

Cultural Heritage Due Diligence Assessment

To accompany a development application for Environmental
Protection Works on the Murray River near Barmah, NSW

March 2022



Progressive Rural Solutions

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Related Documents

Type	Author	Name	Date
Statement of Environmental Effects	Progressive Rural Solutions	J122.2-SEE-V1R4	20/03/2022
Project Design Plans	Rich River Irrigation Developments	J000419	03/02/2022
Project supporting Plans	Progressive Rural Solutions	J122.2-Plans-V1R4	20/03/2022
Biodiversity Test of Significance	Progressive Rural Solutions	J122.2-BTOS-V1R4	20/03/2022
Vegetation Management Plan	Progressive Rural Solutions	J122.2-VMP-V1R4	20/03/2022
Erosion and Sediment Control Plan	Progressive Rural Solutions	J122.2-ESCP-V1R4	20/03/2022

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1. INTRODUCTION

1.1. ORGANISATION

This report has been prepared to accompany a development application made by Ms Carolyn S Muir ATF the CSM Family Trust being the property owner. Progressive Rural Solutions – Clare Fitzpatrick will be the contact person throughout the application process. The main contractor and project manager has not yet been determined however will be subject to all measures identified in the following reports and the related conditions of consent.

1.2. PURPOSE

This Aboriginal Cultural Heritage Due Diligence Assessment has been prepared by Progressive Rural Solutions (PRS) in conjunction with the Client and the Cummeragunja Local Aboriginal Land Council to assess potential impacts that may occur to Aboriginal objects and/or places as part of completing project works described below. The report has been prepared with reference to the following standards, guidelines, and policies:

- *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (NSW Department of Environment, Climate Change and Water [DECCW] 2010) (the Code).
- Statement of Environmental Effects - Progressive Rural Solutions
- Rich River Irrigation - surveyors design plans,
- NSW Office of Environment and Heritage (OEH) Aboriginal Heritage Management System (AHIMS) database,
- Other sources of information where available, and
- Reports as referenced throughout and at the end of the document.

1.3. REPORT FORMAT

This report is set out in the following format:

Table 1-1 – Table showing report format

Section	Address
1	Objectives, documentation and background.
2	Statutory context.
3	General project details, construction methodology, stages and alternatives considered.
4	Historical background.
5	Assessment.
6	Contingency Measures.
7	Conclusion.
Appendices	Plans and supporting reports.

1.4. OBJECTIVES

The key objective of this report is to ensure that impacts to potential Aboriginal cultural heritage are minimised. This includes undertaking the following:

- A search of the NSW OEH AHIMS database to determine if there are any objects or places recorded in the project area and to gain an understanding of records within the project and broader area,
- To review the landscape in and surrounding the project area to determine if there are landforms with potential to contain Aboriginal objects,
- Assess and record the nature of the level of disturbance of the site and landforms,
- Undertake a visual assessment of the project area for disturbance,
- Complete a report to record the Due Diligence process and present any further recommendations including procedures to manage unexpected discovery of Aboriginal heritage items including the notification requirements,
- To summarise the legislative framework in New South Wales that relates to Aboriginal Heritage, and
- Ensure appropriate controls and procedures are implemented during construction activities to avoid or minimise potential adverse impacts to Aboriginal heritage.

1.5. BACKGROUND

The property known as 'Pine View' was purchased by the applicant in 2019 which allowed the consolidation of multiple properties into the C.M. Pastoral Co Moama aggregation and a direct connection to the Murray River. There are multiple pump sites located within the riparian area of this property including the Bama Irrigation Trust, syndicated stock and domestic pump and pipeline and a separate irrigation pump system that supplies water to multiple properties within the C.M Pastoral enterprise. There are no works proposed in connection with the community and trust supplied pump sites although the project works will assist with the protection of the area upstream of the pump sites and improve the water quality within the area.

As has been experienced throughout the broader region the lower sections of the Murray Riverbanks have suffered increased erosion and bank undercutting through the highly variable river operating levels and increased river traffic. This is specifically a concern within the area proposed for works on 'Pine View'.

The single tier, low level, retaining wall is proposed to be constructed with redgum sleepers supported by steel columns and tied back with steel rods and beams. There will be a total length of up to 141.5m with a return section both upstream and downstream of the existing earthen boat ramp. No works are proposed to the existing boat ramp located within the site.

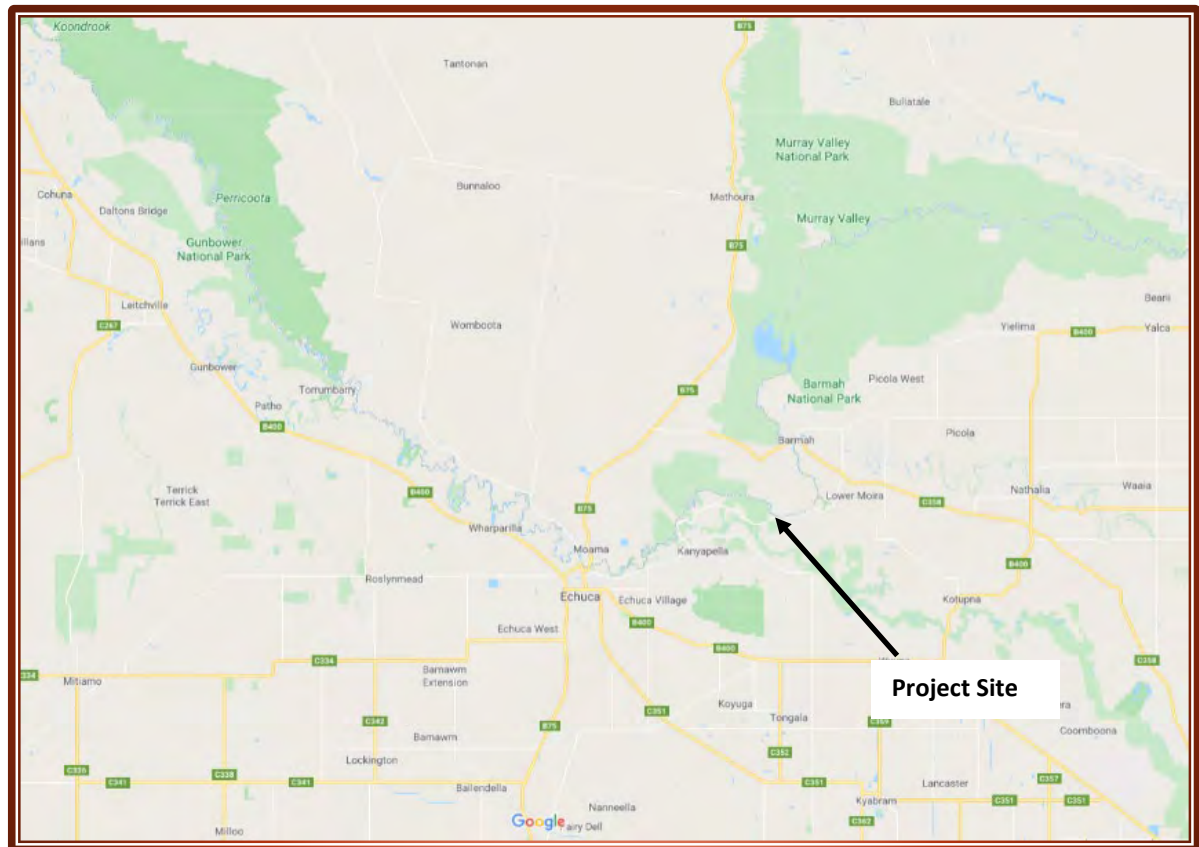


Figure 1-1 - Project Location



Figure 1-2 Image showing overview of the location proposed works and properties

1.6. ENGAGEMENT

Consultation with the Cummeragunja Local Aboriginal Land Council has occurred as part of the request for a site inspection. No extended community consultation has occurred as the assessment undertaken follows the Due Diligence process. Section 5.2 of the *Due Diligence Code of Practice* states: '*consultation with the Aboriginal community is not a formal requirement of the due diligence process*'.

This assessment has not identified that an Aboriginal Heritage Impact Permit (AHIP) is required which would trigger the *Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010*.

2. SITE DESCRIPTION AND WORKS

2.1. LOCATION

The project is located in New South Wales in the Riverina region. Specifically, the site is in the Barmah area, 16.7kms north-east of the township of Moama. The closest township is the Cummeragunja village located 4.5kms to the north east and Barmah is located 6kms to the north north-east.

The property address of the project site is “Pine View” Gilmour Rd, Moama. The project site is located on the north side of the Murray River, 14.5kms downstream of the Barmah Bridge. The property access is 2.3kms by Gilmour Road from the Barmah Rd turn off.

The specific location of the project site is shown below **Figure 2-1**, **Figure 2-2** and **Table 2-1**

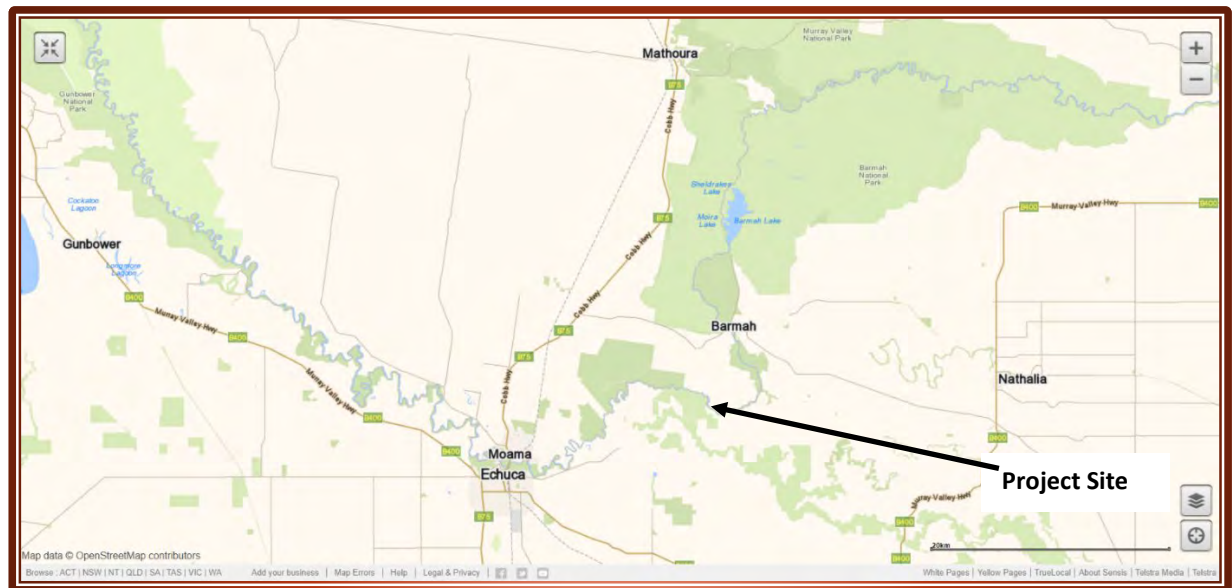


Figure 2-1 Location of project site in relation to the region

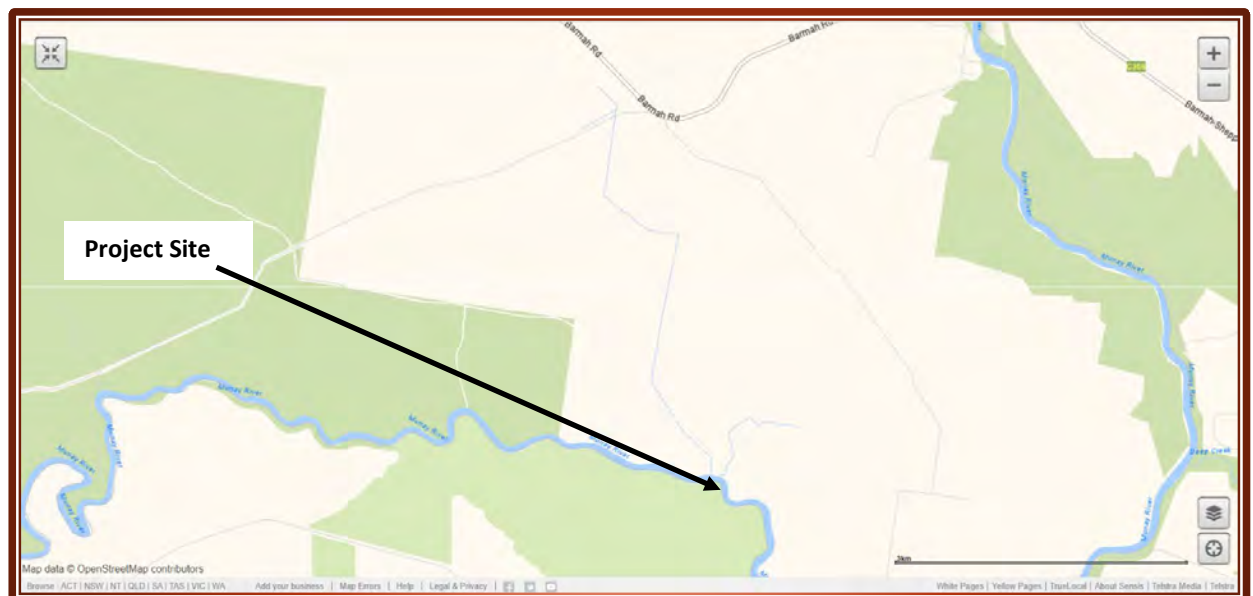


Figure 2-2 Location of project in relation to the local area

The land details of the project are summarised as follows:

Table 2-1 Land details of the project

Details	Specific related to project site
Lot number	53
Deposited Plan	751140
Parish	Bama
County	Cadell
Local Shire	Murray River Council
LEP Zone	Zone RU1 – Primary Production Zone W2 – Recreational Waterway
Catchment Area	Murray
IBRA Sub-region	Riverina – Murray Fans
Mitchell Landscapes	Murray Channels and Floodplains
Local Aboriginal Land Council	Cummeragunja Local Aboriginal Land Council
Floodplain Management Plan	Nil
Land Stature	Freehold
Area of project	1,056m ²
GPS Reference	MGA Zone 55 E:313849 N:6006677

SITE DESCRIPTION

The project works are located in New South Wales on Lot 53 DP751140 within the Murray River Council area. The property enjoys presumptive rights whereby the title extends to the centre thread of the River channel.

The site has been used extensively for livestock grazing for a long period prior to purchase by the applicant. The site as one of the only locations in this stretch of River with its sloping banks would have been a major location for livestock access to water creating ongoing disturbance. The Bama Irrigation Trust supply pump infrastructure and associated channel and levee banks have been at this site for over 100 years. Many pumps have been installed and removed from this location – nearly all requiring some form of excavation activities. Previous property owners have used this location for River boat access to launch small boats and retrieve pumps from the adjoining pump stations.

The project area stretches almost 150m along the river bank where ongoing erosion of the lower banks has led to degradation of the bank. The existing earthen boat ramp will be retained and as such the proposed wall with be spilt into two spans either side of the boat ramp.

The image below shows the existing site with an impression of the proposed wall shown in red.



Figure 2-3 - Image showing proposed retaining wall.

2.2. SURROUNDING AREA

The project is located within the Riverina area of NSW. This region broadly covers 9,576,964ha (7,090,008ha in NSW). The Murray and the Murrumbidgee Rivers together with the Lachlan and the Goulburn Rivers are the major tributaries which flow from the highlands in the east west across the plains. (NSW National Parks and Wildlife Service, 2003)

The Mitchell Landscape for the area is classified as Murray Channels and Floodplains which are defined as: *Active channels and seasonally inundated floodplains of the Murray streams in Quaternary alluvium with associated billabongs, swamps, channels, levees and source bordering dunes, relief to 10m. Includes scalded alluvial flats, broad elevated floodplains and associated relict channels; isolated sandy rises, relief to 5m..* (Eco Logical Australia, 2008).

The area is serviced by local roads, mobile phone service, electricity, internet and river water access.

The project site is surrounded on three sides by floodplain areas of regrowth including River Red Gum and Black Box and is interspersed with some dwarf cherry with a predominantly non-native grass layer. The remaining side is the Murray River. The site has been subject to ongoing long-term grazing of livestock which is evident in the quality of the vegetation and degraded habitat on and adjoining the site.

2.2.1. UPSTREAM

The area upstream of the project site, has banks that are in varying stages of stability and contain native riparian vegetation, fallen timber, leaf litter and very little ground cover. This site is subject to inundation during high river flows and is utilised by livestock for grazing and water access. Morning Glory River Resort is located 2.5kms (by River) upstream and clientele from the resort regularly use this section of the River for riverboat activities.



Figure 2-4 - Image showing upstream of project site

2.2.2. DOWNSTREAM

The area downstream of the project site is the continuation of an outside bend. The Bama Irrigation Trust and other community pumping systems maintain pump infrastructure within this area. The area also contains irrigation channels, levee banks, overhead and buried electricity supply infrastructure, access tracks, fencing and pipelines. The banks in this section are subject to erosion however are nearly vertical in nature. This area is predominantly natural, and portions receive periodic flooding. The vegetation in this area has also been disturbed with little very old remnant vegetation in the immediate landscape.



Figure 2-5 - Image showing downstream of project site

2.2.3. OPPOSITE

The area on the opposite bank of the river is the Lower Goulburn National Park. This area contains native vegetation and the banks are eroding. Based on satellite imagery this area seems to be subject to inundation. The site is not accessible so limited information is available on this area.



Figure 2-6 - Image showing opposite bank

2.3. GENERAL SETTING AND PHYSIOGRAPHY

2.3.1. CLIMATE

The climate in the Echuca/Moama area can be described as a semi-arid climate under the Koppen climate classification with warm to hot summers and cool winters. Temperature extremes are quite variable across the year and the highest temperature recorded at Echuca being 46.9 degrees on the 25th January 2019. The lowest temperature was -5.5 on the 21st July 1982. The average annual rainfall is 415.2mm.

The climate within the project area is considered as it may have implications for the movement of Aboriginal populations in the broader region. During the hot, dry summer months campsites would have been restricted to permanent water sources such as waterholes in rivers and billabongs. The cooler, wetter months allowed Aboriginal people to become more mobile ranging further out into the plains away from the rivers to hunt and camp (Edmonds, 1998).

2.3.2. GENERAL SETTING

The project site is located within the Riverine plain of South-Eastern Australia and is bordered by the Great Dividing Range in the south and south-east, the Manara and Cocoparra ranges in the north and north-east, and the Mallee in the west - see **Figure 1-7** below. The Riverine Plain is approximately 76,800 km²

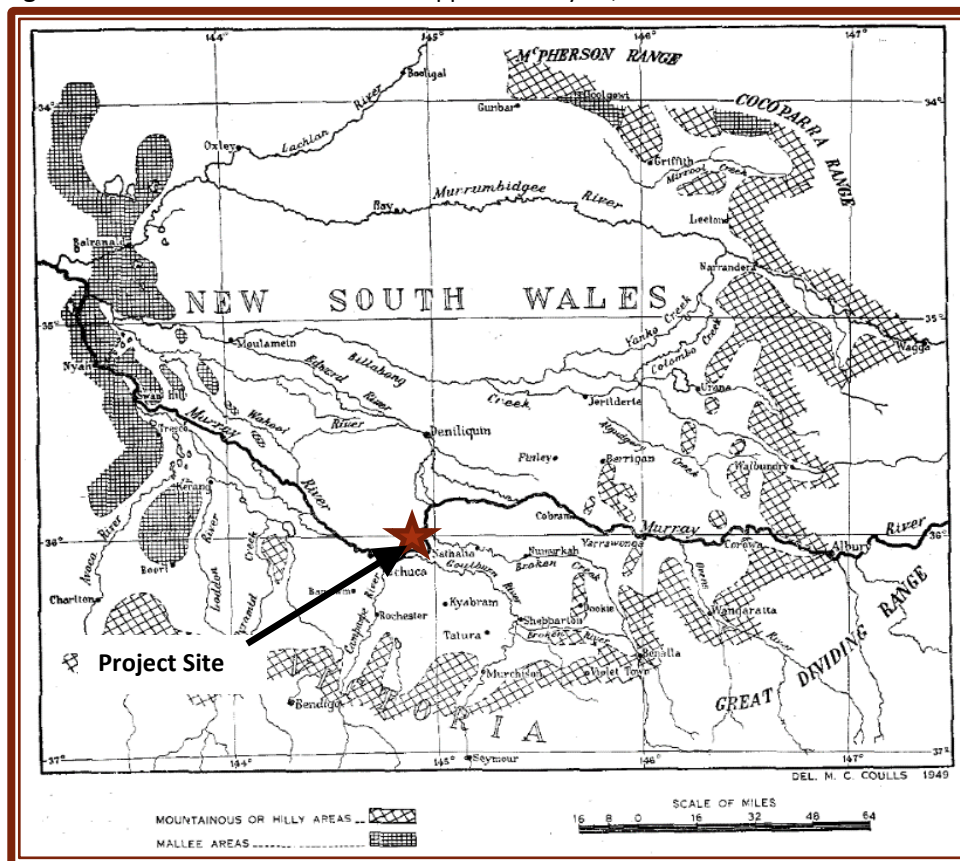


Figure 2-7 The Riverine Plain of South-eastern Australia and its chief physiographic features (Butler 1950, pg 232.)

The Riverine Plain has built up from alluvial and aeolian sediments deposited over the past 65 million years. Bedrock occurs at the land surface around the southern and eastern rim of the plain while sediments are known to be in excess of 300m in depth in the north-west region near the town of Hay, NSW.

The geomorphic (surface features) of the Riverine Plain have developed from fluvial (action of streams), lacustrine (action of lakes and wetlands) and aeolian (action of wind) activity. These processes have resulted in the current level of soil formation on the plain. The geomorphology and soils of the site are documented by (Butler,1973). In accordance with this publication, the mapping unit covering the site is noted as “PLC” or “Plains with channels”. An extract of the map produced by Butler is provided in **Figure 2-8** It can also be noted that adjoining the area in orange is the Lunette shown as “L” being the Cadell Tilt and Cummeragunja Sandhill.

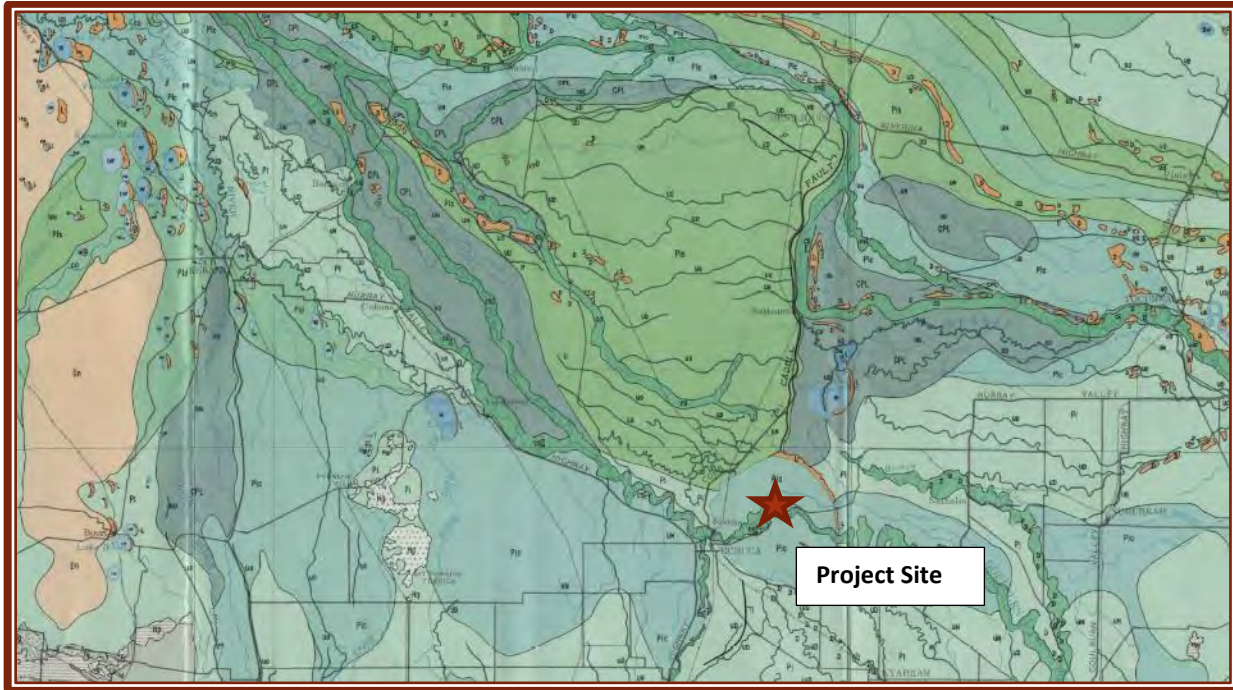


Figure 2-8 Geomorphic map of the area showing prior streams, plains and dunes

The pattern of soil deposition, stream location and flooding occurrence determines the vegetation pattern across the plain. River Red Gum (*E. Camaldulensis*) is generally found close to water courses where a one-in-three to one-in-seven-year flood event is received. Black Box (*E. lagiflorens*) is generally found at further reaches and is a one-in-ten to one-in-thirty-year flood species.

2.3.3. TOPOGRAPHY

This project area does not contain or adjoin any of the aeolian sand hills which are found within the broader area, and which generally depict recent and major prior streams. The site is located on a major River being the Murray River.

The general trend of slopes within the district is to the west at approximately 1:10,000 (10cm/km or 0.01%). This site has an approximate natural surface elevation of 95.30mAH at the top of bank.

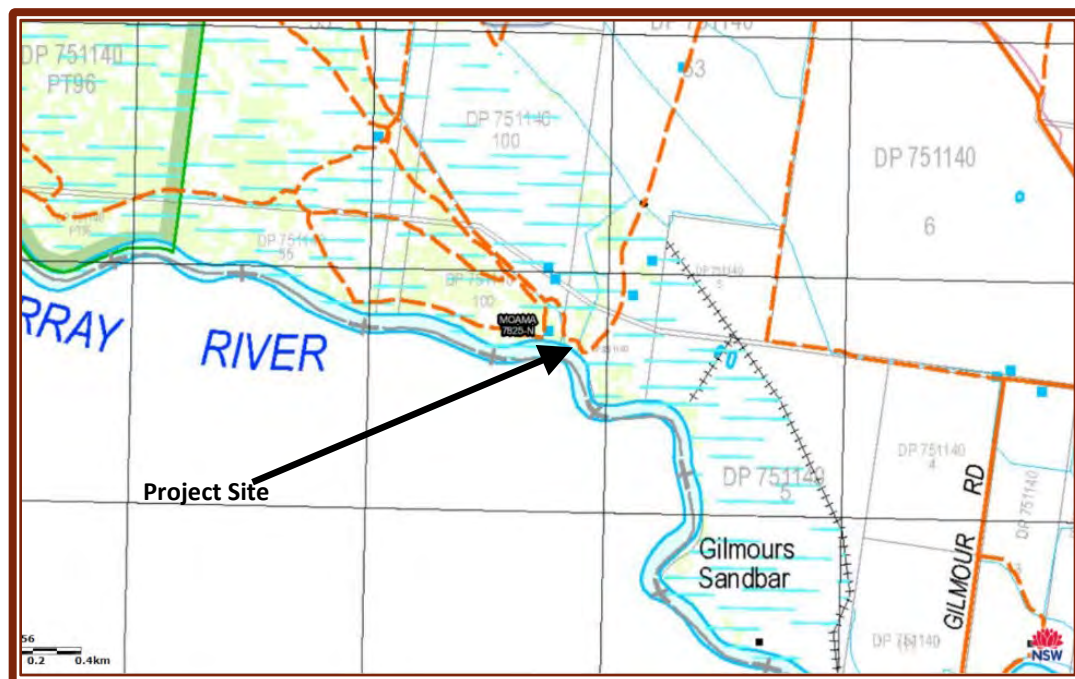


Figure 2-9 - Image showing topography of the project site. (Source Six maps)

2.3.4. SOILS

The “soil and land resources” layer from espade.environment.nsw.gov.au, State of NSW and Office of Environment and Heritage, 2020 has been utilised to review both the soils at the site and the surrounding area. This mapping identifies the soils at the site as Lake Urana (shown below shaded in blue) being described as *typically high in clay content, and commonly form grey and black cracking clays. Gilgai micro-relief is common. These grade to silty grey and brown silty clays where lacustrine silt contents are high. On outer margins with plains or lunettes, soils are typically sodic and brown/grey solodic soils occur. These are occasionally overlain by sandy beach materials—arenic siliceous sands on the windward side of the lake shores.* (DECCW, NSW, 2010) This mapped soil type broadly matches those visually identified on site.



Figure 2-10 - Image showing soils and project site Source: Google earth and eSPADE)

2.3.5. VEGETATION

Vegetation generally consists of River Red Gums (*Eucalyptus camaldulensis*) along the banks of rivers and creeklines and Black Box (*Eucalyptus largiflorens*) with a lignum (*Muehlenbeckia cunninghamii*) understorey on surrounding floodplains.

2.4. PROJECT DESCRIPTION

2.4.1. PROPOSED WORKS

The works proposed relate to the installation of environmental protection works in the form of a redgum sleeper retaining wall. The low-level wall is proposed to follow the existing lower eroded bank of the Murray River and will extend up to 141.5m in total length with a maximum height of 1.3m. The wall is proposed to be separated by an existing earthen boat ramp with two wall returns tied into the bank at the location for added security. Each end of the retaining wall is to be tied into the existing bank by a return and additional rock erosion control. Excavation works will be required but will be minimised.

The project will also include ongoing revegetation works up to a 2 year period after installation.

2.4.2. INFRASTRUCTURE

The project infrastructure when complete is proposed to include the following:

- Existing earthen boat ramp with no change to ramp proposed, and
- Up to 51.5m long redgum sleeper retaining wall downstream of ramp, and
- Up to 90m long redgum sleeper retaining wall downstream of ramp.

Details of the proposed wall are shown below.

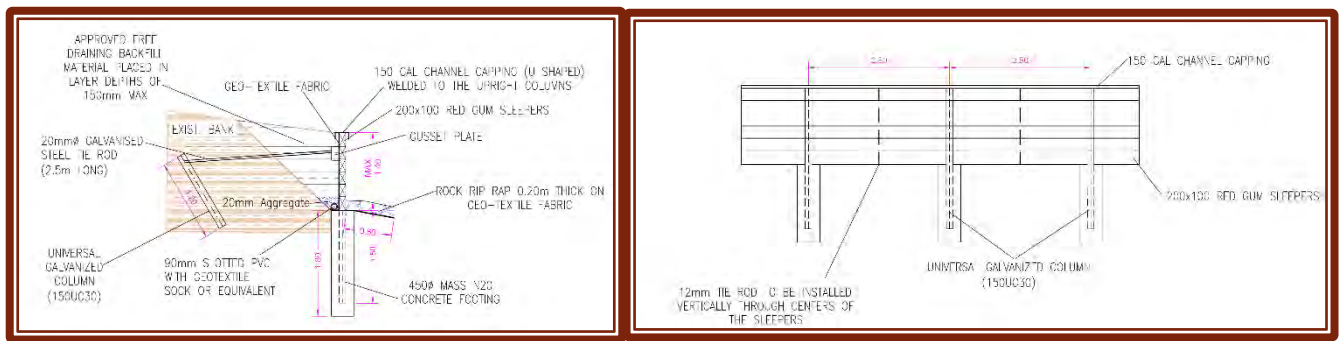


Figure 2-11 Typical Retaining Wall Detail

2.4.3. PROJECT METHODOLOGY

The proposed methodology relating to the project works following the obtaining of all approvals is as follows:

1. Development Application Approval received,
2. Controlled Activity Approval received,
3. Relevant notifications are given to authorities,
4. Erosion and sediment controls are reviewed and installed,
5. Beams and columns installed progressively,
6. Sleepers installed along bank and tieback rods connected to beams progressively,
7. Geotextile fabric installed and site backfilled with previously excavated fill progressively,
8. Revegetation work,
9. Erosion and sediment control measures removed/checked,
10. Project site monitored for ongoing erosion and rehabilitation.

No Native Vegetation (dead or alive) is to be removed and excavation and ground disturbance activities are only to occur in approved locations.

2.4.4. PROJECT STAGES AND TIMING

Project works are proposed to commence as soon as possible. It is estimated that major construction activities will be undertaken over four weeks and the whole project complete in five weeks.

The timing of the works are dependant on the approval process however works will not be undertaken during flood or known major rainfall events. River levels will be monitored and works are proposed to occur during low river level events only.

Where works commence and river levels unexpectedly rise, works will be completed and will recommence at a suitable time to safely undertake them. This may require that the wall is tied into the bank with erosion control temporarily installed as an interim measure.

Ongoing rehabilitation works as identified in the Vegetation Management Plan will be monitored and reviewed over a 2 year period.

2.5. GROUND DISTURBANCE ACTIVITIES

The ground disturbance activities relate to access for machinery, storage of materials and equipment, trenching for tie back rods and anchors and installation of columns. A small area will also require backfill with earth sourced from within the adjoining farming area. The works within the site will encompass an area of approx. 1,056m². Access to and within the site is proposed on existing access tracks currently utilised at the site.

The site parking storage and lay-down area is proposed to occur approx. 30m to the north of the site within the existing irrigation infrastructure area. No excavation activities relating to this project are proposed in this area or on the existing levee banks at the site.

3. STATUTORY CONTEXT

The conservation and management of Aboriginal heritage objects and places is undertaken in accordance with relevant Commonwealth, State or Local Government legislation.

3.1. COMMONWEALTH LEGISLATION

3.1.1. ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT, 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) provides objects within the Act which recognise the role Indigenous people play in the conservation and sustainable use of resources, and the need to promote the use of traditional knowledge to inform management and conservation decisions. The relevant objects for the purposes of this discussion are: to promote a co-operative approach to the protection and management of the environment involving governments, the community, landholders and Indigenous peoples; to recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and to promote the use of Indigenous peoples' traditional knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

3.1.2. ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSHP) allows for the protection of areas and objects that are of particular significance to Aboriginal people. This Act allows the Minister to make a declaration to protect an area, object or class of objects from a threat of injury or desecration on application by an Aboriginal person or group.

3.1.3. NATIVE TITLE ACT 1993

The *Native Title Act 1993* provides a national system for the recognition and protection of native title and for its co-existence with the national land management system. The native title is recognised where: the rights and interests are possessed under traditional laws and customs that continue to be acknowledged and observed by the relevant Indigenous Australians, by virtue of those laws and customs, the relevant Indigenous Australians have a connection with the land or waters, the native title rights and interests are recognised by the common law of Australia.

3.1.4. BURRA CHARTER: THE AUSTRALIA ICOMOS CHARTER FOR PLACES OF CULTURAL SIGNIFICANCE

The Burra Charter is the shorter title given to the Australian ICOMOS Charter for the Conservation of Places of Cultural Significance agreed at the historic mining town of Burra in South Australia in 1979. This Charter has been recognised as having pioneered the understanding of cultural heritage and has been adopted by the Australian Heritage Council, Heritage Council of NSW, Queensland Heritage Council and the Heritage Council of Victoria. It is also recommended by the Heritage Council of Western Australia and the Tasmanian Heritage Council.

The Burra Charter importantly defines the basic principles and procedures to be followed in the preservation of all types of sites and defines Cultural significance as a term used to encompass all meanings and values referring to 'aesthetic, historical, scientific or social values for past, present or future generations.'

3.2. STATE LEGISLATION

3.2.1. NATIONAL PARKS AND WILDLIFE ACT 1974 & NATIONAL PARKS AND WILDLIFE AMENDMENT REGULATION 2019

The *National Parks and Wildlife Act 1974* (NPW Act) specifies that the Director-General of the National Parks and Wildlife Service (NPWS; previously DECCW and OEH now Biodiversity Conservation Division [BCD]) is responsible for the care, control and management of various natural and cultural areas, including Aboriginal places and objects throughout NSW. Under this Act, all Aboriginal objects are protected regardless of significance or land tenure. Such Aboriginal objects include pre-contact features like scarred trees, middens and open camp sites, and post-contact features such as Aboriginal fringe camps. The Act also protects Aboriginal places, which can only be declared by the Minister administering the NPW Act; these are defined as being a place that is or was of special significance with respect to Aboriginal culture.

There are no declared Aboriginal Places within the study area or its vicinity.

Under Section 90 of the NPW Act, it is an offence to destroy, deface, damage or desecrate an Aboriginal object or Aboriginal place, unless an Aboriginal Heritage Impact Permit (AHIP) has been issued by the BCD of the NSW DPIE. The Act requires that reasonable precautions and due diligence be undertaken to avoid impacts on Aboriginal Objects.

The *National Parks and Wildlife Amendment Regulation 2019* excludes activities carried out in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* from the definition of harm in the NPW Act, meaning that test excavations may be carried out in accordance with this Code of Practice, without requiring an AHIP. The Regulation also outlines Aboriginal community consultation requirements (*Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*), and a *Due Diligence Code of Practice* which specifies activities that are low impact, thus providing a defence to the strict liability offence of harming an Aboriginal object.

An 'Aboriginal object' is defined as *"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"*.

There have been no Aboriginal objects identified as part of the desktop or visual assessment at the project site.

3.2.2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) regulates land use planning and development in NSW, including the making of environmental planning instruments (EPIs). The two types of EPIs are State Environment Planning Policies (SEPPs), which cover areas of State or regional environmental planning significance; and Local Environmental Plans (LEPs), which cover Local Government Areas (LGAs). SEPPs and LEPs identify and provide for the protection of local heritage items and heritage conservation areas. Division 6 of Part 3 of the EP&A Act introduces requirements for Development Control Plans to supplement the LEPs and provide more detailed provisions to guide development.

3.2.3. HERITAGE ACT 1977

The *Heritage Act 1977* protects heritage places, buildings, works, moveable objects, precincts and archaeological sites that are important to the people of NSW. Items that have particular importance to the State of NSW are listed on the State Heritage Register (SHR). Such items can include those of Aboriginal and non-Aboriginal heritage significance. The *Heritage Act* offers blanket protection for relics, defined as:

Any deposit, object or material evidence:

- a) *Which relates to the settlement of the area that comprises New South Wales, not being Aboriginal Settlement, and*
- b) *Which is 50 or more years old.*

This includes all historical archaeological sites, places and relics in NSW older than 50 years, regardless of their level of Aboriginal cultural heritage significance.

There are no Aboriginal heritage items or places within the study area listed on the State Heritage Register.

3.3. LOCAL LEGISLATION

3.3.1. MURRAY LOCAL ENVIRONMENT PLAN

The local environment plans guide planning decisions for local government areas. These plans ensure that development is undertaken through zoning and development controls and ensure that local development is undertaken appropriately. The earthworks provision identifies that all earthworks will not have a detrimental impact on cultural or heritage items in relation to the NPW Act particularly Section 86.

4. HISTORICAL BACKGROUND

4.1. ABORIGINAL HISTORY

Language groups along the Murray River and its tributaries often identified themselves with a name which consisted of their word for 'no' repeated. For example, Wemba Wemba, Latji Latji and Wadi Wadi. The project area is located in the south-eastern area of the Joti Jota territory. This territory Murray River from east of Cohuna to Echuca and a point 30 km by river west of Tocumwal in Victoria; along Tullah Creek to Yielima; at Tuppall, Conargo, and Deniliquin in New South Wales; they were reported in 1842 as visiting the Murrumbidgee River. Much of their country is open savannah woodlands with Eucalyptus trees. (Tindale, 1974)

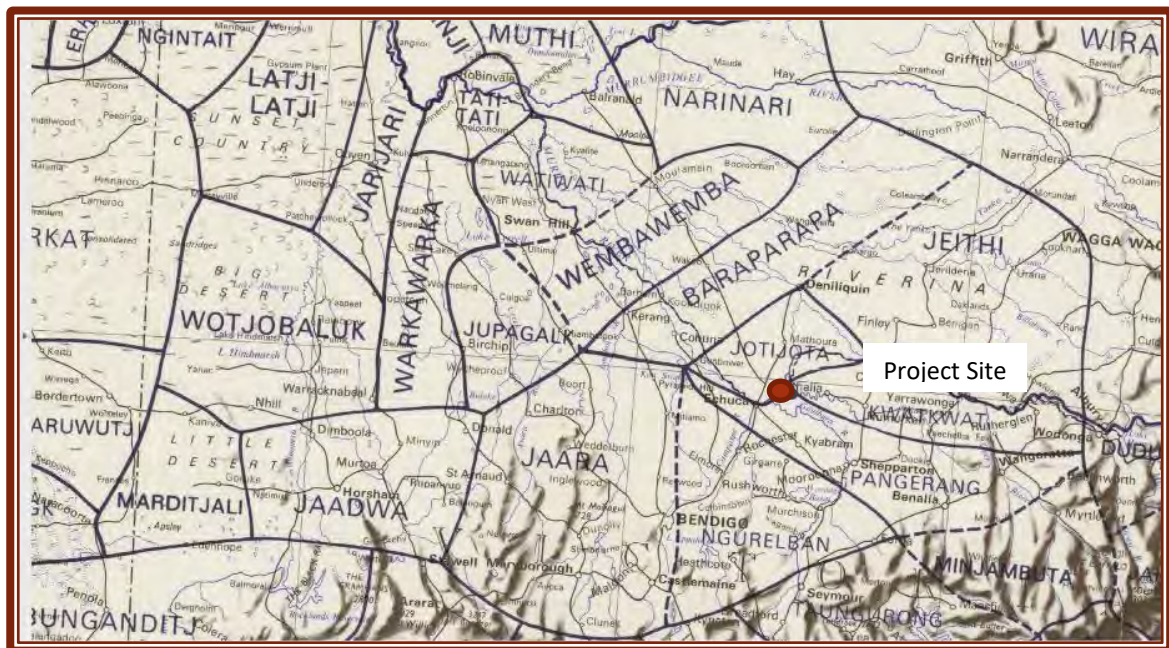


Figure 4-1 - Map from Aboriginal Tribes of Australia – project region (Tindale, 1974)

The abundant and reliable food and water resources of the Murray River and its associated floodplains supported some of the densest Aboriginal populations in Australia (Butlin, 1983). The importance of the river to Aboriginal subsistence was substantial with fish, crayfish and shellfish providing reliable sources of protein. The latter were dived for while fish were caught by a number of methods including the construction of weirs and dams and the use of nets and spears. Other sources of protein available on the floodplain and riverine plains included possums, kangaroos, emus, reptiles and waterfowl and their eggs (Edmonds, 1998).

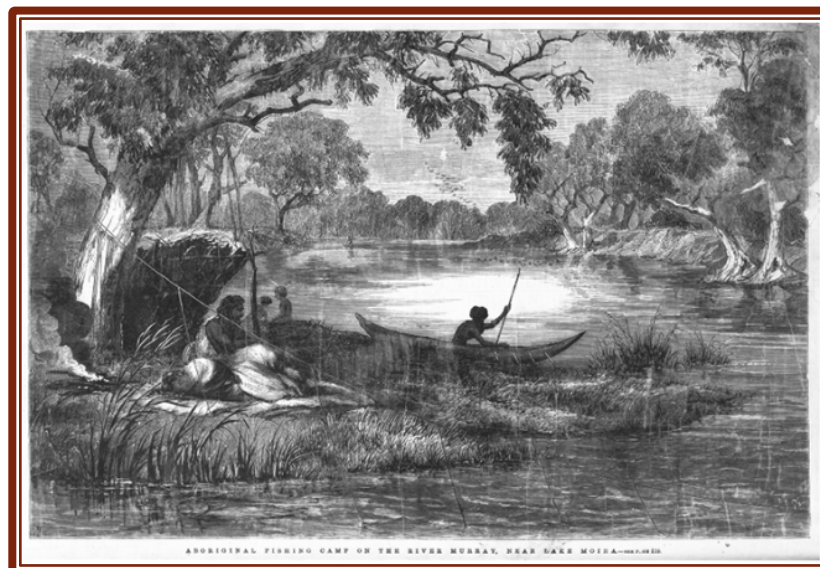


Figure 4-2 - Image showing "Aboriginal Fishing Camp on the River Murray, near Lake Moira (1872) Samuel Calvert

4.1.1. AHIMS SEARCH

A search of the OEH AHIMS database was undertaken prior to a site inspection and again on 5 November 2021. This search revealed no sites within the project or the broader area using the Lot/DP and a search buffer of 200m. An additional search was undertaken as part of the final report writing which included a revised search of the Lot and DP with a 1,000m buffer. This search also revealed no objects or places.

A copy of this search is included in 10.1.

4.1.2. OTHER ARCHAEOLOGICAL ASSESSMENTS

There are no other known reports that have been identified within this area or context of this site..

4.2. EUROPEAN HISTORY

The first Europeans to traverse the project area and surrounds were explorers Charles Sturt and team in 1838. This expedition was followed by British-born Henry Sayer Lewes who established the “Moirs Run” in 1842 – being a total of 172,500 Acres at the time. The run was sold on by 1861 with the area on this area of the property resumed. Of note, Mr HS Lewes recorded that —“The low tract between the plains and the river Murray, now being flooded, was mostly clear swamp, where afterwards it became covered in impenetrable reed beds. The small strips of plain near the swamp were covered with mesembryanthemum and salt-bush. The higher plains were entirely bare of any vegetation whatever but occasional salt-bushes. The box forests skirting the plains had here and there a few tufts of dry grass, which might have been in the same state for years.” (Lewes, 1883).

Few records have been found of the property between the years of 1861 to 1928 however reports from that time in the area describe activities on the floodplains including clearing of native vegetation for charcoal burning and timber cutting for paddle steamers and housing.

The Bama Irrigation Trust was officially gazetted on the 7th August 1925 which included the irrigation of the properties in this proposal. At that time, the levee banks, irrigation channels and other access roads were constructed. The Bama Irrigation Trust still operates today delivering irrigation water to properties surrounding this proposal.

The licencing of the existing pump site relating to this application was recorded on the 17th October 2003 in the NSW Government Gazette No 165. Since this time, except for ongoing general maintenance, little has changed at the site.

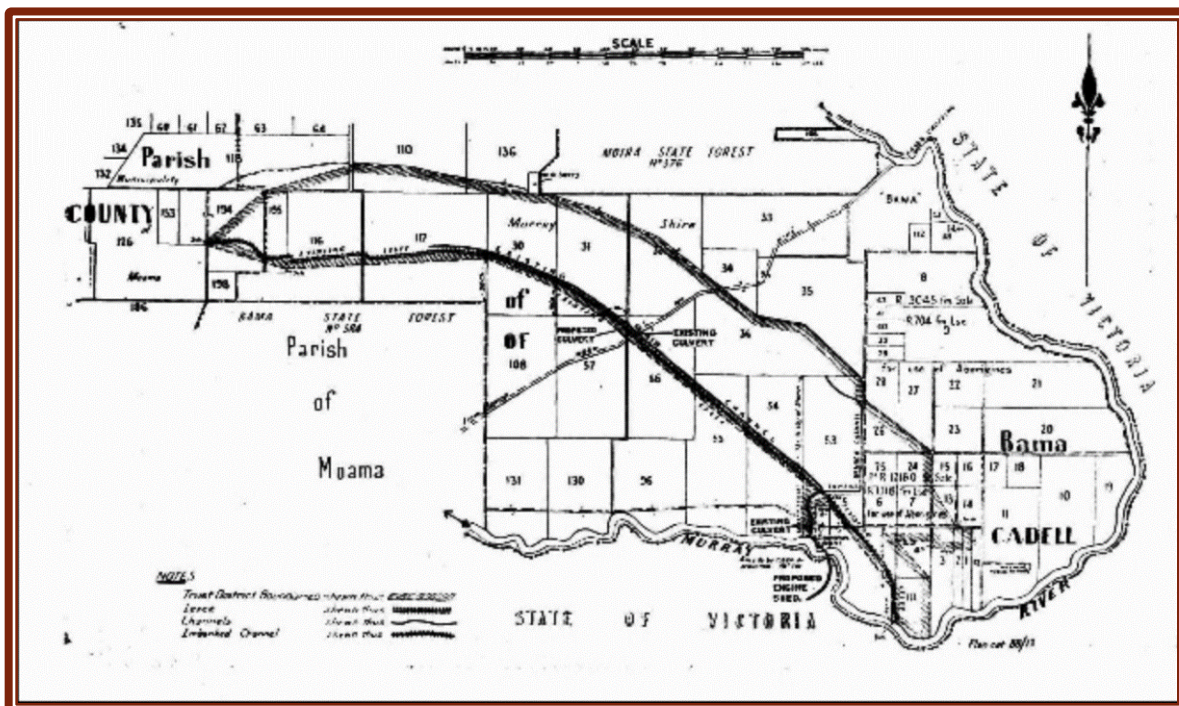


Figure 4-3 – Image used in the original gazette of the Bama Irrigation Trust 25/07/1925 showing the pump site and irrigation properties

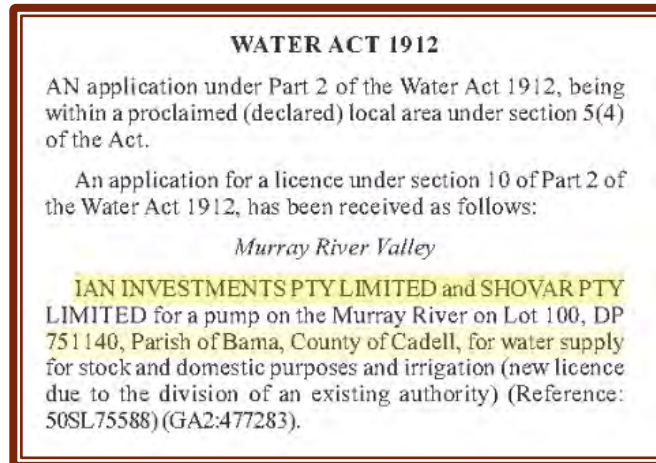


Figure 4-4 - Copy of notice in NSW government gazette 165 17/10/2003

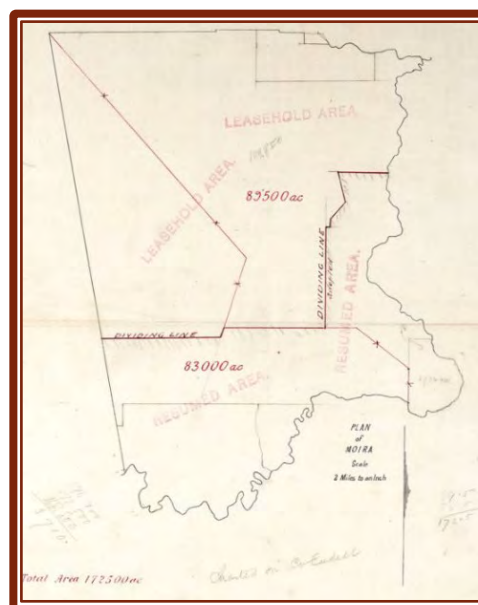


Figure 4-5 – Image showing the historical map of Moira Run (Map No 572556)



Figure 4-6 - Project site and most recent image showing current area disturbance (Source: Six viewer)

5. ASSESSMENT

STEP 1 – WILL THE ACTIVITY DISTURB THE GROUND SURFACE OR ANY CULTURALLY MODIFIED TREES?

Disturbance of the ground surface is often significant when machinery is used to dig, grade, bulldoze, scrap, plough, or drill the ground surface for the purpose of building a structure or removing vegetation. If an activity will disturb the ground surface, there is a higher likelihood that Aboriginal objects will be harmed.

COMMENT

The project activities will disturb the ground surface within the project area. There are no proposed works that relate to the removal of any culturally modified trees. ➡ **If Yes, proceed to Step 2a - Check the AHIMS database**

STEP 2A – SEARCH THE AHIMS DATABASE AND USE ANY OTHER SOURCES OF INFORMATION WHICH MAY BE AVAILABLE.

A search the AHIMS database must be undertaken to check whether any Aboriginal sites have been recorded in the area of the Project. If the results of the initial AHIMS search indicates that AHIMS contains information about recorded Aboriginal objects in the area of the proposed activity, a copy of these records must be obtained. After obtaining the records from AHIMS of any recorded Aboriginal objects, these objects should be confirmed that they are located in the area where the activity is proposed.

COMMENT

An AHIMS search has been undertaken over the project site and its surrounds. Results of this search identified that there are no recorded Aboriginal objects located at or within the vicinity of the project area. (see Section 4.1.1).

➡ **Proceed to Step 2b – other information sources**

STEP 2B. ARE THERE ANY OTHER SOURCES OF INFORMATION OF WHICH A PERSON IS ALREADY AWARE?

If there are any other sources of information, these need to be used to identify whether or not Aboriginal objects are likely to be present in the area. Other sources of information can include previous studies, reports or surveys which have been commissioned or are otherwise aware of.

COMMENT

Archaeological assessments relating to the local area have been reviewed with no assessments that relate to the project area identified (see Section 4.1.2). ➡ **Proceed to Step 2c – landscape features**

STEP 2C – ACTIVITIES IN THE AREAS WHERE LANDSCAPE FEATURES INDICATE THE PRESENCE OF ABORIGINAL OBJECTS

Regardless of whether the AHIMS search indicates known Aboriginal objects, consideration of whether Aboriginal objects are likely to be in the area of the proposed activity need to be made having regard to the above described landscape features.

If after completing steps 2a and 2b it is reasonable to conclude that there are no known Aboriginal objects or a low probability of objects occurring in the area of the proposed activity, you can proceed with caution without applying for an AHIP.

COMMENT

The project area is located adjoining the Murray River or 'waters' which is considered a landscape feature. ➡ **If yes to 2a), 2b) or 2c) - Proceed to Q3 – Avoidance of Harm.**

STEP 3 – CAN HARM TO THE ABOVE ABORIGINAL HERITAGE OR LANDSCAPE FEATURES BE AVOIDED BY THE ACTIVITY?

This step only applies if your activity is on land that is not disturbed land or contains known Aboriginal objects. Where as a result of step 2a you think it is likely that there are Aboriginal objects present in the area of the proposed activity, you need to decide whether you can avoid the harm to those objects. Where as a result of step 2b you have concluded that the landscape features listed are present, you need to decide whether you can move your activity away from the area with the landscape feature(s) so as to avoid disturbing any Aboriginal objects which may be present. If you can't avoid harm to the object or disturbance of the landscape feature(s) you must go to step 4. If you can avoid harm to the object and disturbance of the landscape feature(s) you can proceed with caution without applying for an AHIP.

COMMENT

The project works relating to the Murray River being a landscape feature cannot be avoided as the project site runs along the bank. ➡ **Proceed to Step 4 – Desktop and Visual Assessment**

STEP 4 – DOES A DESKTOP ASSESSMENT AND VISUAL INSPECTION CONFIRM THAT THERE ARE ABORIGINAL OBJECTS OR THAT THEY ARE LIKELY?

This step only applies if your activity is on land that is not disturbed land or contains known Aboriginal objects. The assessment process is primarily a desktop exercise that involves examination and collation of the readily available information. The assessment must consider the area of the proposed activity as a whole, not just particular areas where any Aboriginal objects have been recorded on AHIMS or areas where landscape features are located.

At a minimum the information reviewed as part of the desktop assessment should include existing knowledge of Aboriginal cultural heritage gleaned from previous heritage studies or reports for the area, including any archaeological studies on AHIMS.

A visual inspection of the area must be undertaken to see if Aboriginal objects can be identified or are likely to be present below the surface. This visual inspection must be done by a person with expertise in locating and identifying Aboriginal objects. This person with expertise could be an Aboriginal person or landholder with experience in locating and identifying Aboriginal objects or a consultant with appropriate qualifications or training in locating and identifying Aboriginal objects.

Where either the desktop assessment or visual inspection indicates that there are (or are likely to be) Aboriginal objects in the area of the proposed activity, more detailed investigation and impact assessment will be required. This will need to be done by a person with expertise in Aboriginal cultural heritage management. Go to step 5. Where the desktop assessment or visual inspection does not indicate that there are (or are likely to be) Aboriginal objects, you can proceed with caution without an AHIP application.

COMMENT

The desktop assessment has identified that there is a landscape feature (waters) within the project area. Following the identification of a landscape feature and recognising that the project works will result in ground disturbance activities, a visual inspection has been undertaken to review and record:

- The project location, area, and landscape feature to identify its potential for Aboriginal objects or places,
- The extent of disturbance activities within the site and that those activities remain clear and discernible.

An inspection report was prepared and provided by the Cummeragunja Local Aboriginal Land Council which is attached in Appendix 2. The report recorded the visual inspection undertaken and that there were no Aboriginal objects, sites or scarred trees within the site or vicinity and confirmed that there were significant disturbances obvious within the site and local area.

They report recommended that

- the project be allowed to proceed without constraint on the area as identified and discussed on site.
- works, and vehicle access and disturbance does not occur in areas not previously disturbed within the vegetation area.
- That all contractors be aware Section of 86 their responsibilities under the *NSW National Parks and Wildlife Act 1974*

6. CONTINGENCY MEASURES

All Aboriginal objects and sites in NSW are protected under the *National Parks and Wildlife Act 1974*. It is an offence to knowingly harm or desecrate an Aboriginal object or Aboriginal place. If in the course of the project activities, a potential object is identified, contingency measures have been provided below.

These measures identify the obligations in the event of the discovery of Aboriginal objects either identified or suspected during the project works within the project area.

6.1. UNEXPECTED FIND OF ABORIGINAL OBJECT

In the event that a potential Aboriginal object is encountered during project activities the following steps should be undertaken.

1. All ground surface disturbance in the area of the find(s) will cease immediately following the discovery or potential discovery of a find and
 - a. The discoverer of the find(s) will notify machinery operators in the immediate vicinity of the find(s) so that work can be halted and ensure that there is no further harm to the object,
 - b. The discoverer of the find(s) will secure the area and prevent equipment or personnel from entering the area except in accordance with this protocol, and
 - c. The site supervisor/project manager will be informed of the find(s).
2. If finds are suspected to be human skeletal remains, then NSW Police and HeritageNSW will be contacted as a matter of priority and the procedure for Unexpected Discovery of Possible Human Skeletal Remains should be followed.
3. With approval from the relevant party, a heritage specialist will be engaged to assess the Aboriginal place or object encountered, a Representative from any Registered Aboriginal Party and Local Aboriginal Land Council for the project may also be engaged to assess the cultural significance of the place or object as part of the obligations of the AHIP assessment process.
4. The following process must be followed:
 - a. Immediately notify the following authorities or personnel of the discovery if not already done so:
 - i. HeritageNSW (Environment Line: 131 555); and
 - ii. Relevant Aboriginal Community Representatives, including the Local Aboriginal Land Council.
 - b. Facilitate, in co-operation by an appropriately qualified person with the appropriate authorities and relevant Aboriginal community representatives:
 - i. The recording and assessment of the finds;
 - ii. Fulfilling any legal constraints arising from the find(s). This will include complying with HeritageNSW directions; and
 - iii. The development and conduct of appropriate management strategies. Strategies will depend on consultation with stakeholders, the assessment of the significance of the find(s) and the relevant permits.
5. Re-commencement of ground disturbing works may only resume in the area of the find(s) following compliance with any consequential legal requirements and gaining written approval from HeritageNSW.

6.2. UNEXPECTED FIND OF HUMAN SKELETAL REMAINS

In the event that possible human skeletal material (remains) are encountered during construction, the following steps should be undertaken:

1. Works at that location of discovery and placement of material will cease,
2. The site must be immediately secured to prevent unauthorized access and (any further) harm,
3. Contact police as the discovery of human remains triggers a process which assumes that they are associated with a crime. The NSW Police will retain carriage of the process until such time as the remains are confirmed to be Aboriginal or historic,
4. Contact HeritageNSW should the human remains be deemed Aboriginal or historical by the police, HeritageNSW must be notified immediately to assess the remains – Contact number 131 555,
5. The Local Aboriginal Land Council and any other relevant Aboriginal Party should also be notified,
6. A project Archaeologist may also be engaged at this stage to assist with further representation of the proponent/applicant/owner/company.

- All directions made by the HeritageNSW Southwest Branch, in discussion with the project Archaeologist (where relevant), must be followed. This may include the need to engage technical specialist (e.g. Forensic Anthropologist), and liaison with and RAPs, to formulate future management of the remains.
- Work is not to commence in the area unless authorised in writing by HeritageNSW and/or the NSW Police.

7. CONCLUSION

The project works proposed relate to the installation of a low-level retaining wall along the lower eroding bank and revegetation works. Works will be completed with minimal excavation works where possible however are required in the vicinity of the Murray River. Access to the site will be on existing access tracks and there is no clearing of vegetation proposed.

The assessment undertaken has followed the process identified in the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*. In following the steps in the assessment process, it was identified that the project works are located adjoining the Murray River being a landscape feature and that those works within the landscape feature cannot be avoided. Research relating to the area also identified that the site had been subject to previous disturbance activities including grazing, flooding, trenching and grading.

To ensure that works were not subjecting any unidentified object or the site to repeated harm, a site inspection was undertaken by representatives from the Cummeragunja Local Aboriginal Land Council. No objects or sites were identified at the inspection and a report was provided confirming works could proceed with care.

If any Aboriginal object is discovered and/or harmed in, or under the land, while undertaking the proposed project works, the project manager/project co-ordinator/owner must:

- *Not further harm the object,*
- *Immediately cease all work at the particular location,*
- *Secure the area so as to avoid further harm to the Aboriginal object,*
- *Notify HeritageNSW as soon as practical on 131555, providing any details of the Aboriginal object and its location*
- *Not recommence any work at the particular location unless authorised in writing by the Department of Planning, Industry and Environment*

In the event that skeletal remains are unexpectedly encountered during the activity, work must stop immediately, the area secured to prevent unauthorised access and the NSW Police and HeritageNSW contacted.

8. GLOSSARY

Abbreviation	Term
ACHA	Aboriginal Cultural Heritage Assessment
AHIMS	Aboriginal Heritage Information System
BCD	Biodiversity Conservation Division of DPIE
DA	Determining Authority
DECCW	Former NSW Department of Environment, Climate Change and Water (Now BCD)
DP	Deposited Plan
DPIE	NSW Department of Planning, Industry and Environment
EPA	Environment Protection Authority
GDA	Geocentric Datum of Australia
GPS	Global Positioning System
GSV	Ground Surface Visibility
ICOMOS	International Council on Monuments and Sites
LALC	Local Aboriginal Land Council
LEP	Local Environment Plan
LGA	Local Government Area
MGA	Map Grid of Australia
NHL	National Heritage List
NNTT	National Native Title Tribunal
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPW Regulation	<i>National Parks and Wildlife Regulation 2009</i>
NPWS	National Parks and Wildlife Service
NSW	New South Wales
NTSCORP	Native Title Services Corporation
OEH	Former NSW Office of Environment and Heritage (Now BCD)
PAD	Potential Archaeological Deposit
RAP	Registered Aboriginal Party
REF	Review of Environmental Factors
REP	Regional Environmental Plan
SEPP	State Environmental Planning Policy

9. REFERENCES

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- Pardoe, C (2013b). *A mortar from Koondrook Perricoota State Forest. An information pamphlet to Joint Indigenous Group, Forestry Corporation NSW, State Water Corporation NSW, Murray Darling Basin Authority, Scarp Archaeology, In the Groove Analysis Pty Ltd*.
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10. APPENDICES

10.1. APPENDIX 1 - AHIMS SEARCH



AHIMS Web Services (AWS) Search Result

Your Ref/PO Number : J122.2 CMPC

Client Service ID : 667189

Progressive Rural Solutions

Date: 14 March 2022

PO Box 74

Deniliquin New South Wales 2710

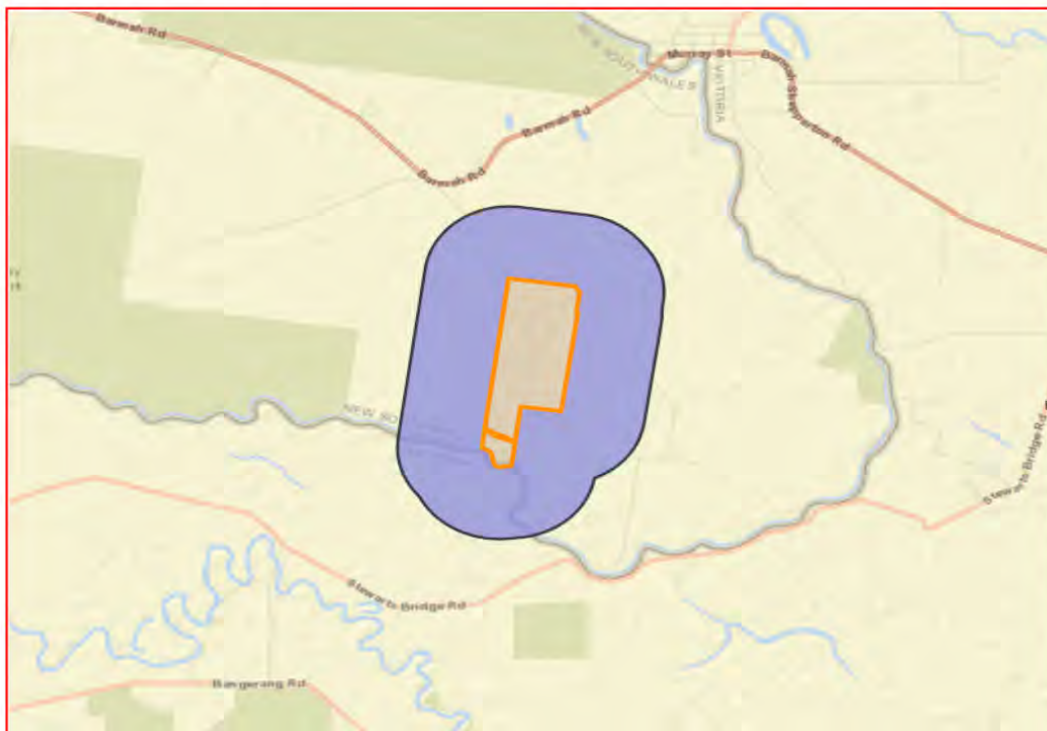
Attention: Clare Fitzpatrick

Email: clare@prsltd.com.au

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 53, DP:DP751140, Section : - with a Buffer of 1000 meters, conducted by Clare Fitzpatrick on 14 March 2022.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *



10.2. APPENDIX 2 – SITE INSECTION REPORT



ABN 71 459 172 253
PO BOX 99, MOAMA, NSW, 2731
EMAIL: CEO@CummeraLALC.com.au

PH: 03 58693372
03 58693401
FAX: 03 58693348

Kevin Atkinson
Cummeragunja Local Aboriginal Land Council
PO Box 99
MOAMA, NSW 2731

19th October, 2020

Site Inspection Report for Lot 53 DP751140, "Pineview" Gilmour Rd Barmah - Riverbank erosion control works

The purpose of the site survey report is to provide written confirmation on the findings of the above described site inspected for ground disturbance works.

This report is intended to provide information on the site survey findings and any recommendations for the site management and project works. This report does not in any way provide an approval to harm (destroy, deface or damage) or desecrate an Aboriginal object or Aboriginal place or in relation to an object, move the object from its current location within the landscape. These actions constitute an offence under the *National Parks and Wildlife Act 1974*.

The project area being located on the eroding Murray River bank adjoining the Bama Irrigation pump site and property levee banks on the Murray River was inspected on the morning of the 19th October 2020 by Bangarang Elder, Mr Kevin Atkinson of the Cummeragunja Local Aboriginal Land Council and Progressive Rural Solutions – Clare Fitzpatrick who represented the client C.M. Pastoral Co who were unable to attend. The weather was fine and sunny with a temperature of approx. 18 degrees. The project works were discussed which relate to the installation of a low-level wall along the lower eroding bank and revegetation works. Excavation works will be minimised where possible however are required within the vicinity of the Murray River.

A visual inspection of the site works area, and the immediate vicinity of the site was undertaken and there were no indications that there is any potential for impact on Aboriginal cultural objects within the area proposed for disturbance. No trees are proposed for removal and none were identified within the site that contained modifications or scarring. The inspection identified that there has been significant disturbance of the area which includes levee banks and old and current irrigation pumping infrastructure. A review of the AHIMS did not identify any records within the site or the broader area.

This report provides the following recommendations:

- That the project be allowed to proceed without constraint on the area as identified and discussed on site.
- That works, and vehicle access and disturbance does not occur in areas not previously disturbed within the vegetation area.
- That all contractors be aware of their responsibilities under the *NSW National Parks and Wildlife Act 1974*, Section 86 that;
 - a) *A person must not harm or desecrate an object that the person knows is an Aboriginal object.*

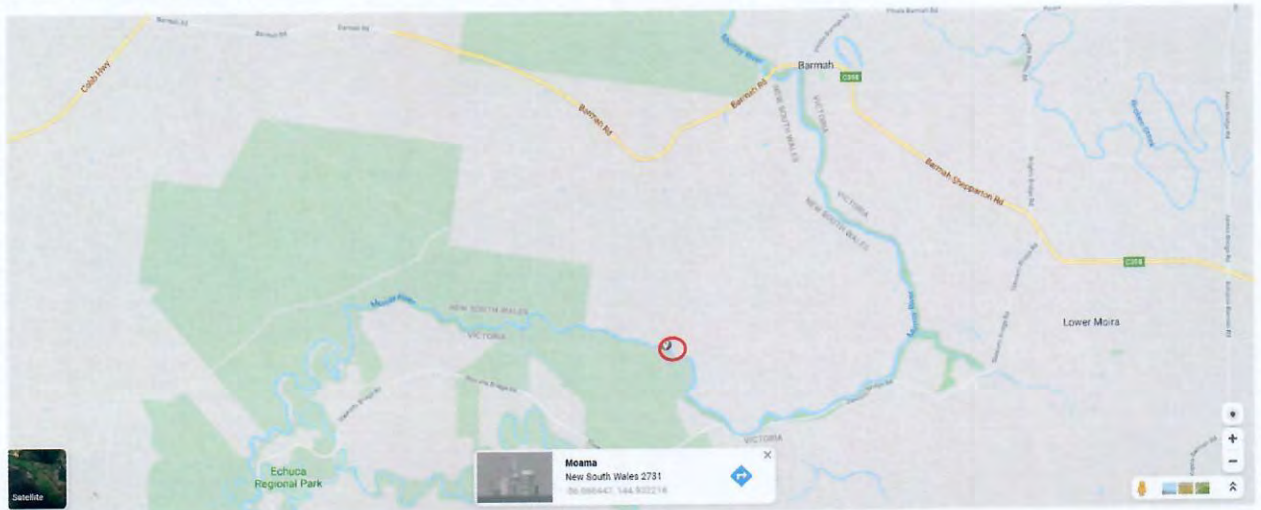
And Section 86 Defences that:

- b) *It is a defence to a prosecution for an offence under section 86 (1), (2) or (4) if (a) the harm or desecration concerned was authorised by an Aboriginal heritage impact permit, and (b) the conditions to which that Aboriginal heritage impact permit was subject were not contravened.*
- c) *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.*

Signed:



Project Site location:



Project site photos:



