



Aboriginal Archaeological Desktop Due Diligence Assessment

For the proposed rezoning of lots to the west of Ryans Road, Gillieston Heights NSW, in Maitland LGA.

Prepared by:

RPS AUSTRALIA EAST PTY LTD

PO Box 428
Hamilton NSW 2303

T: +61 4940 4200
F: +61 4961 6794
E: newcastle@rpsgroup.com.au

Client Manager: Tessa Boer-Mah
Report Number: PR 116205-2
Version / Date: Version 1 March 2013

Prepared for:

YORK AND COMPANY PTY LTD

PO Box 202
East Maitland NSW 2323

Attn: Oliver York

M: 0403 621 050
E: oliveryork@yorkandcompany.com.au

IMPORTANT NOTE

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

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

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

Document Status

Version	Purpose of Document	Orig	Review	Review Date	Approval for Issue	Date Issued
Draft 1	Desktop DD Assessment	CYL	TBM	4/3/2013	T.Boer-Mah	4/3/2013

Contents

EXECUTIVE SUMMARY	1
1.0 INTRODUCTION	3
1.1 The Project Area.....	3
1.2 The Proposed Activity	3
1.3 Authorship and Acknowledgements.....	3
2.0 LEGISLATIVE CONTEXT	5
2.1 <i>National Parks & Wildlife Act 1974</i>	5
2.2 <i>National Parks and Wildlife Regulation 2009</i>	6
2.3 Due Diligence and Codes of Practice	6
2.3.1 <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010)</i>	6
2.4 Aboriginal Community Consultation	7
3.0 ENVIRONMENTAL CONTEXT	8
3.1 Geology and Soils	8
3.2 Topography and Hydrology	8
3.3 Flora and Fauna	8
3.4 Synthesis of Environmental Context	8
4.0 HERITAGE CONTEXT	9
4.1 Aboriginal Heritage Information Management System (AHIMS)	9
4.2 Archaeological and Heritage Literature Review	11
4.2.1 Wheeler (2006) Gillieston Heights Aboriginal Archaeological Assessment	11
4.2.2 ERM (2002) Residential Subdivision Louth Park	11
4.2.3 Dean-Jones (1989) Old Delta Collier Site – East Maitland	11
4.3 Synthesis of Heritage Context	11
5.0 DESKTOP IMPACT ASSESSMENT	12
6.0 CONCLUSIONS AND RECOMMENDATIONS	13
7.0 REFERENCES	14

Tables

Table 1 Summary of AHIMS Sites within the searched coordinates9

Table 2 Summary of AHIMS Sites within the Project Area.....9

Figures

Figure 1 Project Area.....4

Figure 2 Project Area and AHIMS10

Appendices

Appendix 1 Legislative Requirements

Appendix 2 AHIMS

Executive Summary

RPS Cultural Heritage has been engaged by York and Company Pty Ltd (Y&C Pty Ltd) to prepare a desktop due diligence assessment (Stage 1) for four lots of land west of Ryans Road (and near the intersection with Gillieston and Kiah Roads). The four lots of land under investigation include:

- Lot 11 (DP 61751);
- Lot 1 (DP 1119043);
- Lot 17 (DP 263196); and
- Lot 18 9DP 263196).

It is understood that Y&C Pty Ltd intend to rezone the lots and eventually submit a development application (DA) over the Project Area. The purpose of the desktop due diligence assessment is to fulfil the requirements for the rezoning application only. This has been achieved by identifying known Aboriginal sites and outlining the steps to be undertaken should Y&C Pty Ltd proceed with a DA application. The desktop assessment has identified that one Aboriginal site is present in the Project Area (see Figure 2). This site is an artefact scatter (AHIMS 38-4-1376) consisting of three stone artefacts and is of low-moderate significance. In addition, the environmental context indicates that the location of the Project Area on the valley floor near a major water source (Swamp Creek) makes the area an idea transit corridor for past hunter-gather groups to traverse from the high to low grounds (visa versa) and there are several previously recorded sites in the region. If Y&C Pty Ltd proceeds with a DA application, then the Project Area will require a visual inspection prior to DA lodgement.

This desktop due diligence assessment fulfils the heritage requirements for a rezoning application. It has identified an Aboriginal site in the Project Area which due to its low-moderate significance should be considered at DA stage, but does not present a major constraint for the purposes of rezoning. If the proponent (Y&C Pty Ltd) proceeds with the development application, then this site must be further investigated and a visual inspection of the Project Area must be undertaken to identify if an Aboriginal Heritage Impact Permit (AHIP) is required.

The following recommendations have been made based on the outcome of the desktop due diligence assessment:

Recommendation 1

If the proponent (Y&C Pty Ltd) proceeds with a development application (DA), then prior to lodgement of the DA, the proponent must engage a suitably qualified cultural heritage consultant to undertake a visual inspection of the Project Area which must include inspection of AHIMS 38-4-1376. The visual inspection must be documented as an addendum to this desktop due diligence assessment or as a separate report.

Recommendation 2

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

Terms, Definitions, and Abbreviations

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

1.0 Introduction

RPS has been engaged by York and Company Pty Ltd (Y&C Pty Ltd) to prepare a desktop Aboriginal Archaeological Due Diligence Assessment for a proposed rezoning of four lots west of Ryans Road in Gillieston Heights. This report fulfils the requirements for the rezoning application and has been undertaken in accordance with the Due Diligence Code of Practice for the Projection of Aboriginal Objects in New South Wales (2010) (*Due Diligence Code*).

1.1 The Project Area

This due diligence assessment has been prepared for the area subject to the proposed activity (rezoning) and herein is referred to as the “Project Area.” The Project Area is located between Figtree Lane and Ryans Road and concerns Lot 11 (DP 61751), Lot 1 (DP 1119043), Lot 17 (DP 263196) and Lot 18 (DP 263196) in the Maitland Local Government Area (LGA). The Project Area is in Gillieston Heights approximately 2.5 kilometre from the town of Maitland and is approximately 38 hectare in size (Figure 1).

1.2 The Proposed Activity

It is understood that Y & C Pty Ltd intends to lodge an application to rezone Lots 11, 1, 17 and 18 from secondary rural to residential. It is anticipated that, at a later stage, a Development Application (DA) will be submitted to Maitland Council. This desktop report only covers the rezoning “activity” and a Stage 2 due diligence with a visual inspection will need to be undertaken after rezoning, but before DA lodgement. It is understood that the rezoning for residential development of the will strengthen and enhance the existing residential development and increase the prospects of the Gillieston Heights residential community and Public school. The rezoning and achievement of development approval will also increase the demand for housing in the Hunter region.

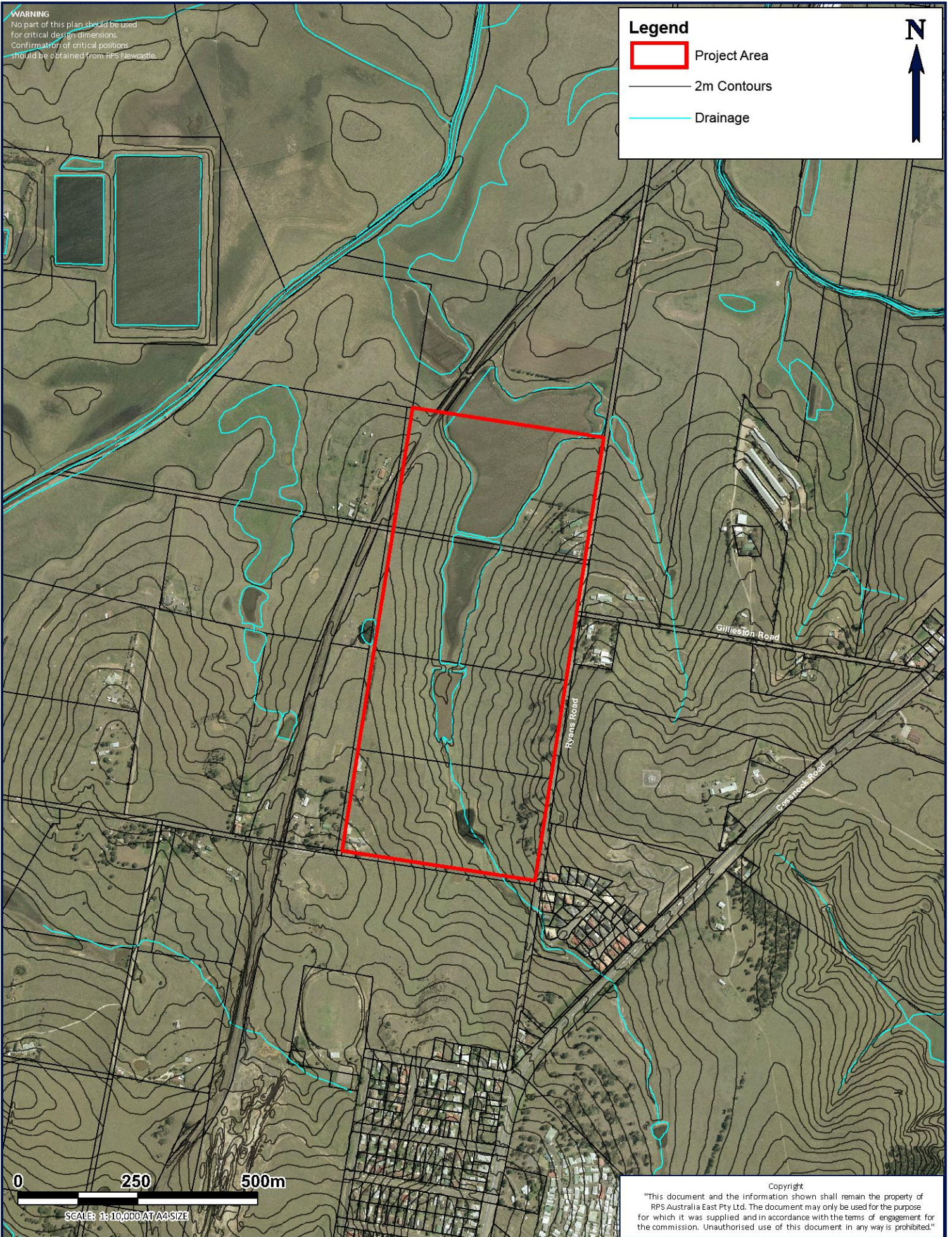
1.3 Authorship and Acknowledgements

This report was prepared by RPS archaeologist Cheng Yen Loo. The report was reviewed by RPS Senior Archaeologist and Cultural Heritage Manager, Tessa Boer-Mah.

WARNING
No part of this plan should be used
for critical design dimensions.
Confirmation of critical positions
should be obtained from RPS Newcastle.

Legend

-  Project Area
-  2m Contours
-  Drainage



TITLE: FIGURE1: PROJECT AREA

LOCATION: RYANS ROAD
GILLIESON HEIGHTS

DATUM: (GDA 94)
PROJECTION: MGA ZONE 56

DATE: 25/03/2013
PURPOSE: HERITAGE

LAYOUT REF: J:\J08\116K\116205 Gillieson Hts\10- Drafting
VERSION (PLAN BY): AA4 (CYL-NW)

CLIENT: YORK AND COMPANY PTY LTD
JOB REF: 116205

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

RPS

2.0 Legislative Context

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

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

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

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

2.1 *National Parks & Wildlife Act 1974*

The *National Parks & Wildlife Act 1974* (NPW Act) protects Aboriginal heritage (places, sites and objects) within NSW. Protection of Aboriginal heritage is outlined in s86 of the Act, as follows:

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

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

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

Notification of Aboriginal Objects

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

2.2 National Parks and Wildlife Regulation 2009

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

2.3 Due Diligence and Codes of Practice

The aims of a due diligence assessments are to:

- assist in avoiding unintended harm to Aboriginal objects;
- provide certainty to land managers and developers about appropriate measures for them to take;
- encourages a precautionary approach;
- provides a defence against prosecution if the process is followed; and
- results in more effective conservation outcomes for Aboriginal cultural heritage.

One of the benefits of the due diligence provisions are that they provide a simplified process of investigating the Aboriginal archaeological context of an area to determine if an Aboriginal Heritage Impact Permit (AHIP) is required.

Under the s80A *National Parks & Wildlife Regulation 2009* ("NPW Regulation") a number of due diligence codes are recognised.

This report has been written to meet the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010) ("Due Diligence Code").

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

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

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

Investigations under the code include the following:

- A search of the Aboriginal Heritage Information Management System (AHIMS) database to identify if there are previously recorded Aboriginal objects or places in the Project area,
- Identification of landscape features including, land within 200m of water, dune systems, ridgetops, headlands, land immediately above or below cliff faces and/or rockshelters/caves,
- Desktop assessment including a review of previous archaeological and heritage studies and any other relevant material,
- Visual inspection of the project area to identify if there are Aboriginal objects present, and
- Assessment as to whether an AHIP is required.

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

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

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

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

2.4 Aboriginal Community Consultation

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

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

3.0 Environmental Context

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

3.1 Geology and Soils

The Project Area is on two soil landscapes; Bolwarra Heights and Hunter. The geological units under the soil landscapes consist predominantly of the Branxton Formation which includes sandstone, siltstone, conglomerate and erratic. Also located within this is the Muree Sandstone (conglomerate, sandstone and siltstone) unit, the Greta Coal Measure (sandstone, shales, coal and conglomerate) unit and the Farley Formation (sandstone, mudstone, siltstone and shale). If these geological units are exposed at the surface, they may provide opportunities for obtaining raw materials or use for grinding activities.

3.2 Topography and Hydrology

The Project Area comprises low lying slopes associated with the far western edge of the East Maitland Hills and a floodplain associated with Swamp Creek. Swamp Creek and Wentworth Swamps are situated west of the Project Area and appear to be a major water source in the region.

3.3 Flora and Fauna

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

Cleared land occurs over most of the Project Area with a few introduced tree species associated with residential areas. The vegetation community that dominates the majority of the Project Area consists almost entirely of grasses and herbaceous shrubs and groundcover. Intensive land modification would have changed the availability of food resources for foraging purposes.

3.4 Synthesis of Environmental Context

A review of the environmental context of the Project Area suggests that prior to European settlement the landscape would have been suitable for occupation. The Project Area is in proximity of natural water sources and the availability of raw materials such as sandstone, shale and siltstone provided suitable resource for stone artefact manufacturer. Although the landscape has been largely stripped of vegetation, woodland trees would have been available pre-European contact which would have provided shelter, and bark resources for use.

4.0 Heritage Context

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

4.1 Aboriginal Heritage Information Management System (AHIMS)

A search was undertaken of the Aboriginal Heritage Information Management System (AHIMS) and the coordinates searched for the Project Area were GDA Zone 56, Eastings 361398 to 363557 and Northings 6373995 to 6376354 and revealed that there are 15 previously recorded Aboriginal sites within these coordinates (Table 1 and Table 2). The most common site type in the region was isolated finds, artefact scatters and potential archaeological deposits (PADs). Artefact scatters containing PAD's and unspecified finds only occurred in one instance.

Table 1 Summary of AHIMS Sites within the searched coordinates

Sites	Frequency	Percent
Artefact Scatters	4	26.7%
Artefact Scatter/PAD	1	6.60%
Isolated Find	5	33.3%
PAD	4	26.7%
Unspecified Find	1	6.70%
TOTAL	15	100%

The search revealed that one Aboriginal site is within the Project Area. The site is an artefact scatter which is on the western boundary of the development footprint within Lot 1 (DP 1119043). This site is an artefact scatter (AHIMS 38-4-1376) consisting of three stone artefacts is in the Project Area and is of low-moderate significance. It is important to note that AHIMS 38-4-1376 is located in the "no build zone" and no identifiable risk of harm has been identified to the site.

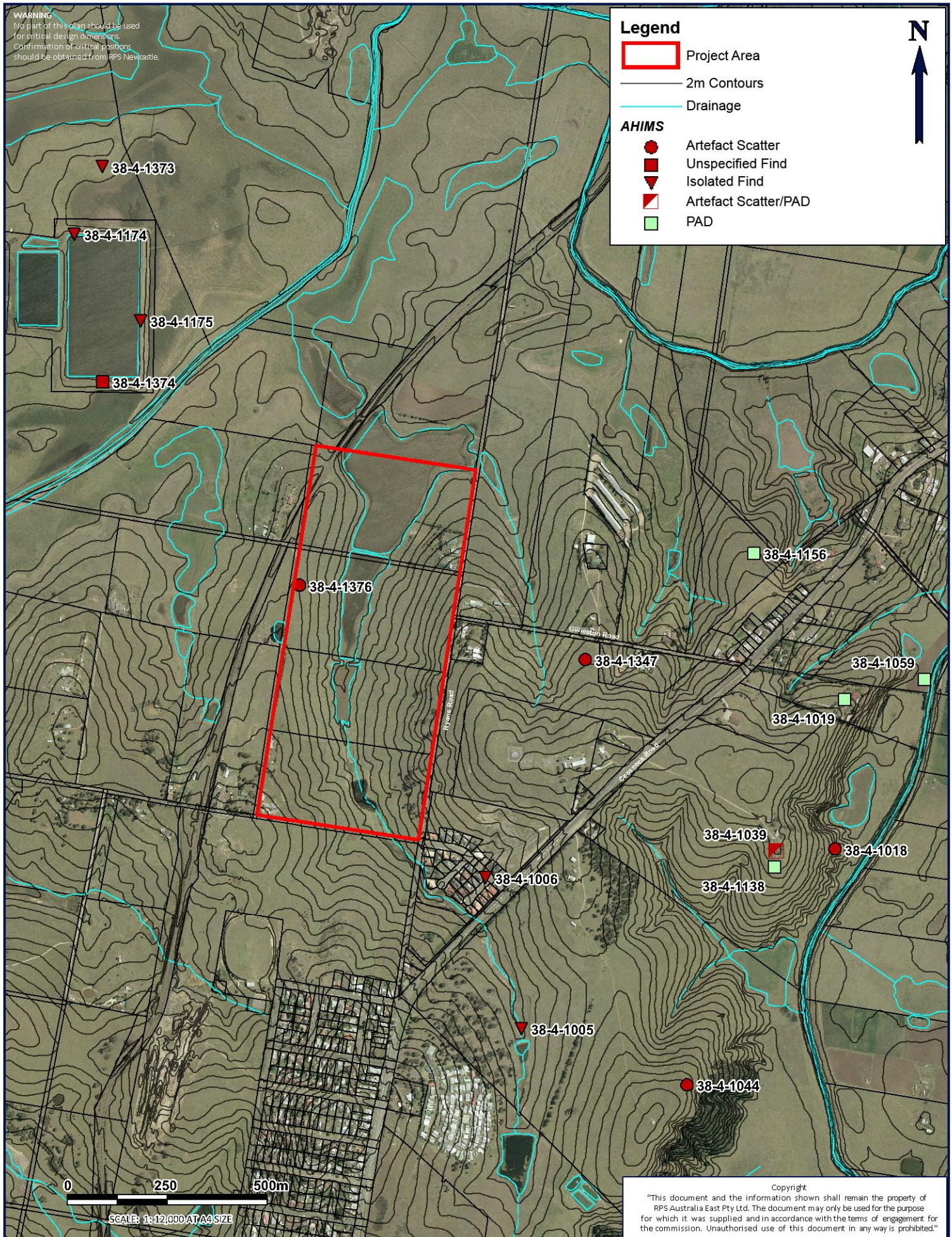
Table 2 Summary of AHIMS Sites within the Project Area

AHIMS Number	Site Name	Site Type
38-4-1376	Fig Tree Lane Sewer Project Artefacts	Artefact Scatter: 3

WARNING
No part of this plan should be used
for critical design dimensions.
Confirmation of critical positions
should be obtained from RPS Newcastle.

Legend

- Project Area
- 2m Contours
- Drainage
- AHIMS**
 - Artefact Scatter
 - Unspecified Find
 - ▼ Isolated Find
 - ▣ Artefact Scatter/PAD
 - PAD



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

TITLE: FIGURE1: PROJECT AREA
WITH AHIMS

LOCATION: RYANS ROAD
GILLIESTON HEIGHTS

DATUM: (GDA 94)
PROJECTION: MGA ZONE 56

DATE: 25/03/2013
PURPOSE: HERITAGE

LAYOUT REF: J:\J08S\116K\116205 Gillieston Hts\JD- Drafting
MapInfo Workspaces
VERSION (PLAN BY): AA4 (CYL-NW)

CLIENT: YORK AND COMPANY PTY LTD
JOB REF: 116205

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

RPS

4.2 Archaeological and Heritage Literature Review

A review of previous archaeological and heritage reports has been undertaken to inform this due diligence assessment.

4.2.1 Wheeler (2006) Gillieston Heights Aboriginal Archaeological Assessment

A preliminary Aboriginal archaeological investigation was conducted on lands between Gillieston Road and Cessnock Road, Gillieston Heights in August 2006 on behalf of Insite Planning and Engineering. The inspection of the study area involved examining the ground surfaces for the visible presence of Aboriginal cultural material, as well as an assessment of land disturbance and erosion. There were no Aboriginal sites or objects locations during the inspection.

The letter report identified that the study area had archaeological potential but that this potential was dependent upon the survival of intact A-horizon soil. It was recommended that a geotechnical investigation be undertaken to determine if in situ A-horizon soil was present in significant portions of the study area. If so, it was considered that there would be archaeological potential in those areas.

4.2.2 ERM (2002) Residential Subdivision Louth Park

ERM conducted excavations within a proposed rural residential sub division at Louth Park, south west of East Maitland, 2 kilometres east of the study area. Two PADs were identified during a previous assessment of the land by ERM in 2001. Twenty one hand excavation sand four shovel tests were conducted over PAD 1 and fourteen hand excavations and seven shovel tests over PAD2. Ploughing and sheet erosion had occurred in the immediate vicinity and modern material such as broken glass present. PAD 1 revealed artefacts from five of the test pits with the highest density (85 in total) from Pit 1/13. Forty two flakes, eighteen broken flakes, twenty one flake fragments, one broken blade, one blade and one bondi point were recovered. Raw materials in the assemblage included cream chert, grey chert and quartz. ERM concluded that the artefacts were brought onto the site due to past land use practises and the soil profile. No artefacts were recovered from PAD 2.

4.2.3 Dean-Jones (1989) Old Delta Collier Site – East Maitland

A survey was conducted for Maitland City Council for a waste disposal site. During the survey, six sites were located including small and larger artefact scatters. Five of the six sites were located on lower slopes and adjacent to drainage lines, one was situated on a ridge rest. The assemblages consisted of reddish brown silcrete and tuff with fewer instances of grey and yellow chert and quartz. Sub-surface tests excavations were recommended.

4.3 Synthesis of Heritage Context

A review of the AHIMS data and previous archaeological work in the area suggest that the region was occupied by Aboriginal hunter-gatherer groups in the past. The availability of raw stone material provided suitable resources for the manufacture of stone artefacts. This theory is supported by the fact that all of the site types previously recorded consists of stone artefacts and PAD's which are site types associated with Aboriginal campsites.

5.0 Desktop Impact Assessment

The proposed activity is to undertake a planning rezoning of lots to the west of Ryans Road (and near the intersections with Gillieston and Kiah Roads). The lots under inspection are Lot 11 (DP 61751), Lot 1 (DP 1119043), Lot 17 (DP 263196) and Lot 18 (DP 263196).

The AHIMS search has identified that one Aboriginal site is present in the Project Area (see Figure 2). This site is an artefact scatter (AHIMS 38-4-1376) consisting of three stone artefacts is in the Project Area and is of low-moderate significance. In addition, environmental context indicates that the location of the Project Area on the valley floor near a major water source (Swamp Creek) makes the area an idea transit corridor for past hunter-gather groups to traverse from the high to low grounds (visa versa) and there are several previously recorded sites in the region. If Y&C Pty Ltd proceed with a DA application, then the Project Area will require a visual inspection prior to DA lodgement.

This desktop due diligence assessment fulfils the heritage requirements for a rezoning application. It has identified an Aboriginal site in the Project Area which due to its low-moderate significance should be considered at DA stage, but does not present a constraint for the purposes of rezoning because the site is in the "no build zone". If the proponent (Y&C Pty Ltd) proceeds with the development application, then this site must be further investigated and a visual inspection of the Project Area must be undertaken to identify if an Aboriginal Heritage Impact Permit (AHIP) is required.

6.0 Conclusions and Recommendations

This report has considered the available desktop environmental and archaeological information for the Project Area and the proposed activity, rezoning of four lots along Ryans Road. This desktop due diligence assessment fulfils the heritage requirements for a rezoning application. It has identified one Aboriginal site in the Project Area. Should the proponent proceed with a DA application, then this site will need further investigation and a visual inspection of the Project Area must be undertaken to assess whether an AHIP is required.

The following recommendations have been made based on the outcome of the desktop due diligence assessment:

Recommendation 1

If the proponent (Y&C Pty Ltd) proceeds with a development application (DA), then prior to lodgement of the DA, the proponent must engage a suitably qualified cultural heritage consultant to undertake a visual inspection of the Project Area which must include inspection of AHIMS 38-4-1376. The visual inspection must be documented as an addendum to this desktop due diligence assessment or as a separate report.

Recommendation 2

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

7.0 References

- Dean-Jones, 1989. Report of an Archaeological Survey of the Old Delta Colliery Site, Mt Vincent Road, Near East Maitland. Report prepared for Patterson Britton and Partners Pty Ltd.
- DECCW. 2010. "Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales." in *Part 6 National Parks and Wildlife Act 1974*, edited by Department of Environment Climate Change & Water.
- ERM, 2002. Waterforde Estate Stage 4: Archaeological Test Excavation. Report to Waterforde Pty Ltd.
- Keith, D. 2006. *Ocean Shores to Desert Dunes: The Native Vegetation of New South Wales and the ACT*. Sydney: Department of Environment and Conservation NSW.
- Wheeler, J. 2006. A Preliminary Archaeological Investigation of Lot 5 DP 868890, Cessnock Road, Gillieston Heights. Archaeological and Heritage management Solutions for Insite Planning and Engineering Cessnock.

Appendix I

Legislative Requirements

Summary of Statutory Controls

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

COMMONWEALTH

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

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

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

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

Australian Heritage Commission Act 1975

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

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

STATE

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

National Parks and Wildlife Act 1974 (NPW Act)

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

Section 86

This section now lists four major offences:

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

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

Section 87

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

Section 87A & 87B

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

Section 89A

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

Section 90

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

Section 90A-90R

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

Aboriginal Heritage Impact Permits (AHIP)

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

Aboriginal Cultural Heritage Consultation Requirements for Proponents

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

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

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

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

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

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

Heritage Act 1977

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

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

Appendix 2

AHIMS

RPS Australia East Pty Ltd -Hamilton

Date: 22 March 2013

Accounts Payable Fortitude Valley PO Box 237
Brisbane Queensland 4006

Attention: Cheng-Yen Loo

Email: chengyen.loo@rpsgroup.com.au

Dear Sir or Madam:

AHIMS Web Service search for the following area at Datum :GDA, Zone : 56, Eastings : 361398 - 363557, Northings : 6373995 - 6376354 with a Buffer of 50 meters, conducted by Cheng-Yen Loo on 22 March 2013.

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:

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

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette \(http://www.nsw.gov.au/gazette\)](http://www.nsw.gov.au/gazette) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date .Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.

Note: This Excel report shows the sites found in AHIMS on the 25/03/2013. If this date is not the same as the original date of the Search Results letter obtained during the Basic Search, then the search results might be different. The PDF version of this report will always coincide with the Basic Search Results letter.

Site ID	Site name	Datum	Zone	Eastings	Northing	Context	Site status	Primary contact	Site features	Site types	Recorders	Reports	Permits	Longitude GDA94	Latitude GDA94
38-4-1018	GH Campsite 1	AGD	56	363166	6374506	Open site Valid		Searle	Aboriginal Resource and Gathering : -		Mary Dallas Consulting	100898,100987		151.54	-32.76
38-4-1019	GH PAD3	AGD	56	363190	6374880	Open site Valid		Searle	Potential Archaeological Deposit (PAD) : -		Mary Dallas Consulting	100504,100898,100987	2721	151.54	-32.75
38-4-1005	Gillieston Heights 1	AGD	56	362380	6374055	Open site Destroyed			Artefact : 1		Umwelt (Australia) Pty l	100966	2714,2715	151.53	-32.76
38-4-1006	Gillieston Heights 2	GDA	56	362396	6374623	Open site Destroyed			Artefact : 1		Umwelt (Australia) Pty l	100966	2714,2715	151.53	-32.76
38-4-1059	GH PAD 2	AGD	56	363390	6374930	Open site Valid		S Scanlon	Potential Archaeological Deposit (PAD) : 1		Ms.Mary Dallas	100898,100987		151.54	-32.75
38-4-1044	GillMinv 1	AGD	56	362795	6373915	Open site Destroyed		Mindaribba Local Aborig	Artefact : 11		Umwelt (Australia) Pty Limited		2715,2954,3077	151.54	-32.76
38-4-1039	GH PAD 1	AGD	56	363020	6374500	Open site Valid		Mr.Stephen Talbott	Artefact : 117, Potential Archaeological Deposit		Mary Dallas Consulting	100987,101097	2962,3071	151.54	-32.76
38-4-1156	GHN 1 PAD	GDA	56	363068	6375437	Open site Valid			Potential Archaeological Deposit (PAD) : -		RPS Australia East Pty Ltd -Hamilton		3162	151.54	-32.75
38-4-1138	GH PAD 1 (Beretfield)	GDA	56	363120	6374650	Open site Valid			Potential Archaeological Deposit (PAD) : -		Mr.Paul Irish,Ms.Mary l	100898		151.54	-32.76
38-4-1174	FWW 2 (Malland)	GDA	56	361367	6376236	Open site Valid			Artefact : 1		Ms.Gillian Goode		3445	151.52	-32.74
38-4-1175	FWW 3 (Malland)	GDA	56	361532	6376018	Open site Valid			Artefact : 1		Ms.Gillian Goode		3445	151.52	-32.74
38-4-1376	Figtree Lane Sewer Prc	GDA	56	361931	6375357	Open site Valid		Mr.Thomas Miller	Artefact : 3		Ms.Mary Dallas		3433	151.53	-32.75
38-4-1373	RPS Farley IF1	GDA	56	361437	6376404	Open site Valid			Artefact : 1		RPS Australia East Pty Ltd -Hamilton, Miss.Phil	3445		151.52	-32.74
38-4-1374	FWW5	GDA	56	361438	6375865	Open site Valid			Artefact : -		Ms.Gillian Goode,RPS Australia East Pty Ltd -H	3445		151.52	-32.75
38-4-1347	Lot 4 and 52 DP86889	GDA	56	362645	6375169	Open site Valid		Mindaribba Local Aborig	Aboriginal Resource and Gathering : -, Artefact		RPS Australia East Pty Ltd -Hamilton, Miss.Phil	3412		151.53	-32.75