



**EVERICK**

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APRIL 2012

## CULTURAL HERITAGE ASSESSMENT



CEDAR POINT QUARRY

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## EXECUTIVE SUMMARY

The following report presents the results and outcomes of a cultural heritage assessment of Indigenous. The land subject to this assessment is identified as parts of Lot 1 DP 366036 and Lot 12 DP 582916, 5km south of Kyogle township, N.S.W.

Everick Heritage Consultants (the 'Consultant') were commissioned by Grahams Quarries Pty Ltd (the 'Proponent') to undertake an Aboriginal Cultural Heritage Impact Assessment in support of a development application to the New South Wales Department of Planning and Infrastructure (DPI). At the request of the JRPP, the Proponent was required to undertake Aboriginal community consultation in accordance with the Office of Environment and Heritage ('OEH') *Aboriginal Community Consultation Requirements for Proponents* (2010) ('ACHCRP').

An assessment of the archaeological characteristics of the Project area was undertaken by Hew Burton in 1996. Further archaeological research was not within the scope of works for this project. However, archaeological characteristics of the site have been considered as they relate to the broader cultural significance of the Project Area.

The methods adopted in this assessment included

- (a) consultation with the registered Aboriginal stakeholders for the Project;
- (b) searches of applicable heritage registers;
- (c) a review of ethnographic and historic resources relevant to the region;
- (d) assessments of cultural significance and impact; and
- (e) report on findings and recommended management strategies.

As part of a desktop study, Everick undertook searches of the relevant Aboriginal and historic heritage registers. A search was conducted on 16 March 2012 of the OEH Aboriginal Heritage Information Management System ('AHIMS'), which identified 67 recorded sites for the broader search area. Three (3) were recorded within close proximity to the Project Area, however not within the actual area to be impacted by the Project. There are no Indigenous places within the Project Area listed in other heritage registers.

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



Everick recognise that there is Traditional Owner knowledge associated with the region that will have to be treated in a confidential manner. Everick has sought advice from Aboriginal stakeholders as to the appropriate protocols to be adopted in regard to such knowledge.

Everick has made a commitment to the Aboriginal community to document the consultation process as fully as possible.

## Aboriginal stakeholder consultation

### *Githabul Elders Council*

The members of the Githabul Elders Council have been consulted through a number of meetings both on site and off site (Section 8.2). During this period they have been afforded the opportunity to reconnect with the cultural and spiritual significance of the Project Area. During an initial meeting, concerns were raised by the members about the impact of the proposal on their cultural values. In particular, it was noted that the Project Area was located in close proximity to the Richmond River, which raised concerns about the environmental impact of the Project. Concern was also expressed about the continued impact of development activities within the traditional lands of the Githabul people. Quarrying was seen as a particularly invasive activity and something that inherently contradicts with Traditional obligations to manage and protect country.

A site meeting with the members of the Githabul Elders Council was arranged. Also in attendance were the land owners (Mr Peter Carlill and Mr Tim Carlill) and the Proponent (Mr Rodney Graham and Mrs Karie Graham). The Githabul inspected the proposed extraction area. Having been substantially cleared of original vegetation, expansive views were evident to the surrounding mountain ranges. While these views may have been heightened as a result of clearing activities, the steep escarpment banks mean that prominent views would likely have been afforded from many parts of the ridge top prior to European settlement.

The Githabul were shown the location of three culturally scarred trees (Figures 8 and 9), being located near the southern edge of the escarpment, outside of the Project Area. The scarred trees have been interpreted by the Githabul as cultural markers. Interestingly, each of the scarred trees faces south.

During the meeting the Githabul advised the Proponent that they considered the Project Area to be culturally significant to them. They requested the opportunity to camp on the site, so that they could reconnect with the



cultural significance of the property. The Carlill family agreed to host the Githabul over the course of a weekend. Members of the Githabul were invited to camp on the site over the weekend of 24 February to 26 February, 2012.

The act of a landowner inviting an Aboriginal group to camping on country during a development application process is unique in Everick's experience, if not unique in New South Wales. It is hoped that this will be the beginning of a strong relationship between all parties.

Both the Githabul and the Carlill family independently advised Everick that they found the experience to be very rewarding. The Githabul, through Mrs Gloria Williams, passed on their sincere gratitude for the respect that the Carlill family had shown to them and their culture. During the camp, Mr Peter Carlill and Mr Tim Carlill attended the camp and spoke to the Githabul about their culture, and how the Project may impact on their culture. A common connection between the Carlills and the Githabul was discussed - their relationship to Aboriginal Elder Alex Vesper. Further discussions included whether any impact mitigation activities could occur. Suggestions included whether a monument could be erect at the entrance of the quarry to commemorate the relationship between Peter Carlill's father and Alex Vesper. This was suggested as a symbolic act of bringing the two cultures together.

Everick consultant Tim Robins met with Githabul representatives Rob Williams on 14 March 2012. The purpose of the meeting was to further establish the cultural significance of the Project Area. During this meeting, the Githabul representatives identified the Project Area as a culturally significant men's place. The Githabul had been able to establish this through interpretation of the landscape and camping on country. The information cleared for publishing was that this place was used for ceremony and initiation. Ongoing men's health is linked to the preservation of the site.

The Githabul discussed how they had 'looked for indicators' that had led to this conclusion. The Project Area is situated close to the Richmond River and the contact site of Stony Gully. This and many other campsites along the nearby Richmond River would have allowed people to access resources for ceremony. The men would leave the women at these campsites, and walk several hundred meters up the escarpment face to the plateau, which included the Project Area. Near the top of the Plateau were a series of scarred trees. These trees have been interpreted as markers, warning people that this was a significant place. The Githabul would know that only those who are authorised should proceed. From the plateau top, prominent views could be seen of many of the significant spiritual places in the region, such as Wollumbin (Mount Warning) to the east. This would have played an important role in the initiations.



No details have been provided as to the physical boundaries of the area on the ridgeline that is significant to the Githabul people. However, it is well documented that intangible values can extend far beyond the physical confines of the place (Bowdler 2000). The Githabul have advised that the cultural significance of this place will be impacted by the quarry proposal. It is on this basis that the Githabul have strongly objected to the quarry proposal.

The Githabul representatives also discussed how the Project Area fit within the broader cultural landscape. The basalt ridgeline on which the Project Area is situated is not seen as the remnants of a 'lava flow'. Rather, its origins would have been told in traditional story. The ridgeline runs from the Richmond River valley floor to the Mackenzie Ranges in the west. The ridgeline would have made the ideal pathway or "highway" from the valley floor west toward Etrick. The basalt would also have provided an important resource, as it is some of the hardest rock in the region. It would have been used to make axes. The Githabul Stakeholders also contend that there will be stone tools discarded on the Plateau. This potential is discussed further in Section 9 below.

The Githabul have advised that the proposal is also objectionable on the grounds that it is environmentally harmful. It is not culturally appropriate to excavate a large pit generally, but particularly so when it is in the top of a prominent outcrop such as that of the Project Area. Whilst the excavations will not be visible to those traveling along the Richmond Valley, this does not diminish the impact that it will have on the cultural significance of this place.

The Githabul were provided an opportunity to review a draft version of this report, which was distributed on 28 March 2012. In a subsequent meeting on 18 April 2012, Githabul representative Rob Williams confirmed that the Githabul strongly objected to the quarry proceeding. The grounds for the objection were consistent with those discussed above. No written comments have been received by the Githabul at the time of finalising this assessment. At the time of finalising this report, another meeting was arranged for 3 May 2012. A record of this meeting will be provided to the consent authorities.

### *Bundjalung*

Two Bundjalung representatives were registered as stakeholders for this consultation, Mrs Patsy Nagas and Mr Michael Wayne Walker. A meeting was arranged for 13 February 2012 at the offices of the Gugin GUddabh LALC. Unfortunately, Ms Nagas and Mr Walker were unable to attend. The meeting proceeded with Gugin GUddabh LALC representatives. The Land Council had assessed the Project Area in 1996 and 2011. They had previously supported the development application, noting that the proposal was unlikely to impact on physical cultural heritage. However, during the meeting they noted that when making this evaluation, that had based there assessment within the New South Wales legislative framework (see section 8.2.2). Gugin



Guddabah LALC CEO Mr Ronald Randall stated that they believed the Project Area was likely to be of particular cultural significance to Aboriginal people prior to European settlement. The basis for this assumption was the physical prominence of the plateau, the scarred trees and the 'feel' of the place. Assessing potential significance in this manner is, in Everick's experience, relatively common to Aboriginal culture. This has been a consistent theme in the community consultation for this Project, and is discussed in further detail in Section 8.2.

A meeting was held with Mrs Nagas in the Gugin Guddibah LALC offices, on 14 March 2012. Mrs Nagas provided a detailed description of how the Project Area fits within the broader cultural landscape. Mrs Nagas discussed the important role Stony Gully played during the early contact period, as a primary place of occupation for Aboriginal people.

Mrs Nagas advised how she has been instructed in local culture by older generations over her years living in Kyogle. She mentioned how she had been told of the significance of the lagoon in Kyogle and nearby mountain to the south east of Kyogle. On one of these occasions, she was told that the Project Area was a traditional men's place. Older generations of men had instructed her that this was a traditional place of ceremony for men and also a place where they would go to carve shields. Further information was not divulged to her on account of it being culturally inappropriate (she herself being female).

A meeting between Mrs Nagas and consultant Tim Robins was arranged for 18 April 2012. During the meeting, a draft version of this report was reviewed. Mrs Nagas was consistent in her objections to the Project. She was unable to provide further evidence to support her proposition that the Project Area was a place of particular spiritual / cultural significance to Aboriginal people. She was unaware of any other persons who held similar knowledge, noting that the persons who passed down this information were long deceased. Tim Robins advised Mrs Nagas that, in Everick Heritage Consultants opinion, the evidence regarding the significance of the Project Area did not reach or come close to the threshold for being considered an Aboriginal Place under New South Wales legislation. The recommendations would therefore be the same in the final report as the draft.

Mrs Nagas provided a number of written statements by non-Indigenous persons who are local residents, discussing the cultural heritage significance of the Cedar Point region. Each objected to the quarry. These have been reviewed by the Consultant, and have been provided to the consent authorities in a community consultation file.



## Theoretical and Legislative Context

### *Defining and Verifying Intangible Cultural Heritage*

The aim of cultural heritage management is to establish the values particular groups of persons may associate with places or objects (Byrne 2003). The statements of cultural significance for the Githabul and Bundjalung Aboriginal stakeholders both relate largely to the intangible (non-physical) cultural values of the Project Area. Both position the Project Area within the broader cultural landscape, and are consistent in that they have identified the place as being a men's place. They did, however, arrive at this conclusion differently: the Githabul being from a reinterpretation of the cultural significance of the place and the Bundjalung being through oral tradition.

Importantly, value of intangible connections to landscapes by Aboriginal people has been well documented by Australian anthropologists since the late 19<sup>th</sup> Century (Weiner 2011:189). The value of the intangible often far outweighs values placed on the physical (Turnpenny 2007).

It is relevant at this juncture to review the accepted definitions of intangible heritage. Intangible heritage is defined in the UNESCO International Convention for the safeguarding of the Intangible Heritage (2003) as being

(Article 1):

*practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. The “intangible cultural heritage”... is manifested inter alia in the following domains:*

- (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;*
- (b) performing arts;*
- (c) social practices, rituals and festive events;*
- (d) knowledge and practices concerning nature and the universe;*
- (e) traditional craftsmanship.*

Whilst Australia does not rank amongst the 137 States that have ratified the UNESCO treaty, it does make for a relevant starting point. The UNESCO definition is particularly broad. In the context of the present





assessment, it is clear that a men's ceremonial place would fit within this definition. Ceremony is a well-documented traditional practise of Aboriginal people, and these cultural traditions can be a vibrant mix of oral traditions, performing arts, rituals, festivals and expressions of spiritual knowledge.

From the definition provided above, a critical element would appear to be where the UNESCO convention notes that intangible heritage is 'transmitted from generation to generation.' It might be argued that the reinterpretation of cultural landscapes, as has occurred by the Githabul, may be precluded from this definition of intangible heritage. However, it is contended in this report that while the precise details of reinterpreted cultural values have clearly not been passed from 'generation to generation', the act of reinterpreting landscapes and cultural connections generally has (Ross 2008).

The actions of the Githabul Stakeholders inevitably raises questions of authenticity. It has been outside of the scope of this assessment to undertake detailed anthropological works to establish whether those persons reinterpreting the cultural significance of the Project Area have the authority amongst their own community to do so. Based on consultation to date, it appears that this is the case, at least amongst a reasonable portion of the Githabul community. Having regard to the legislative discussion in Section 8.2.2 below, this issue is not believed to be critical to the assessment.

Through this consultation process, it has been concluded by Everick that the Githabul Registered Stakeholders have been engaging in a culturally valid reinterpretation of the Project Area. They have undertaken a synthesis of a broad range of cultural information (scarred tree locations, local campsites, hunting practises, regional spiritual places, local movement) and environmental information (traditional resource areas, geographic prominence, visual aesthetics) to reinterpret the meaning of the Project Area. Their interpretation appears well considered and quite reasonable in the context of the surrounding landscape. It is quite plausible that at some point in time the Project Area was of *particular significance* to the Aboriginal people of the region. A discussion of how this significance sits within a legislative context is provided in Section 8.2.2 below.

The description of place provided by Mrs Nagas of the Bundjalung accords with a more conventional definition of intangible cultural significance. That is, Mrs Nagas stated that the location of a men's place was passed down from generation to generation. Whilst any cultural activities almost certainly ceased within the Project Area many generations ago, the knowledge of this location remained.

The authenticity of Mrs Nagas claim is difficult to verify. It is of note that Mrs Nagas is of good standing in the local community, and has been widely recognised for her works in promoting the continuation and preservation of Aboriginal culture. These are works that Mrs Nagas has undertaken over a period of over 30 years. Mrs Nagas is recognised among many Aboriginal community members as being a person of cultural knowledge.



Despite an extensive literature review, there have been no ethnographic accounts on the public record that relate to the Project Area as being a place of particular cultural significance as a men's ceremonial place. Nor is there any record of it being a recognised place for making shields. Nor is any other Bundjalung person able to verify these claims. This is not to imply these claims are a fabrication. There are many places within the Australian landscape that are highly significant to Aboriginal people that have not been recorded ethnographically. The well-known recent review of this issue was the 'Hindmarsh Island affair' involving some of the Aboriginal women of the Ngarrindjeri (Tonkinson 1997). However, it is also of note that the Courts require a standard of evidence in verifying these claims that has been almost entirely absent in this instance.

### *New South Wales Legislation*

Researchers have for some time criticised the disconnect between theoretical heritage 'best practise' and the legislation of Australia (English 2003; Godwin and Weiner 2006: 127; Turnpenny 2007; Andrews and Buggy 2008). This is particularly so for the assessment and management of intangible heritage. When legislation along the eastern seaboard of Australia is compared, a common thread is that their main focus is undeniably on physical Aboriginal heritage (MacLaren 2006; Ross *et. al* 2010; Schnierer 2011).

Never-the-less, this assessment has been commissioned in a development context, and there are strong public policy and administrative reasons for the legislation being structured the way it is. This assessment must, therefore, be firmly grounded in the relevant state statute.

As reviewed in Section 2, the primary legislation in New South Wales for the protection of Aboriginal cultural heritage is the NPW Act. The Act protects both Aboriginal Objects and Aboriginal Places. Aboriginal Places must be declared places, and registered on the AHIMS Register. Section 84 of the NPW Act defines Aboriginal Places as "in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture." As to what constitutes 'special significance', guidance can be sought from both the AHIMS listing of Aboriginal Places and the OEH *Aboriginal Places Policy* (2011) ('APP').

A comparative review of declared Aboriginal Places in northern New South Wales has also been undertaken during this assessment. The closest Aboriginal Place is the (now destroyed) **Casino Bora Ground**, approximately 20 km to the south of the Project Area. This was a well-documented and highly significant bora ground to the region. Measuring approximately 70m in diameter, it was a regional meeting place and of extremely high regional significance. The next closest places to the Project Area are:



- (a) **Cubawee:** the historic self-managed Aboriginal settlement of Cubawee, with considerable material remains.
- (b) **Parrots Nest:** a sacred place including: Sacred hoop pine trees, rock engravings, stone arrangements, rock paintings, axe grooves and fallen carved trees.
- (c) **Capeen Mountain:** a natural mythological site and dominant physical feature of the area, with no Aboriginal Objects associated.
- (d) **Yabbra Spring:** a natural mythological site with no Aboriginal Objects associated.
- (e) **Tooloom Falls:** a natural mythological site relating to the story of the creation of the Clarence River.
- (f) **Ti Tree Lake:** a sacred women's site and mythological place.
- (g) **Cocked Hat Rocks:** a natural mythological site.

A common feature of all of these places is that their significance has been well documented in the ethnographic record. Their significance has been passed on through the generations, with each pre-dating the contact period. The closest in level of significance (as expressed by the Aboriginal Stakeholders) is Ti Tree Lake at Broken Head in the Byron Shire. This is a women's site that was (and still is) in active use at the time that it was registered as an Aboriginal Place.

The review of OEH policy and previous declarations for Aboriginal Places in the region demonstrate that, on the evidence available, it is highly unlikely that the Project Area would reach the threshold for being declared an Aboriginal Place. There is no other legislative protection afforded to intangible heritage places in New South Wales.

## RECOMMENDED MANAGEMENT & MITIGATION MEASURES

On the evidence available, and having regard to the legislative framework within which this assessment has been commissioned, it is recommended that the Project proceed. The following recommendations are made to assist in mitigating any impacts to Aboriginal cultural values as a result of the Project.

### Recommendation 1: Continued Consultation



It is recommended that the Proponent continue to consult with the Aboriginal Stakeholders over potential impact mitigation activities and other social benefits that may result from the Project.

### **Recommendation 2: Aboriginal Scarred Trees**

The culturally scarred trees have been identified as being of high significance to the Aboriginal Stakeholders. It is recommended that the following management strategies are implemented to prevent damage to the culturally scarred trees adjacent to the Project Area:

- (a) A permanent fence should be constructed around the trees to prevent inadvertent damage during the course of quarrying activities. The proponent is reminded that any act or omission resulting in harm to the culturally scarred trees may constitute an offence under Section 86 of the NPW Act;
- (b) Staff and contractors of the Proponent should be instructed as to the cultural significance of the trees and advised of the offence provisions detailed in (a) above (see also recommendation 3).

### **Recommendation 3: Cultural Heritage Inductions**

It is recommended that Staff and Contractors involved in the initial stripping of topsoil on the site should undergo a cultural heritage induction prior to commencing works. The induction should include:

- (a) An introduction to Aboriginal culture and tradition, including why evidence of Aboriginal occupation is important to Aboriginal people;
- (b) A summary of the requirements under New South Wales cultural heritage legislation
- (c) A brief introduction on how to identify Aboriginal Objects; and
- (d) A review of procedures in the event that Aboriginal cultural heritage is identified during the course of undertaking the project.

### **Recommendation 4: Aboriginal Human Remains**

It is recommended that if human remains are located at any stage during earthworks within the Project Area, all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched. The nearest police station, the Aboriginal



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

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

### **Recommendation 5: Aboriginal Cultural Material**

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

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

### **Recommendation 6: Notifying the OEH**

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

### **Recommendation 7: Conservation Principles**



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



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## DEFINITIONS

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

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

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

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

**EPA Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**LALC** means Local Aboriginal Land Council.

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

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

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

**Project Area** means the land subject to this assessment identified as Lot 1 DP 366036 and Lot 12 DP 582916 904 Edenville Road, Cedar Point, N.S.W 2474.

**Proposed Works** means all activities associated with the proposed construction and landscaping within the Project Area (Figures 2), including activities undertaken by subsequent landholders.

**Proponent** means Grahams Concrete Pty Ltd and all employees and contractors of the Proponent.



***The Project*** means JRPP matter 2011NTH004 - Kyogle Council - 2011.34 - Establishment and operation of extractive industry, 904 Edenville Road, Cedar Point, 2474.

***The Consultant*** means qualified archaeological staff and/or contractors of Everick Heritage Consultants Pty Ltd.





## 1. INTRODUCTION

### 1.1 Purpose of the Cultural Heritage Investigation

Everick Heritage Consultants (“Everick”) have been engaged by the Grahams Concrete Pty Ltd (the “Proponent”), to conduct an Aboriginal Cultural Heritage Assessment in preparation for the proposed development of a quarry at Cedar Point, Kyogle (“Project Area”). The intent of the investigation is to identify any Aboriginal Cultural Heritage constraints to the proposed works.

### 1.2 Proponent & Project Brief

Everick Heritage Consultants (the ‘Consultant’) was commissioned by Grahams Quarries Pty Ltd (the ‘Proponent’) to undertake an Aboriginal Cultural Heritage Impact Assessment in support of a development application to the New South Wales Department of Planning and Infrastructure (DPI). The assessment was commissioned to address the requirements of the Joint Regional Planning Panel (JRPP) in their review of the Development Application for the Project dated 1 November 2011. At the request of the JRPP, the Proponent was required to undertake Aboriginal community consultation in accordance with the Office of Environment and Heritage (‘OEH’) *Aboriginal Community Consultation Requirements for Proponents* (2010) (‘ACHCRP’).

An assessment of the archaeological characteristics of the Project area was undertaken by Hew Burton in 1996. Further archaeological research was not within the scope of works for this project. However, archaeological characteristics of the site have been considered as they relate to the broader cultural significance of the Project Area.

The methods adopted in this assessment included:

- (f) consultation with the registered Aboriginal stakeholders for the Project;
- (g) searches of applicable heritage registers;
- (h) a review of ethnographic and historic resources relevant to the region;
- (i) assessments of cultural significance and impact; and



- (j) report on findings and recommended management strategies.

### 1.3 Defining the Project Area

The land subject to this assessment is identified as parts of Lot 1 DP 366036 and Lot 12 DP 582916 (the Project Area). It is situated north of Edenville Road and south of Omagh Road and is approximately 16 ha. It is located approximately 5km south of Kyogle township. A plan of the proposed quarry area has been included in the attached Environment Impact Statement report for the project.

The Project Area for this assessment is located approximately 250 m west of the Richmond River. The land has been cleared and used for grazing. The proposed quarry is located on a prominent basalt rise, with the upper elevation approximately 55 m higher than the Richmond River flood plain to the east of the Project Area. A topographic map is enclosed in the EIS for the Project. The soils of the Project Area are generally shallow, with numerous outcrops of basalt stone.



**Figure 1: Project Area General Location**



**Figure 2: Aerial View of the Project Area (Alderson 2010:16).**

## 1.4 Report Authorship

The desktop study was undertaken by consultants Tim Robins, Richard Robins and Caroline Ingram. This report was written by T. Robins, assisted by C. Ingram and R. Robins. Community consultation was undertaken by Tim Robins.





## 2. LEGISLATIVE AND PLANNING CONTEXT

The *National Parks and Wildlife Act 1974* (NSW) and the *Environmental Planning and Assessment Act 1979* (NSW) following legislation provides the context for Aboriginal cultural heritage in NSW. The Commonwealth also has a role in the protection of nationally significant cultural heritage through the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), *The Protection of Movable Cultural Heritage Act 1986* (Cth) and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

For the purposes of this assessment it is the State legislation that is relevant. Approval from the OEH may also be required should the Project impact on identified Aboriginal Objects. The information below lists the legislative and policy framework within which this assessment is set.

### 2.1 The National Parks and Wildlife Act 1974 (NSW) and the National Parks and Wildlife Regulations 2009 (NSW)

The *National Parks and Wildlife Act 1974* (NSW) (NPW Act) is the primary legislation concerning the identification and protection of Aboriginal cultural heritage. It provides for the management of both Aboriginal Objects and Aboriginal Places. Under the NPW Act, an Aboriginal Object is any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area, regardless of whether the evidence of habitation occurred before or after non-Aboriginal settlement of the land. This means that every Aboriginal Object – regardless of its size or seeming isolation from other Objects – is protected under the Act.

An Aboriginal Place is an area of particular significance to Aboriginal people which has been *declared* an Aboriginal Place by the Minister. The drafting of this legislation reflects the traditional focus on Objects, rather than on areas of significance such as story places and ceremonial grounds. However, a gradual shift in cultural heritage management practices is occurring towards recognising the value of identifying the significance of areas to Indigenous peoples beyond their physical attributes.



With the introduction of the *National Parks and Wildlife Amendment Act 2010* (NSW) the former offence provisions under Section 86 of ‘disturbing’, ‘moving’, ‘removing’ or ‘taking possession’ of Aboriginal Objects or Places have been replaced by the new offence of ‘harming or desecrating’. The definition of ‘harm’ is ‘destroying, defacing or damaging an Object’. Importantly, in the context of the management recommendations in this assessment, harm to an Object that is ‘trivial or negligible’ will not constitute an offence.

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

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

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

### 2.1.1 ‘*Low Impact Activities*’

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



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

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

### *2.1.2 Due Diligence Code of Practice for the Protection of Aboriginal Objects*

The Due Diligence Code has been applied in Section 7.2 of this assessment. It operates by posing a series of questions for land users before they commence development. These questions are based around assessing previous ground disturbance. An activity will generally be unlikely to harm Aboriginal Objects where it:

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

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



## 2.2. The ACHCRP (2010)

The OEH has published the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010) ('ACHCRP'). The ACHCRP provide an acceptable framework for conducting Aboriginal community consultation in preparation for Aboriginal Heritage Impact Permits. Proponents are also required to follow the ACHCRP where a Project that is likely to impact on Aboriginal cultural heritage and where required by the consent authority, as has occurred for the Project.

## 3. DESCRIPTION OF DEVELOPMENT PROPOSAL

The Proponent is proposing to develop a basalt quarry at Cedar Point, Kyogle. The resource that is to be extracted is basalt, with some basaltic agglomerate and over-burden also to be removed.

The initial development application proposed to seek consent for an average extraction rate of 47,000 cubic metres per annum. This extraction rate is currently under review, with it being anticipated that considerably less material will be extracted on an annual basis. This extraction rate should lead to a quarry life of many years, but at least 43 years.

It is understood that Grahams Concrete, as the quarry manager, will use material from the subject quarry, which will also be available commercially throughout the Shire. The end use will primarily be for aggregate in concrete manufacture, road maintenance, reconstruction, bitumen sealing and general construction carried out by contractors.

Generally, this type of development may involve stripping of topsoil, levelling, cut and or fill and extensive excavations and removal of the underlying geological features. It is fair to say that the proposed Project Activities will involve significant subsurface ground disturbance, which has the potential to harm Aboriginal heritage should it be located within the Project Area.



## 4. ABORIGINAL COMMUNITY CONSULTATION

### 4.1 Traditional Owner Knowledge

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

Everick recognise that there is Traditional Owner knowledge associated with the region that will have to be treated in a confidential manner. Everick has sought advice from Aboriginal stakeholders as to the appropriate protocols to be adopted in regard to such knowledge.

Everick has made a commitment to the Aboriginal community to document the consultation process as fully as possible. This report includes *all* written comments received from the Aboriginal, enabling Everick to make an informed and accurate assessment of the significance of any cultural heritage within the Project Area.

### 4.2 OEH Aboriginal Cultural Heritage Consultation Requirements

The OEH *Aboriginal cultural heritage consultation requirements for proponents (2010)* ("ACHCRP") sets out a guide for conducting the community consultation process. It requires that the Proponents must notify and register Aboriginal people who hold cultural knowledge relevant to determining the cultural significance of Aboriginal Objects and places in the area of the proposed Project. Aboriginal parties who register to participate in the cultural heritage assessment process were provided with further information about the proposed Project.



### 4.3 The Register of Interested Persons/Organisations

On the 24<sup>th</sup> December, 2011, a public notice was placed in the Northern Star newspaper inviting Aboriginal persons/organisations with cultural heritage interests in the proposed Cedar Point Quarry to advise Everick Heritage Consultants (Appendix A). Letters of invitation were written to the following potential stakeholder groups, as previously nominated by the Office of Environment and Heritage (in alphabetical order):

- (a) Gugin Guddaba LALC;
- (b) Kyogle Council;
- (c) NSW Native Title Services;
- (d) National Native Title Tribunal;
- (e) NSW Office of Environment and Heritage;
- (f) NTSCORP Ltd; and
- (g) The Office of the Registrar, *Aboriginal Land Rights Act 1983*;

At the request of the OEH and supplemented by Evericks knowledge of potential interested Aboriginal persons in the region, the following regional groups in northern NSW were also notified in writing of this assessment (in alphabetical order):

- (a) Banjalang Aboriginal Corporation;
- (b) Baryulgil Square Co-operative Society Ltd;
- (c) Bundjalung Aboriginal Home Care Service;
- (d) Bundjalung Elders Council Aboriginal Corporation;
- (e) Bundjalung Tribal Society;
- (f) Bundjalung of Byron Bay Aboriginal Corporation (Arakwal);
- (g) Burabi Aboriginal Corporation;
- (h) Burra:Waj:Ad;
- (i) Canowindra Tweed Byron Aged and Disabled Aboriginal Corporation;
- (j) Collum Collum Aboriginal Corporation;
- (k) Durahrwa Training and Development Aboriginal Corporation;
- (l) Minjunbal Trading Company;
- (m) Ngarakwal Traditional Owner Harry Boyd;
- (n) Numbahjing Clan Native Title;
- (o) Tweed Aboriginal Co-operative Society Ltd and Minjungbal Museum;



(p) Tweed Aboriginal Corporation for Sport.

In accordance with the OEH ACHCRP Aboriginal parties were given 14 days to register their interest. The Githabul contacted Everick registering their interest in the assessment after viewing the public notice, and were therefore not sent a written notice of assessment. A Stakeholders Register was compiled and consists of (in alphabetical order):

- (a) Githabul Elders Council;
- (b) Gugin Guddaba Local Aboriginal Land Council;
- (c) Michael Wayne Walker; and
- (d) Patsy Nagas.

Prior to distributing a methodology, Everick undertook preliminary consultation with the Registered Stakeholders. The purpose of the consultation was to introduce the project, establish the role that Everick would be undertaking during the consultation, and establish the expectations of the Registered Stakeholders about how consultation should be managed. The consultation occurred via phone attendance on the Gugin Guddibah LALC (10.01.12) and Patsy Nagas (10.01.12 and 02.02.12) and in a meeting with the Githabul Elders Council on 1 February 2012.

In accordance with the ACHCRP Guidelines, a proposed methodology for conducting the consultation for this assessment was distributed to the registered stakeholders on 02 February 2012. No additional Aboriginal stakeholders contacted Everick after this date.

## 4.2 Site Inspections

The Githabul Elders Council members and the Bundjalung Stakeholders were invited to inspect the Project Area (at separate times) on 13 February 2012. Patsy Nagas and Michael Wayne Walker were subsequently unable to attend the arranged meeting. During their site inspection, the Githabul raised strong opposition to the proposal, identifying the Project Area as a place of significance. They requested that they be able to camp on the site, to better ascertain its cultural significance.



Members of the Githabul Elders Council subsequently camped on site over the weekend of 24 – 26 February 2012. During this time, members of the Carlill family also attended the camp. A record of the meeting has been provided to the consent authority.

A follow up meeting was held with the Githabul and Bundjalung Registered Stakeholders on 14 March 2012. Both provided further detail of the significance of the Project to them. Both raised objections to the Project proceeding as proposed. No compromises were able to be identified at this time. A discussion on the project significance and objections of the Githabul has been provided in Section 8 of this report.

## 4.2 Additional Aboriginal Consultation

Meetings were held with both the Githabul and Bundjalung Stakeholders on 18 April 2012, to review the contents of the draft report and assist in finalising this report. Both the Githabul and the Bundjalung object to the quarry proposal.

It is considered that sufficient consultation has been undertaken in order to assess the cultural significance of the Project Area. However, consultation is ongoing, including a proposed meeting between the Consultant and the Githabul on 3 May 2012. Any additional correspondence will be provided to the consent authorities upon its receipt.

# 5. LANDSCAPE CONTEXT

## 5.1 Environment Locality

The Project Area is located within the Richmond River catchment area, approximately 250 m west of the Richmond River. Closest rainfall summaries are from Lismore, as presented in the EIS, and suggest that the district has a summer / spring rainfall season, with March is generally the wettest month, averaging 192mm of rainfall, with 1360mm being the annual rainfall amount. Temperatures range between 18 and 30+ degrees centigrade in summer, and fall to between 5 and 20 in winter (Alderson 2010).





## 5.2 Topography

The Project Area is situated on the crest (Figure 3), of a very steep sided basalt plateau (Figures 4 – 6). This plateau was created by volcanic lava flows during the Miocene Epoch, some 25 million years ago, and which has weathered the surrounding geologically softer landscape down around this harder basalt flow (Keats, 1988). Note however the differing interpretation by the Aboriginal Stakeholders expressed in Section 8 of this assessment.

This prominent basalt rise has an upper elevation approximately 55 m higher than the Richmond River flood plain to the east of the Project Area. The plateau is bounded to the south and east by the Richmond River, with a number of ephemeral creeks located to east and west, and a wetland swamp to the southwest (Crossley, 2011)

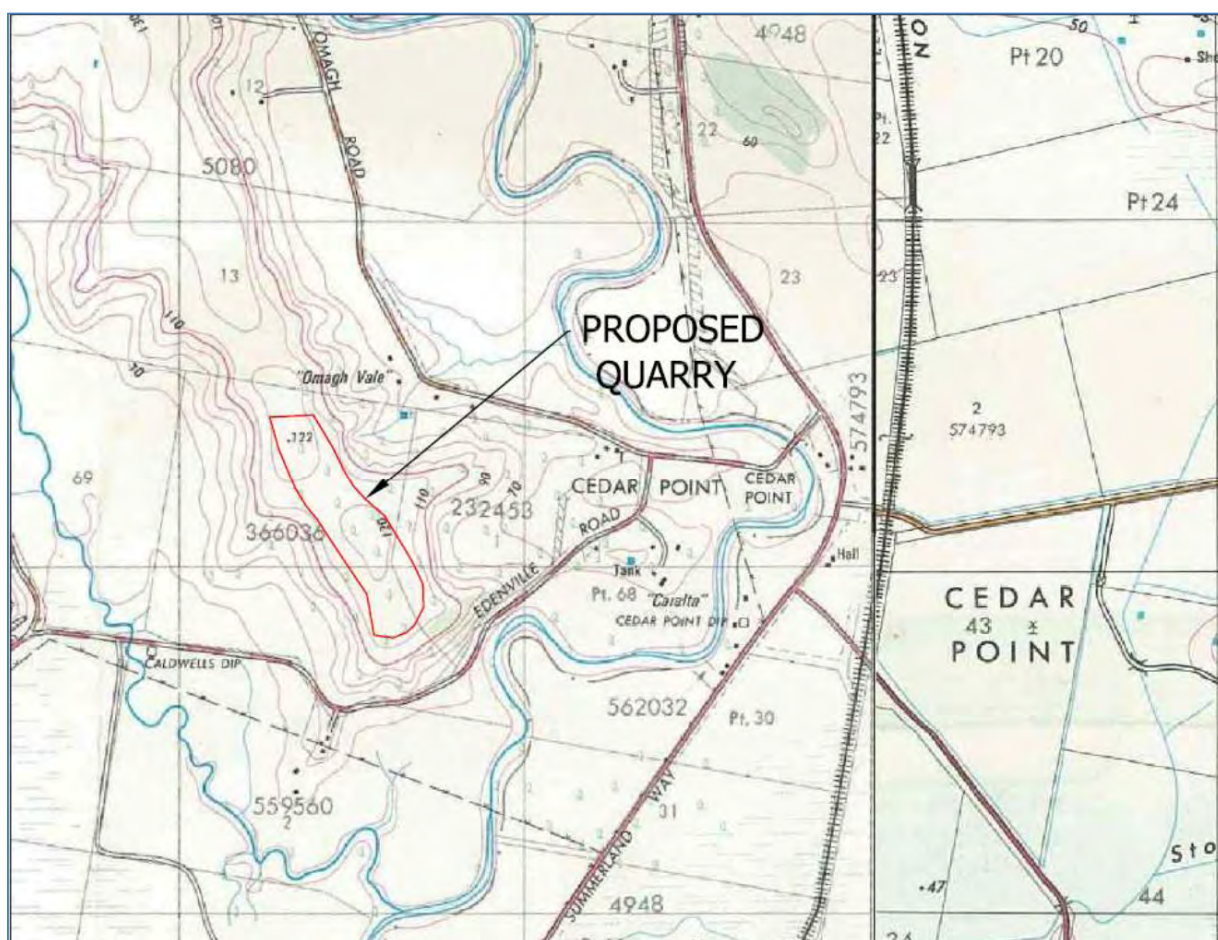


Figure 3: Topographic View of the Project Area (Alderson 2010:15).



**Figure 4: View west showing escarpment face on the south east of the Project Area**



**Figure 5: View north west showing eastern escarpment face**





**Figure 6: View south east along plateau top, showing southern half of the Project Area**

## 5.2 Geology & Soils

The soils of the Project Area are generally shallow, with nine borehole readings across the Project Area bringing readings of soils between 0.5 m and 2.3 m deep. . Beneath the topsoil, the Project Area comprises two layers of black basalt flows, with an approximately 2m thick zone of basalt agglomerate separating them. The upper layer would appear to be both marginally thicker than the lower layer, and also coarser in composition, making it superior as a quarry product than the lower layer (Alderson 2010)

## 5.3 Vegetation

Current vegetation at the location of the proposed quarry is either open woodland or open forest. The EIS goes into greater detail, however it can be summarised as saying the current flora in the region is made up of six



communities, one of which is a highly disturbed regrowth rainforest, which was reported as being of high conservation value (Alderson 21010:20).

According to Keats (1988) the flora in the Kyogle and Cedar Point region prior to European clearing would have been “tall woodland”, which he postulates would have covered the area in proximity to the Richmond River. Well drained black soils which have an average yearly rainfall of 110-125cm would be under this “tall woodland” cover. Species predominating include Rough-barked Apple (*Angophora floribunda*), Swamp Turpentine (*Lophostemon suaveolens*) and Red gum (*Eucalyptus sp.*). Also present in this country would be Busby’s Flat, Roseberry and Runnymede (Keats, 1988: 450).

## 6. HERITAGE REGISTERS

### 6.1 The OEH Aboriginal Heritage Information Management System

Care should be taken when using the AHIMS database to reach conclusions about site prevalence or distribution. For example, a lack of sites in a given area should not be seen as evidence that the area was not occupied by Aboriginal people. It may simply be an indication that it has not been surveyed, or that the survey was undertaken in areas of poor surface visibility. Further, care needs to be taken when looking at the classification of sites. For example, the decision to classify a site an Open Campsite containing shell rather than a Midden can be a highly subjective exercise, the threshold for which may vary between archaeologists. There are also errors with the data.

A search was conducted on 13 March 2012 of the OEH Aboriginal Heritage Information Management System (AHIMS service number 65451) over 10 km<sup>2</sup> centring on Cedar Point. The search identified 67 registered Aboriginal sites within the search area. Figure 7 shows the locations of the identified sites within 30 km of the Project Area.

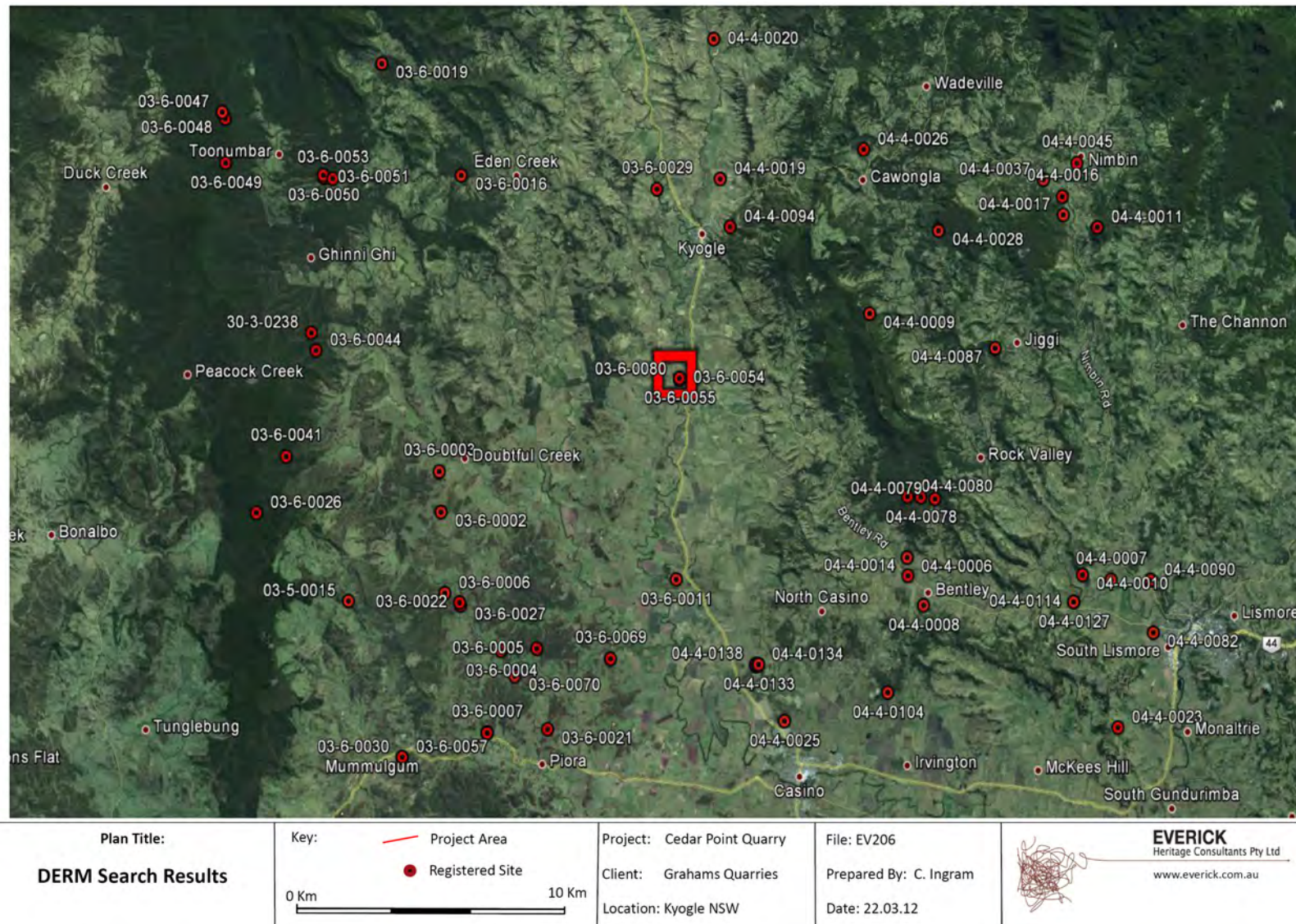
Appendix C contains a summary of each of the sites. There were 67 sites recorded across 15 site types within the 5km search radius. The majority of the registered sites are artefact scatters (14), bora rings (9) and modified trees (8), with scarred trees (6) recorded separately in the AHIMS register. Also numerous in the search area were burials (6), and mythological / Aboriginal Dreaming and ceremony (6).



Other site classes listed in the search include isolated stone artefacts (4), shelter with deposit (4), shelter with art (3) habitation structures (2), stone arrangements (1), and rock engravings (1). Several sites were listed as a collection of site features; modified tree and resource tree (1), artefacts and grinding grooves and art (1) and finally a burial and artefact and Rockshelter complex (1).

Three (3) sites lie directly within the Project Area, and will be disturbed by the project to some degree. These are two scarred trees (O3-06-0054 and O3-06-0055) and a modified or scarred tree (O3-6-0080).





**Figure 7: AHIMS Search Results**



## 6.2 Other Heritage Registers: Indigenous & Historic Cultural Heritage

The following heritage registers were accessed on 21 March 2012 for Indigenous and historic places within the Kyogle City LGA:

- **The World Heritage List:** Contains one place listing for the Lismore LGA, the Gondwana Rainforests of Australia. The place is not within close proximity to the Project Area.
- **The National Heritage List and Commonwealth Heritage List** (Australian Heritage Council): Lists the Gondwana Rainforests of Australia, and the Chauval Park, Clarence Street, Tabulam. These places are not within close proximity to the Project Area.
- **Register of the National Estate** (Australian Heritage Council): Contains 15 place listings for the Kyogle LGA including 5 in the Kyogle City area. None are in close proximity to the Project Area. The closest is the lower extent of the Kyogle Urban Area, which extends to approximately 5km from the Project Area.
- **The Commonwealth Heritage List:** no sites were listed on this Heritage List for the Kyogle LGA.
- **The State Heritage Register** (NSW Heritage Office): Section 1 (listed under the NSW Heritage Act): Contains three place listings. None with close proximity to the Project Area. Section 2 (listed by Local Government and State agencies): Lists place listing, none of which are within the Project Area.
- **Kyogle Local Environment Plan 2011 and Draft Kyogle LEP 2011:** List 155 heritage items and 11 Archaeological places in Schedule 1; and lists 6 heritage places in Schedule 2. Of these, the Unumgar Hill Family Cemetery and the Residence 12845 Summerland Way are the closest to the Project area, being approximately 4.5km to the north. No other heritage items, heritage conservation areas or archaeological sites are listed in close proximity to the Project Area.



## 7. DESKTOP SYNTHESIS OF ETHNOHISTORY

The following section provides a brief synthesis of ethno-historic records for the region. It is of note that the Registered Aboriginal Stakeholders consist of two Aboriginal groups (Githabul and Bundjalung) who contest the rights of the other to exclusive rights to speak for country within the Cedar Point region. The use of historic ethnographic records can serve to further fuel these tensions, as the accuracy of many are questionable at best.

The extensive repetition of ethno-historical accounts are not, therefore, considered to be of benefit to this assessment. It is not the intent of this section to cause offence to either group. Never-the-less, it is important to demonstrate the breadth of research undertaken in order to verify claims of cultural significance detailed in later sections of this report.

### 7.1 Settlement

Information from the European and Aboriginal contact period from this region of N.S.W. is irregular and intermittent in nature (McBryde, 1974), with sources of the day, even sympathetic ones, indifferent or apathetic to recording the subtleties of anthropological data:

*The manners and customs of the primitive inhabitants of New South Wales are so generally known and so very similar that I consider it superfluous to allude further than to such distinctions as appear to me to exist between the tribes on the Clarence, and these I have known in other districts; the most striking of which is the disinclination they evince to almost any intercourse with the settlers.* (Oliver Fry, in a report to the Colonial Secretary in 1843, as quoted in McBryde, 1974).

Settlers and cedar cutters arrived in the region during the 1840's, although the general area had been first recorded to in 1823 when Lt. Oxley explored parts of the Tweed River in 1823, and when Captain Rous discovered the Richmond River in 1828. The Tweed River was further mapped in 1840 by Robert Dixon, as well as the Brunswick and parts of the Richmond River (Keats 1988).

Population estimates by eye witnesses of Aboriginal numbers for the coastal regions immediately after European settlement are highly likely to be underestimates of pre contact numbers due to the impacts of diseases, particularly small pox, that spread throughout coastal groups prior to official settlement.





Uniake, an observer on John Oxley's ship 'Mermaid', estimated 200 men armed with spears observed the ship from Fingal Head following a brief exploration of the lower Tweed River (Uniake 1825:40). This is approximately 70km north west of Kyogle, but is one of the earliest European observations of the region and its inhabitants.

The Commissioner of Crown Lands for New England reported in 1842; 'from personal observation on these occasions and information gathered from the Police, it does not appear to me that their number in New England exceeds five or six hundred'. (Commissioner GJ MacDonald, August 1842; quoted in McBryde, 1974:8). Oliver Fry, the Commissioner of Crown Lands for the Clarence district, made an estimate of over 2,000 Aboriginal people living in the combined Clarence and Richmond River district in 1843 (McBryde 1974:7).

The sources here are in some disagreement in regards to either numbers of individuals in a tribal group, or in fact of the composition of the groups themselves. Fry claims there were seven discrete tribes in this region, ranging in numbers between 50 to 150 individuals. However, later researchers such as Tindale (1940) list four, the Badjelang (Bandjalong), the Kumbainggiri (Gumbainggar), the Jigara and the Jakambal in this region, although Tindale also indicates that the Widjabal people lived in the Kyogle, Casino and Coraki area, and the Kalibal (Galibal) were in the MacPherson Ranges (McBryde, 1974:8).

Crowley (1978) refers to Bundjalung dialect areas in the greater region, with Keats (1988) giving further details of the Galibal in the Kyogle and Cedar Point region, the Nganduwal to their north west across the Tweed Range and extending down to the Night Cap Range, and the Wijabal to east of the Galibal (Keats 1988). The Wijabal speaking group may have occupied the area between the Tuckean Swamp in the south and the Nightcap Range in the north (Crowley 1971).

## 7.2 Movement

Contact between local clans and more distant groups took place for the purposes of exchange, intermarriage, armed conflict and during times of seasonally abundant food supply. A number of models have been proposed to account for the systematic use of the hunter gatherer environment of northern New South Wales and southern Queensland. Movement took place within territories in response to the availability of food supplies and across group territories for purposes of ceremonial occasions and tribal conflicts in addition to exploiting the seasonal abundance of particular food sources. However, it has been suggested that movement in the



coastal river valleys does not seem to have been caused by food shortages as such, but rather to take advantage of different food types (Belshaw 1978:75). McBryde (1974 and 1978) argues for a seasonal movement of people between the coast in summer exploiting marine foods and hunting inland in winter.

Movement within a clan territory in response to local conditions or availability of different food sources also occurred. Aborigines at Byron Bay often shifted camps but seldom moved far from a flying fox camp (Sullivan 1960). Bundock noted that on the upper Richmond flying fox were taken more easily in wet weather (Bundock 1898:4-5). Davey on the Tweed suggests that movement may have been frequent (Davey 1948). Moehead recorded that near Lismore the Richmond Aborigines, ‘...camped on the river flats until the rain set in and would then retire to the hills’ (Moehead nd: 1).

At Ballina, Ainsworth (1922) describes movement over the short distance between the beaches and the ‘big scrub’, a distance of only a few kilometres. He suggests that Aborigines of east and west Ballina were scattered in small groups combining at times of abundant food resources:

‘... the tribe usually camped in divisions at different places except during the oyster season when they assembled unitedly at Chickiba, on North Creek ... The blacks in the month of September each year flocked to the beaches for salmon fishing’ (Ainsworth 1922:44).

On the ethno-historical evidence McBryde argued that some seasonal movement was usual and that the basic subsistence economy of hunting, fishing and gathering was neither static, nor completely migratory, but characterised by movement between the coast and the foothills (McBryde 1974:337). An exception to normal movement practices across tribal boundaries was that documented by Petrie (1975) and Bundock (1898). Bundock recorded the movement of the upper Richmond River Aborigines to the Bunya Mountain in Queensland, ‘... every third year or so ... under a sort of ‘Truce of God’... for the blacks went through each other territories unharmed’ (Bundock 1898). These gatherings occurred every third or fourth year, attracting groups to their own traditionally defined camping areas and served to promote trade and strengthen kinship networks across a vast area of western Queensland, south-east Qld, and north-east N.S.W.

The Bunya Mountains have therefore become an important place for the number of Aboriginal groups who attended these cyclic events. The nuts themselves are very rich in carbohydrates, although poor in other nutritional value, meaning that during seasons of inter-tribal gathering, hunting and gathering of other resources in the region was excessive. The natural resources of the area would have been seriously depleted, and there are reports that the tree owners had “reciprocal rights to visit neighbouring areas after Bunya gathering (e.g. the coast to fish for mullet or dugong)”. (Encyclopaedia of Aboriginal Australia, 1994; 165).



In 1883 a 'reserve' was created for the Bundjalung people, approximately 25km southeast of Casino and 48km from Kyogle, named "Coraki". This proved an extreme disruption to traditional tribal community life, although it is noted that Coraki was less restrictive and less culturally destructive than some of the other 'stations' or 'missions' such as Woodenbong or Tabulam, where resident managers, teachers or missionaries kept strict control on the social exchange (Keats 1988:230).

### 7.3 Economy

The most detailed analysis of material culture of the North Coast has been that undertaken by McBryde (1978). The region of the Tweed, Richmond and Clarence Rivers would seem to form a distinct unit. This is particularly so in the case of fishing technology. The multi-pronged fishing spear and the shellfish hook are both absent from this region. Fish were caught in nets or speared in the shallows (McBryde 1978:187). Spears were single pointed fire hardened weapons (Dawson 1935:22), of both a lighter and heavier variety (Byrne 1946:3). Neither the woomera nor the spear throwing stick were used in this region (Dawson *ibid*). The range of materials is considered wider than central Australian tribes with fewer all-purpose items, few composite tools and a number of specialised ones. This may reflect a more sedentary life style in a rich environment requiring fewer specialised tools (McBryde 1978:187). The stone tool element in the material culture was small and unspecialised. The archaeological evidence suggests changes to a simpler stone technology took place only centuries before European settlement. The stone tools in use immediately prior to European settlement, '... show little typological sophistication and did not demand highly skilled craftsmanship' (McBryde 1978:198).

The resources of sub-tropical rainforest were used extensively in the technology of the Richmond, which is heavily dependent on wood and bark fibre (McBryde 1978:197). Rainforest timbers were used to manufacture spears, a variety of clubs, shields, boomerangs and digging sticks. Bark was used for containers and shelter. Stone axes are referred to by Dawson (1935:22) and Byrne (1946:2). Fishing nets and rope was made from twine spun from the flame tree (Byrne *ibid*). Fishing nets were made a couple of yards long with a stick at each end used individually or in combination with many of the same (Seymour 1976). Bundock (1898) and Ainsworth (1922) described the same type of nets used for game drives in rainforests and for cod fishing in summer. Descriptions of diet for inland groups emphasise terrestrial animal foods with little emphasis on vegetable foods. Bundock (1898) wrote of the Richmond River Aborigines: 'For game they had opossums, many varieties of kangaroo and wallaby, snakes, bandicoots, porcupine and flying foxes...birds...a good deal of fish in summer and large mussels'. The description would appear to include animals found in both rainforests and perhaps more open grasslands. Vegetable foods included '...a sort of



bread from the beans of the Moreton Bay chestnut and from the roots of a large arum (called by the Blacks congevois)' (Bundock 1898). While congevoi is a rainforest plant the Moreton Bay chestnut is normally only found growing on watercourses.

Terrestrial animal foods mentioned by Ainsworth (1922:43) include pademelons, wallabies, bandicoots, and iguanas. He reports that flying foxes provided a source of food and were easily brought down with the boomerang and pademelon stick. Bundock also records the hunting of flying fox '... by going into the camps where they sleep during the day, when it is raining heavily, as they will not fly...' (Bundock: 1898). At Byron Bay flying fox were so prolific and reliable that the natives, though often shifting camp, seldom went far away on account of this source of food supply (Anon. n.d., b:1 in Sullivan1978:107).

Ethnohistorical records are largely directed towards descriptions of hunting techniques which employed large groups of people and obvious types of technology requiring demonstrable physical skills: the use of spears, clubs, boomerangs, the 'tow-row' (net) etc. The role of plant foods in the local economy is often understated or overlooked entirely. Certainly, vegetable foods are given no particular prominence in Ainsworth's recollections at Ballina. He refers to yams obtainable in the scrubs, and to bread made from nuts which grew on the coastal headland (Ainsworth 1922:43). McFarlane (1934) writing of the Clarence River placed greater emphasis on the role of vegetable foods '... the woods supply much variety in the shape of fruit or berries but every description of vegetable contributed to the digestive requirements of the collector of food necessities...'



## 7.4 Culturally significant places in the region

The closest place of cultural significance to the Project Area is believed to be an Aboriginal contact site and mission at Stony Gully, south east of the Project Area. In a letter published in the journal *Aboriginal History*, former Honorary Secretary of the Aboriginal-Australian Fellowship in Sydney (1958-1966) Jack Horner (1996) recounts an encounter he had with local Elder Alex Vesper. Horner writes of Vesper's lament of how the Welfare Board had forcibly removed the families from Stony Gully, relocating them to Muli Muli (Woodenbong). This had caused considerable distress to the local families, and resulting in Alex Vesper losing some of the high status he had enjoyed within the Stony Gully community (Horner 1996:199). Many had families buried there after an outbreak of smallpox in the late 1930's, with the land since converted to farming land and presently under cultivation (Nagas pers comm. 14.03.12).

A number of Bora rings or significant ceremonial places have been recorded or survive in the ethno-historical records for the Kyogle and Casino areas. It was recorded that in the Richmond and Tweed valley regions, there were a "considerable number of Bora rings and records of many more since destroyed, but no sites (or descriptions in the literature) of stone cairns" (McBryde 1974:31).

The remains of a bora ring were recorded in 1964 on the property of J.F. Brown, approximately two and half miles north of Kyogle. The Brown family did not recall its use by local Aboriginal people, however recollections were noted of "natives holding corroborees on nearby Fawcett's Plain Station about 1902. An aboriginal living in Kyogle at present refers to it as 'a place of judgement'." (McBryde 1974:55).

Roseberry, approximately 16.5km north of Kyogle, was recorded to be a place of some ceremony. The Richmond River Historical Society informed McBryde of a ring, and "marks of dancing" on Shearman's Hill at Roseberry. There was also recorded there an 'increase ceremony site for yams', according to Radcliffe-Brown, however McBryde could not find archaeological evidence of either of these places during her field trips to the region.

On that same field trip in 1964, McBryde was made aware of a destroyed Bora ring near Smith's Creek, approximately 16km's northwest of Kyogle. The area where this ring was said to have been was under a tennis court at the time of inspection, however, "it was said to be been marked by a ring of pink stones, which would make it similar to the Borl Rings of the Tweed described by Bray (McBryde 1974:56).

There were also a number of Rockshelter with grooves, rockshelters with art, and grinding grooves alone recorded near Smiths Creek at this time (McBryde 1974:95-100).



Two Bora rings were recorded by McBryde near Casino, approximately 28km's from Kyogle. One of these was recorded by R.L. Dawson as being 'across Back Creek' from the Dawson's house in Bently in the 1870's. The other was " 'clearly visible in 1906, and still to be traced in 1943', as described by Gill" (McBryde 1974:56), and he gave its measurements as being 154 feet in diameter, with a smaller ring, 20 feet in diameter being approximately 260 from this larger ring (Steele 1987:26)

## 8. PROJECT AREA SIGNIFICANCE

### 8.1 Aboriginal stakeholder consultation

#### *8.1.2 Githabul Elders Council*

The members of the Githabul Elders Council have been consulted through a number of meetings both on site and off site (Section 2). During this period they have been afforded the opportunity to reconnect with the cultural and spiritual significance of the Project Area. At an initial meeting with members of the Elders Council, concerns were raised by the members about the impact of the proposal on their cultural values. In particular, it was noted that the Project Area was located in close proximity to the Richmond River, which raised concerns about the environmental impact of the Project. Concern was also expressed about the continued impact of development activities within the traditional lands of the Githabul people. Quarrying was seen as a particularly invasive activity and something that inherently contradicts with Traditional obligations to manage and protect country.

A site meeting with the members of the Githabul Elders Council was arranged for 13 February 2011. Also in attendance were the land owners (Mr Peter Carlill and Mr Tim Carlill) and the Proponent (Mr Rodney Graham and Mrs Karie Graham). The Githabul inspected the proposed extraction area. Having been substantially cleared of original vegetation, expansive views were evident to the surrounding mountain ranges. While these views may have been heightened as a result of clearing activities, the steep escarpment banks mean that prominent views would likely have been afforded from many parts of the ridge top prior to European settlement.





**Figure 8: View of Quarry test pit undertaken prior to preparation of the EIS**



**Figure 9: View south east across the Richmond River Valley**



**Figure 10: View north east from the Project Area**



**Figure 11: View west from the Project Area**





**Figure 12: Scarred Tree immediately south of the Project Area**



**Figure 13: Scarred Tree immediately south of the Project Area**

The Githabul were shown the location of three culturally scarred trees (Figures 8 and 9), being located near the southern edge of the escarpment, outside of the Project Area. The scarred trees have been interpreted by the Githabul as cultural markers. During the meeting the Githabul advised the Proponent that they considered the Project Area to be culturally significant to them. They requested the opportunity to camp on the site, so that they could reconnect with the cultural significance of the property. The Carlill family agreed to host the Githabul over the course of a weekend.

Members of the Githabul were invited to camp on the site over the weekend of 24 February to the 26<sup>th</sup> February, 2012. The act of a landowner inviting an Aboriginal group to camping on country during a development application process is unusual in Everick's experience, if not unique in New South Wales. Both the Githabul and the Carlill family advised Everick independently that they found the experience to be very rewarding. The Githabul, through Mrs Gloria Williams, passed on their sincere gratitude for the respect that the Carlill family had shown to them and their culture.



During the camp, Mr Peter Carlill and Mr Tim Carlill attended the camp and spoke to the Githabul about their culture, and how the Project may impact on their culture. A common connection between the Carlills and the Githabul was discussed - their relationship to Aboriginal Elder Alex Vesper. Mr Vesper worked for the Carlill family for many years, and was well liked and respected amongst both the local Aboriginal and European communities. The Githabul advised that Alex Vesper was a man of considerable knowledge, whose family came from the Stony Gully region. Jack Horner (1996) also published a discussion in the journal *Aboriginal History* which mentioned Alex Vesper. Consistent with the observations of members of the Githabul, Horner noted that Alex Vesper was regarded as a person 'holding important links with the past at Stoney Gulley' and had 'responsibility at Stoney Gulley for keeping the land' (1996:199). During later consultation, the Githabul have stated that Alex Vesper would have been working on the Carlill property as a means of maintaining access to the Project Area, which is further indication of its significance.

Discussions included whether any impact mitigation activities could occur. Suggestions included whether a monument could be erect at the entrance of the quarry to commemorate the relationship between Peter Carlill's father and Alex Vesper.

Everick consultant Tim Robins met with Githabul representatives Rob Williams on 14 March 2012. The purpose of the meeting was to further establish the cultural significance of the Project Area. During this meeting, the Githabul representatives identified the Project Area as a culturally significant men's place. The Githabul had been able to establish this through interpretation of the landscape and camping on country. The information cleared for publishing was that this place was used for ceremony and initiation. Ongoing men's health is linked to the preservation of the site.

The Githabul discussed how they had 'looked for indicators' that had led to this conclusion. The Project Area is situated close to the Richmond River and the recorded campsite of Stony Gully. This and many other campsites along the nearby Richmond River would have allowed people to access resources for ceremony. The men would leave the women at these campsites, and walk several hundred meters up the escarpment face to the plateau, which included the Project Area. Near the top of the Plateau were a series of scarred trees. These trees have been interpreted as markers, warning people that this was a significant place. The Githabul would know that only those who are authorised should proceed. From the plateau top, prominent views could be seen of many of the significant spiritual places in the region, such as Wollumbin (Mount Warning) to the east. This would have played an important role in the initiations.



No details have been provided as to the physical boundaries of the area on the ridgeline that is significant to the Githabul people. However, it is well documented that intangible values can extend far beyond the physical confines of the place (Bowdler 2000). The Githabul have advised that the cultural significance of this place will be impacted by the quarry proposal. It is on this basis that the Githabul have strongly objected to the quarry proposal.

The Githabul representatives also discussed how the Project Area fit within the broader cultural landscape. The basalt ridgeline on which the Project Area is situated is not seen as the remnants of a 'lava flow'. Rather, its origins would have been told in traditional story. The ridgeline runs from the Richmond River valley floor to the Mackenzie Ranges in the west. The ridgeline would have made the ideal pathway or "highway" from the valley floor west toward Etrick. The basalt would also have provided an important resource, as it is some of the hardest rock in the region. It would have been used to make axes. The Githabul Stakeholders also contend that that there will be stone tools discarded on the Plateau. This potential is discussed further in Section 9 below.

The Githabul have advised that the proposal is also objectionable on the grounds that it is environmentally harmful. It is not culturally appropriate to excavate a large pit generally, but particularly so when it is in the top of a prominent outcrop such as that of the Project Area. Whilst the excavations will not be visible to those traveling along the Richmond Valley, this does not diminish the impact that it will have on the cultural significance of this place.

The Githabul were provided an opportunity to review a draft version of this report, which was distributed on 28 March 2012. In a subsequent meeting on 18 April 2012, Githabul representative Rob Williams confirmed that the Githabul strongly objected to the quarry proceeding. The grounds for the objection were consistent with those discussed above. No written comments have been received by the Githabul at the time of finalising this assessment. Another meeting was arranged for 3 May 2012. A record of this meeting will be provided to the consent authorities.

### *8.1.2 Bundjalung*

Two Bundjalung representatives were registered as stakeholders for this consultation, Mrs Patsy Nagas and Mr Michael Wayne Walker. A meeting was arranged for 13 February 2012 at the offices of the Gugin Guddabh LALC. Unfortunately, Ms Nagas and Mr Walker were unable to attend. The meeting proceeded with Gugin Guddabh LALC



representatives. The Land Council had assessed the Project Area in 1996 and 2011. They had previously supported the development application, noting that the proposal was unlikely to impact on physical cultural heritage. However, during the meeting they noted that when making this evaluation, they had taken into account the New South Wales legislative regime when reaching their conclusions (see Section 8.2.2).. Gugin Guddabah LALC CEO Mr Ronald Randall stated that they believed the Project Area was likely to be of particular cultural significance to Aboriginal people prior to European settlement. The basis for this assumption was the physical prominence of the plateau, the scarred trees and the 'feel' of the place. Assessing potential significance in this manner is, in Everick's experience, relatively common to Aboriginal culture. This has been a consistent theme in the community consultation for this Project, and is discussed in further detail in Section 8.2 below.

A meeting was held with Mrs Nagas in the Gugin Guddabah LALC offices, on 14 March 2011. Mrs Nagas provided a detailed description of how the Project Area fit within the broader cultural landscape. Mrs Nagas discussed the important role Stony Gully played during the early contact period, as a primary place of occupation for Aboriginal people.

Mrs Nagas advised how she has been instructed in local culture by older generations over her years living in Kyogle. She mentioned how she had been told of the significance of the lagoon in Kyogle and the Mt Fairy to the south east of Kyogle. On one of these occasions, she was that the Project Area was a traditional men's place. Older generations of men had instructed her that this was a traditional place of ceremony for men and also a place where they would go to carve shields. Mrs Nagas also advised that the Project Area was a known navigational place, with good views over the surrounding country. Further information was not divulged to her on account of it being culturally inappropriate (herself being female).

Mrs Nagas also stated that the ridge along which the Project Area is situated was an important resource for its basalt. The stone would be quarries from the ridge and taken to Blackbutt Mountain to trade.

A meeting between Mrs Nagas and consultant Tim Robins was arranged for 18 April 2012. During the meeting, a draft version of this report was reviewed. Mrs Nagas was consistent in her objections to the Project. She was unable to provide further evidence to support her proposition that the Project Area was a place of particular spiritual / cultural significance to Aboriginal people. She was unaware of any other persons who held similar knowledge, noting that the persons who passed down this information were long deceased. Tim Robins advised Mrs Nagas that, in Everick Heritage Consultants opinion, the evidence regarding the significance of the Project Area did not reach or come close to the threshold for being considered an Aboriginal Place under New South Wales legislation. The recommendations would therefore be the same in the final report as the draft.



Mrs Nagas provided a number of written statements by non-Indigenous persons who are local residents, discussing the cultural heritage significance of the Cedar Point region. Each objected to the quarry. These have been reviewed by the Consultant, and have been provided to the consent authorities in a community consultation file.

## 8.2 Theoretical and Legislative Context

### 8.2.1 *Defining and Verifying Intangible Cultural Heritage*

The aim of cultural heritage management is to establish the values particular groups of persons may associate with places or objects (Byrne 2003). The statements of cultural significance for the Githabul and Bundjalung Aboriginal stakeholders both relate largely to the intangible (non-physical) cultural values of the Project Area. Both position the Project Area within the broader cultural landscape, and are consistent in that they have identified the place as being a men's place. They did, however, arrive at this conclusion differently: the Githabul being from a reinterpretation of the cultural significance of the place and the Bundjalung being through oral tradition.

Importantly, value of intangible connections to landscapes by Aboriginal people has been well documented by Australian anthropologists since the late 19<sup>th</sup> Century (Weiner 2011:189). The value of the intangible often far outweighs values placed on the physical (Turnpenny 2007).

It is relevant at this juncture to review the accepted definitions of intangible heritage. Intangible heritage is defined in the UNESCO International Convention for the safeguarding of the Intangible Heritage (2003) as being (Article 1):

*practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. The “intangible cultural heritage”... is manifested inter alia in the following domains:*

*(f) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;*



- (g) performing Arts;*
- (h) social practices, rituals and festive events;*
- (i) knowledge and practices concerning nature and the universe; and*
- (j) traditional craftsmanship.*

Whilst Australia does not rank amongst the 137 States that have ratified the UNESCO treaty, it does make for a relevant starting point. The UNESCO definition is particularly broad. In the context of the present assessment, it is clear that a men's ceremonial place would fit within this definition. Ceremony is a well-documented traditional practise of Aboriginal people, and these cultural traditions can be a vibrant mix of oral traditions, performing arts, rituals, festivals and expressions of spiritual knowledge.

From the definition provided above, a critical element would appear to be where the UNESCO convention notes that intangible heritage is 'transmitted from generation to generation.' It might be argued that the reinterpretation of cultural landscapes, as has occurred by the Githabul, may be precluded from this definition of intangible heritage. However, it is contended in this report that while the precise details of reinterpreted cultural values have clearly not been passed from 'generation to generation', the act of reinterpreting landscapes and cultural connections generally has (Ross 2008).

The actions of the Githabul Stakeholders inevitably raises questions of authenticity. It has been outside of the scope of this assessment to undertake detailed anthropological works to establish whether those persons reinterpreting the cultural significance of the Project Area have the authority amongst their own community to do so. Based on consultation to date, it appears that this is the case, at least amongst a reasonable portion of the Githabul community. Having regard to the legislative discussion in Section 8.2.2 below, this issue is not believed to be critical to the assessment.

Through this consultation process, it has been concluded by Everick that the Githabul Registered Stakeholders have been engaging in a culturally valid reinterpretation of the Project Area. They have undertaken a synthesis of a broad range of cultural information (scarred tree locations, local campsites, hunting practises, regional spiritual places, local movement) and environmental information (traditional resource areas, geographic prominence, visual aesthetics) to reinterpret the meaning of the Project Area. Their interpretation appears well considered and quite reasonable in the context of the surrounding landscape. It is quite plausible that at some point in time the Project Area was of *particular significance* to the Aboriginal people of the region. A discussion of how this significance sits within a legislative context is provided in Section 8.2.2 below.





The description of place provided by Mrs Nagas of the Bundjalung accords with a more conventional definition of intangible cultural significance. That is, Mrs Nagas stated that the location of a men's place was passed down from generation to generation. Whilst any cultural activities almost certainly ceased within the Project Area many generations ago, the knowledge of this location remained.

The authenticity of Mrs Nagas claim is difficult to verify. It is of note that Mrs Nagas is of good standing in the local community, and has been widely recognised for her works in promoting the continuation and preservation of Aboriginal culture. These are works that Mrs Nagas has undertaken over a period of over 30 years. Mrs Nagas is recognised among many Aboriginal community members as being a person of cultural knowledge.

Despite an extensive literature review, there have been no ethnographic accounts on the public record that relate to the Project Area as being a place of particular cultural significance as a men's ceremonial place. Nor is there any record of it being a recognised place for making shields. Nor is any other Bundjalung person able to verify these claims. This is not to imply these claims are a fabrication. There are many places within the Australian landscape that are highly significant to Aboriginal people that have not been recorded ethnographically. The well-known recent review of this issue was the 'Hindmarsh Island affair' involving some of the Aboriginal women of the Ngarrindjeri (Tonkinson 1997). However, it is also of note that the Courts require a standard of evidence in verifying these claims that has been almost entirely absent in this instance.

### *8.2.2 New South Wales Legislation*

Researchers have for some time criticised the disconnect between theoretical heritage 'best practise' and the legislation of Australia (English 2003; Godwin and Weiner 2006: 127; Turnpenny 2007; Andrews and Buggey 2008). This is particularly so for the assessment and management of intangible heritage. When legislation along the eastern seaboard of Australia is compared, a common thread is that their main focus is undeniably on physical Aboriginal heritage (MacLaren 2006; Ross *et. al* 2010; Schnierer 2011).

Never-the-less, this assessment has been commissioned in a development context, and there are strong public policy and administrative reasons for the legislation being structured the way it is. This assessment must, therefore, be firmly grounded in the relevant state legislation.



As reviewed in Section 2 above, the primary legislation in New South Wales for the protection of Aboriginal cultural heritage is the NPW Act. The Act protects both Aboriginal Objects and Aboriginal Places. Aboriginal Places must be declared places, and registered on the AHIMS Register. Section 84 of the NPW Act defines Aboriginal Places as “in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture.” As to what constitutes ‘special significance’, guidance can be sought from both the AHIMS listing of Aboriginal Places and the OEH *Aboriginal Places Policy* (2011) (‘APP’).

A comparative review of declared Aboriginal Places in northern New South Wales has also been undertaken during this assessment. The closest Aboriginal Place is the (now destroyed) **Casino Bora Ground**, approximately 20 km to the south of the Project Area. This was a well-documented and highly significant bora ground to the region. Measuring approximately 70m in diameter, it was a regional meeting place and of extremely high regional significance. The next closest places to the Project Area are:

- (h) **Cubawee:** the historic self-managed Aboriginal settlement of Cubawee, with considerable material remains.
- (i) **Parrots Nest:** a sacred place including: Sacred hoop pine trees, rock engravings, stone arrangements, rock paintings, axe grooves and fallen carved trees.
- (j) **Capeen Mountain:** a natural mythological site and dominant physical feature of the area, with no Aboriginal Objects associated.
- (k) **Yabbra Spring:** a natural mythological site with no Aboriginal Objects associated.
- (l) **Tooloom Falls:** a natural mythological site relating to the story of the creation of the Clarence River.
- (m) **Ti Tree Lake:** a sacred women’s site and mythological place.
- (n) **Cocked Hat Rocks:** a natural mythological site.

A common feature of all of these places is that their significance has been well documented in the ethnographic record. The closest in level of significance (as expressed by the Aboriginal Stakeholders) is Ti Tree Lake at Broken Head in the Byron Shire. This is a women’s site that was (and still is) in active use at the time that it was registered as an Aboriginal Place.

The review of OEH policy and previous declarations for Aboriginal Places in the region demonstrate that, on the evidence available, it is highly unlikely that the Project Area would reach the threshold for being declared an Aboriginal Place. There is no other legislative protection afforded to intangible heritage places in New South Wales.





## 9. IMPACT ASSESSMENT

The Project has a high potential to impact on the intangible values identified during this assessment, as expressed by the Aboriginal Stakeholders. The southern portion of the plateau (c. 50 m) will be preserved under the proposed plans. However, the excavation of a significant amount of basalt from the plateau has been identified by the Aboriginal stakeholders as having a considerable detrimental effect to the cultural significance of the place.

The Project has a low potential to impact on places of particular intangible heritage significance (Aboriginal Places) as recognised under New South Wales legislation.

A previous archaeological assessment undertaken by Hew Burton identified the Project as having a low risk of harming physical Aboriginal cultural heritage sites. Evericks archaeologists are of the opinion that the conclusions of Mr Barton are reasonable. During consultation, suggestions have been made that the areas surrounding the Project Area would have been used as a traditional quarry source. There is no evidence of any quarrying activities within the Project Area itself. The bore logs submitted in support of the EIS for the Project demonstrate the between 0.5 m and 2.5 m of topsoil cover the basalt source. It is highly unlikely that any traditional quarries existed within the Project Area. Surveys undertaken by Hew Barton failed to identify any quarries on lands adjacent to the Project Area.

## 10. RECOMMENDED MANAGEMENT & MITIGATION MEASURES

On the evidence available, and having regard to the legislative framework within which this assessment has been commissioned, it is recommended that the Project proceed. The following recommendations are made to assist in mitigating any impacts to Aboriginal cultural values as a result of the Project.

### **Recommendation 1: Continued Consultation**

It is recommended that the Proponent continue to consult with the Aboriginal Stakeholders over potential impact mitigation activities and other social benefits that may result from the Project.



## **Recommendation 2: Aboriginal Scarred Trees**

The culturally scarred trees have been identified as being of high significance to the Aboriginal Stakeholders. It is recommended that the following management strategies are implemented to prevent damage to the culturally scarred trees adjacent to the Project Area:

- (c) A permanent fence should be constructed around the trees to prevent inadvertent damage during the course of quarrying activities. The proponent is reminded that any act or omission resulting in harm to the culturally scarred trees may constitute an offence under Section 86 of the NPW Act;
- (d) Staff and contractors of the Proponent should be instructed as to the cultural significance of the trees and advised of the offence provisions detailed in (a) above (see also recommendation 3).

## **Recommendation 3: Cultural Heritage Inductions**

It is recommended that Staff and Contractors involved in the initial stripping of topsoil on the site should undergo a cultural heritage induction prior to commencing works. The induction should include:

- (e) An introduction to Aboriginal culture and tradition, including why evidence of Aboriginal occupation is important to Aboriginal people;
- (f) A summary of the requirements under New South Wales cultural heritage legislation
- (g) A brief introduction on how to identify Aboriginal Objects; and
- (h) A review of procedures in the event that Aboriginal cultural heritage is identified during the course of undertaking the project.

## **Recommendation 4: Aboriginal Human Remains**

It is recommended that if human remains are located at any stage during earthworks within the Project Area, all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched. The nearest police station, the Registered Aboriginal Stakeholders and the OEH Regional Office, Coffs Harbour are to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the



Aboriginal community and the OEH should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

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

### **Recommendation 5: Aboriginal Cultural Material**

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

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

### **Recommendation 6: Notifying the OEH**

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



### **Recommendation 7: Conservation Principles**

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



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## APPENDIX A: CORRESPONDANCE WITH ABORIGINAL STAKEHOLDERS

### **Aboriginal Cultural Heritage Study**

#### **Registration of interest**

Everick Heritage Consultants Pty Ltd (ABN 78 102 206 682) is seeking to consult with interested Aboriginal persons over a proposed Quarry at Cedar Point, Kyogle, NSW. The land subject to assessment is approximately 16 ha. and situated north of Edenville Road, south of Omagh Road. The proposed quarry will be located on parts of Lot 1 DP366036 and Lot 12 DP582916.

#### **What do you need to do?**

Aboriginal persons who hold cultural knowledge of the Cedar Point region are invited to register their interest in writing with:

Everick Heritage Consultants  
PO Box 146  
RED HILL QLD 4059  
or [t.robins@everick.com.au](mailto:t.robins@everick.com.au)

#### **When must registration be received?**

Registration must be received by Monday, 16 January 2012.

Ad placed in Northern Star 24.12.11



## APPENDIX B: AHIMS SEARCH RESULTS

Site ID	Site Name	Easting	Northing	Context / Type	Features
04-4-0025	Casino Bora Ground	503700	6809700	Aboriginal Place,Bora / Ceremonial	Aboriginal Place,Bora / Ceremonial
04-4-0104	Spring Grove 1	509570	6810800	Artefact : 2, Aboriginal Resource and Gathering : -	Artefact : 2, Aboriginal Resource and Gathering
03-6-0006	Dyraaba Creek Dyraaba 3	485000	6817000	Axe Grinding Groove,Shelter with Art,Shelter with Deposit	Axe Grinding Groove,Shelter with Art,Shelter with Deposit
04-4-0006	Bentley	511000	6817400	Bora / Ceremonial	Bora / Ceremonial
04-4-0007	Tuncester	522400	6815700	Bora / Ceremonial	Bora / Ceremonial
04-4-0008	Bungabbee;Bentley	511800	6815000	Bora / Ceremonial	Bora / Ceremonial
04-4-0019	Kyogle	501500	6836600	Bora / Ceremonial	Bora / Ceremonial
04-4-0020	Horseshoe Creek	501500	6843500	Bora / Ceremonial	Bora / Ceremonial
03-6-0011	Fairy Hill	498000	6817000	Bora / Ceremonial	Bora / Ceremonial
03-6-0016	Corn O'Cob Creek Kyogle	487000	6837500	Bora / Ceremonial	Bora / Ceremonial
04-4-0037	Nimbin Brookside	519600	6835600	Bora / Ceremonial	Bora / Ceremonial
04-4-0009	Larnock	509500	6829500	Burial/s	Burial/s
04-4-0017	Nimbin Rocks Burial Mounds	520600	6833800	Burial/s	Burial/s
03-6-0002	Dyraaba Dyraaba Central 1	485000	6821000	Burial/s	Burial/s
03-6-0003	Dyraaba Dyraaba Central 2	485000	6823000	Burial/s	Burial/s
03-5-0015	Theresa Creek	479600	6816900	Burial/s	Burial/s
03-6-0019	Smith's Creek Kyogle 2	482870	6843190	Burial/s	Burial/s



Site ID	Site Name	Easting	Northing	Context / Type	Features
04-4-0028	Larnock;	513600	6833400	Burial/s,Shelter with Deposit	Burial/s,Shelter with Deposit
04-4-0127	Cubawee Aboriginal Place	520226	6814724	Habitation Structure : -	Habitation Structure : -
04-4-0114	Cubawee	520226	6814727	Habitation Structure : 1, Potential Archaeological Deposit (PAD) : 1	Habitation Structure : 1, Potential Archaeological Deposit (PAD) : 1
04-4-0087	Jiggi 1	516470	6827450	Isolated Find	Artefact :
04-4-0082	Lismore 1	524650	6812970	Isolated Find	Artefact :
03-6-0047	Richmond Range Road 2-2	473800	6841300	Isolated Find	Artefact :
03-6-0051	Toonumbar Forest Road 3	479300	6837800	Isolated Find	Artefact :
03-6-0070	Southampton1	488800	6812900	Modified Tree	Modified Tree (Carved or Scarred)
04-4-0133	Casino, Dargaville Scarred Tree.1	502504	6812749	Modified Tree :	Modified Tree (Carved or Scarred)
04-4-0134	Casino, Dargaville Scarred Tree.2	502469	6812749	Modified Tree	Modified Tree (Carved or Scarred)
04-4-0135	Casino, Dargaville Scarred Tree.3	502405	6812741	Modified Tree	Modified Tree (Carved or Scarred)
04-4-0136	Casino, Dargaville Scarred Tree.4	502371	6812680	Modified Tree	Modified Tree (Carved or Scarred)
04-4-0137	Casino, Dargaville Scarred Tree.5	502317	6812730	Modified Tree	Modified Tree (Carved or Scarred)
04-4-0138	Casino, Dargaville Scarred Tree.6	502355	6812783	Modified Tree	Modified Tree (Carved or Scarred)



Site ID	Site Name	Easting	Northing	Context / Type	Features
03-6-0080	Edenville Scarred Tree.1	498792	6827023	Modified Tree	Modified Tree (Carved or Scarred)
03-6-0069	Dobies Bight MT	494105	6813282	Modified Tree; Aboriginal Resource and Gathering : 1	Modified Tree (Carved or Scarred) : 1, Aboriginal Resource and Gathering
04-4-0010	Bob Durrabbin's Jurraveel; Tuncester	520800	6816030	Natural Mythological (Ritual)	Aboriginal Ceremony and Dreaming
04-4-0014	Bentley	511000	6816500	Natural Mythological (Ritual)	Aboriginal Ceremony and Dreaming : -
04-4-0016	Nimbin Rocks	520600	6834700	Natural Mythological (Ritual)	Aboriginal Ceremony and Dreaming : -
03-6-0026	Bonalbo Gorges Creek	474700	6821500	Natural Mythological (Ritual)	Aboriginal Ceremony and Dreaming : -
04-4-0023	Parrot's Nest Hill	522400	6808400	Natural Mythological (Ritual)	Aboriginal Ceremony and Dreaming : -
04-4-0026	Cawongle Waterhole, Nyarelini	509600	6837600	Natural Mythological (Ritual)	Aboriginal Ceremony and Dreaming : -
30-3-0238	CWD1	478210	6830200	Open Camp Site	Artefact : -
04-4-0078	Mackellar Range18-1	511920	6820330	Open Camp Site	Artefact : -
04-4-0079	Oaky Ck 4-1	512710	6820210	Open Camp Site	Artefact : -
04-4-0080	Mackellar Range 17-1	511180	6820400	Open Camp Site	Artefact : -
03-6-0041	Babyl Creek 4-1	476500	6824180	Open Camp Site	Artefact : -



Site ID	Site Name	Easting	Northing	Context / Type	Features
03-6-0044	Peacock Creek Road 10-1	478450	6829300	Open Camp Site	Artefact : -
03-6-0048	Richmond Range Road 2-1	473950	6840970	Open Camp Site	Artefact : -
03-6-0049	Richmond Range Road 1	473850	6838800	Open Camp Site	Artefact : -
03-6-0050	Toonumbar Forest Road 4	479280	6837920	Open Camp Site	Artefact : -
03-6-0052	Toonumbar Forest Road 2	479350	6837800	Open Camp Site	Artefact : -
03-6-0053	Toonumbar Forest Road 1	479800	6837720	Open Camp Site	Artefact : -
03-6-0027	Pigman Creek. #1 Doubtful Creek Mummulgum	485850	6816350	Open Camp Site	Artefact : -
04-4-0045	Nimbin Open Campsite	521500	6836300	Open Camp Site	Artefact : -
03-6-0007	Dyraaba Arm	487000	6810000	Rock Engraving	Art (Pigment or Engraved)
03-6-0029	Canoe Tree	497923	6836260	Scarred Tree	Aboriginal Resource and Gathering : Modified Tree
04-4-0094	Kyogle Honey Tree	501930	6834200	Scarred Tree	Modified Tree
04-4-0090	Booerie Ck. Canoe tree;?;	524600	6815570	Scarred Tree	Modified Tree
04-4-0085	Boorie Creek Canoe Tree;BC-CT;	524600	6815570	Scarred Tree	Modified Tree -



Site ID	Site Name	Easting	Northing	Context / Type	Features
03-6-0021	Dyraaba Arm Piora	490400	6810000	Shelter with Deposit	Artefact : -
03-6-0022	Dyraaba Central Dyraaba	485800	6816500	Shelter with Deposit	Artefact : -
03-6-0023	Dyraaba Arm Dyraaba	487000	6810000	Shelter with Deposit	Artefact : -
03-6-0030	Mummulgum Rock Shelter	482190	6809060	Shelter with Midden	Shell : -, Artefact : -
03-6-0057	Theresa Creek 1	482190	6809060	Stone Arrangement : -	Stone Arrangement :
04-4-0011	Bishop's Creek Cave	522500	6833100	Shelter with Art	Art (Pigment or Engraved) : -
03-6-0054	Carlill 2	498700	6826900	Scarred Tree	Modified Tree-
03-6-0055	Carlill 1	498700	6826900	Scarred Tree	Modified Tree -
03-6-0004	Dyraaba Creek Dyraaba 1	488000	6814000	Shelter with Art	Art (Pigment or Engraved) : -
03-6-0005	Dyraaba Creek Dyraaba 2	490000	6814000	Shelter with Art	Art (Pigment or Engraved) : -