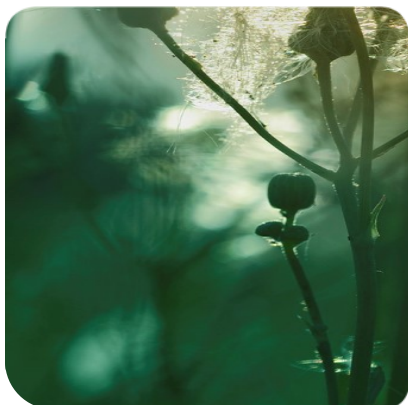
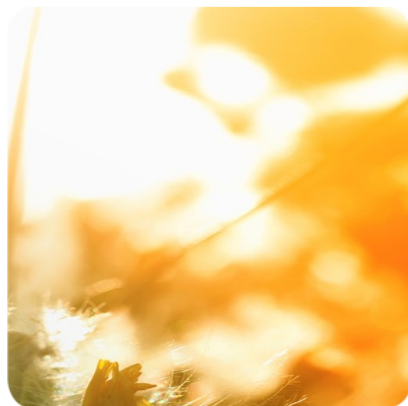
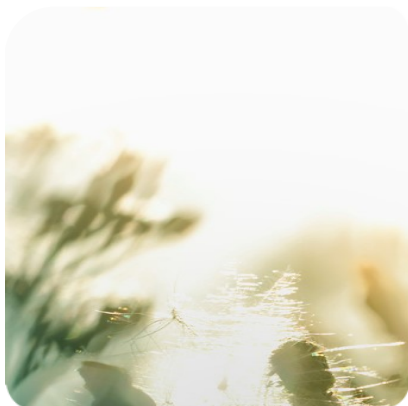


ABORIGINAL HERITAGE DUE DILIGENCE ASSESSMENT

Rayford Street, Warners Bay

*Prepared for **Pulver Cooper & Blackley***

8 JUNE 2017





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Executive Summary

RPS has been engaged by Pulver Cooper & Blackley to prepare a Heritage Due Diligence Assessment for the re-zoning of land at Rayford St Warners Bay in the Lake Macquarie Local Government Area (LGA).

This assessment has been undertaken in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects* (DECCW 2010) which requires reasonable and practicable steps be taken to: identify whether or not Aboriginal objects are, or are likely to be, present in an area; determine whether or not their activities are likely to harm Aboriginal objects (if present); and determine if an Aboriginal Heritage Impact Permit is required (DECCW 2010:2).

A search was undertaken of the Aboriginal Heritage Information Management System (AHIMS) that revealed 12 previously recorded Aboriginal sites within the search coordinates. No Aboriginal objects or places were identified in the Project Area.

The Project Area was inspected on foot on 3 February 2017, Lot 6 DP814499, with a second inspection conducted on 8 June 2017, Lot 100 DP1173625. A number of disturbances were identified in the area, including grazing and farming activities, fence construction and earthworks. Mature trees were inspected for evidence of cultural modification and exposed ground surfaces were inspected for evidence of Aboriginal objects or PADs.

No Aboriginal objects or places have been identified within the Project Area and therefore an Aboriginal Heritage Impact Permit (AHIP) is not required for the proposed activity.

The following recommendations are made in relation to the proposed activity:

Recommendation 1

All relevant Pulver Cooper & Blackley 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.

Recommendation 2

This due diligence assessment must be kept by Pulver Cooper & Blackley so that it can be presented, if needed, as a defence from prosecution under Section 86(2) of the *National Parks and Wildlife Act 1974*.

Recommendation 3

If unrecorded Aboriginal object/s are identified in the Project Area, then all works in the immediate area must cease and the area should be cordoned off. OEH must be notified by ringing the Enviroline 131 555 so that the site can be adequately assessed and managed.

Recommendation 4

In the unlikely event that skeletal remains are identified, work must cease immediately in the vicinity of the remains and the area must be cordoned off. The proponent must contact the local NSW Police who will make an initial assessment as to whether the remains are part of a crime scene or possible Aboriginal remains. If the remains are thought to be Aboriginal, OEH must be contacted by ringing the Enviroline 131 555. An OEH officer will determine if the remains are Aboriginal or not; and a management plan must be developed in consultation with the relevant Aboriginal stakeholders before works recommence.

Recommendation 5

If, during the course of development works, suspected historic cultural heritage material is uncovered, work should cease in that area immediately. The Heritage Branch, Office of Environment & Heritage (Enviroline 131 555) should be notified and works only recommence when an approved management strategy has been developed.

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)
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

1.0 Introduction

RPS has been engaged by Pulver Cooper & Blackley to prepare an Aboriginal Heritage Due Diligence Assessment. The purpose of a due diligence assessment is to demonstrate that reasonable and practicable measures were taken to prevent harm to an Aboriginal object or place and has been undertaken in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (2010) ("Due Diligence Code").

This report has outlined the relevant environmental and archaeological context, landforms, landscape features, disturbances, legislative context and the nature of the proposed activity. This information has been considered in formulating the recommendations.

1.1 The Project Area

This due diligence assessment has been prepared for the re-zoning for future development, herein referred to as the "Project Area." The Project Area pertains to the land east of RL 54, located at the end of Rayford Street in Warners Bay, Lot 6 DP814499 and Lot 100 DP1173625, in the Lake Macquarie Region Local Government Area LGA (Figure 1)

1.2 The Proposed Activity

The proposed activity will involve the re-zoning for future development. Works to be undertaken involve vegetation clearing, earthworks and the construction of services such as water and communications. Works will involve ground disturbance and vegetation clearing and therefore a due diligence assessment is required under S1 and S2a of the Due Diligence Code (DECCW 2010:11).

1.3 Authorship and Acknowledgements

This report was prepared by RPS Cultural Heritage Consultant Ben Slack. The report was reviewed by RPS Senior Cultural Heritage Consultant Cheng Yen Loo and Tessa Boer-Mah RPS Cultural Heritage Manager.



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 recommends 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 and 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 \$220,000 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; and/or 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 OEHS 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 assessment 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.

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

Letters were sent to Peter Townsend (Awabakal Local Aboriginal Land Council), Peter Leven (Awabakal Descendants Traditional Owners Corporation) and Kerrie Brauer (Awabakal Traditional Owners Aboriginal Corporation) on Monday 30 January 2017 inviting participation in the field survey. Peter Townsend and Peter Leven were in attendance for the survey conducted on Friday 3 February 2017.

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 Codes (DECCW 2010:12-13).

3.1 Geology and Soils

Aboriginal people often made stone tools using siliceous, metamorphic or igneous rocks and therefore understanding the local geology can provide important information regarding resources in a study area. The nature of stone exploitation by Aboriginal people depends on the characteristics of the source, for example whether it outcrops on the surface (a primary source), or whether it occurs as gravels (a secondary source) (Doelman et al. 2008).

The Project Area lies on a moderate slope within the Boolaroo Subgroup of the Newcastle Coal Measures which include irregular coal seams, mudstone, tuff, sandstone and shale. Mudstone and tuff are important stone resources which were often used in the production of Aboriginal stone tools. Sandstone outcrops on high ridges and are often utilised for shelters, however rocky outcrops are absent within the Project Area (Matthei 1995:61).

Soils consist of up to 20cm of a friable brownish black loam (wa1) overlying 10 – 40cm of a hardsetting bleached clay loam (wa2) and 60 – 150cm of mottled yellowish grey clay (wa3). Along the upper slopes of the Project Area soils are often shallower with the wa2 material removed. Within developed or disturbed areas moderate sheet erosion can expose subsoils; this is particularly prevalent where vegetation has been removed. Limitations within the Project Area include steep slopes, mass movement hazards and high water erosion hazard (Matthei 1995:62).

3.2 Topography and Hydrology

The Project Area is located at the northern end of Lake Macquarie on a moderate to steep slope of Munibung Hill which rises to approximately 120 Australian Height Datum (AHD) to the immediate west of the Project Area. Within the Project Area local relief is between 25 and 52 AHD and has an east facing aspect. The Munibung Hills travel for approximately two kilometres to the north and offer commanding views around the local area, the western side of the hills consist of moderate to steep ridges and gullies which contain numerous ephemeral drainage lines.

No permanent or ephemeral drainage lines transect the Project Area with the closest ephemeral line, Hawkins Creek, located 300m to the west, North Creek is located approximately 800m to the east which is more permanent, however the creek comprises brackish water. The closest permanent fresh water supply would likely have been Winding Creek located 3.5km to the north. The Lake Macquarie shoreline is situated approximately 500m to the south of the Project Area which would have offered an array of food resources.

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.

Past Aboriginal people are likely to have encountered the Hunter-Macleay Dry Sclerophyll Forest region which occupies foothills and undulating terrain below 400 metres on well drained loamy soils. Two species of grey gums comprise much of the Hunter Valley area; *Eucalyptus punctata* and *E. propinqua*, the latter more common throughout the Rutherford area. The understory consists of small shrubs and grasses, of particular interest are the coffee bush (*Breynia oblongifolia*) and the gorse bitter pea (*Daviesia ulicifolia*) which provide bush tucker foods (Keith 2006:124-125).

3.4 Synthesis of Environmental Context

The Project Area is unlikely to have been used on a regular basis for camp site occupation. The ethnographic record suggests that Munibung Hill was an important spiritual and ceremonial place in the lives of the Awabakal people. It is likely that land closer to resource rich Lake Macquarie foreshore, south of the Project Area was occupied on a more permanent basis whilst the Project Area was used transiently.

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 Codes (DECCW 2010:12-13).

4.1 Ethnographic Accounts of Munibung Hill

Threlkeld (Gunson 1974:64) records that a large mountain called Ko-na-ko-na-ba at the northern extremity of Lake Macquarie the Awabakal people obtained a yellow substance (Ko-na-ko-na) used for paint in war like expeditions. The probability that the large mountain described by Threlkeld is Munibung Hill is supported by Murray (2005:7) who records the presence of limonite, a yellow substance known as true ochre in the weathering sandstone at Munibung Hill.

It is also possible that Threlkeld was referring to Munibung Hill when he advised W. A. Miles (1854:25-26), an early Sydney based ethnographer, that stone circles were present on the very summit of the mountains of Lake Macquarie. The circles were said to be associated with a legend that the stones were brought there by an eagle-hawk, a bird that was highly regarded by the Aboriginal people.

Threlkeld (Gunson 1974:65) recorded that the Aborigines considered high places as being sacred and distinguished them by placing symbolic engravings on rocks. He describes his finding on a high hill, or rather series of high hills, where a circular erection of stones about five to six feet in diameter and two to three feet high construction without any form of cementing. He found a series of these stone circles over an area of more than a quarter mile. Thinking they may have been a burial area he dug within the area but found nothing. In questioning his Aboriginal tutor M'Gill he was told that the stones had been placed by the eagle-hawk.

4.2 Aboriginal Heritage Information Management System (AHIMS)

A search was undertaken of the Aboriginal Heritage Management System (AHIMS) on the 2 of February 2017 which revealed 12 previously recorded Aboriginal sites within these coordinates.

No Aboriginal objects or places are present in the Project Area.

Table 1 Summary of AHIMS Sites within the Searched Coordinates

Site	Frequency	Percent
Artefact Site (Number Unspecified)	7	58.33%
Midden	2	16.66%
Artefact Scatter	1	8.33%
Ceremonial, Stone Arrangement	1	8.33%
Shelter	1	8.33%
Total	12	100.00%

Search parameters: GDA Zone 56 Eastings 371090 - 374090, Northings 6350289 - 6353289

4. The aerial photography used in this plan has not been rectified. This image has been overlaid as a best fit on the boundaries shown and position is approximate only.



4.3 Archaeological and Heritage Literature Review

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

Haglund, L. 1986. Assessment of the Prehistoric Heritage in the Lake Macquarie Area. Report to the Lake Macquarie City Council.

In 1986 Laila Haglund produced an assessment of the Aboriginal heritage in the Lake Macquarie area which aimed to identify areas of known or potential archaeological and/or Aboriginal significance and to provide advice in how to best protect and manage these sites. Field surveys were conducted along ocean coasts and adjacent hinterland and several parcels of Lake Macquarie shoreline in an attempt to relocate previously identified sites.

Ethnographic research indicated that past Aboriginal groups likely occupied relatively small areas because high resource yields were available from the immediate environment and that exploitation of these resource rich environments were highly seasonal. This meant the creation of areas of high archaeological potential particularly along the Lake Macquarie shoreline. Recommendations made regarding the future of foreshore development indicate that all future works undergo archaeological assessment due to the high past Aboriginal usage of the area.

RPS. 2011. Cultural Heritage Survey and Assessment for Speers Point Quarry

In 2011 RPS conducted a Cultural Heritage Survey at Speers Point on the western side of Munibung Hill and approximately 200m west of the current Project Area. The survey covered an area of approximately 80 hectares and was conducted over two days in 2010 with Shane Frost from Awabakal Descendants Traditional Owners Aboriginal Corporation (ADTOAC).

The survey initially recorded six Aboriginal cultural heritage sites, five of those were recorded either on ridgelines or associated slope. Five sites consisted of stone artefacts either as scatters (n=3) or isolated finds (n=2), one grinding groove was located in the southern portion of the study area. It was noted that dense vegetation and ground cover resulted in less than satisfactory survey coverage in some sections of the study area. On advice from Shane Frost an additional survey was conducted after evidence of a rock shelter within the study area was received. The shelter was located and was recorded as large enough to shelter a large family group and adequate to house the group comfortably (RPS 2011).

RPS. 2012. Aboriginal Heritage Due Diligence Report. South of Myall Road, Hillsborough, NSW

RPS was engaged by Bannister and Hunter Pty Ltd to prepare an Aboriginal Heritage Due Diligence Report for a portion of land adjacent to Myall Road, Hillsborough NSW. An archaeological field survey was conducted in October 2011 in what was a heavily vegetated area with access limited to previously used dirt tracks. Where visible surface exposure revealed B Horizon in which fragments of quartz, shale and other local rock types were observed; however no Aboriginal objects were identified during the field survey and the area was not considered to be of high archaeological sensitivity.

4.4 Synthesis of Heritage Context

A review of the AHIMS data and previous archaeological studies in the area indicate it was suitable for past Aboriginal occupation. The site types surrounding Munibung Hill appear to reflect a low occupation pattern rather than permanent camp sites. The views offered from Munibung Hill and the spiritual connection to past Aboriginal populations would have meant the area was of high cultural significance. Site locations appear to favour the ridgeline and the western slopes. The Project Area lie on a relatively steep ascent towards Munibung Hill and would have been an unlikely route to the summit compared with the more accessible western slopes, it was therefore likely a transient route for past Aboriginal peoples.

5.0 Visual Inspection and Field Results

A visual inspection of the Project Area was undertaken to identify whether Aboriginal objects are present on the ground surface or are likely to be present below the ground surface. In accordance with the Due Diligence Codes a qualified archaeologist undertook the visual inspection (DECCW 2010:12-13).

5.1 Visual Inspection

The visual inspection of the Project Area was conducted 3 February 2017 and undertaken by RPS Cultural Heritage Consultant Ben Slack together with ALALC representative Peter Townsend and ADTOAC representative Peter Leven. The visual inspection was conducted on foot (pedestrian). The Project Area is located at Rayford Street, Warners Bay Lot 6 DP814499 and Lot 100 DP1173625.

The Project Area consisted several fenced paddocks are currently used to keep horses (Plate 1). The southern portion of the Project Area consisted of a small but dense forest with a small gully running through; no running water was noted despite recent rains. Upon moving north from here the area opens up into a selection of small heavily grazed paddocks with a thick layer of pasture grasses. Ground surface visibility was high throughout the paddocks however the dense grasses meant surface exposure was less than 5%. Surface exposure increased outside the fenced paddocks which offered a good opportunity for the identification of stone artefacts. Evidence of disturbance activity within these areas meant limited raw materials were identified (Plate 2).

The east facing slope begins to increase in gradient towards the north with evidence of earthworks observed in the creation of an artificial drainage line and swales (Plates 3 & 4). A dam has been constructed in the centre of the Project Area and was full at the time of the visual inspection (Plate 5). Several surface exposures within the northern portion revealed B Horizon soils. Stone fragments were also observed within these exposures yet none were artefactual (Plates 6 & 7).

Both Peter Townsend (ALALC) and Peter Leven (ADTOAC) remarked on the favourable position of the Project Area, particularly towards the western boundary which provided views to the lake and across Warners Bay, stating that the area would have been a popular area amongst past Aboriginal people (Plate 8). It was also noted that the area lacks a permanent water source for constant habitation however; mature trees were noted in several locations throughout. None of the mature trees observed exhibited signs of cultural scarring.

The visual inspection of Lot 100 DP1173625 was conducted on 8 June 2017 and undertaken by RPS Cultural Heritage Consultant Ben Slack together with ALALC representative Peter Townsend. The lot is located on an east facing slope which has been cleared of vegetation apart from small pockets of undisturbed land in the south east and north east of the lot. Dense grasses were noted throughout with small sections of exposure due to vehicle movement (Plate 9). Overall surface visibility was high due to the cleared vegetation; however, the dense grasses meant surface exposures within the lot were extremely low at approximately 5%. Overall ground surface visibility was approximately 30%.

An artificial drainage line was noted running north to south through the Project Area indicating significant earthworks (Plate 10). Water had pooled throughout these sections due to heavy overnight rain. The disturbed areas revealed a fine sandy loam with quartz and conglomerate fragments and appeared to be imported fill (Plate 11). Other areas of disturbances revealed a very dark brown loam with multiple pebble inclusions (Plate 12). The western most section of the lot provided views over Lake Macquarie and Warners Bay. Heavy earthworks were noted throughout this section with a large flat bench identified transecting the lot (Plate 13). The heavily vegetated corner in the south east of the Project Area contained several mature trees which with a dense understory of shrubs and grasses; no trees showed evidence of cultural scarring (Plate 14).

5.2 Visual Inspection Field Results and Summary

No Aboriginal objects or sites were identified as a result of the visual inspection of the Project Area. Ground surfaces, where visible, were inspected for stone artefacts with none identified. Despite GSV and GSE being relatively low, there was sufficient exposure and visibility for the identification of Aboriginal objects as most areas had eroded down to B Horizon clays. Consequently, all areas are considered as having low potential for unidentified Aboriginal objects to be present. The few mature trees present were inspected for evidence of cultural scarring, but, no such evidence was identified.

No natural water sources were identified inside the Project Area. The nearest source of portable water would have been sourced from the ephemeral drainage line Hawkins Creek located approximately 300m to the west. Sandstone overhangs have been identified within the Munibung Hills to the west of the Project Area but none suitable for human occupation was observed inside the Project Area. All areas were subject to some degree of ground disturbances such as earthworks, construction and animal grazing. Considering the extent of past earthworks activity in the Project Area, it is unlikely that Aboriginal sites would be present *in-situ* within the Project Area.

No Aboriginal objects or places were identified in the Project Area during the visual inspection.

6.0 Impact Assessment

The purpose of a due diligence assessment is to identify whether Aboriginal objects are present, or likely to be present, in the Project Area; to determine whether proposed activities are likely to harm Aboriginal objects (if present) and to determine whether an Aboriginal Heritage Impact Permit (AHIP) is required.

The proposed activity will involve the re-zoning for future development of the Project Area. Disturbances consisted of vegetation clearing, earthworks and the construction of service infrastructure and utilities.

The results of the AHIMS search and the visual inspection indicate that there are no identified Aboriginal objects in the Project Area. There are no identified Aboriginal objects in the Project Area and therefore no identified risk of harm to Aboriginal objects. An AHIP is not required for the proposed activity.

7.0 Conclusions and Recommendations

This report has considered the available environmental and archaeological information for the Project Area, the land condition, as well as, the nature of the proposed activities. The visual inspection did not identify Aboriginal objects within the Project Area.

A search was undertaken of the Aboriginal Heritage Information Management System (AHIMS) on 2 February 2017 which revealed 12 previously recorded Aboriginal sites within these coordinates. No Aboriginal objects or places are present in the Project Area.

The Project Area was inspected on foot on 3 February 2017, Lot 6 DP814499, with a second inspection conducted on 8 June 2017, Lot 100 DP1173625. A number of disturbances were identified including grazing/farming activities, bulk earthworks and dam construction. Mature trees were inspected for evidence of cultural modification and exposed ground surfaces were inspected for evidence of Aboriginal objects or PADs.

No Aboriginal objects or places have been identified within the Project Area and therefore an Aboriginal Heritage Impact Permit (AHIP) is not required for the proposed activity.

The following recommendations are made in relation to the proposed activity:

Recommendation 1

All relevant Pulver Cooper & Blackley 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.

Recommendation 2

This due diligence assessment must be kept by Pulver Cooper & Blackley so that it can be presented, if needed, as a defence from prosecution under Section 86(2) of the *National Parks and Wildlife Act 1974*.

Recommendation 3

If unrecorded Aboriginal object/s are identified in the Project Area, then all works in the immediate area must cease and the area should be cordoned off. OEH must be notified by ringing the Enviroline 131 555 so that the site can be adequately assessed and managed.

Recommendation 4

In the unlikely event that skeletal remains are identified, work must cease immediately in the vicinity of the remains and the area must be cordoned off. The proponent must contact the local NSW Police who will make an initial assessment as to whether the remains are part of a crime scene or possible Aboriginal remains. If the remains are thought to be Aboriginal, OEH must be contacted by ringing the Enviroline 131 555. An OEH officer will determine if the remains are Aboriginal or not; and a management plan must be developed in consultation with the relevant Aboriginal stakeholders before works recommence.

Recommendation 5

If, during the course of development works, suspected historic cultural heritage material is uncovered, work should cease in that area immediately. The Heritage Branch, Office of Environment & Heritage (Enviroline 131 555) should be notified and works only recommence when an approved management strategy has been developed.

8.0 References

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- Gunson, N. (Ed.). 1974. *Australian Reminiscences and Papers of L.E. Threlkeld: Missionary to the Aborigines, 1824-1859*. Canberra: Australian Institute of Aboriginal Studies.
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- Murray, P. 2005. *From Bahtahbah to Belmont: A History of Belmont 1826-1926*. Belmont: Self Published.
- RPS. 2011. "Cultural Heritage Survey and Assessment for Speers Point Quarry." Lake Macquarie City Council.

9.0 Plates



Plate 1 View north east into paddock area



Plate 2 Surface exposure, note earthworks and disturbances



Plate 3 Earthworks associated with drainage line



Plate 4 Swales constructed for the drainage line



Plate 5 Artificial dam



Plate 6 Surface exposure



Plate 7 View west showing extent of surface coverage



Plate 8 View south east towards Lake Macquarie



Plate 9 Surface exposure due to vehicle movement, note dense grass cover



Plate 10 Drainage line intersecting Project Area, view south



Plate 11 Exposure in south eastern corner revealed an imported fill



Plate 12 Small areas of disturbance revealed a dark brown loam



Plate 13 View east looking overlooking the bench



Plate 14 South eastern corner showing dense vegetation

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).

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:

- (1) A person must not harm an object that the person knows is an Aboriginal object;
- (2) A person must not harm an Aboriginal object;
- (3) 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;
- (4) 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 and AHIP.

Section 90A-90R

These sections govern the requirements relating to applying for an AHIP. In addition to the amendments to the Act, OEH have issued three new policy documents clarifying OEH'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

AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref/PO Number : 134844-1 BS

Client Service ID : 264769

SiteID	SiteName	Datum	Zone	Easting	Northing	Context	Site Status	SiteFeatures	SiteTypes	Reports
38-4-1297	RPS Speers Point AS1	GDA	56	371863	6352743	Open site	Valid	Artefact : -		
	Contact Mr.Shane Frost	Recorders				RPS Australia East Pty Ltd -Hamilton,Ms.Laraine Nelson		Permits		
38-4-1302	RPS Speers Point IF2	GDA	56	371963	6352772	Open site	Valid	Artefact : -		
	Contact	Recorders				RPS Australia East Pty Ltd -Hamilton,Ms.Laraine Nelson		Permits		
38-4-1298	RPS Speers Point AS2	GDA	56	372280	6352022	Open site	Valid	Artefact : -		
	Contact Mr.Shane Frost	Recorders				RPS Australia East Pty Ltd -Hamilton,Ms.Laraine Nelson		Permits		
38-4-1311	RPS SPEERS POINT RS1	GDA	56	372309	6352095	Open site	Valid	Habitation Structure : -		
	Contact	Recorders				RPS Australia East Pty Ltd -Hamilton,Ms.Laraine Nelson		Permits		
38-4-1301	RPS Speers Point IF1	GDA	56	372526	6352168	Open site	Valid	Artefact : -		
	Contact	Recorders				RPS Australia East Pty Ltd -Hamilton,Ms.Laraine Nelson		Permits		
38-4-1299	RPS Speers Point AS3	GDA	56	372799	6352603	Open site	Valid	Artefact : -		
	Contact Mr.Shane Frost	Recorders				RPS Australia East Pty Ltd -Hamilton,Ms.Laraine Nelson		Permits		
38-4-0198	Marmong Point;	AGD	56	371050	6350200	Open site	Valid	Shell : -, Artefact : -	Midden	1333,98458,98459
	Contact	Recorders				Warren Bluff		Permits		
38-4-0197	Marmong Point;	AGD	56	371050	6350220	Open site	Valid	Shell : -, Artefact : -	Midden	1333,98458,98459
	Contact	Recorders				Warren Bluff		Permits		
38-4-0009	Speers Point Manse	AGD	56	371594	6351241	Open site	Valid	Artefact : -	Open Camp Site	98458
	Contact	Recorders				Unknown Author		Permits		
38-4-0453	Maniibang;	AGD	56	372880	6352880	Open site	Valid	Stone Arrangement : -	Stone Arrangement	1333,98458,98459
	Contact	Recorders				Warren Bluff		Permits		
38-4-0011	North Creek;	AGD	56	373156	6350813	Open site	Valid	Artefact : -	Open Camp Site	98458
	Contact	Recorders				ASRSYS		Permits		
38-4-0840	North Creek 2 Warners Bay	AGD	56	373240	6351899	Open site	Valid	Artefact : 3		
	Contact	Recorders				Mrs.Angela Besant		Permits	2185	

Report generated by AHIMS Web Service on 02/02/2017 for Ben Slack for the following area at Datum :GDA, Zone : 56, Eastings : 371090 - 374090, Northings : 6350289 - 6353289 with a Buffer of 0 meters. Additional Info : Due Diligence. Number of Aboriginal sites and Aboriginal objects found is 12

This information is not guaranteed to be free from error omission. Office of Environment and Heritage (NSW) and its employees disclaim liability for any act done or omission made on the information and consequences of such acts or omission.