

APPENDIX I

CULTURAL HERITAGE ASSESSMENT

**CONVERGE HERITAGE & COMMUNITY
JUNE 2010**

A Cultural Heritage assessment of a proposed expansion area of a BP Service Centre at Chinderah northern New South Wales. **I0038C/2010**



Converge Heritage + Community undertook this cultural heritage assessment and prepared this report.

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Executive Summary

Converge Heritage + Community (Converge) has been commissioned by Mr Mark Baker, Town Planning Consultant Pty Ltd on behalf of BP Australia to undertake an assessment of the Aboriginal cultural heritage aspects of the proposed expansion area of a BP Service Centre at Chinderah (Figure 1) on the far north coast of New South Wales.

No areas or objects of Aboriginal cultural heritage significance were identified within the project area, possibly due to low ground surface visibility. The following precautionary recommendation was made in order to assist in protecting and managing the cultural heritage values of the project area.

Recommendation One - Procedures for Unexpected Finds

Even though there were no specific areas or objects of Aboriginal cultural heritage significance identified within the project area, there still exists potential (albeit low) for subsurface remains. In order to account for such an occurrence, a process should be implemented with regard to the management of unexpected finds during development activities (Appendix C). During development activity the Proponent should encourage employees or sub-consultants to be aware of and vigilant for Aboriginal cultural heritage. A Cultural Heritage Awareness Induction program would support this process. In the event that suspected cultural heritage was found, a buffer zone surrounding the outer extent of the find should be flagged and all activities should cease within this buffer zone until such time as clearance to continue activities within the buffer has been provided. The Proponent is bound under the State legislation (*National Parks and Wildlife Act, 1974*) to inform the Department of Environment, Climate Change and Water (DECCW) forthwith of any cultural heritage objects. Additionally the Proponent should inform the TBLALC as soon as practicable of any suspected cultural heritage.

1.0 Introduction

Converge Heritage + Community (Converge) has been commissioned by Mr Mark Baker, Town Planning Consultant Pty Ltd on behalf of BP Australia to undertake an assessment of the Aboriginal cultural heritage aspects of the proposed expansion area of a BP Service Centre at Chinderah (Figure 1) on the far north coast of New South Wales.

1.1 Project Background

BP Australia are proposing to expand the BP Service Centre at Chinderah, northern NSW (Figure 1) to increasing truck parking space (Figure 2). The proposed development area is 2h directly adjacent to the current location of the BP Service Centre (Figure 2). A cultural heritage assessment of the location of the current BP Service Centre was undertaken by ARCHAEO Cultural Heritage Services in 2001 (ARCHAEO 2001).



Figure 1. Chinderah Location (Image adapted from Google Earth Pro 2008).

Figure 2. Site Plan – Project Area (Image adapted from Google Earth Pro 2008).



1.2 Consultation

Consultation for this cultural heritage assessment has been in accordance with the Department of Environment, Climate Change and Water (DECCW) guidelines including the May 2009 *Draft Community Consultation Requirements for Proponents*. On 28 November 2009 a Public Notice was placed in the Tweed Daily News requesting members of the Aboriginal community contact Ian Fox of Converge and register any interest in the proposal (Appendix D).

On Monday 30 November 2009 Ian Fox met with representatives of the following Aboriginal Community groups to provide a background for the proposal and seek advice on any specific consultation requirements:

- Lesley Mye on behalf of the Tweed Shire Aboriginal Advisory Committee (AAC);
- Leweena Williams on behalf of the Tweed Byron Local Aboriginal Land Council (TBLALC);
- Desrae Rotumah on behalf of the Minjungbal Museum and Tweed Aboriginal Co-op Society;
- Jackie McDonald on behalf of Eastern Yugambah Ltd and the Gold Coast Native Title Group.

Jackie McDonald was the only formal respondent to the Public Notice placed on 28 November 2009. On 4 December 2009 Leweena Williams of the TBLALC confirmed George Scott (Sites Officer) would be available to assist with a field inspection and a subsequent phone call to Jackie McDonald established that George Scott had approval to act on her behalf for the field inspection.

A field inspection of the proposed site was undertaken on 21 December 2009 (See Section 3.0 Fieldwork).

A copy of a Draft Cultural Heritage Assessment Report for review and comment was provided to the registered respondent, Jackie McDonald, TBLALC, AAC, and Minjungbal Museum/Tweed Aboriginal Co-op Society. Any comments received were included in the Final Report and an endorsed Consultation Letter of Support is included in the final document (Appendix F).

1.3 Scope of Study

Converge was commissioned Mr Mark Baker, Town Planning Consultant Pty Ltd on behalf of BP Australia to undertake an assessment of the Aboriginal cultural heritage aspects of the proposed

expansion area of a BP Service Centre at Chinderah (Figures I-2). The scope of the cultural heritage assessment was to:

- Identify and map the presence of Aboriginal objects and sites;
- Consult with the local Aboriginal community;
- Determine the significance of the area to Aboriginal people;
- Undertake a search of the relevant registers and databases;
- Undertake an impact assessment of the development on any identified sites; and
- Determine any required mitigation and/or amelioration measures;

2.0 Contextual Background

2.1 Bio-geographical Context

The Chinderah area is bounded by the Tweed River to the west and the ocean to the east, with most of the geomorphology of the area forming during the late Holocene. The Chinderah area was a focal point for timber extraction and land clearance for early agricultural pursuits, such as sugar cane, from the earliest times of European settlement (Keats, 1988; Regional Histories, 1996). Evidence of extensive land clearing remains through the construction of drainage channels that have lowered the water table and restricted the extent of regenerating floodplain vegetation.

The project area has been previously cleared as attested to by the remaining windrows (Figure 3). The current vegetation is dominated by blade grass and small regrowth, including Iron Bark (*Eucalyptus crebra*), Brush box (*Lophostemon confertus*) and Bloodwood (*Eucalyptus dolichocarpa*) (Figure 4). There are some introduced weeds including whip grass and lantana. As a buffer zone surrounding the project area there is a band of older regrowth.

Figure 3. Windrow (looking NW)



Figure 4. General View (looking N)

2.2 Aboriginal Cultural Background

This cultural background is not intended to be an exhaustive treatment of the area.

The Coojingburra People of the larger Bundjalung tribal group occupied the area of the Tweed Coast and the southern shoreline of the Tweed River Estuary (Keats, 1988). The language dialect is recorded as Minjungbal and based on the observations of explorer John Oxley in 1823 it is estimated that the group numbered around 500 people prior to European contact and the later permanent settlement from 1844 (Steele, 1984; Keats, 1988; Nayutah and Finlay, 1988). Traditional food gathering practices included the hunting of terrestrial fauna, fishing, and gathering both aquatic and marine shellfish from the nearby ocean and adjacent river estuary. A variety of plant foods and resource areas would have been present on the lower river floodplain.

There is anecdotal and oral evidence for the presence of a Bora ceremonial area adjacent to Dodds Island, approximately three kilometres to the south-west (Des Williams [TBLALC] personal communication). There are several registered middens within the village of Chinderah, approximately one kilometre to the north, and the Cudgen Burial Ground (registered as AHIMS site No. 04-2-0100) is known to contain Aboriginal burials of people recorded in the historic record and of whom there are descendants in today's Tweed Aboriginal community (Jackie McDonald, personal communication).

2.3 Previous Studies

This summary is not intended to be an exhaustive treatment of studies/research within the region, but rather a brief introduction. The following section provides a brief outline of relevant archaeological and cultural heritage findings from research projects and previous consultancy works carried out in proximity to the present project area. However, it needs to be stressed that many sacred places are known in the Tweed area (Keats, 1988; Steele, 1984). Bora rings are recorded throughout the Northern Rivers region including one at Tweed Heads south (Keats, 1988; McBryde, 1974; Steele, 1984).

2.3.1 Academic Research

Aside from traditional knowledge, that is knowledge passed down through the generations by word of mouth, there is some literature available concerning Aboriginal culture in the Tweed area (for example see Harper, 1894; Curr, 1887; Crowley, 1978). An Aboriginal Cultural Heritage Management Plan for Cobaki and Terranora Broadwater, prepared for TSC (Fox, 2006), lists the earliest observations of Aboriginal people in the area from a European perspective. The reference

list includes the journal entries of Joseph Banks (Cooks expedition) in 1770; the observations of explorer John Oxley in 1823; a letter transcript to the Surveyor General by Robert Dixon in 1840; and the observations of J.G Appell and Captain Joe Kirkwood who described gatherings on the northern shore of Cobaki Broadwater during the earliest period of European settlement. The following section provides a brief outline of relevant archaeological and cultural heritage findings from research projects and previous consultancy works carried out in proximity to the present project area.

McBryde (1974) undertook a detailed regional archaeological survey of northeastern NSW and documents many ceremonial sites in the Tweed region. Similarly, Steele (1984) details the presence of bora rings, stone arrangements and ochre sources.

The earliest scientifically validated records for the presence of Aboriginal people in the greater northern New South Wales and southern Queensland region is at Wallen Wallen Creek, on North Stradbroke Island. An archaeological investigation of a midden site at that location provided a record of occupation from around 20,500 years ago (Neal and Stock, 1986). One of the earliest sites in the Tweed is a midden site at Elsie Street, Bannora Point (Sextons Hill), which dates to around 4,700 years BP (Appleton, 1993).

Shell middens are commonly found along the estuaries and coastlines of NSW and Queensland (see Nicholson and Cane, 1994; Ulm et al., 1995), including the north coast of NSW and the area around the Tweed. For example, Kari Barz (1980) reported on the salvage excavation of a large midden on Terranora Inlet at Tweed Heads. The excavation revealed shell, bone and stone artefacts. The lower stratum consisted of a dense band of shell (primarily of oyster, club-whelk and cockle) and a considerable amount of fish bone (primarily snapper). Bone points (both uni-points and bi-points) and flaked stone artefacts were also identified within this stratum. Charcoal from a hearth at the base of this stratum gave a C¹⁴ date of 605±90 yrs BP. Kari Barz (1980) inferred that the location was a specialised fishing site utilised at a regular but not intense level over the past 500 years.

The Bundjalung Mapping Project (BMP) is a pilot project designed to assist Indigenous Australian communities to record, store and manage information about their cultural places and landscapes. The Project, based on the north coast of New South Wales, is the result of a unique partnership between Southern Cross University, Bundjalung people, the Northern Rivers Catchment Management Authority, and the Department of Environment, Climate Change and Water (National Parks and Wildlife Service Division). A Memorandum of Understanding sets out guidelines and the conditions of information access and exchange.

An electronic database has been designed and successfully trialled with the Tweed Aboriginal community that stores community knowledge in a culturally appropriate way. The database is cross referenced to a documentary library or 'Keeping Place' containing in excess of 1250 separate entries collected from private resources and the public domain. Access to the database and library is controlled by the community and in the case of the current trial, by the Tweed/Byron Local Aboriginal Land Council. The TBLALC are participants in this Cultural Heritage Assessment and have provided approval for access to the BMP database and documentary records.

2.3.2 Consultancies

The ARCHAEO (2001) assessment of the adjoining BP Service Centre details consultancies within the general area and this will not be repeated here.

Recent work undertaken in the area includes an archaeological excavation of a small shell midden and subsequent further survey of the Piggabeen Road Deviation Project (Converge, 2009a), which is located approximately 2.5 kilometres north east of the current project area. Excavations revealed that the shell midden was of a relatively small size and consisted of oyster with some remains of large and small varieties of whelks; all estuarine shell fish species. One stone artefact was recovered: a bifacial retouched silcrete flake. The survey revealed two previously unidentified sites, a stone artefact scatter and a shell scatter. These sites were, however, beyond the road corridor and would not have been impacted as a result of any remaining construction activity. A cultural significance story, based on consultation with the local Aboriginal community, was also composed to provide a strengthened emphasis for determining cultural significance and heritage assessment, which was more inclusive of the Aboriginal community's perspective.

Recent work in the general area also includes the Preliminary Archaeological Overview of the proposed Byrrill Creek Dam (Converge, 2009b) located approximately 35 kilometres south west of the current project area. The study included consultation with the Aboriginal community, a preliminary field survey to assess impacts to Aboriginal cultural heritage values and a literature review. Four sites of Aboriginal cultural heritage significance were located during the survey. This, coupled with the numerous Aboriginal sites and areas previously recorded within the area, indicated that there was a reasonable possibility that further, undetected cultural heritage material and associated elements would remain within the project area. Aboriginal sites within the project area included isolates, artefact scatters, scarred trees and grinding areas.

2.4 Register Searches

Desktop searches of the following register and databases were undertaken for the project area: Aboriginal Heritage Information Management System (AHIMS) Aboriginal sites register; the (former) Register of the National Estate; World Heritage List; National Heritage List; and the Commonwealth Heritage List.

There were no Aboriginal sites listed on the World Heritage List, National Heritage List, the Commonwealth Heritage List or the (former) Register of the National Estate within the project area.

The *National Parks & Wildlife Act, 1974* (NPW Act) protects all Aboriginal objects and Aboriginal places in NSW (Appendix A). It is an offence to disturb, move, excavate, knowingly destroy/damage/deface, or knowingly cause the destruction/damage/defacement of an aboriginal object or place without the written permission of DECCW.

A search of the DECCW Aboriginal Heritage Information Management System (AHIMS) database was undertaken and a printout report was received on 21 December 2009, stating that there are no recorded Aboriginal objects or Aboriginal places within the project area, but there were two recorded Aboriginal objects or Aboriginal places near the project area (Table I; Appendix E).

Table I: AHIMS Search Results

Site ID	Site Name	Site Type
04-1-0021	Chinderah BMP-05-0156	Midden
04-2-0100	Cudgen Burial Ground	Burials – not an Aboriginal site

2.5 Conclusions

It can be anticipated that most Aboriginal site types would have been encountered within the Chinderah area in the recent prehistoric past. These site types include:-

Artefact scatters - areas within the landscape which show a concentration of debris associated with human occupation.

Culturally modified trees - commonly called **scarred** or **carved** trees – trees where bark has been removed from a tree for a variety of purposes including for containers, shelter and canoes, or holes have been cut or carved into the surface of the tree.

Middens - deposits which largely consist of mainly marine, estuarine and/or freshwater shells that are the remains of numerous Aboriginal meals of shellfish. Middens may contain burials as they were on occasions used as repositories for human interment.

Fish traps - generally stone walls which form enclosures to trap fish as waters recedes.

Grinding grooves - a by-product of manual rubbing of an artefact, such as a stone axe, to grind and sharpen its surface. Flat sandstone platforms are preferred locations for grinding grooves, although other suitable abrasive rock exposures are utilised.

Quarries – locations where stone has been procured for the manufacture of artefacts although ochre quarries are also known but are relatively rare.

Ceremonial sites – locations occurring widely across the landscape that can take many forms including bora grounds (stone arrangements, earth arrangements).

Natural sacred sites - geographical and natural features of the landscape that may contain no material evidence but remain significant to the Aboriginal custodians.

Prior to historic modification, the nearby coastline extending both north and south and areas adjacent to the Tweed River would have contained numerous shell middens and camp sites and the general area would have been a resource-rich area and very attractive to Aboriginal people .

Due to historic modifications to the general area and the small size of the project area, it is probable that cultural heritage, if present, would be restricted to stone artefacts (both as isolates and in scatters) in both surface and subsurface deposits, and possibly deposits of midden shell, consisting primarily of oyster, cockle, mussel and mud whelk sourced from the nearby coastal and estuarine areas. Features such as scarred trees and stone arrangements are unlikely to have survived historic clearing and disturbance of the project area.

3.0 Fieldwork

3.1 Methodology

Archaeologists use various forms of assessment to carry out cultural heritage surveys and these surveys occur in a series of clearly defined steps including sampling, surveying, site evaluation, recording, impact assessment, and management recommendations. This project is a cultural heritage assessment (CHA) in relation to Aboriginal cultural heritage sites and places within the project area. Briefly, the methodology applied to this CHA was as follows:

The field survey concentrated on the 2h footprint of the proposed development, but also considered site specific factors including topography, so as to ensure broad coverage of the area.

- The field survey was carried out to assess the presence of, or the potential for, Aboriginal cultural heritage to exist within the project area;
- The field survey was carried out on foot and, due to the small size, the entire project area was assessed;
- A Traditional Owner representative participated in the field survey and consultation was in accordance with the DECCW *Interim Community Consultation Requirements for Applicants* and also the *Aboriginal Cultural Heritage Draft Community Consultation Requirements* issued in May 2009. The Traditional Owner representative was encouraged to provide oral information about any culturally sensitive areas and voice any concerns they may have felt during the fieldwork;
- For the purposes of this report the following definitions apply:
 - ⇒ **Site** refers to *all* physical traces of Aboriginal occupation, including isolated artefacts, or traces of non-Aboriginal cultural heritage.
 - ⇒ **Isolate** refers to the find-spot of a single artefact separated by more than 30 metres from other artefacts and/or associated archaeological features.
 - ⇒ **Artefact scatter** refers to a group of 2 or more artefacts located on the ground surface, with a distance of no greater than 30m between each and occurring within an arbitrary linear distance nominated by the archaeologist subject to factors such as artefact type, environment, visibility, integrity and previously recorded site characteristics occurring within the larger project area.

⇒ **Aboriginal object** means any deposit, object or material evidence relating to the Aboriginal habitation of the area that comprises NSW (NSW NPWA 1974 Part 1 s5).

- Culturally modified trees, commonly called **scarred** or **carved** trees, where found were assessed according to a detailed list of selection criteria developed by Converge that allow for some degree of scientific rigour to be applied to the identification process.
- Where relevant the archaeologist made reference to the principles of the *Australia ICOMOS Burra Charter, 1999* (Burra Charter - see Appendix B) as a basis for attributing levels of scientific significance to areas or objects noted during the survey. However with respect to Aboriginal cultural heritage, the attribution of significance on the basis of cultural grounds was left entirely to the Traditional Owner representative on the survey team.
- Areas of interest were photographed using a digital camera with 12.1 effective mega-pixels, and locations were recorded using a hand-held global positioning system (GPS) accurate to approximately 4 metres (WGS 84 geodetic format), and all field data was recorded in a field notebook. Upon completion of the report these photographs are stored on disk (CD) in the Converge office.

There are a variety of issues that can, in a variety of ways, constrain cultural heritage survey and assessment. Two constraints, however, remain constant across all landscapes; ground surface visibility and ground surface integrity. **Ground Surface Integrity (GI)** and **Ground Surface Visibility (GSV)** were both recorded across the project area in order to provide insight into the levels to which the landscape had been modified, and how much of the ground surface could actually be seen during the survey. GI and GSV levels were both determined using a percentage range between 0-100% i.e. **Zero - 0%; Poor - 1-25%; Moderate- 26-50%; Fair - 51-75%; Good - 76-85%; Excellent 86-100%.**

3.2 Field Survey Outcomes

The field component of this cultural heritage assessment was conducted on the 2nd June 2009, when the project area was traversed on foot (Figure 5).

3.2.1 GI and GSV within the Project Area

The project area exhibited poor GSV caused by regrowth and thick grass cover (see Figures 3-4).



Figure 5. Survey route (Image adapted from Google Earth Pro 2008).

3.2.2 Aboriginal Cultural Heritage

Aboriginal communities generally recognise their heritage in broader terms than the site specific and object based approach of Western science. For this reason, any location is assessed within the wider landscape and recognition is given to who may have used or visited an area in traditional times and how the natural resources of an area may have been incorporated into daily life. The area of proposed extension to the Service Centre is a small portion of the Lower Tweed River Floodplain and is in fact approximately 800m from the main river channel. As described above, the area has been altered significantly in the past through land clearance, drainage channel construction, and ground levelling and filling.

Because of the location adjacent to the river and the ocean and the areas position within the wider landscape, it is probable that the general area would have been utilised by traditional Aboriginal people.

3.2.3 Areas and Objects of Aboriginal Cultural Heritage Significance

No areas or objects of Aboriginal cultural heritage significance were identified during the field survey.

3.3 Conclusion

No places or objects of Aboriginal cultural heritage significance were identified within the project area. This could be the result of the low GSV across the project area and the long-term disturbance and modification of the general area. These survey results and the register searches suggest there is a low probability that undetected cultural heritage material is present within the project area.

4.0 Site Evaluation and Impact Assessment

4.1 Aboriginal Cultural Significance

Archaeologists place a high priority on levels of existing site preservation as a means of determining scientific integrity and therefore, the value of the contextual data found within a site, or surrounding a particular object. Any loss of scientific integrity does not, however, reduce the cultural significance of a place and/or item. Equally, the presence of bush food species, trees of great age, or a particular bluff in a mountain range, for example, may provide indicators of cultural importance not borne out in the archaeological record. An assessment of cultural significance was attained through consultation with the local Aboriginal community that has traditional knowledge and interests in the area.

4.2 Archaeological (Scientific) Significance

To assess archaeological (scientific) significance, requirements of the *NSW National Parks and Wildlife Act, 1974* were considered and the best practice guidelines of the *Australia ICOMOS Burra Charter, 1999 (Burra Charter)* were applied where relevant.

However, as there were no specific areas or objects of Aboriginal cultural heritage significance identified within the project area, there were no sites or objects with archaeological (scientific) significance evident. As noted above, this may be due to the poor GI and low GSV across the project area. However, there remains a low probability that there may be subsurface remains within the project area.

4.3 Impact Assessment

It is important to note that the fragile nature of cultural heritage and its associated environment, especially in relation to any as yet unidentified cultural heritage that may exist within subsurface deposits (e.g. stone artefacts), would be both easily and irrevocably impacted upon by ground disturbance associated with the development activities that will occur within the project area. It should be noted that ground disturbance within the project area will generally be limited to tree clearing with most site works involving fill and levelling.

If areas or objects of Aboriginal cultural heritage were uncovered, cultural heritage mitigation measures will need to be established and in accordance with the *National Parks and Wildlife Act, 1974*, work must cease and DECCW notified forthwith.

4.4 Aboriginal Community Expectations and Issues

The proposed use of the project area for a parking extension to the existing Service Facility does not impact or conflict with known Aboriginal cultural information for the site. There remains a low possibility that cultural objects or evidence of an Aboriginal presence could be located below the present ground surface and potentially could be disturbed during construction of the facilities extensions. Should this be the case the Aboriginal community would wish to be immediately informed through the TBLALC (contact phone number 07 55361 763).

5.0 Management and Recommendations

5.1 Cultural Heritage Management

When protecting cultural heritage values, a number of management options are available. These include:

1. **Avoidance.**

This option is preferred by the Traditional Owners as it allows for their cultural heritage to remain on 'country' and undisturbed. Sites remaining on 'country' may require the development of site specific management protocols including the establishment of activity exclusion zones.

2. **Mitigation**

In areas where impact cannot be avoided an appropriate mitigation program utilising recognised archaeological methods will need to be developed. Mitigation processes may vary according to site or feature types and may include but not be restricted to, processes such as detailed site recording and mapping, manual and machine excavation and/or controlled collection of artefacts.

3. **Monitoring**

A program of site monitoring by representatives of the local Aboriginal community during activities causing ground disturbance (i.e. earthworks) can be developed as a management option for recognised areas of medium to high potential for the presence of unidentified cultural heritage - no areas within the project area were identified as having such potential.

Ultimately, the most important factor within the successful management of the cultural heritage process remains ongoing consultation between the Proponent and the local Aboriginal community. There are also requirements under the *National Parks and Wildlife Act, 1974*, with respect to the identification, disturbance and/or removal of Aboriginal cultural heritage that must be adhered to during development activities.

5.2 Recommendation

5.2.2 Unexpected Finds

Even though there were no specific areas or objects of Aboriginal cultural heritage significance identified within the project area, there still exists potential (albeit low) for subsurface remains. In order to account for such an occurrence, a process should be implemented with regard to the management of unexpected finds during development activities (Appendix C). During development activity the Proponent should encourage employees or sub-consultants to be aware of and vigilant for Aboriginal cultural heritage. A Cultural Heritage Awareness Induction program would support this process. In the event that suspected cultural heritage was found, a buffer zone surrounding the outer extent of the find should be flagged and all activities should cease within this buffer zone until such time as clearance to continue activities within the buffer has been provided. The Proponent is bound under the State legislation (*National Parks and Wildlife Act, 1974*) to inform the Department of Environment, Climate Change and Water (DECCW) forthwith of any cultural heritage objects. Additionally the Proponent should inform the TBLALC as soon as practicable of any suspected cultural heritage.

6.0 References

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Appendix A – Relevant Legislation

In New South Wales, three pieces of legislation provide the primary context for Aboriginal heritage management: the *National Parks and Wildlife Act 1974* (NPW Act); the *Heritage Act 1977*; and the *Environmental Planning and Assessment Act 1979* (EP&A Act). Other relevant legislation includes the *Aboriginal Land Rights Act 1983*, the *Commonwealth Native Title Act 1993* and the *NSW Native Title Act 1994*.

The National Parks and Wildlife Act 1974

The NPW Act is administered by the Department of Environment and Climate Change (DECC) and is the primary legislation for the protection of Aboriginal cultural heritage in New South Wales. One of the objectives of the NPW Act is:

‘the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including but not limited to: (i) places, objects and features of significance to Aboriginal people ...’ (s.2A[1][b])

Part 6 of the Act provides specific protection for Aboriginal objects and places by making it an offence if impacts are not authorised. If impacts on Aboriginal objects and places are anticipated, an Aboriginal Heritage Impact Permit (AHIP) should be obtained. AHIPs can be issued under S.87 and S.90 of the NPW Act.

An *Aboriginal object* is any deposit, object or material evidence (that is not a handicraft made for sale) relating to Aboriginal habitation of New South Wales, before or during the occupation of that area by persons of non-Aboriginal extraction (and includes Aboriginal remains).

An *Aboriginal place* is a place declared so by the Minister administering the NPW Act because the place is, or was, of special significance to Aboriginal culture. It may or may not contain Aboriginal objects.

The NPW Act does not provide protection for spiritual areas or natural resource areas that have no physical evidence of Aboriginal occupation or use, unless they have been declared an Aboriginal place.

The Heritage Act 1977

The Heritage Act protects the State’s natural and cultural heritage. Aboriginal places or objects that are recognised as having high cultural value are listed on the State Heritage Register. The State Heritage Register protects particular places and items that the Aboriginal community has formally recognized as being of high cultural value. The State Heritage Register provides an extra level of

protection beyond that provided by the Department of Environment and Conservation's register (the AHIMS register and database) as it protects against any damage or destruction to these special places. The Aboriginal heritage of NSW is irreplaceable and as such there are heavy penalties for offences under the Heritage Act.

The Environmental Planning and Assessment Act 1979

The EP&A Act is administered by Local Government and the NSW Department of Planning and provides planning controls and requirements for environmental assessment in the development approval process. It also establishes the framework for Aboriginal heritage values to be formally assessed in land-use planning and development consent processes.

Aboriginal Land Rights Act 1983

The NSW *Aboriginal Land Rights Act 1983* establishes the NSW Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs). The Act requires these bodies to:

- (a) take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law; and
- (b) promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.

Native Title Legislation

The Commonwealth Native Title Act 1993 and NSW Native Title Act 1994 provide the legislative framework to:(a) recognise and protect native title;(b) establish ways in which future dealings affecting native title may proceed, and to set standards for those dealings;(c) establish a mechanism for determining claims to native title; and(d) provide for, or permit, the validation of past acts invalidated because of the existence of native title. DECC acknowledges that native title legislation provides native title holders and registered native title claimants with certain procedural rights in relation to Acts which affect native title.

Appendix B – The Burra Charter

Although not codified in law, the *Australia ICOMOS Burra Charter, 1999* (*Burra Charter*) is the foundational document upon which cultural heritage management practice is based, and this document continues to guide cultural heritage management in Australia. It was first adopted in 1979 by Australia ICOMOS (International Council on Monuments and Sites) and was initially designed for the conservation of and management of historical heritage. However, after the addition of further guidelines that defined cultural significance and conservation policy, use of the charter was extended to Aboriginal studies. The *Burra Charter* defines conservation as ‘the processes of looking after a place so as to retain its cultural significance’ (Article 1.4). A place is considered culturally significant if it possesses aesthetic, historic, scientific, social or spiritual value for past, present or future generations (Article 1.2). The *Guidelines to the Burra Charter: Cultural Significance* provides the following definitions (Section 2):

Aesthetic value includes aspects of sensory perception for which criteria can and should be stated. Such criteria may include consideration of the form, scale, colour, texture and material of the fabric; the smells and sounds associated with the place and its use.

Historic value encompasses the history of aesthetics, science and society, and therefore to a large extent underlies all of the terms set out in this section. A place may have historic value because it has influenced, or has been influenced by, an historic figure, event, phase or activity. It may also have historic value as the site of an important event. For any given place the significance will be greater where evidence of the association or event survives *in situ*, or where the settings are substantially intact, than where it has been changed or evidence does not survive. However, some events or associations may be so important that the place retains significance regardless of subsequent treatment.

Scientific (archaeological) research value of a place will depend upon the importance of the data involved, on its rarity, quality or ‘representativeness’, and on the degree to which the place may contribute further substantial information.

Social value embraces the qualities for which a place has become a focus of spiritual, political, national or other cultural sentiment to a majority or minority group.

Article 5 of the *Burra Charter* states that:

Conservation of a place should identify and take into consideration all aspects of its cultural and natural significance without unwarranted emphasis on any one value at the expense of others.

Appendix C – Procedures for Unexpected Finds

Draft Procedures for Unexpected Finds

During project works involving ground breaking activities the Proponent should encourage its employees or sub-consultants to be vigilant for cultural heritage. A Cultural Heritage Awareness Induction program would support this process.

In the event that suspected cultural heritage was found, then the Proponent should ensure that a 10m buffer zone surrounding the outer extent of the find is flagged, and that all project activities cease within this buffer zone.

The Proponent is bound under the NSW *National Parks and Wildlife Act, 1974* to inform DECCW forthwith of any identified cultural heritage objects.

The Proponent should also inform TBLALC of any identified cultural heritage objects as soon as practicable.

The Proponent should, in consultation with DECCW and TBLALC, arrange for an assessment of the suspected cultural heritage to be undertaken in accordance with the requirements of the NSW *National Parks and Wildlife Act, 1974*. The assessment should identify the nature and location of any identified or potential cultural heritage and detail appropriate management options.

Aboriginal Cultural Heritage – Chinderah

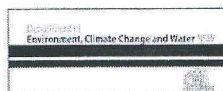
Members of the Aboriginal community with cultural knowledge of the Chinderah area are invited to register their interest for a Cultural Heritage Study of a proposed expansion area of a BP Service Centre adjacent to the Chinderah Bypass at Chinderah.

Please contact: Ian Fox of Converge Heritage & Community, PO Box 333 The Gap, Qld 4061, or telephone (07) 3366 8488, within 14 days of the date of this notice.

Appendix E – AHIMS Report



Aboriginal Heritage Information Unit
43 Bridge Street Hurstville NSW
PO Box 1967, Hurstville NSW 2220
Tel: (02) 95856345 Fax: (02) 95856094
ABN 30 841 387 271
www.environment.nsw.gov.au



Your reference : Chinderah Bypass, Chinderah
Our reference : AHIMS #28503

Converge Heritage and Community
P.O. Box 333 The Gap
Queensland QLD 4061

Monday, 21 December 2009

Attention: Phillip Habgood

Dear Sir or Madam:

Re: AHIMS Search for the following area at Chinderah Bypass, Chinderah; E:553828-555828; N:6874677-6876677

I am writing in response to your recent inquiry in respect to Aboriginal objects and Aboriginal places registered with the NSW Department of Environment, Climate Change and Water (DECCW) at the above location.

A search of the DECCW Aboriginal Heritage Information Management System (AHIMS) has shown that 2 Aboriginal objects and Aboriginal places are recorded in or near the above location. Please refer to the attached report for details.

The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.

The following qualifications apply to an AHIMS search:

- AHIMS only includes information on Aboriginal objects and Aboriginal places that have been provided to DECCW;
- Large areas of New South Wales have not been the subject of systematic survey or recording of Aboriginal history. These areas may contain Aboriginal objects and other heritage values which are not recorded on AHIMS;
- Recordings are provided from a variety of sources and may be variable in their accuracy. When an AHIMS search identifies Aboriginal objects in or near the area it is recommended that the exact location of the Aboriginal object be determined by re-location on the ground; and
- The criteria used to search AHIMS are derived from the information provided by the client and DECCW assumes that this information is accurate.

All Aboriginal places and Aboriginal objects are protected under the *National Parks and Wildlife Act 1974* (NPW Act) and it is an offence to destroy, damage or deface them without the prior consent of the DECCW Director-General. An Aboriginal object is considered to be known if:

- It is registered on AHIMS;
- It is known to the Aboriginal community; or
- It is located during an investigation of the area conducted for a development application.

If you considering undertaking a development activity in the area subject to the AHIMS search, DECCW would recommend that an Aboriginal Heritage Assessment be undertaken. You should consult with the relevant consent authority to determine the necessary assessment to accompany your development application.

Yours Sincerely



Freeburn, Shannon
Administrator
Aboriginal Heritage Information Unit
Information Systems and Assessment Section
Aboriginal Heritage Operation Branch
Culture and Heritage Division
Department and Environment, Climate Change and Water (DECCW)
Phone: 02 9585 6471
Fax: 02 9585 6094



List of Sites (List - Short)

Chinderah Bypass, Chinderah

Grid Reference Type = AGD (Australian Geodetic Datum), Zone = 56, Easting From = 553828, Easting to = 555828, Northing From = 6874677, Northing to = 6876677, Requestor like 8248%, Service ID = 28503, Feature Search Type = AHIMS Features

Site ID	Site Name	Datum	Zone	Easting	Northing	Context	Site Features	Site Types	Recording	Reports	State Arch. Box No
								(recorded prior to June 2001)	(Primary)	(Catalogue Number)	(for office use only)
<u>04-1-0021</u>	<u>Chinderah, BMP-05-0156</u>	AGD	56	555400	6875000	Open Site	AFT : -, ETM : -, SHL : -	Midden	McBryde, Fox		NRS/17798/1/5
		Status	Valid								
		Primary Contact			Northern HTO				Permit(s)		
<u>04-2-0100</u>	<u>Cudgen Burial Ground</u>	AGD	56	554200	6875100	Open Site	BUR : -	Burial/s, Not an Aboriginal Site	ASRSYS		NRS/17798/1/7
		Status	Not a Site								
		Primary Contact							Permit(s)		

Appendix F – Consultation - Support Letters

Ian Fox

From: Jackie McDonald [mctogo@austarnet.com.au]
Sent: Tuesday, 18 May 2010 6:30 AM
To: Ian Fox
Subject: Assessment for BP Service Station Chinderah

Dear Ian,
Thank you for consulting and providing me with a copy of the Assessment for the expansion of the BP Service Station at Chinderah.

I have reviewed the Assessment and I am happy with the recommendations.

The only thing I would add is:

"Although there are only 2 registered Aboriginal sites on the AHIMS register, I remember a number of other midden sites that were still evident when I was a child, growing up in Chinderah. Development has had a significant impact on those sites and only remnants remain, however this does not remove the significance of those sites.

Cultural practice was still carried out in my Mother's time. She specifically told me about where these practices took place".

Jackie McDonald
Traditional Aboriginal descendant, Tweed Valley.

30 April 2010

Cultural Heritage Assessment for:
Proposed expansion of vehicle parking area, BP Service Centre,
Chinderah, northern New South Wales

This letter is to confirm that with respect to the project above, I and/or my organisation have been consulted for cultural advice, were invited to contribute to the study and have been provided with the opportunity to comment on a draft of the Report.

Having reviewed the draft report I am in agreement with the outcomes of the study and the recommendations made in the report.

Signed 

30 April 2010

Cultural Heritage Assessment for:

Proposed expansion of vehicle parking area, BP Service Centre,
Chinderah, northern New South Wales

This letter is to confirm that with respect to the project above, I and/or my organisation have been consulted for cultural advice, were invited to contribute to the study and have been provided with the opportunity to comment on a draft of the Report.

Having reviewed the draft report I am in agreement with the outcomes of the study and the recommendations made in the report.

Signed

P Scott
TBLALC
Sites Officer