



**Ardill Payne**  
& PARTNERS

ENGINEERS PLANNERS SURVEYORS ENVIRONMENTAL PROJECT MANAGEMENT

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# HERITAGE ASSESSMENT

## Submission to Byron Shire Council

Lot 38 DP 1059938  
31 Alidenes Road Wilsons Creek

for:  
Yvette Jiang

February 2019

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## EXECUTIVE SUMMARY

Ardill Payne & Partners (the Consultant) was commissioned by Yvette Jiang (the 'Proponent') to undertake an Aboriginal Cultural Heritage Assessment for the rezoning of land located at 31 Alidenes Road, Wilsons Creek, NSW (the Project). The Project Area is identified as Lot 38 DP1059938, comprising 12.27 hectares (the 'Project Area').

The intent of this cultural heritage assessment is to assess the suitability of the amended land use proposal in relation to potential impacts to Aboriginal (Indigenous) and non-Aboriginal (non-Indigenous) heritage. Should potentially significant heritage be identified, the assessment will consider higher level planning mechanisms through which such heritage can be adequately managed at the planning proposal and at the development application stage.

The proponent is proposing to rezone the subject land to a residential zone, with a combination of lot sizes (nominally 3000m<sup>2</sup> – 6000m<sup>2</sup>). Whilst the current proposal relates to a planning proposal, the impact assessment assumes that future development applications may result in the removal of soils that have the potential to contain Aboriginal objects. The heritage management recommendations have been structured with this level of impact in mind. Having regard to the potential for the Project Area to contain Aboriginal Objects, the recommendations have been structured to address the rezoning application and any subsequent Development Applications.

The brief for this project was to undertake a Cultural Heritage Assessment of a suitable standard to be submitted in support of the Project. In accordance with the relevant administrative and legislative standards for New South Wales (see Section 2 below), the methods employed in this assessment included:

- a) a search of relevant heritage registers;
- b) consultation with a representative of the Tweed/Byron Local Aboriginal Land Council ('LALC');
- c) assessments of archaeological significance and impact; and
- d) report on findings and recommended management strategies.

The methods used for this assessment are in compliance with the Office of Environment and Heritage ('OEH') *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010) and all relevant legislation as described in Section 2 of this Report. The following report complies with the accepted methodology for also undertaking an Aboriginal Heritage Assessment under the *National Parks and Wildlife Act 1974* ('NPW Act').

A basic search of the Aboriginal Heritage Information Management System (AHIMS) was undertaken on 22 October 2018 (Client Service ID 377582). The search focused on the Project area with a buffer of 1000m and returned no registered Aboriginal sites within this search area. As a result of the desktop study and consultation with Tweed/Byron LALC the following conclusions were established:

- a) No Indigenous cultural heritage sites or relics were identified within the Project Area.
- b) It is considered unlikely that the Project Area will contain significant 'insitu' Aboriginal heritage of a nature which would be a constraint to the proposed rezoning proposal.
- c) The Project Area has been disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code. However, the disturbance history of the Project Area is noted, this disturbance is not of a scale or nature which would remove Aboriginal sites, should they have occurred within the Project Area.
- d) Consultation with Tweed/Byron LALC did not identify any known historic Aboriginal campsites or intangible cultural heritage values within the Project Area.

There was one item of non-Aboriginal heritage significance identified during the desktop assessment, namely, the hydro-electric power station adjacent to the Project Area. The Consultant is of the opinion that the proposed rezoning does not impact the historic cultural significance of this heritage item.

The Consultant is of the opinion that the proposed rezoning will not impact on Aboriginal objects of moderate to high conservation value. As such it is not recommended that cultural heritage conservation areas will be required to manage cultural heritage within the Project Area.

The following recommendations are provided:

### **Recommendation 1: Cultural Heritage Induction**

It is recommended that a cultural heritage induction is provided to all contractors who are engaged as site supervisors or act in senior operational roles. The purpose of the cultural heritage induction is to:

- Make staff aware of the survey effort to date and potential for the Project Area to contain Aboriginal sites;
- Provide sufficient training for staff to identify Aboriginal objects should they be impacted during construction works; and
- Ensure that staff are aware of response procedures in the event of any harm to Aboriginal sites during construction works.

It is recommended that the cultural heritage induction is provided by a suitably experienced member of the Aboriginal community or a qualified archaeologist.

### **Recommendation 2: Aboriginal Objects Find Procedure**

It is recommended that if suspected Aboriginal material has been uncovered as a result of development activities within the Project Area:

- a) work in the surrounding area is to stop immediately;
- b) a temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site;
- c) an appropriately qualified archaeological consultant is to be engaged to identify the material; and
- d) if the material is found to be of Aboriginal origin, the Aboriginal community is to be consulted in a manner as outlined in the OEH guidelines: *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010).

### **Recommendation 3: Aboriginal Human Remains**

Although it is unlikely that Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched.

The nearest police station (Mullumbimby), the Tweed/Byron LALC and the OEH Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and the OEH should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

It is also recommended that in all dealings with Aboriginal human remains, the Proponent should use respectful language, bearing in mind that they are the remains of Aboriginal people rather than scientific specimens.

### **Recommendation 4: Notifying the OEH**

It is recommended that if Aboriginal cultural materials are uncovered as a result of development activities within the Project Area, they are to be registered as Sites on the AHIMS, managed by the OEH. Any management outcomes for the site will be included in the information provided to the AHIMS.

### **Recommendation 5: Conservation Principles**

It is recommended that all effort must be taken to avoid any impacts on Aboriginal and non-Aboriginal Cultural Heritage values at all stages during the development works. If impacts are unavoidable, mitigation measures should be negotiated between the Proponent, OEH and the Aboriginal community.

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## DEFINITIONS

The following definitions apply to the terms used in this report:

**Aboriginal Object** means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

**Aboriginal Place** means any place declared to be an Aboriginal place (under s. 84 of the NPW Act) by the Minister administering the NPW Act, by order published in the NSW Government Gazette, because the Minister is of the opinion that the place is or was of special significance with respect to Aboriginal culture. It may or may not contain Aboriginal Objects.

**ACHCRP Guidelines** means the *OEH Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010).

**AHIP** means Aboriginal Heritage Impact Permit.

**Archaeological Code of Practice** means the *OEH Archaeological Code of Practice for the Investigation of Aboriginal Objects in New South Wales* (2010).

**BSC** means Byron Shire Council.

**Due Diligence Code** means the *OEH Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (2010).

**LALC** means Local Aboriginal Land Council.

**LEP** means the Local Environment Plan.

**NPW Act** means the *National Parks and Wildlife Act 1974* (NSW).

**NPW Regulations** means the *National Parks and Wildlife Regulations 2009* (NSW).

**OEH** means the New South Wales Office of Environment and Heritage.

**Project Area** means the land subject to this assessment comprises Lot 38 DP1059938 located at 31 Alidenes Road, Wilsons Creek NSW.

**Proposed Works** means all activities associated with and as an outcome of the planning proposal to which this report relates. Future works are anticipated to include residential development which may involve earth works, construction and landscaping within the Project Area (including activities undertaken by subsequent landholders).

**Proponent** means Yvette Jiang.

**The Consultant** means qualified staff and/or contractors of Ardill Payne & Partners.

**The Project** means the proposal to rezone the Project Area from RU2 Rural Landscape to R5 Large Lot Residential under the provisions of the *Byron Local Environmental Plan 2014*.

## 1. INTRODUCTION

### 1.1 Purpose of the Archaeological Investigation

Ardill Payne & Partners was commissioned by Yvette Jiang (the Proponent) to undertake an Aboriginal Cultural Heritage Assessment for the rezoning of land located at 31 Alidenes Road, Wilsons Creek, NSW (the Project). The Project Area is identified as Lot 38 DP1059938, comprising 12.27 hectares (the 'Project Area').

The intent of this cultural heritage assessment is to assess the suitability of the amended land use proposal in relation to potential impacts to Aboriginal (Indigenous) and non-Aboriginal (non-Indigenous) heritage. Should potentially significant heritage be identified, the assessment will consider higher level planning mechanisms through which such heritage can be adequately managed at the planning proposal and at the development application stage.



**Figure 1: Location of Project Area**



**Figure 2: Project Area**

## 1.2 Description of Planning Proposal

The proponent is proposing to rezone the subject land to a large lot residential zone, with a combination of lot sizes (nominally 3000m<sup>2</sup> – 6000m<sup>2</sup>). Whilst the current proposal relates to a planning proposal, the impact assessment assumes that future development applications may result in the removal of soils with the potential to contain Aboriginal Objects.

The heritage management recommendations have been structured with this level of impact in mind. Having regard to the potential for the Project Area to contain Aboriginal objects, the recommendations have been structured to address the rezoning application and any subsequent Development Applications.

## 1.3 Proponent, Project Brief & Methodology

The brief for this project was to undertake a Cultural Heritage Assessment of a suitable standard to be submitted in support of the Project. In accordance with the relevant administrative and legislative standards for New South Wales (see Section 2 below), the methods employed in this assessment included:

- a) a search of relevant heritage registers;
- b) consultation with a representative of the Tweed/Byron Local Aboriginal Land Council ('LALC');
- c) assessments of archaeological significance and impact; and
- d) report on findings and recommended management strategies. The methods used for this assessment are in compliance with the Office of Environment and Heritage ('OEH') *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010) and all relevant legislation as described in Section 2 of this Report. The following report complies with the accepted methodology for also undertaking an Aboriginal Heritage Assessment under the *National Parks and Wildlife Act 1974* ('NPW Act').

## 2. LEGISLATIVE AND PLANNING CONTEXT

The primary State legislation concerning cultural heritage in New South Wales are the NPW Act 1974 (NSW) and the Council Local Environment Plans and Development Control Plans. The Commonwealth also has a role in the protection of nationally significant cultural heritage through the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), *The Protection of Movable Cultural Heritage Act 1986* (Cth) and the *Historic Shipwrecks Act 1976* (Cth).

For the purposes of this assessment the State and local legislation are most relevant. The consent authorities will be the Byron Shire Council and, where a referral agency is required, the OEH. Approval from the OEH will also be required should the Project impact on identified Aboriginal Objects. The information below lists the legislative and policy framework within which this assessment is set.

### 2.1 The National Parks and Wildlife Act 1974 (NSW)

The *National Parks and Wildlife Act 1974* (NSW) (NPW Act) is the primary legislation concerning the identification and protection of Aboriginal cultural heritage. It provides for the management of both Aboriginal Objects and Aboriginal Places. Under the NPW Act, an Aboriginal Object is any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area, regardless of whether the evidence of habitation occurred before or after non-Aboriginal settlement of the land. This means that every Aboriginal Object, regardless of its size or seeming isolation from other Objects, is protected under the Act. An Aboriginal Place is an area of particular significance to Aboriginal people which has been *declared* an Aboriginal Place by the Minister. The drafting of this legislation reflects the traditional focus on Objects, rather than on areas of significance such as story places and ceremonial grounds. However, a gradual shift in cultural heritage management practices is occurring towards recognising the value of identifying the significance of areas to Indigenous peoples beyond their physical attributes. With the introduction of the *National Parks and Wildlife Amendment Act 2010* (NSW) the former offence provisions under Section 86 of 'disturbing', 'moving', 'removing' or 'taking possession' of Aboriginal Objects or Places have been replaced by the new offence of 'harming or desecrating'. The definition of 'harm' is 'destroying, defacing or damaging an Object'. Importantly, in the context of the management recommendations in this assessment, harm to an Object that is 'trivial or negligible' will not constitute an offence.

The penalty for individuals who inadvertently harm Aboriginal Objects has been set at up to \$55,000, while for corporations it is \$220,000. Also introduced is the concept of '*circumstances of aggravation*' which allows for harsher penalties (up to \$110,000) for individuals who inadvertently harm Aboriginal heritage in the course of undertaking a commercial activity or have a record for committing similar offences. For those who knowingly harm Aboriginal cultural heritage, the penalty will rise substantially. The maximum penalty will be set at \$275,000 or one year imprisonment for individuals, while for corporations it will rise to \$1,100,000.

Where a land user has or is likely to undertake activities that will harm Aboriginal Objects, the Director General(OEH) has a range of enforcement powers, including stop work orders, interim protection orders and remediation orders. The amended regulations also allow for a number of penalties in support of these provisions. The NPW Act also now includes a range of defense provisions for unintentionally harming Aboriginal Objects:

- Undertaking activities that are prescribed as ‘Low Impact’.
- Acting in accordance with the new Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010).
- Using a consulting archaeologist who correctly applies the OEH Code of Practice for Archaeological Conduct in New South Wales (2010) (‘Archaeological Code of Practice’).
- Acting in accordance with an Aboriginal Heritage Impact Permit (AHIP).

The regulations allow for a range of low impact activities to be undertaken without the need to consult the OEH or a consulting archaeologist. Generally, those who undertake activities of this nature will not be committing an offence, even if they inadvertently harm Aboriginal Objects. These activities include:

- a) Maintenance – For example on existing roads and tracks, or on existing utilities such as underground power cables and sewage lines.
- b) Farming and Land Management – for land previously disturbed, activities such as cropping, grazing, bores, fencing, erosion control etc. \*
- c) Removal of dead or dying vegetation - only if there is minimal ground disturbance.
- d) Environmental rehabilitation – weed removal, bush regeneration.
- e) Development in accordance with a Development Certificate issued under the EPA Act 1979 (provided the land is previously disturbed). \*
- f) Downhole logging, sampling and coring using hand held equipment.
- g) Geochemical surveying, seismic surveying, costeaning or drilling. \*

\* This defense is only available where the land has been disturbed by previous activity. Disturbance is defined as a clear and observable change to the land’s surface, including but not limited to land disturbed by the following: soil ploughing; urban development; rural infrastructure (such as dams and fences); roads, trails and walking tracks; pipelines, transmission lines; and storm water drainage and other similar infrastructure.

## 2.2 Due Diligence Code of Practice for the Protection of Aboriginal Objects 2010

The Due Diligence Code has been applied in Section 10 of this assessment. It operates by posing a series of questions for land users before they commence development. These questions are based around assessing previous ground disturbance. An activity will generally be unlikely to harm Aboriginal Objects where it:

- a) will cause no additional ground disturbance; or
- b) is in a developed area; or
- c) in a significantly disturbed area.

Where these criteria are not fulfilled, further assessment for Aboriginal cultural heritage will typically be required prior to commencing the activity.

## 2.3 The ACHCRP (2010)

The *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010) ('ACHCRP') provide an acceptable framework for conducting Aboriginal community consultation in preparation for impacts to Aboriginal cultural heritage. Proponents are required to follow them where a Project is likely to impact on cultural heritage and where required by Council. It is recommended by the OEH that all cultural heritage assessments involve this level of consultation, although it is not strictly a requirement unless it meets the above criteria. The ACHCRP Guidelines typically take a minimum of 90 days to complete. However, in complicated Projects this period may need to be extended by several months. The Guidelines require public notice of the assessment, preparation of a proposed methodology, undertaking site meetings and excavations where required, the production of a draft report, which is distributed to the registered Aboriginal groups and the production of a final report.

Although not strictly required, a thorough consultation process will treat the ACHCRP Guidelines as a minimum standard of community consultation. Generally, consultants must go to further effort to identify the significance of a given site to the Aboriginal community. This will likely include undertaking additional site inspections if requested by Aboriginal stakeholders, fully resourcing the community by providing copies of past archaeological and environmental assessments in the region and meeting with community members to seek their opinions of the site.

## 2.4 The Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014

The Byron Local Environmental Plan 2014 (LEP) provides statutory protection for items already listed as being of heritage significance (Schedule 5 – Environmental Heritage), that fall under the ambit of the *Heritage Act 1977* (NSW) and Aboriginal Objects under the *National Parks and Wildlife Act 1974* (NSW). It ensures that essential best practice components of the heritage decision making process are followed.

For listed heritage items, relics and heritage conservation areas, the following action can only be carried out with the consent of the Byron Shire Council:

- a) demolishing, moving or altering the exterior of a heritage item, an Aboriginal object or a building, work, relic, or tree within a heritage conservation area,
- b) altering a heritage item that is a building by making structural changes to its interior,
- c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- d) disturbing or excavating an Aboriginal place of heritage significance,
- e) erecting a building on land on which a heritage item or Aboriginal object is located or that is within a heritage conservation area or an Aboriginal place of heritage significance,
- f) subdividing land on which a heritage item or Aboriginal object is located or that is within a heritage conservation area or an Aboriginal place of heritage significance.

The *Byron Development Control Plan 2014* (DCP 2014) provides guidelines that apply to new development in the vicinity of a heritage item with the following objectives:

- a) To ensure that new development achieves a sympathetic relationship with nearby heritage items in terms of scale, massing, character, setback, orientation, materials and detailing.
- b) To ensure that any new development respects the established streetscape, and the patterns of development in the vicinity of the heritage item.
- c) To ensure the careful siting of new development retains the integrity and setting of the heritage item.

## 2.5 The Heritage Act (1977) NSW

The *Heritage Act 1977* (NSW) ('Heritage Act') is aimed at identifying and protecting significant items of historic (as opposed to Aboriginal) cultural heritage. The focus of the legislation is on identifying places of either local or state heritage significance, and protecting them by registration on heritage registers. Significant historic heritage items are afforded little protection (other than at the discretion of councils) where they are not on a heritage register. Of note are the provisions allowing for interim heritage orders (Part 3), which grants the Minister or the Minister's delegates, (which importantly may include a local government agent) the power to enter a property and provide emergency protection for places that have not yet been put on a heritage register but that may be of local or State significance.

The *Heritage Act 1977* (NSW) also makes allowances for the protection of archaeological deposits and relics (Part 6). An archaeological 'relic' means any deposit, object or material evidence which relates to the settlement of the area, not being Aboriginal settlement. Importantly, a former requirement for an archaeological relic to be 50 years or older has recently been repealed. The focus is now on the item's potential heritage significance, not its age. As will be discussed below, it is highly unlikely that archaeological relics of significant historic sites are located within the Project Area.

## 2.6 ICOMOS Burra Charter

The International Council on Monuments and Sites (ICOMOS) is the peak body of professionals working in heritage conservation. ICOMOS has adopted the *Burra Charter* which describes acceptable standards for the assessment and management of items of cultural heritage significance in Australia. Although not a legal requirement, the *Burra Charter* has been adopted by Australian heritage professionals as a guide to assessing and managing heritage places and artefacts.

### 3. ABORIGINAL COMMUNITY CONSULTATION

#### 3.1 Traditional Owner Knowledge

The Aboriginal Stakeholders are the primary determinants of the significance of their cultural heritage. Members of the Aboriginal community will be consulted, and will continue to be consulted, with regard to their concerns not only about known archaeological sites in the region, but also about cultural values such as areas with historic and spiritual significance, and other values relating to flora and fauna of the area.

The Proponent recognises that there is Traditional Owner knowledge associated with the region that may have to be treated in a confidential manner. Where there is potential for impacts upon Aboriginal heritage as a result of future development proposals, consultation under Aboriginal Cultural Heritage Community Consultation Requirements for Proponents (OEH 2010) would apply.

#### 3.2 Consultation with the Tweed/Byron LALC

Project information was provided to the Tweed/Byron LALC by phone on 23 October 2018. Tweed/Byron LALC Conservation Planning Officer Maurice Gannon undertook a telephone consultation with the Proponent on the same day. The Conservation Planning Officer is not aware of places of particular cultural significance within the Project area and Aboriginal archaeological sites in the vicinity of the Project Area.

## 4. ABORIGINAL CULTURAL HERITAGE DESKTOP REVIEW

### 4.1 The OEH Aboriginal Heritage Information Management System (AHIMS)

A basic search of the Aboriginal Heritage Information Management System (AHIMS) was undertaken on 22 October 2018 (Client Service ID 377582). The search focused on the Project area with a buffer of 1000 meters and returned noregistered Aboriginal sites within this search area. A second search (Client Service ID 377589) focused on the entire lower Wilsons Creek area and returned noregistered Aboriginal sites within this search area.

**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:

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

**Figure 3: AHIMS search site area.**

Care should be taken when using the AHIMS database to reach conclusions about site prevalence or distribution. For example, a lack of sites in a given area should not be seen as evidence that the area was not occupied by Aboriginal people. It may simply be an indication that it has not been surveyed for heritage or that the survey was undertaken in areas or at times of poor ground surface visibility. Further, care needs to be taken when looking at the classification of sites. There are also errors with the data.

## 4.2 Other Heritage Registers: Aboriginal & Historic Cultural Heritage

The following heritage registers were accessed on 22 October 2018:

- **The World Heritage List** (Australian Heritage Council): Contains no heritage listings within or within close proximity to the Project Area.
- **The National Heritage List** (Australian Heritage Council): Contains no heritage listings within or within close proximity to the Project Area.
- **Commonwealth Heritage List** (Australian Heritage Council): Contains no heritage listings within or within close proximity to the Project Area.
- **Register of the National Estate** (Australian Heritage Council): Contains no heritage listings within or within close proximity to the Project Area.
- **The State Heritage Register and Inventory** (NSW Heritage Office): Contains no heritage listings in Section 1-3 (NSW Heritage Act) within the Project Area.
- **Byron Local Environment Plan 2014**: Contains one heritage listings within or within close proximity to the Project Area.

**Table 1: BSC Heritage Register Listing**

<u>Item name</u>	<u>Address</u>	<u>Suburb</u>	<u>LGA</u>	<u>Information source</u>
Power Station	Wilsons Creek Road	Wilsons Creek	Byron	LGOV

Item listed by **local councils** on Local Environmental Plans under the Environmental Planning and Assessment Act, 1979 and **State government agencies** under s.170 of the Heritage Act. This information is provided by local councils and State government agencies.

## 4.3 Item of Historic Cultural Heritage

Below is a description of the Power Station published by OEH.

### 4.3.1 Item details

Name of item: Power Station  
 Other name/s: Hydro-electric Power Station; Power Station and Race  
 Type of item: Built  
 Group/Collection: Utilities – Electricity  
 Category: Electricity Generator/Power Station - hydro-electric  
 Primary address: Wilsons Creek Road, Wilsons Creek, NSW 2482  
 Local govt. area: Byron

**Figure 4: Watercourses on site**

### 5.3 Landscapes and Vegetation

The majority of the Project Area remains substantially cleared grazing pasture dominated by exotic grasses and herbs with occasional paddock trees, and a small proportion comprises of Camphor Laurel dominant forest. The central, northeastern and southeastern portions of the project area are affected by the clearing and maintenance of vegetation for the powerline easement.



Figure 5: Open pasture on project area

### 5.4 Disturbance Analysis

The Due Diligence Code of Practice (OEH 2010) provides the following definition of ‘disturbed land’;

*“Land is disturbed if it has been the subject of human activity that has changed the land surface, being changes that remain clear and observable. Examples include ploughing, construction of rural infrastructure (such as dams and fences), construction of roads, trails and tracks (including fire trails and tracks and walking tracks), clearing vegetation, construction of buildings and erection of other structures, construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water and sewerage pipelines, stormwater drainage and other similar infrastructure) and construction of earthworks” (OEH 2010:18)*

The Project Area is mostly located within land subject to the following types of disturbance;

- Low intensity grazing and pasture production.

## 6. ABORIGINAL CULTURAL CONTEXT

### 6.1 Predictive Mapping: OEH Due Diligence Code of Practice

There are a number of criteria by which the potential of a landscape to contain Aboriginal sites or cultural places should be assessed. These are broadly outlined in the OEH *Due Diligence Code of Practice* as areas:

- within 200 m of waters,
- or located within a sand dune system,
- or located on a ridge top, ridge line or headland,
- or located within 200 m below or above a cliff face, or within 20 m of or in a cave, rock shelter, or a cave mouth; and
- is on land that is not disturbed land.

Having consideration for these environments it is reasonable to conclude that the Project Area has the potential to contain Aboriginal objects (sites) on the basis that the Project Area contains a water feature being Yankee Creek and two smaller unnamed water courses.

The use of ridge lines as transit corridors between river valleys and major tributaries within those systems is advanced by Fox (2003). In the ridge line landform context archaeological evidence consists of artefact scatters, scarred trees and isolated artefacts in 'open' situations and may include the use of nearby overhangs/rock shelters/caves. Associations between ridge line sites in terms of their contemporaneity and contents, has not been tested by systematic archaeological investigations. However, results from surveys undertaken for residential and commercial developments generally demonstrate a trend towards occupation on elevated slopes and ridge crests. While ridge lines may have served as transit corridors for Aboriginal groups on a sporadic basis their use as 'campsites' is dependent upon other factors apart from slope, ground covers, access to water and access to food and other resources.

The Project Area is some distance away from the closest ridge lines of Koonyum Range. In this instance the Project Area is considered to be located in an area where the low elevated hills may have provided access, albeit limited, to these features and resources.

It is possible to propose a model of use and occupation by Aboriginal people targeting the Wilson River riparian zone and low elevated hills in close proximity to the Wilson River. The Project Area is primarily low elevated grazing land which comprises open pastures with paddock trees and channels of the Yankee Creek. It is considered that the low inundated lands and low slopes of the Project Area less than optimal campsites when compared to elevated areas nearby, especially those in closer proximity to the Wilson River.

## 7. Historic Cultural Heritage Management

### 7.1 Statement and Assessment of Significance

The Hydro-electric Power Station adjacent and to the south of the Project Area is listed as a heritage item in BSC heritage register listing. The following information is provided by OEH.

#### 7.1.1 Statement of significance

The hydro-electric power station, weir, canals and tunnels form a rare example of pioneering utility construction undertaken by a small rural town in northern NSW. The hydro-electric power generation complex remains as a reminder of the enterprise and forward looking ambitions of a small community.

#### Description

<b>Designer/Maker:</b>	Mullumbimby Municipal Council
<b>Construction years:</b>	1922-1925
<b>Physical description:</b>	<p>There are four main components of the Hydro-electric Power Station complex. They are: The weir which is a reinforced arc-shaped structure across the Wilson's River west of Mullumbimby. The canal races that feed water from the weir to supply water to the town of Mullumbimby are reinforced concrete open channels.</p> <p>The tunnels that redirect water to Yankee Creek are medium diameter concrete lined tunnels. The power station or power generation plant comprises two main buildings of timber frame construction clad with corrugated asbestos complete with generating and distribution equipment inside and beside the buildings</p>
<b>Current use:</b>	Diesel Power Station

#### History

<b>Historical notes:</b>	<p>The first European settlement in the Byron Shire was established in 1849 in the area now known as Ocean Shores. The first industry was cedar cutting, which exploited the areas reserves of timber. The loggers often followed the trails of Aboriginal people into the hinterland. Timbergetters exploited the trees along the riverbanks from the 1850s and a townsite was reserved in 1872 near a river crossing. The (Mullumbimby) townsite was surveyed in 1887 and the village was proclaimed the following year. A post office opened in 1889. When the railway arrived in 1894 dairying and agriculture took off and the town prospered, acquiring its own municipal government in 1908. The fertile river flats and subtropical climate also proved ideal for the cultivation of bananas and other tropical fruits.</p>
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The Main Arm Valley lies to the north-west of Mullumbimby. It was first explored by timber cutters, followed by bananas and dairying. There are no remaining dairy farms in the Main Arm area. Banana platforms used to be located at the bottom of steep north facing slopes, and the bananas where sent downhill on flying foxes on a continuous loop of wire.

Agriculture in the area today consists of small scale orchards/gardens, nurseries, and beef grazing. The valley is now home to cottage industries, retirees, and commuters. Much of the land cleared for dairying has now been allowed to regenerate into sub-tropical temperate rainforest. Main Arm is identified by locals and tourists as part of the Byron Hinterland or just the hills.

A weir was built on Wilsons Creek in the 1920s. It supplied both the town's water supply and a hydro-electric power station which also serviced Bangalow and Byron Bay. During the more than seventy years when Mullumbimby was administered independently from the surrounding Byron Shire area an ambitious project was implemented to provide water and power to the district.

The idea of providing the newly-incorporated town of Mullumbimby with a water supply was first considered in 1909. In December 1922 the ratepayers agree to proceed with the bold plan which combined the provision of water with the generation of hydro electric power. Survey work commenced in 1924. The scheme involved the construction of a weir at Wilson's Creek, the driving of a tunnel to divert the waters into Yankee Creek and the construction of a power station at the lower level. It opened successfully when the electric street lights of Mullumbimby were turned on for the first time on 23rd December 1925. The townspeople were able to use the new form of power in their homes from 6th March 1926. Byron Bay was connected to the supply in June and Bangalow in July.

The water supply component of the scheme became a reality in 1939, for the township of Mullumbimby only. It involved the construction of a town reservoir, and a filtration and purification plant. Today the power station is a diesel power relay station for Country Energy.

## Historic themes

### *Australian theme (abbrev)*

4. Settlement-Building  
settlements, towns and cities

### *New South Wales theme*

Utilities-Activities associated with the provision of  
services, especially on a communal basis

### *Local theme*

(none)-

## Assessment of significance

**SHR Criteria a)**  
[Historical significance]

The hydro-electricity scheme was a by-product of a plan to supply water to the township of Mullumbimby, devised in 1909. It was completed in 1926.


**SHR Criteria f)** [Rarity]

It is one of the few small hydro-electric plants to remain in operation in NSW.

**Integrity/Intactness:**

High

**Assessment criteria:**

Items are assessed against the  State Heritage Register (SHR) Criteria to determine the level of significance. Refer to the Listings below for the level of statutory protection.

## Recommended management:

Recommend listing as an item of local heritage significance

## Listings

Heritage Listing	Listing Title	Listing Number	Gazette Date	Gazette Number	Gazette Page
Local Environmental Plan			17 Mar 88		
Local Environmental Plan	Byron LEP 2014	I185	21 Jul 14		
Heritage study					

## Study details

Title	Year	Number	Author	Inspected by	Guidelines used
Byron Shire Community Based Heritage Study	2005	7.1	Donald Ellsmore and Ian Fox	Theresa Gilroy	Yes

## References, internet links & images

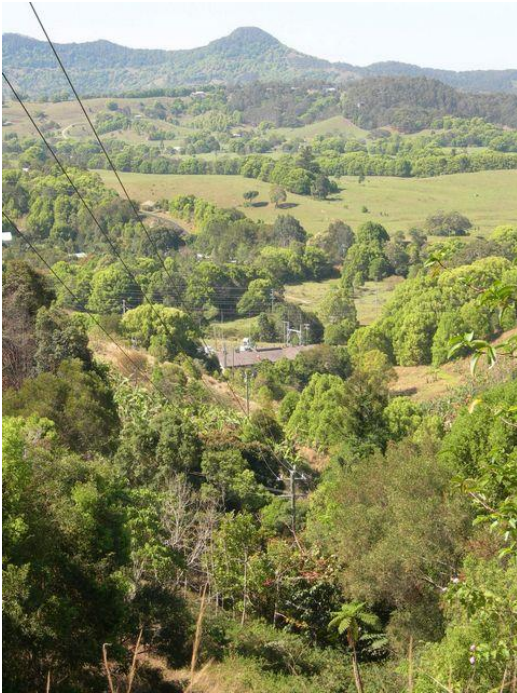
Type	Author	Year	Title	Internet Links
Written	Northern Star	1996	Newspaper: 3rd September	
Written	W.H. Denning	1980	Book: Sunkissed Playground	

## Data source

The information for this entry comes from the following source:

**Name:** Local Government

**Database number:** 1260134



**Figure 6: View of power station from dam**

Image by: D Ellsmore

Image copyright owner: D Ellsmore

## 7.2 Constraints and Opportunities

The constraints that arise as a result of the heritage significance of the power station are:

- the level of management for the item is local not State, implying there is limited heritage incentives available
- health and fire safety regulations in relation to the item are strict
- there are limited changes that can be tolerated without major impact on significance
- there is a low level of appropriateness of original uses and other possible compatible uses
- there is possible existence of hidden relics which require investigation, and excavation permits

The opportunities that arise as a result of the heritage significance of the power station are:

- opportunities for heritage significance to be interpreted for the community as the power station represents the pioneering spirit and enterprise of a small rural community
- the associated contribution of the item to the identity of the community, and community perceptions and aspirations for the item and its surrounding area
- sound structural integrity of the item
- ability for the item to be adapted for new uses with modern services, i.e. today it is a diesel power relay station for Country Energy
- clear planning controls and guidelines on new development in the vicinity of the heritage item as outlined in BSC DCP 2014

### 7.3 Statement of Conservation Policy

The feasible use of the power station is to continue its functionality that is compatible with retaining or enhancing the cultural significance of the item. The most appropriate way to conserve the item and its setting is to let its current owner Country Energy continue with its operations as a diesel power relay station, and have minimum external intervention whether from the local government or community.

The proposed rezoning does not pose any external intervention to this cultural heritage item. Future development of adjacent land will require continued operations of the diesel power relay station, and thereby extend the feasible use of the power station beyond its otherwise expected life span.

The Consultant is of the opinion that the proposed rezoning does not impact the historic cultural significance of this heritage item, and future development will only enhance the service and utilities provided by the power station and ensure its ongoing use/maintenance.

## 8. RESULTS

### 8.1 Aboriginal heritage

As a result of the desktop study and consultation with Tweed/Byron LALC the following conclusions were established:

- a) No Indigenous cultural heritage sites or relics were identified within the Project Area.
- b) It is considered unlikely that the Project Area will contain significant 'insitu' Aboriginal heritage of a nature which would be a constraint to the proposed rezoning proposal.
- c) The Project Area has been disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code. However, the disturbance history of the Project Area is noted, this disturbance is not of a scale or nature which would remove Aboriginal sites, should they have occurred within the Project Area.
- d) Consultation with Tweed/Byron LALC did not identify any known historic Aboriginal campsites or intangible cultural heritage values within the Project Area.

### 8.2 Non-Aboriginal heritage

There was one item of non-Aboriginal heritage significance identified during the desktop assessment, namely, the hydro-electric power station adjacent to the Project Area.

The Consultant is of the opinion that the proposed rezoning does not impact the historic cultural significance of this heritage item, and future development will only enhance the service and utilities provided by the power station.

## 9. RECOMMENDATIONS

The Consultant is of the opinion that the proposed rezoning will not impact on Aboriginal objects of moderate to high conservation value. As such it is not recommended that cultural heritage conservation areas will be required to manage cultural heritage within the Project Area.

However, the Project Area is located within a landform identified by the Due Diligence Code of Practice as having the potential to contain Aboriginal objects and has been identified by Tweed/Byron LALC as requiring additional investigation. Whilst there is evidence of ground disturbance, this disturbance is not of a scale which would remove Aboriginal heritage from the Project Area.

As such the following recommendations are provided:

### **Recommendation 1: Cultural Heritage Induction**

It is recommended that a cultural heritage induction is provided to all contractors who are engaged as site supervisors or act in senior operational roles. The purpose of the cultural heritage induction is to;

- Make staff aware of the survey effort to date and potential for the Project Area to contain Aboriginal sites;
- Provide sufficient training for staff to identify Aboriginal objects should they be impacted during construction works; and
- Ensure that staff are aware of response procedures in the event of any harm to Aboriginal sites during construction works.

It is recommended that the cultural heritage induction is provided by a suitably experienced member of the Aboriginal community or a qualified archaeologist.

### **Recommendation 2: Aboriginal Objects Find Procedure**

It is recommended that if suspected Aboriginal material has been uncovered as a result of development activities within the Project Area:

- a) work in the surrounding area is to stop immediately;
- b) a temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site;
- c) an appropriately qualified archaeological consultant is to be engaged to identify the material; and
- d) if the material is found to be of Aboriginal origin, the Aboriginal community is to be consulted in a manner as outlined in the OEH guidelines: *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010).

### **Recommendation 3: Aboriginal Human Remains**

Although it is unlikely that Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched.

The nearest police station (Mullumbimby), the Tweed/Byron LALC and the OEH Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and the OEH should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

It is also recommended that in all dealings with Aboriginal human remains, the Proponent should use respectful language, bearing in mind that they are the remains of Aboriginal people rather than scientific specimens.

### **Recommendation 4: Notifying the OEH**

It is recommended that if Aboriginal cultural materials are uncovered as a result of development activities within the Project Area, they are to be registered as Sites on the AHIMS, managed by the OEH. Any management outcomes for the site will be included in the information provided to the AHIMS.

### **Recommendation 5: Conservation Principles**

It is recommended that all effort must be taken to avoid any impacts on Aboriginal and non-Aboriginal Cultural Heritage values at all stages during the development works. If impacts are unavoidable, mitigation measures should be negotiated between the Proponent, OEH and the Aboriginal community.

## 10. REFERENCES

Aboriginal Heritage Information Management System (AHIMS). New South Wales Office of Environment and Heritage.

<https://www.environment.nsw.gov.au/awssapp>

BSC (2014). Byron Shire Local Environmental Plan. Byron Shire Council, Mullumbimby, NSW.

BSC (2014). Byron Shire Development Control Plan. Byron Shire Council, Mullumbimby, NSW.

Guidelines on Conservation Management Plans and Other Management Documents. New South Wales Office of Environment and Heritage.

Morand, D.T. (1994). Soil Landscapes of the Lismore-Ballina: 100 000 Sheet. Department of Land and Water Conservation, Sydney, NSW.

State Heritage Inventory. New South Wales Office of Environment and Heritage.

<https://www.environment.nsw.gov.au/heritageapp>