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Tweed Byron Local Aboriginal Land Council



CULTURAL HERITAGE SITES INSPECTION REPORT

Bayshore Drive Byron Bay

19—21 December 2018

REPORT PREPARED BY TBLALC CULTURAL HERITAGE UNIT

Conservation Planning Officer Maurice Gannon

SITE INSPECTION COMPLETED BY TBLALC CULTURAL HERITAGE UNIT

Conservation Planning Officer Maurice Gannon

and

**Clarence Kelly representing the the Bundjalung of Byron Bay Aboriginal
Corporation (Arakwal)**



Aboriginal people have deep spiritual and cultural connections with the land and have inherent responsibilities to ensure that those connections are maintained for future generations.

PURPOSE

There are numerous Federal, State and Local Government statutes, regulations, policies and guidelines that are applicable to the assessment of, and protection of, Aboriginal Cultural Heritage (ACH). The National Parks and Wildlife Act 1974 (NPW Act), administered by the NSW Department of Environment, Climate Change and Water (DECCW) Office of Environment and Heritage (OEH), is the primary legislation for the protection of ACH in New South Wales.

Part 6 of the NPW Act provides specific protection for Aboriginal Objects and declared Aboriginal Places by establishing offences of harm, for which significant penalties apply. Harm includes desecrating, destroying, defacing or damaging an Aboriginal Object or Aboriginal Place and, in relation to an Object, moving it from the land on which it has been situated.

The Tweed and Byron regions are abundantly rich in ACH. Extreme and extensive damage to the ACH of the region has occurred over many years, including very recently. The regions are also areas of rapid population growth and development. Therefore, the potential for ongoing harm to ACH is real and ever-present.

This report summarises the findings resulting from an on-site inspection supported by desktop analysis, review of the TBLALC CHU databases and records, access to and consultation with Aboriginal community and knowledge-holders and informed awareness of Aboriginal history, traditions and lore.

The site inspection considers both the tangible and intangible ACH of the site. TBLALC assesses the potential for harm and provides advice on avoidance, mitigation, and compliance with relevant legislation and codes of practice.

This report does not confer approval to harm ACH. The authority for such an approval rests solely with the Director General of the DECCW and the process of applying for and obtaining such an approval is very detailed and substantive.

TBLALC's objectives are:

1. to ensure ACH is appreciated, respected, protected and preserved;
2. to inform you of ACH in the region and the actual and potential ACH on the site;
3. to inform you of the applicable law and potential risks involved in any proposed project; and
4. to provide advice and recommendations as to how you should go about minimizing your risks of legal breaches.

LANDSCAPE

The Australian continent has been tectonically stable for an exceptionally long time. About 370 to 290 million years ago a volcanic mountain chain extended along the Gondwana coast. The eroded sediments from the volcanic chain were deposited and settled differentially into coarse sands and finer silts and muds on the seafloor off the Gondwana coast.



Over the next 50 million years the oceanic plate was being subducted beneath the continental plate. The pressure and heat of the tectonic plate movements compressed and cooked the sediments and folded and thrust them upwards to form mountain ranges. The sediments were also penetrated by lavas that erupted onto the deep ocean floor. In some places innumerable siliceous skeletons of microscopic animals called radiolaria formed sediments of marine origins.

These tectonic and volcanic process also caused metamorphism (cooking as squeezing) to form new minerals and rock types such as greywacke, argillite, greenstone and quartzite. These massive tectonic, volcanic and erosion and deposition processes continued during the next 140 million years as Australia rifted away from Antarctica.

Source: NASA Jet Propulsion Laboratory. California Institute of Technology. Shuttle Radar Topography Mission (SRTM) from the space shuttle Endeavour.



Australia is the only continent without any current volcanic activity but it hosts one of the world's largest extinct volcanoes, the Tweed Volcano. Rock dating methods indicate that the Tweed Volcano eruptions lasted about 3 million years, ending about 20 million years ago. Twenty million years of erosion has left this landform deeply eroded yet very recognizable, appearing as a caldera with a central peak. The central peak is the erosional stub of the volcanic neck; the central pipe that carried the magma upward. It is surrounded by ring dikes, which are circular sheets of magma that solidified and now form erosion-resistant ridges. The central peak is named Wollumbin (Mt. Warning). The topography of the northern rivers region is a record of this enormous shield volcano and the landscape evolution that has occurred since its creation. Low relief uplands interspersed between deeply eroded canyons form a radial pattern that clearly defines the shape and extent of the original volcanic dome.

LANDSCAPE (Cont.)

Erosion is most extensive on the eastern side because the eroding streams drained directly to the ocean and therefore had the steepest gradients. This asymmetry of erosion has been extreme enough that the volcano has been hollowed out by the east-flowing drainage, forming an erosional caldera. Calderas usually form as the result of collapse where magmas retreat within an active volcano. If collapse occurred here erosion may have removed the evidence but it produced a similar landform. This combination of volcanic activity and erosion and deposition processes over a vast area and enormous time span has resulted in the landforms and environmental features that define the area today.

The metamorphism and folding and uplifting of the marine sediments formed the Neranleigh–Fernvale basement rocks. The tectonic plate movements gave rise to the Burringbar and Condong Ranges. The erosion and deposition and folding of sediments generated the Clarence Moreton Basin. The more recent volcanism of the Tweed Shield Volcano created the Lamington Volcanics and lava flows the remnants of which remain at Kingscliff, Cudgen, Fingal, Banora, Cook Island and throughout the Tweed Valley.

The underlying country rock of much of the Tweed region is therefore made up of the Neranleigh-Fernvale beds, a somewhat unusual rock type of partially metamorphosed sediments - meta-sediments - and the volcanics of the Wollumbin shield volcano. These source rocks have been altered over millions of years by the combined effects of erosion, deposition and climatic and sea-level changes that produced ancient stream channels and geological remnants of earlier coastlines (paleo shorelines).

The in-situ chemical weathering of the of Pleistocene (Ice Age) country rock (up to 1.8 million years in age) results in the development (pedogenesis) of the volcanic soils and the poorly sorted, rocky, sandy and silty soils that make up the land surface today. More recent sedimentary deposits which, of course, dominate the coastal erosional and depositional environments, are Holocene in age (Present to 10,000 years). The Pleistocene and Holocene epochs, together make-up the Quaternary Period, which is the Period that includes human habitation.

Many of the rock types created by these tectonic, volcanic and geomorphic processes, such as quartzite, chert, silcrete, flint, quartz, obsidian and garnet, are the specific types that were used by Aboriginal people for stone tool making. For example, chert is formed by the silicification of beds of the deep sea sediments made up of the microscopic skeletons of marine organisms, mentioned earlier. Obsidian, at the other extreme, is formed by very rapid cooling of felsic volcanic lava.

All land has an ancient history. In the northern rivers regions of NSW we are extremely fortunate to be able to also relate the geological, geomorphological and environmental history with the human cultural history of the area. Aboriginal cultural heritage is a current, living and unbroken human relationship with country.

This is the landscape in which we live.



BRIEF ETHNOHISTORY OF THE ABORIGINAL PEOPLES OF THE TWEED AND BYRON

Aboriginal 'territories' were defined and maintained by languages and dialects. Ngandowal was spoken by people around the Tweed, Minyungbal south to Byron and Nyungbal around Ballina.

Within these language groups there were also clan groups occupying certain areas:

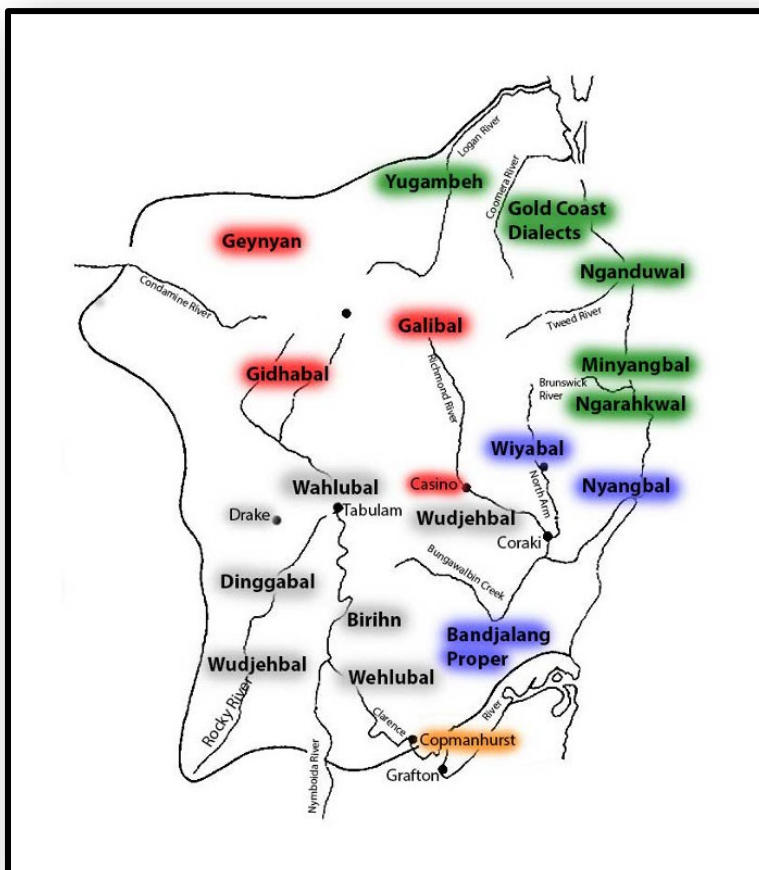
- The Coodjingbarra were a clan group that lived along the coast between the Tweed and Brunswick Rivers. 'Cudgen' means 'red' and the territory of the Coodjingburra clan was, amongst other things, a source of ceremonial ochre.
- The Tul-gi-gin people lived around the North Arm; and
- The Moorang-Moobar people lived around the Southern and Central Arms around Wollumbin (Mt Warning).



References to Minyungbal, Ngnadowal, Coodjingburra, Tulgigin, Moorang-Moobar and Gidhabal, (variously called Minjangbal, Minjyung, Minywoa, Gendo, Gando Minjang, Gandowal, Ngandowul, Cudgingberr, Coodjingburra, Githabal and many alternatives) are all references to the Bundjaung people.

Wollumbin is the central landmark in Bundjalung territory. It has mythical, spiritual and cultural significance to the Bundjalung and other Aboriginal people.

A very large number of sites containing physical evidence of past Aboriginal land use remain in the Tweed and Byron regions: middens, bora grounds/ceremonial grounds, fish traps, burials, innumerable artefact scatters, stone tools, caves, scarred trees, cultural places, story places and campsites. Aboriginal people currently living in the region have unbroken lineages, with Elders and knowledge holders who are the custodians of ancient knowledge and teachings and the carriers of oral histories and stories of Aboriginal cultural practices prior to non-Aboriginal settlement.



BRIEF ETHNOHISTORY (Cont.)

The earliest historical report of European observation of the Aboriginal population of northern coastal NSW was made by Captain James Cook on May 15, 1770, who, 25 kilometres south of the Tweed River “discovered smoke in many places and saw a group of natives”. The first direct contact with was made by the explorer Lieutenant John Oxley on October 31, 1823: “200 Aboriginal men approximately five kilometres from the mouth of the Tweed River”.

There is conjecture about the total populations of Aboriginal people prior to the arrival of Europeans. Allison Smith, daughter of the first pilot at Tweed Heads, stated: “At that time [early 1870s] hundreds of natives camped within the present town site”. Of course there was no census and it is a known fact that Aboriginal populations were decimated by introduced diseases both before and after contact. N. C. Hewitt in the Tweed Daily 1923 Supplement quoted Henry Barnes of Dryaaba Station saying, “Some disease came amongst the blacks about 1858 and nearly one third of them on the coast died.” In October 1923, a writer, ‘Old Hand’, in the Northern Star stated, “Dysentery occurred among the blacks in 1865 and carried off hundreds of victims.” It is also a fact that massacres took place and historical records of such events were understated, to say the least.

The earliest reports record groups of hundreds of Aboriginals camped in the area. Records dating from the 1860’s describe gatherings of the Tul-Gi-Gin and Moorung-Moobar people of up to 600 people in semi-permanent camps on the banks of the Tweed River.

Aboriginal people did not ‘trespass’ on each other’s country but the coastal people moved more ‘freely’ across common territory. These limited historical records tempt the conclusion that territorial boundaries were more significant where resources were less abundant. The region is resource rich and resource zones were guarded. Seasonal events, such as the bunya-nut feasts, would result in large gatherings, sometimes drawing people from distant territories. Complex and strict rules governed trespass. Territory and interactions were likely linked to ceremony and ceremonial sites.

There was regular trade and interaction between both local and broader territories and so there was travel and gatherings for trade and seasonal and ceremonial events. Travel across territorial boundaries established pathways, campsites, tool-making sites, meeting and gathering places and ceremonial locations across the landscape.

The Bundjalung territory was replete with cultural sites. From the earliest days of interaction with white settlers corroboree sites, bora rings and ceremonial sites were well documented.. Many have been destroyed but the region, fortunately, is still rich in cultural material and sites. Aboriginal people frequently used the coastal dunes as burial sites and cemeteries. There are numerous recorded Aboriginal burial sites around the Tweed and Byron region. The known sites and physical evidence represent a fraction of what would once have been present.

Rights of passage and ‘directions’ were established by levels of initiation, stories, traditional knowledge, songs and dances. The stories relate to ‘country’; not just descriptive landscapes but also the animals and plants, the rocks, soils and waters and ancient histories and ancestral experiences. These pathways formed a network of ‘songlines’ and ‘story places’ that connected and traversed the entire continent and, in some cases, beyond. This is why the knowledge holders of Aboriginal communities are so profoundly respected. They are the repositories of ancient lore.

BRIEF OUTLINE OF ABORIGINAL LAND USE IN THE TWEED AND BYRON REGIONS

Aboriginal land use is classically described as 'subsistence'. A more current perspective would describe it as 'sustainable'. Resource use and people movements were determined in large part by seasonal resource availability and social customs. Living along the banks and in the catchments, estuarine outlets and wetlands of the Tweed, Brunswick, Richmond and Clarence Rivers, 'subsistence' involved the gathering of fresh and saltwater fish, shellfish and crustaceans. The roots of the Bungwahl fern was gathered from wetlands as a staple food item. Other animals were also hunted, particularly further inland, including wallabies, bandicoots, possums, flying foxes, echidnas, snakes, goannas and lizards, freshwater fish, ducks, pigeons and other birds. Edible and fruit and berry bearing plants were also harvested, as was wild honey.

The temperate and timbered environments also provided abundant resources for habitation structures and stone tool making. Sophisticated techniques, including nets, weirs, fish traps and spears were used in fishing. Nets were also used for hunting kangaroo. Bangalow palm leaves were used to make containers and the bark and trunks of various trees were used to make canoes.

Prior to the establishment of large-scale timber getting in the mid-1840s, the Bundjalung people had relatively little contact with the European settlers. Change was sudden and rapid: extensive dispossession and decimation of the Aboriginal population began with the establishment of large-scale timber getting industry in 1844. Although there are several records of violent and bloody conflicts Aboriginal people, with their unique skills and knowledge of the country assisted the timber getters and were rewarded with steel axes, flour, sugar, rum, tobacco and tea. As cedar resources diminished freehold land was opened to white settlers in the 1860s. Sugar cane, banana growing, dairying and commercial fishing industries started to develop and rail links were established by the late 1800's. Of course Aboriginal people were also used as labourers in timber getting and land clearing.

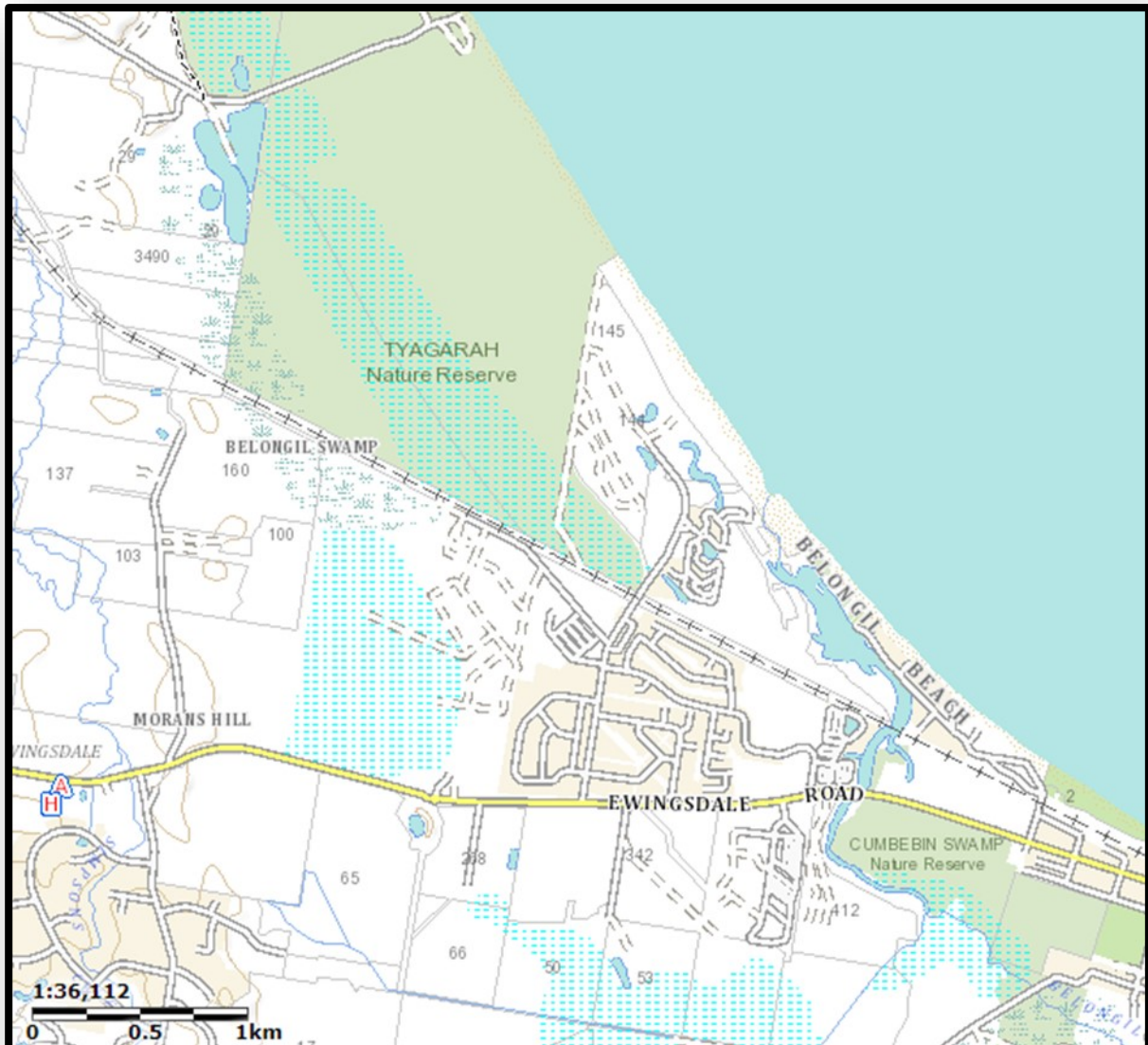
Land clearing, devastation of habitats and resources, destruction of sacred and ceremonial sites, disease, dispossession and seizure of Aboriginal women gave rise to violent conflict and Aboriginal people were forced into reserves and missions. Fortunately for the Bundjalung people coastal estuaries, dunes, beaches, swamps and lakes (in addition to mountains) weren't good farmlands and therefore there was some degree of relative 'refuge' on the coast.

Adrian Piper (1983) noted, between 1865 and 1875 the solid social fabric and economic [Aboriginal] structure collapsed as the basis of a viable society. The last recorded Booral ceremony took place on the Upper Tweed in about the mid eighteen seventies. This is significant for it emphasises how devastating the impact of farming into the Tweed Valley really was. The ritual life is perhaps the strongest and most enduring element of any society, yet in the Tweed Valley it barely survived fifteen years of contact with farmers. With the loss of both traditional land and the ritual essential to aboriginal society the Tweed aborigines became refugees in their own land.

Fingal was established as 'the blacks camp' an Aboriginal camp in the 1880s. Aboriginal life became more sedentary and was influenced by Christianity and Pacific Islander culture. The Aboriginal community of the Tweed Region is still strong and vibrant today.

SITE LOCATION

Approximate central GPS coordinates (GDA 94 MGA Zone 56) for the area that is the subject of this report are 557340E 6833520N. The land is bordered on all sides by environmentally significant features—Belongil Beach to the east, Belongil Creek draining wetlands and the Cumbebin Swamp Nature Reserve to the south, with its estuarine outlet onto the beach, Tyagarah Nature Reserve to the north and Belongil Swamp and associated wetlands to the west



BRIEF OUTLINE OF THE ABORIGINAL CONTEXT OF THE REGION

The Bundjalung of Byron Bay (Arakwal) people and other Bundjalung people have a long and ongoing cultural association with the coastal landscape around Byron Bay. Research into the Bundjalung lands of south east Queensland date their occupation to at least 22,000 years ago (Neal & Stock 1986).

There are extensive areas of wetlands in the Byron Bay region, such as the Cumbebin and Belongil Swamps, that are protected under State Environmental Plan. They complement other wetland and coastal reserves on the NSW far north coast including Ukerebagh, Cudgen, Billinudgel and Brunswick Heads Marsh. The Tyagarah Nature Reserve is an important part of Country to the Bundjalung of Byron Bay for a range of reasons, including as a place rich in spiritual and cultural significance.

The landscape that includes these areas is an important part of the Bundjalung / Arakwal history. People would move through Country using the resources of the swamps for food and medicinal resources. People camped in the dunes and obtained food from the beach and the creek. Swamp paperbark was used for cooking and carrying food and materials. The swamplands are the locations of pathways, middens, stone arrangements, ceremonial sites and burials.

Highly significant Aboriginal sites, including middens and artefacts such as stone tools, cores and flakes (remnant's of stone tool making) are recorded in the Tyagarah Nature Reserve. Extensive sandmining of near-shore dunes would have removed a lot of evidence of Aboriginal use of these areas however evidence is virtually certain to be widespread in unmined areas that have yet to be investigated. Simpsons Creek, its tributaries and the ocean were popular for fishing and collecting other foods and the beach itself was a significant pathway for Aboriginal people travelling between Belongil Creek and the Brunswick River

The abundant resources of the area have sustained generations of Bundjalung people. The rainforest, woodlands, heaths, wetlands, beaches, tidal areas, river and sea provided food and materials. Bundjalung people traditionally camped on dunes and elevated areas within the boundaries of what is now the reserve. The same camp areas were also used when they worked in the local timber and sugar cane industries.

Connection to this Country, including responsibility for looking after its land, waters, plants and animals remains. Maintenance of cultural traditions and associations contributes to identity and well-being and shows respect to the ancestors. Care of the plants and animals of the area is important to the Bundjalung of Byron Bay for their conservation, totemic, wild resource and other cultural values.

AHIMS SEARCH AND CULTURAL MAPPING



AHIMS Web Services (AWS) Search Result

Purchase Order/Reference : Bayshore drive Byron Bay
Client Service ID : 382643

Tweed Byron LALC CHU
PO BOX 6967
TWEED HEADS SOUTH New South Wales 2486
Attention: Warren Phillips
Email: sites@tblalc.com

Date: 14 November 2018

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 13, DP:DP243218 with a Buffer of 1000 meters, conducted by Warren Phillips on 14 November 2018.

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 the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

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

The Aboriginal Heritage Information Management System (AHIMS) database, compiled and maintained over many years by the NSW Department of Environment, Climate Change & Water (DECWW) Office of Environment and Heritage (OEH), has registered Aboriginal sites in the area. Combining local Aboriginal cultural knowledge of the area with the AHIMS record indicates that it is highly likely that Aboriginal cultural material is present on the property that is the subject of this report.

AHIMS SEARCH AND CULTURAL MAPPING (Cont.)

The red stars in the image below show the locations of registered sites in the region surrounding the project area. Obviously, registered sites are only a small subset of the sites that would be present and, given the background outlined throughout this report, cultural mapping of the region would certainly map the project area as 'highly predictive' for the presence of Aboriginal cultural material, objects and places.



PROJECT PROPOSAL

TBLALC's understanding of the project proposal that is the subject of this report is an application for a rezoning of the area on the eastern side of Bayshore Drive, excluding the environmentally protected sand dune areas, to enable subdivision into several large residential lots.

The area that will be affected has previously been cleared of vegetation and was once used as a golf course. Therefore it is likely that the ground has previously been disturbed.

Rezoning and / or subdivision, in and of themselves, will not harm Aboriginal Cultural Heritage whereas the subsequent construction of dwellings does have the potential to do so. The recommendations at the end of this report are made in this context.



Date & Time: Thu, 20 Dec 2018, 14:08:40 AEDT
Position: 56 S 557302 6833534
Altitude: 4m
Datum: WGS-84
Azimuth/Bearing: 116° S64E 2062mils (True)
Elevation Angle: +02.0°
Horizon Angle: +00.7°
Zoom: 1X

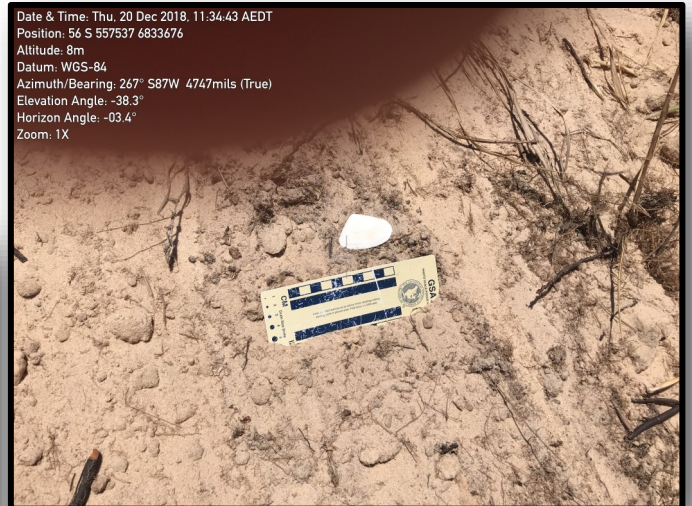


Date & Time: Thu, 20 Dec 2018, 14:08:47 AEDT
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Altitude: 4m
Datum: WGS-84
Azimuth/Bearing: 357° N03W 6347mils (True)
Elevation Angle: +02.9°
Horizon Angle: +01.1°
Zoom: 1X



SITE INSPECTION OUTCOMES

The entire project area, and significant parts of the neighbouring area, was traversed on-foot, over two days. The following images show the tracks that were followed. Briefly, the entire area was comprehensively surveyed. The sand dunes on the eastern side of the project area are not part of the area that is the subject of this report but they were carefully surveyed because of the likelihood of the presence of Aboriginal cultural material. The grass cover on the dunes was extreme and therefore visibility was virtually zero. There were approximately 10 isolated, somewhat oxidised pipi shells located high-up on the beachside of the dunes but, whilst they are evidence (although highly predictable) of a typical food species, they were not considered to be of cultural origins (not midden material).



RECOMMENDATIONS

- ⇒ In regard to Aboriginal Cultural Heritage, insofar as it relates to proposed development of the site that is the subject of this report, in *TBLALC's opinion there is nothing at this stage to halt or delay the consideration of sub-division or rezoning of this site.*
- ⇒ TBLALC **recommends** that it also be consulted in regard to any subsequent Development Applications for constructions on the project area. In our opinion, at this stage, the site is likely to contain Aboriginal cultural material, which could be encountered during any ground disturbing earthworks. Therefore, subject to the actual details of any future Development Applications, we would *anticipate* that monitoring by a representatives of TBLALC and Arakwal of any future ground disturbance on the area will be recommended.
- ⇒ TBLALC generally recommends that the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW ('the Code')*, published by the DECCW OEH, being the basic standard of assessment, should be referred to. A copy of the Code will be included with this report.
- ⇒ Note that this report provides a useful part of supporting documentation for proceeding in accordance with the Code.

The following procedure *must* be applied in the case of unexpected finds (including even *suspected* ACH objects):

- ⇒ Stop all work on-site immediately. Do not further disturb the object(s) or the site in any way.
- ⇒ Place a protective barrier around the site.
- ⇒ OEH must be contacted as soon as possible for its information, advice, assessment and guidance. *This is a legal and regulatory requirement.* TBLALC **recommends** that, in such circumstances, it should also be contacted as soon as possible. OEH is the regulatory authority in regard to ACH and will almost certainly arrange its own inspection. TBLALC can facilitate communications and consult and advise the proponent as required.
- ⇒ In such circumstances TBLALC will almost certainly require that it monitor any further works involving ground disturbance within the project area.
- ⇒ In the event that human skeletal material is encountered NSW Police must be contacted immediately, a buffer zone surrounding the area should be setup and ALL activities must cease within this buffer zone until such time as the necessary approval is given to continue work within the buffer zone. Again, it is *the proponent's legal responsibility* to notify NSW Police. It is usually not easy to determine whether bone material is of animal or human origin. Please contact TBLALC as soon as possible. The main points are: Secure the area, do not disturb the specimen and call OEH, NSW Police and TBLALC immediately.

Please contact the TBLALC Cultural Heritage Unit (CHU) if we can be of further assistance.