



TRAVERS BUSHFIRE & ECOLOGY

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ABORIGINAL HERITAGE DUE DILIGENCE ASSESSMENT

Planning Proposal Request to Facilitate Future
Superlot Subdivision and Landuse Rationalisation

Lot 100, DP 1159926

229 Macquarie Grove Road

Cobbitty (Mater Dei)

12 September 2023

(REF: 21PPS02.2)

ABORIGINAL HERITAGE DUE DILIGENCE ASSESSMENT

For

Planning Proposal Request to Facilitate Future Superlot Subdivision and Landuse Rationalisation

Lot 100, DP 1159926, 229 Macquarie Grove Road, Cobbitty

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The mapping is indicative of available space and location of features which may prove critical in assessing the viability of the proposed works. Mapping has been produced on a map base with an inherent level of inaccuracy, the location of all mapped features are to be confirmed by a registered surveyor.

EXECUTIVE SUMMARY

This Aboriginal Heritage Due Diligence Assessment has been prepared by *Travers bushfire & ecology* for the property at Lot 100, DP1159926, 229 Macquarie Grove Road, Cobbitty (Mater Dei) within the Camden Council Local Government Area (LGA). This assessment was undertaken in accordance with the following:

1. The *National Parks and Wildlife Act* (1974)
2. National Parks and Wildlife Regulation 2009, and
3. Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW (DECCW, 2010).
4. Section 9.1 Direction 3.2 Heritage Conservation EP&A Act (1979)

This Aboriginal Heritage Due Diligence Assessment was undertaken to provide the required information for the Planning Proposal Request (PPR) to rezone parts of the site and facilitate the future creation of super-lots. These super-lots are then proposed to be managed in accordance with their assigned purpose, such as:

1. Natural Environment Conservation Lands (C2), and
2. Rural Landscape Holding (RU2)

This Due Diligence Report has been undertaken to meet NSW legislative requirements. The aims of these requirements are to:

1. Identify any known or likely Aboriginal heritage on or adjacent to the property,
2. Assess the potential impact of the proposal on Aboriginal heritage, and
3. Determine if an Aboriginal Heritage Impact Permit (AHIP) is required prior to commencement of the development or construction within the study area, under a future development / planning time horizon.
4. Conserve items, areas, objects and places of indigenous heritage significance.

Summary of findings

Predictive modelling of key trends associated with the content of Aboriginal archaeological sites on the Cumberland Plain (*Navin Officer Heritage Consultants P/L*, October 2015 – *Western Sydney Airport Aboriginal Cultural Heritage Assessment*) highlights a set of predictive statements or criteria that are associated with historical use of the landscape within the wider Cumberland Plain.

The area subject to the PPR has a number of attributes which would indicate that historical Aboriginal use of the site would have been likely. However, moderate to high levels of disturbance to the site's landform and vegetation in modern history has affected the surface expression of aboriginal artefacts. This is caused by past land uses and management practices such as vegetation clearing, modification to the rock outcrops, establishment of a historical working pastoral property, quarrying, creation of dams, construction of roads, tracks and buildings and more recently as two separate schools, including the retention and restoration of the European heritage buildings and other outbuildings and infrastructure.

Despite the disturbance of the topsoil over much of the subject site, it is considered that the site has a moderate potential to contain aboriginal artifacts. The main areas that are likely to contain aboriginal artifacts are along the numerous watercourses, ridgelines and rock outcrops or vantage points which form a network throughout the study area. The PPR seeks to rationalise the prevailing zonings and establish a template for future development / management, initially entailing a superlot subdivision.

In the unlikely event known or new Aboriginal artefacts are identified or disturbed during any future activities within the new proposed superlots, then works shall cease immediately and the site be assessed by a qualified archaeologist which will then guide the activities to conserve that part of the site. If disturbance to newly found or known existing sites is necessary, then an AHIP will be required for any resulting impacts. Conversely, if no Aboriginal artefacts are identified, an AHIP application is not necessary.

Applications for an AHIP must be accompanied by an assessment report conducted in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW 2010*. Applications must also provide evidence of consultation with the Aboriginal communities. Consultation is required under Part 8A of the NPW Regulation 2009 and is to be conducted in accordance with the *Aboriginal Heritage Consultation Requirements for Proponents 2010*.

Predictive modelling of the landscape suggests that potential Aboriginal Heritage areas have a moderate probability to occur within the subject site, but are importantly manageable within the subject framework. Accordingly, the cited legislative requirements, including Section 9.1 Direction 3.2, are concluded to have been adequately fulfilled at this Planning Proposal stage.

LIST OF ABBREVIATIONS

AS 4970	Protection of trees on a development site
APZ	asset protection zone
BC Act	Biodiversity Conservation Act, 2016
BPA	bushfire protection assessment
CRZ	critical root zone
DCP	Development Control Plan
DAWE	Commonwealth Department of Agriculture, Water and the Environment.
DOEE	Commonwealth Department of Environment & Energy (superseded by DAWE)
DPIE	NSW Department of Planning, Industry and Environment
EEC	endangered ecological community
EPA	Environmental Protection Authority
EP&A Act	Environmental Planning and Assessment Act
EPBC Act	Environment Protection and Biodiversity Conservation Act
ESMP	ecological site management plan
FF	flora and fauna assessment
FM Act	Fisheries Management Act
FMP	fuel management plan
ha	hectares
HTA	habitat tree assessment
IPA	inner protection area
LEP	local environment plan
LGA	local government area
m	metres
NES	national environmental significance
NPWS	NSW National Parks and Wildlife Service
OEH	NSW Office of Environment and Heritage (superseded by DPIE from August 2019)
OPA	outer protection area
PBP	Planning for bush fire protection 2006
RF Act	Rural Fires Act
RFS	NSW Rural Fire Service
ROTAP	rare or threatened Australian plants
S9.1	Section 9.1 Direction EP&A Act, 1979
SRZ	structural root zone
SULE	safe useful life expectancy
TPO	tree preservation order
TPZ	tree protection zone
TRRP	tree retention and removal plan

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1. BACKGROUND

1.1 Project background

This Aboriginal Heritage Due Diligence Assessment has been prepared by *Travers bushfire and ecology* for the property known as Lot 100, DP 1159926, at 229 Macquarie Grove Road, Cobbitty (“Mater Dei”) within Camden local government area (LGA) (as shown in Figure 1-1). This assessment was undertaken in accordance with the following:

1. *The National Parks and Wildlife Act 1974*
2. *National Parks and Wildlife Regulation 2009*, and
3. *Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW* (DECCW, 2010)
4. Section 9.1 Direction 3.2 Heritage Conservation EP&A Act (1979)

This Aboriginal Heritage Due Diligence Assessment was undertaken to provide the required information for the Planning Proposal Request (PPR)

This Due Diligence Assessment is required to meet NSW legislative requirements. The aims of these requirements are to:

1. identify any known or likely Aboriginal heritage on the property,
2. assess the potential impact of the proposal on Aboriginal heritage
3. determine if an Aboriginal Heritage Impact Permit (AHIP) is required prior to commencement of the development or construction within the study area, and
4. Conserve items, areas, objects and places of indigenous heritage significance

1.2 Project description

This Aboriginal Heritage Due Diligence Assessment was undertaken to provide the required information for the PPR which is to rationalise the zoning and planning provisions of parts of the site to establish a template and allow limited future development/subdivision including the creation of a Superlot subdivision for the following purposes:

1. Natural Environment Conservation Lands (C2), and
2. Rural Landscape (RU2)

The ultimate proposal is to subdivide the site into super-lots such that various ownership and management requirements can be enacted within appropriately zoned and managed lands as shown in Figure 1.2. This super-lot subdivision will potentially allow different entities to undertake management or other works independently from entities owning or managing adjacent super-lots.

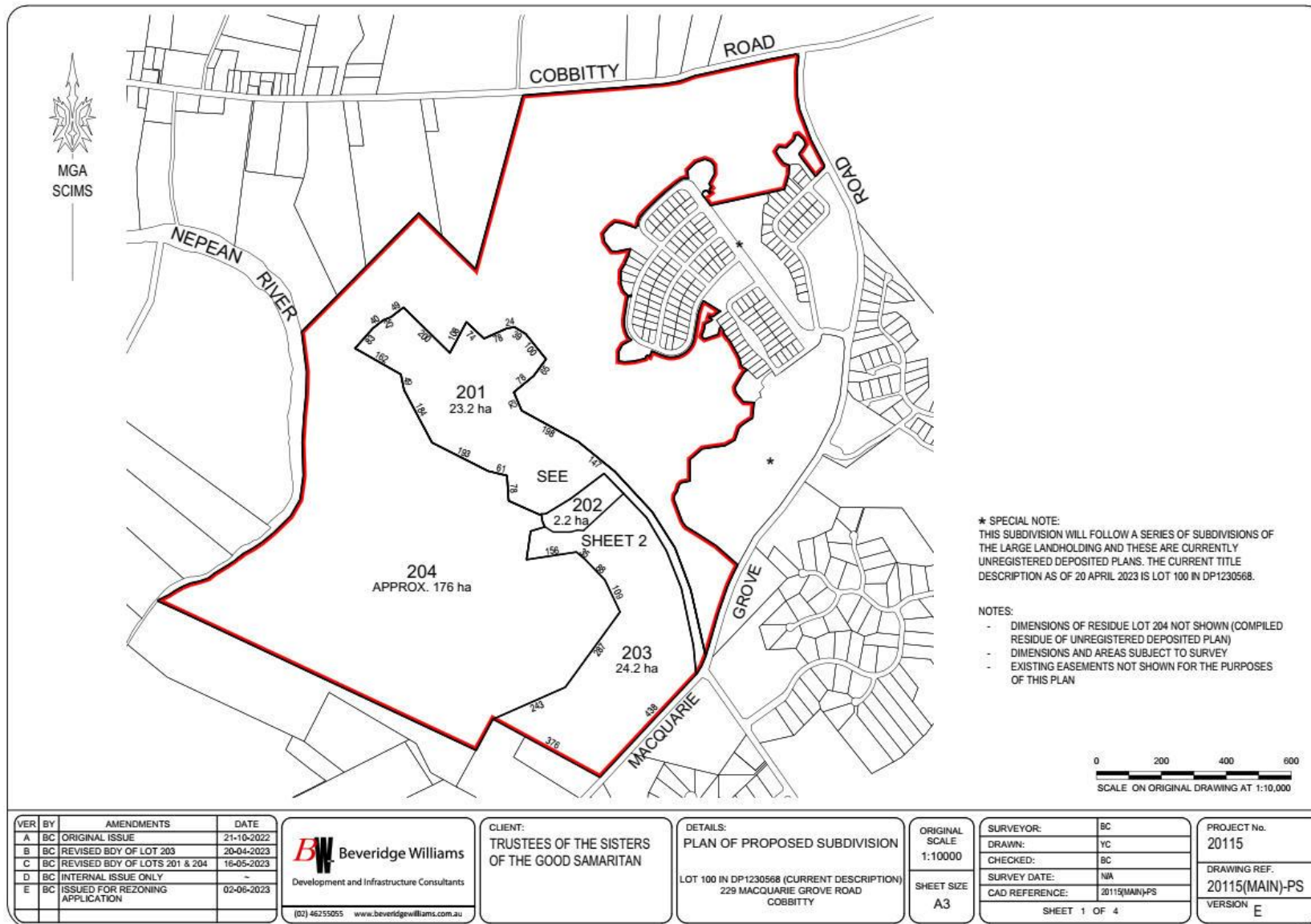


Figure 1-2- Proposed Super-lot subdivision

(Source: Beveridge Williams, 02.06.2023)

1.3 Previous studies/advice

Previous Aboriginal Heritage / Archaeological studies, surveys and Local Aboriginal Land Council (LALC) consultations and liaison have been undertaken for the Wivenhoe Residential Development (formerly part of the Mater Dei holding). A detailed report was produced by *Kelleher Nightingale Consulting Pty Ltd* (April 2008).

In addition, A Curtilage study was undertaken by Dallas, M. and Tuck, D. (July 2003) – *Denbigh Curtilage Study: Aboriginal Cultural Heritage*. (It is noted that Denbigh property is a nearby large rural landholding to the north of Cobbitty Road)

Most recently, a site assessment was conducted by the Tharawal LALC (5 May 2023), with an inspection report dated 16 May 2023 reproduced as Appendix 2 to this assessment.

1.4 Assessment process

The Due Diligence Code of Practice for the protection of Aboriginal Objects (Section 4) (DECCW, 2010) states:

“Consideration of the potential impacts of development on Aboriginal heritage is a key part of the environmental impact assessment process under the Environmental Planning and Assessment Act 1979 (EP&A Act). The standards in this code can be used or adapted by proponents to inform the initial assessment of the environmental impacts of an activity on Aboriginal heritage. An environmental impact assessment which meets all of the requirements of this code will satisfy the due diligence test.”

Section 6 of DECCW, 2010) also states:

“In the context of protecting Aboriginal cultural heritage, due diligence involves taking reasonable and practicable measures to determine whether your actions will harm an Aboriginal object and, if so, what measures can be taken to avoid that harm.

There are several advantages to having a due diligence process for assessing potential harm to Aboriginal objects in that it:

- *assists in avoiding unintended harm to Aboriginal objects*
- *provides 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*
- *results in more effective conservation outcomes for Aboriginal cultural heritage.”*

In order to fulfil the requirements of ‘Due Diligence’, the generic due diligence process as outlined within Section 8 of DECCW (2010) should be followed as a minimum. The steps required are summarised below.

1. Does the activity require disturbance to the ground surface?
- 2a. Search the AHIMS database and use any other sources of information of which you are already aware.
- 2b. Activities in areas where landscape features indicate the presence of aboriginal objects, (eg. Within 200m of waters or below/above a cliff, sand dune systems, ridge tops or lines or headlands, within 20m of a cave, rock shelter or cave mouth, etc.)

3. Can harm to the object or disturbance of the landscape feature be avoided?
4. Desktop assessment and Visual Inspection. The visual inspection must be done by a person with expertise in locating and identifying Aboriginal objects. This person with expertise could be an Aboriginal person or landholder with experience in locating and identifying Aboriginal objects or a consultant with appropriate qualifications or training in locating and identifying Aboriginal objects.
5. Further investigations and impact assessment. If after the above detailed investigation and impact assessment you decide that harm will occur to Aboriginal objects then an AHIP application must be made. If you have followed this code and at any point have reasonably decided that an AHIP application is not necessary either because Aboriginal objects are not present or, if they are present, harm to those objects can be avoided, you can proceed with caution. If, however, while undertaking your activity you find an Aboriginal object you must stop work and notify DECCW and you may need to apply for an AHIP. Some works may not be able to resume until you have been granted an AHIP and you follow the conditions of the AHIP. Further investigation may be required depending on the type of Aboriginal object that is found.

It is noted, as referenced previously, that a site assessment was conducted by the Tharawal LALC (refer to Appendix 2).

2. ASSESSMENT

This assessment section works through the requirements of the 'Due Diligence' process as outlined in Section 1.4.

2.1 Identify if the proposed works will disturb the ground surface

The proposed PPR is to facilitate rezoning of parts of the study area and the subsequent creation of several super-lots. This will allow separate entities to manage these land parcels as appropriate to the new zoning requirements, and to undertake limited development in the future and to potentially allow these separate entities to operate independently from neighbouring properties. It is expected that the newly created super-lots will require replacement of existing fence lines which is expected to be the only disturbance to the soil resulting from the proposal. It is also expected that any future (currently unknown) works undertaken within the study area will avoid areas known to contain aboriginal artefacts and may be the subject of further assessment. Therefore, the known Aboriginal sites within the study area are unlikely to suffer from ground disturbance as a result of the foreshadowed creation of Super-lots and the fencing required to delineate the boundaries. See Figure 2.1 for locations of aboriginal Heritage sites within the study area.

2.2 AHIMS database searches and other known information sources

2.2.1 AHIMS web database searches

Caution should be exercised when using of the Heritage NSW Aboriginal Heritage Information Management System database to reach conclusions about site prevalence or distribution. For example, a lack of registered 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 the area has not been surveyed for cultural heritage or that the surveys were undertaken in areas of poor surface visibility. It is important to note that the nature and location of Aboriginal sites can be culturally sensitive information and should only be publicly disseminated with the express consent of the Aboriginal community.

Extensive AHIMS search

An extensive AHIMS search was undertaken on 31 January 2023 (Client Service ID: 749053) of Lot 100 DP1230568 with a buffer of 200 metres.

Thirteen Aboriginal sites and zero Aboriginal Places were identified in the search. These sites were all registered by AECOM Australia in 2010 during an investigation in relation to Oran Park West Sewer Infrastructure.

All thirteen sites are located within the boundary of Lot 100 DP1230568. One of the objectives of the site inspection will be to reidentify these registered sites and confirm what impacts, if any, they will be subject to through the proposed ultimate subdivision.

For the thirteen sites within the search area, a total of three different site features are recorded as shown in Table 2-1.

The results of the extensive search are shown in Table 2-1 below. The distribution of registered sites is shown in Figure 2-1.

Table 2-1: AHIMS Extensive search results for the locality

Site ID	Site name	Datum	Zone	Easting	Northing	Context	Site status	Site features
52-2-3344	MD1	AGD	56	288278	6232209	Open site	Valid	Artefact: 1
52-2-3345	MD2 Camden	AGD	56	287995	6232233	Open site	Valid	Artefact: 1
52-2-3346	MD3	AGD	56	288091	6232254	Open site	Valid	Artefact: 1
52-2-3347	MD4	AGD	56	287958	6232287	Open site	Valid	Artefact: 1
52-2-3348	MD5	AGD	56	288102	6232562	Open site	Valid	Potential Archaeological Deposit
52-2-3349	MD6	AGD	56	287635	6233053	Open site	Valid	Artefact: 1
52-2-3350	MD7	AGD	56	287747	6233378	Open site	Valid	Artefact: 18
52-2-3351	MD8	AGD	56	288331	6233371	Open site	Valid	Artefact: 1
52-2-3352	PAD6	AGD	56	287947	6232407	Open site	Valid	Potential Archaeological Deposit
52-2-3353	MD-OS-1	AGD	56	288468	6232583	Open site	Valid	Artefact:4
52-2-3354	MD-OS-2	AGD	56	288199	6232838	Open site	Valid	Artefact: 9
52-2-3355	MD-IF-1	AGD	56	287860	6233477	Open site	Valid	Artefact: 1
52-2-3356	MD-ST-1	AGD	56	288468	6232583	Open site	Valid	Modified Tree (Carved or Scarred)

2.2.2 Other database searches

The following heritage registers were accessed on 31 January 2023:

- World Heritage List (Australian Heritage Council/UNESCO)
- The National Heritage List (Australian Heritage Council)
- Commonwealth Heritage List (Australian Heritage Council)
- Register of the National Estate (Australian Heritage Council): This is a non-statutory list which is retained as an archive of the previous listing process
- The State Heritage Register (NSW Heritage Office)
- The Register of the National Trust of Australia: This is a non-statutory listing.
- Camden Local Environmental Plan (LEP) 2010
- AHIP Public Register

There is one site listed on the Camden LEP which is located within the study area – Wivenhoe villa (LEP item #199). This site pertains to European heritage and is unlikely to be impacted by the proposed subdivision. Such site is, however, known to be the subject of independent specialist investigation by a European heritage consultant.

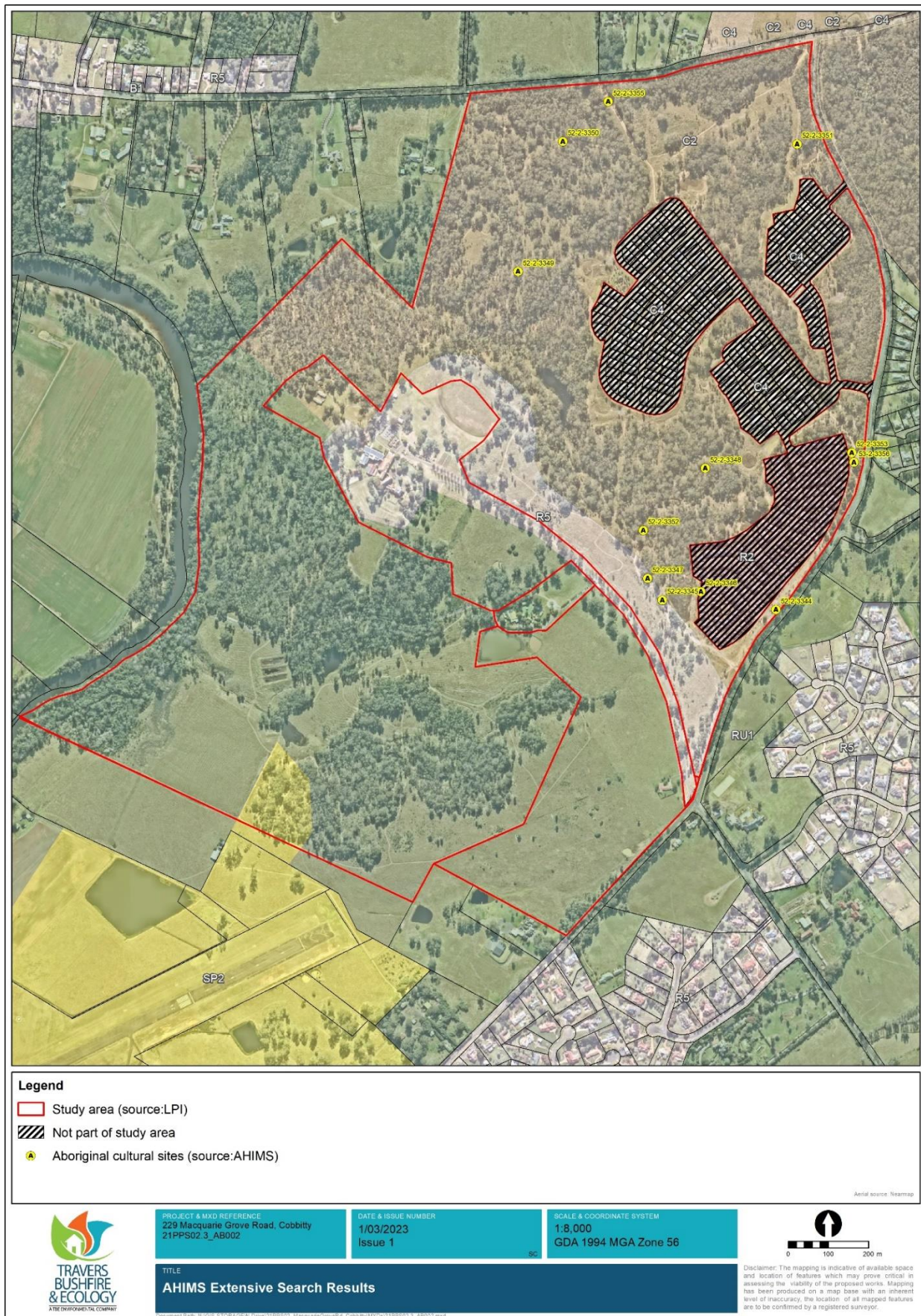


Figure 2-1 – Plot of known AHIMS sites within the Study Area

2.3 Landscape assessment

Haglund (1980) (in Dallas *et. al.*) developed a predictive model of site location based on early survey work in the Blacktown area. She predicted that sites would most likely be located near watercourses such as creeks and soaks, and on high ground near creek confluences.

Kohen (1986) postulated that the availability of water was the most important factor influencing the distribution of sites across the landscape.

Brayshaw, H. (1988) (in Dallas *et.al.*) Assessed the Probable Maximum Flood (PMF) inundation zone of the Warragamba Dam. She noted that the majority of the known sites were located on the Wianamatta shale landforms. Since that time, a number of archaeological surveys have been conducted in and around the Oakdale Colliery and nearby at the Brimstone Colliery.

Smith, L. J. (1989) Conducted a planning study over a large (25 km²) area near Liverpool. This study concluded that “sites in the Liverpool area were more likely to occur on creek flats than on any other topographical feature, and that the probability of sites occurring on creek flats increased near creek confluences.

Navin Officer, (1998) summarised the history of investigations and observed that a wide range of site types common in Hawkesbury sandstone are present and that site density varies according to topography and steepness of terrain. Site densities ranged from 1 site per 9.5ha to one site per 110ha. The higher site densities occur in landforms of low gradient slopes and open or flat valley floors. It must be noted that Wianamatta shale is also present within the subject site which provides additional diversity to the potential for Aboriginal heritage sites to occur.

Predictive modelling of key trends associated with the content of Aboriginal archaeological sites on the Cumberland Plain (*Navin Officer Heritage Consultants P/L, October 2015 – Western Sydney Airport Aboriginal Cultural Heritage Assessment*) highlights a set of predictive statements or criteria that are associated with historical use of the landscape within the wider Cumberland Plain. It is generally inferred that Aboriginal people often used certain landscape features and that Aboriginal objects are most often associated with these.

The study area has a number of attributes which would indicate that Aboriginal use of the site would have been historically likely. Therefore, an evaluation of landscapes present within the study area aids in assessing the likelihood of Aboriginal objects occurring within the subject site.

2.3.1 Historical Aboriginal Cultural Heritage of the Cumberland Plain

Some of the trends to predict the location and potential content of Aboriginal archaeological sites (*Navin Officer, 2015*), are present within the study area such as:

- Site frequency and artefact density are strongly related to access to fresh water and other necessary resources.
- Intact archaeological material may still be present below the plough zone (i.e. top 25 cm of soil).
- Artifacts are mostly situated close (within 100 metres) to permanent fresh water sources such as second order or higher creeks, rivers and wetland basins.

- Aboriginal sites are frequently located on creek banks, alluvial flats and lower slopes, or on higher ground such as ridges or knolls.
- Sites are often located within a short range of food resources and the raw materials for making tools.
- Complex sites that support large groups, or small groups at regular intervals, are usually located near permanent water sources.
- Stream order may provide a predictive framework for the occurrence and complexity of associated archaeological deposits (McDonald, 2005).
- Fourth and fifth order streams are likely to contain more complex and possibly stratified evidence of more permanent or repeated occupation.
- Third order streams are more likely to contain evidence of frequent occupation such as knapping areas. Higher artefact densities are often found in the lower reaches of tributary creeks.
- Second order watercourses are likely to contain sparse archaeological evidence, likely caused by mostly occasional use or occupation.
- First Order watercourses are associated with sparse archaeological evidence.
- Creek junctions may also provide a focus point and the size of artefact deposits may increase with the size or Order of these watercourses
- High value artefact deposits are most likely to occur in areas where fluvial deposits are accumulating within valley floors, on fringing basal slopes or on nearby locally elevated and well drained areas.
- Ridge tops and hill crests are usually defined as low potential for artefacts; however, some hilltops or ridgelines do present large artifact deposits.
- Single old trees and stands of remnant 'old growth' have potential for evidence of scarring by Aboriginals.
- Grinding grooves may occur in creek lines and are often associated with a sandstone substrate.

2.3.2 Historical Aboriginal Cultural Heritage within the locality

A report by Mary Dallas and Dan Tuck (July 2003) – Titled “*Denbigh Curtilage Study: Aboriginal Cultural Heritage*” was also produced. This report was more specific to the central areas within the study area and has determined that Aboriginal activity across the local landscape was evidenced by multiple interactions between Aboriginal and European peoples since the first European settlers within the region. This information was extracted from reports and writings of the times which described people, places, skirmishes and peaceful cohabitation in the area.

This study describes the environment with respect to the geology dominated by The Tertiary Bringelly Shales of the Wianamatta Geological Group. Minchinbury sandstone beds that are often associated with this group occur along the ridgeline to the north and east of the homestead. Quaternary fine-grained silts and clays dominate the Nepean floodplain. This landscape supported various forested types such as, Grey Box Woodland, Red Gum Forest and Narrow-leaved Ironbark Woodland. The Nepean River is supported by a large number of small tributaries derived from a network of even smaller first, second and third Order watercourses. Dallas and Tuck (2003) stated that “*The general archaeological context for this portion of the Sydney Basin is of interest because it lies close to the interface of the shale-based and sandstone formations*”. They go on to say – “*Most of the sites in the region are strongly correlated to the underlying geology. The predominant site types are sheltered occupation deposits, painted and engraved art sites and axe grinding grooves within the sandstone formations*”.

Dallas and Tuck (2003) conclude that: “*There is firm archaeological and historical evidence of the Aboriginal association with Denbigh. This evidence includes activities associated with tool and equipment-making and ceremonial activities. Further archaeological investigations and field survey is likely to provide evidence of extensive use of the area, particularly the ridge system and the Cobbitty Creek valley floor*”.

2.3.3 Likely occurrence of Aboriginal sites within the subject site

The subject site is located on the Blacktown Soil Landscape consisting of gently undulating rises on Wianamatta Shale with gently inclined slopes. The study area is traversed by several first and second Order watercourses which feed into the Nepean River. These watercourses and river have eroded down into the Theresa Park soil landscape which is derived from sandstone and fluvial deposits. This soil landscape is associated with floodplains surrounded by higher shale bands which sometimes form steep banks and outcrops.

The topography has been modified through land management practices associated with pastoral activities for over 100 years. Several dams and farm tracks have been constructed.

Prior to European settlement the study area would have been vegetated with vegetation types such as, Grey Box Woodland, Red Gum Forest and Narrow-leaved Ironbark Woodland. After European settlement, the study area was mostly cleared for pastoral purposes. However, more recently the vegetation has been allowed to naturally recover in part and has been the subject of extensive regeneration initiatives, yet it still has some way to go to achieve an almost natural state. Weeds such as Lantana, African Olive and other invasive species have been the subject of extensive eradication and remain the targets for ongoing weed control.

As described above, the landscape within the study area provides features that are known to be associated with aboriginal use and therefore areas within the study area are likely to contain known (e.g. AHIMS records) and as yet undiscovered aboriginal heritage artefacts. Landform features that are associated with Aboriginal activity, use, or occupation as determined by the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW 2010), are present within the study area, such as:

- The presence of fresh water within intermittent and semi-permanent watercourses and also within 100 metres of the watercourses,
- Creek banks, alluvial flats, lower slopes, or on higher ground such as ridges, lookouts or knolls,
- Within a short range of food resources and the raw materials for making tools,
- Sites that support large groups, or small groups at regular intervals, are usually located near permanent water sources such as the floodplain along the Nepean River,
- Higher artefact densities such as knapping areas are often found in the lower reaches of tributary creeks,
- Higher order watercourses are more likely to contain artefacts from more permanent or frequently repeated occupation,
- Creek junctions may also provide a focus point and the size of artefact deposits may increase with the size of these watercourses,
- High value artefact deposits are most likely to occur in areas where fluvial deposits are accumulating within valley floors, on fringing basal slopes or on nearby locally elevated and well drained areas,
- Ridge tops and hill crests are usually defined as low potential for artefacts; however, some hilltops or ridgelines do present large artifact deposits, especially those that have a view across the surrounding country,
- “Old Growth” forest and single old trees provide potential for ‘scarring’ by Aboriginals,
- Grinding grooves are most often found in creek lines and are often found in association with a sandstone substrate.

However, the majority of the study area is disturbed land as defined within the code of practice as the land has undergone activities such as:

- clearing of vegetation,
- construction of buildings,
- construction of dams
- establishment of farm tracks,
- construction or installation of utilities or services (electricity, water, sewer, stormwater, communications),
- Disturbance to the upper layers of the soil (such as tilling) to promote the growth of pasture species,
- construction of earthworks associated with anything mentioned in the above points.

Despite the above-mentioned disturbances, it is considered that the site does have a moderate potential to contain aboriginal artifacts. However, the main areas that are likely to contain aboriginal artifacts are along the Nepean riverbank, along the multiple creeklines and along ridgetops and knolls. Some locations on the larger river flats and flatter higher ground within the site may also contain artifacts from camps. The proposed rezoning and ultimate subdivision into super-lots within the study area will retain all thirteen (13) currently known AHIMS sites within future conservation and offset areas which are to be rezoned to C2, and accordingly will not be impacted.

2.3.4 Due Diligence inspections by Cubbitch Barta Native Title Claimants Aboriginal Corporation and Tharawal LALC

Mary Dallas and Dan Tuck were accompanied by Glenda Chalker, chairperson of the Cubbitch Barta Native Title Claimants Aboriginal Corporation during the reconnaissance survey across the Denbigh Homestead property on 17 June 2003.

Other Aboriginal Consultations were undertaken by *Kelleher Nightingale* (2008) for the proposed development of *Wivenhoe Residential Development*. Tharawal Local Aboriginal Land Council (TLALC), Cubbitch Barta Native Title Claimants Aboriginal Corporation (CBNTCAC), Darug Tribal Aboriginal Corporation (DTAC), Darug Custodian Aboriginal Corporation (DCAC) and Darug Aboriginal Cultural Heritage Assessments (DACHA) were consulted regarding the proposed rezoning and residential development. Kelleher Nightingale further states: "*The proposed conservation area incorporates a number of the recorded Aboriginal sites and the area of archaeological potential. This represents a positive conservation outcome for Aboriginal heritage as it retains the connection between identified Aboriginal sites and areas of archaeological sensitivity, forming a landscape approach to the conservation of Aboriginal cultural heritage*".

Written responses from the consulted local Aboriginal community groups on the assessment by *Kelleher Nightingale* (2008) confirmed the findings and support for the recommendations:

DTAC agreed with and supported the recommendations made in the report. In addition, it requested that if any work is done outside the development area that DTAC be notified.

DCAC expressed its support of the information and recommendations made in the assessment report.

DACHA supported the findings of the field survey and agreed with the recommendations in the report. In addition, it expressed interest in continuing to be involved in any future works on the lands.

Most recently, a site assessment was conducted by the Tharawal LALC (5 May 2023), with an inspection report dated 16 May 2023 reproduced as Appendix 2 to this assessment. The subject report concluded that ‘nothing significant to the Aboriginal people that hasn’t already been documented is to be found on the land’.

2.4 Impact avoidance

The PPR in seeking to rezone parts of the site and facilitate the creation of super-lots is unlikely to cause any significant disturbance to the soil surface. After the creation of the super-lots it is expected that the boundaries of these new lots will be fenced. The proposed super-lots have been planned such that the new zone boundaries utilise existing internal fence lines. Some of these fences require maintenance or replacement. However, the proposed zone boundaries and the required maintenance and replacement fences will be located along the existing fence lines.

It is expected that fence maintenance and replacement is likely to require the digging of fence post holes along the existing fence lines. It must be noted that AHIMS sites 52-2-3344, 52-2-3346 and 52-2-3356 are located in proximity to fences surrounding the recently constructed Wivenhoe residential development. *Kelleher Nightingale* (2008) has assessed potential impacts of the Wivenhoe residential development and all three of these AHIMS sites have been left in situ (see Figure 2.2). In particular, AHIMS site 52-2-3346 is located close to the fence line in the south-western portion of the Wivenhoe residential development, however, this site is preserved in-situ within a parkland area that is to be managed as a bushfire Asset Protection Zone (APZ).

Considering the small areas of likely soil disturbance (possible new fence post holes along an existing fence line), and the proposed location of the new super-lot boundaries over existing fences, it is considered that the PPR with subsequent rezoning and subdivision into Super-lots will avoid any significant impact to known Aboriginal heritage artefacts or sites.

2.5 Desktop assessment

There is a moderate possibility that undiscovered aboriginal objects may be located within the subject site. However, all remaining AHIMS sites are located within land proposed to be Conservation Areas or Biobank sites. Further, it is considered that the landscapes most likely to contain aboriginal artefacts (e.g. creeks and their surrounds, ridgelines, knolls, river flats etc.) will be conserved within the proposed C2 Lands. The following is a desktop assessment based on previous works in the region, within the study area, and incorporating landscape interpretation within the subject site.

2.5.1 Aboriginal heritage within the study area

A search of the AHIMS database identified thirteen registered sites within the study area. These thirteen sites are located within the boundary of the proposed area to be zoned C2 Environmental Conservation and will not be impacted by the rezoning. Overall, the study area has been assessed as demonstrating moderate archaeological sensitivity and moderate potential for Aboriginal objects and/or in situ archaeological deposits.

In accordance with the Due Diligence Code of Practice (DECCW 2010), the proposed subdivision within the study area will not impact on identified Aboriginal objects or areas where Aboriginal objects are likely to occur beneath the ground surface.

2.5.2 Potential impact of the proposal on Aboriginal heritage within the study area

The PPR to rezone parts of the site and facilitate the creation of super-lots. These super-lots will then be managed by owners in accordance with their assigned purpose such as:

1. Natural Environment Conservation Lands - to be Zoned C2 Environmental Conservation
2. Rural Landscape Holding – To be Zoned RU2 Rural Landscape

(Refer to landuse provisions contained in Camden LEP 2010)

All of the thirteen (13) AHIMS sites known to occur within the site (Lot 100, DP 1159926), No. 229, Macquarie Grove Road, Cobbitty will be retained within proposed new lot 204 which will be rezoned to C2 Environmental Conservation.

The proposed rezoning boundaries will follow existing fence lines and will not require any works or ground disturbance that would be likely to have any direct impact on any known or potential Aboriginal heritage items or previously recorded AHIMS site within the study area.

Despite the historical disturbance of the top layer of soil over much of the site for pastoral purposes, it is considered that the site does have potential to contain as yet undiscovered aboriginal artifacts. The main areas that are likely to contain aboriginal artifacts are along the numerous watercourses, watercourse confluences, adjoining flats, banks and riparian zones, on the lower slopes located just above the floodplain of the Nepean River and on ridgetops, knolls and rock outcrops. Some locations on higher ground in the western parts of the site may also contain artifacts from camps. Therefore, it is considered that no impacts on any known artifacts located within the Proposed C2 (Environmental Conservation) protected areas is likely to occur as a result of the proposed rezoning and subdivision into Super-lots.

3. CONCLUSIONS & RECOMMENDATIONS

3.1 Conclusions

All thirteen (13) registered AHIMS sites are located within the proposed C2 Environmental Conservation area, or are incorporated into parkland which will be managed as a bushfire Asset Protection Zone (APZ) within the Wivenhoe village adjusted boundary. As a result, all known aboriginal artefacts within the study area will be retained in-situ within the proposed C2 zoned land.

Potential or undiscovered Aboriginal Heritage artefacts have a moderate likelihood to occur within the subject site. However, areas with the greatest potential to contain Aboriginal artifacts or aboriginal value such as the Nepean Riverbank, creeklines and the riparian zones will be retained within the proposed C2 zone. Therefore, it is considered that the proposal will result in minimal impacts on known or potential aboriginal deposits. Moreover, these deposits will be perpetually conserved and managed within the proposed C2 zone.

All other naturally vegetated areas within the site are intended to be retained and regenerated in accordance with the vegetation management plan and/or the weed control plan.

In the unlikely event that Aboriginal artefacts are identified during any weed control or land management activities, all works should cease. A qualified archaeologist is to be engaged to assess the item/s and to liaise with the local Aboriginal groups. The required consulting process will then facilitate alternative methods be employed to avoid impacts to Aboriginal heritage items. If soil or ground surface disturbance is unavoidable on or near an Aboriginal artefact, then an Aboriginal Heritage Impact Permit (AHIP) will be required before any resulting impacts are undertaken. Conversely, if no Aboriginal artefacts are identified, an AHIP application is not necessary and works can proceed without Aboriginal heritage constraint.

Finally, the PPR is noted to be consistent with the objective of Section 9.1 Direction 3.2 Heritage Conservation in respect of indigenous heritage significance. Furthermore, although it does not contain provisions that facilitate the conservation of:

- Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974* and Aboriginal areas, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people

It is noted that the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation or regulations that apply to the land.

3.2 Recommendations


1. All known aboriginal artefacts or Potential Aboriginal Deposits (PADs) known within the proposed C2 Environmental Conservation zone are to be plotted and marked in the field and on any land management or vegetation management plans. These plans are to operate in such a way as to conserve all of these sites at their current location and in perpetuity.

2. If as yet undiscovered Aboriginal artefacts are identified during any excavation or soil disturbance phase of the site management, then works will cease in the affected area and the artifacts will be assessed in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW 2010*, an AHIP will be required for any impacts arising from the works.
3. An Aboriginal Heritage Impact Permit (AHIP) is required if impacts to Aboriginal objects and/or places cannot be avoided. Applications for an AHIP must be accompanied by an assessment report conducted in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW 2010*. Applications must also provide evidence of consultation with the Aboriginal communities. Consultation is required under Part 8A of the NPW Regulation 2009 and is to be conducted in accordance with the *Aboriginal Heritage Consultation Requirements for Proponents*.

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APPENDIX 1. EXTENSIVE AHIMS SEARCH RESULTS

		AHIMS Web Services (AWS)						Your Ref/PO Number : 21PPS02.3		
		Extensive search - Site list report						Client Service ID : 749053		
SiteID	SiteName	Datum	Zone	Easting	Northing	Context	Site Status **	SiteFeatures	SiteTypes	Reports
52-2-3344	MD1	AGD	56	288278	6232209	Open site	Valid	Artefact : 1		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3345	MD2 Camden	AGD	56	287995	6232233	Open site	Valid	Artefact : 1		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3346	MD3	AGD	56	288091	6232254	Open site	Valid	Artefact : 1		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits 3484		
52-2-3347	MD4	AGD	56	287958	6232287	Open site	Valid	Artefact : 1		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3348	MD5	AGD	56	288102	6232562	Open site	Valid	Potential Archaeological Deposit (PAD) : *		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3349	MD6	AGD	56	287635	6233053	Open site	Valid	Artefact : 1		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3350	MD7	AGD	56	287747	6233378	Open site	Valid	Artefact : 18		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3351	MD8	AGD	56	288331	6233371	Open site	Valid	Artefact : 1		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3352	PAD6	AGD	56	287947	6232407	Open site	Valid	Potential Archaeological Deposit (PAD) : *		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3353	MD-OS-1	AGD	56	288468	6232583	Open site	Valid	Artefact : 4		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3354	MD-OS-2	AGD	56	288199	6232838	Open site	Valid	Artefact : 9		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits 3484		
52-2-3355	MD-IF-1	AGD	56	287860	6233477	Open site	Valid	Artefact : 1		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		
52-2-3356	MD-ST-1	AGD	56	288468	6232583	Open site	Valid	Modified Tree (Carved or Scarred) : *		102151
	Contact Searle	Recorders				Australian Museum Consulting (AM Consulting)		Permits		

** Site Status

Valid - The site has been recorded and accepted onto the system as valid

Destroyed - The site has been completely impacted or harmed usually as consequence of permit activity but sometimes also after natural events. There is nothing left of the site on the ground but proponents should proceed with caution.

Partially Destroyed - The site has been only partially impacted or harmed usually as consequence of permit activity but sometimes also after natural events. There might be parts or sections of the original site still present on the ground

Not a site - The site has been originally entered and accepted onto AHIMS as a valid site but after further investigations it was decided it is NOT an aboriginal site. Impact of this type of site does not require permit but Heritage NSW should be notified

Report generated by AHIMS Web Service on 31/01/2023 for Samuel Riley for the following area at Lot : 100, DP:DP1230568, Section : null with a Buffer of 200 meters.. Number of Aboriginal sites and Aboriginal objects found is 13

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

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APPENDIX 2. THARAWAL LALC REPORT (16 MAY 2023)



Mater-Dei Site Inspection Report

16th May 2023

To Whom it may concern,

Tharawal Local Aboriginal Land Council's Culture and Heritage Officer Shazda Brown conducted a site assessment on the Mater-Dei Site at Cobbity on the 5th May 2023.

Shazda is of the opinion that nothing significant to the Aboriginal people that hasn't already been documented is to be found on the land.

With more and more land being destroyed and lost for future generations to enjoy through development, Tharawal Local Aboriginal Land Council fully support Mater-Dei's decision to hand over the land they will not use to National Parks and Wildlife for conservation purposes. Tharawal Local Aboriginal Land Council commend the Trustees of the Sisters of the Good Samaritan for considering the importance the land holds for the local Aboriginal people and the environment.

Kind regards
Julie Dannevig
Chief Executive Officer
Tharawal Local Aboriginal Land Council

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M:0400497735

ceo@tharawal.com.au

I acknowledge and pay my respects to the traditional custodians of the land on which I work and live. I pay my respects to my Elders both past and present and thank them for their leadership, guidance and knowledge.

Site: 220 West Parade, COURIDJAH NSW 2571

Mailing address: PO BOX 245, THIRLMERE NSW

Facebook page: www.facebook.com/Tharawal-Local-Aboriginal-Land-Council