



Due Diligence Assessment

For

Mullaway Seniors Development, Mullaway, NSW

For

GHD

June 2012

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1.0 Introduction

1.1 Background

This Due Diligence Assessment was commissioned by GHD on behalf of John Hannaford to investigate the potential for the site at Lot 1 DP 1128964, Darkum Road, Mullaway, NSW, to contain items of Aboriginal heritage significance and if the Seniors Living Development will impact upon those items.

The report is based upon the requirements of the NSW Environmental Protection Agency (EPA) and the standards and Codes of Practice that guide such investigations in NSW.

1.2 Due Diligence

The Due Diligence process is guided by Part 6 of the NSW *National Parks and Wildlife Act 1974* (NP&W Act), and is the first step for a proponent of development to undertake when determining if they will trigger the provisions of Part 6 during the development.

This first step is concerned with avoiding impact wherever possible through careful assessment and planning. By undertaking such action, both the development's potential as well as any heritage significance are both protected and undergo a mutually beneficial assessment.

The aim of the Due Diligence process is to determine if a development can proceed with caution, with the assessment concluding that impact can be avoided, or whether a more detailed assessment will be required to support an Aboriginal Heritage Impact Permit (AHIP) application for consent for the development to damage or destroy Aboriginal sites.

1.3 Standards and Legislation

This Due Diligence assessment is undertaken in accordance with the following standards and guidelines:

- Australia ICOMOS *Burra Charter*;
- EPA's *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*;
- EPA's *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*;
- EPA's *Aboriginal Cultural Heritage Standards & Policies Kit*;
- EPA's *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*;
- EPA's *Draft Code of Practice for Archaeological Investigation in NSW*;
- James Semple Kerr's *The Conservation Plan*;
- The NSW Heritage Branch's *Conservation Management Documents*; and
- The NSW Heritage Branch's *Assessing Heritage Significance*.

1.4 Project Location

The site in question is located along Mullaway Drive, from the Pacific Highway intersection to the Darkum Road Intersection, NSW, approximately 8.5km south-east of Coffs Harbour on the NSW Mid-North Coast.

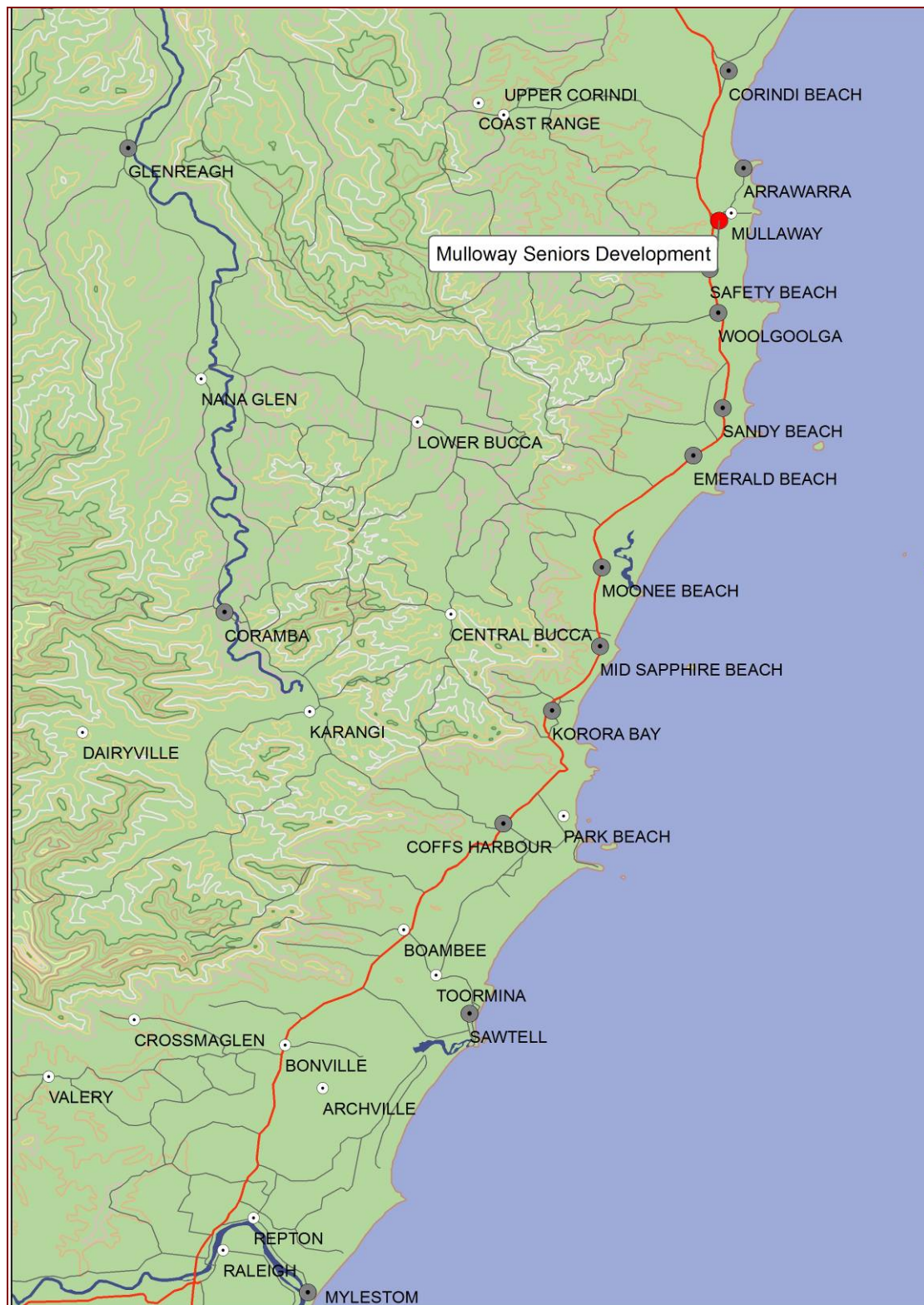


Figure 1: General Site Location



Figure 2: Specific Site Location

The site itself lies within a coastal landscape, with the immediate vicinity and project area itself consisting of a terminating ridgeline (along which Mullaway Road runs), with the central and eastern portions of the site lying on the side and foot slopes of this ridge. The western extension of the site runs along the northern edge of this ridges southern side slope. The lower lying south-eastern portion of the site runs into a paperbark swamp area across Darkahm Road, with Mullaway Headland is 750 meters to the east. The nearest water sources to the project area are a small stream 275 meters to the east and the ocean, 500 meters to the east.. Nearby development has consisted of works on the Pacific Highway and the village of Mullaway to the North East.

1.5 Project Site Description

The Seniors Living Development will consist of three distinct stages with additional works as described below:

- Stage 1 will consist of:
 - 6x2 and 2x3 bed independent living villas, in four separate structures;
 - A club room in a single structure;
 - A Maintenance shed; and
 - Associated roads and services;
- Stage 2 will add:
 - 6x2 and 2x3 bed independent living villas, in four separate structures;
 - Associated roads and services;
- Stage 3 will add:

- 6x2 and 2x3 bed independent living villas, in four separate structures;
- Associated roads and services;
- Stage 4 will add:
 - 8x2 and 2x3 bed independent living villas, in five separate structures;
 - Associated roads and services;
- Additional and supportive works will consist of:
 - Several pathways;
 - Daybed pavilions;
 - A restaurant;
 - A pool and wellness centre;

The additional works will be designed to link in with the already approved eco-tourism villas which lie to the east of the proposed pool and wellness centre.



Figure 3: Development Footprint

1.6 Study Aims

The aim of this Due Diligence assessment is to determine if the Mullaway Seniors Development can proceed with caution, or whether impact upon Aboriginal sites is unavoidable and need to be addressed through an AHIP application.

The assessment will determine the future steps regarding Aboriginal cultural heritage by using the methodology below.

1.7 Methodology

The following methodology was adapted from the EPA's *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (The Code) and will be followed throughout in guiding the assessment and assisting in determining the eventual recommendations. The steps to be undertaken are:

- Provide Site Background;
- Determine if the development is Part 3A, Except or of Negligible Impact;
- If the development will impact a known site or place;
- Determine if the development is recognised as Low Impact;
- Note any Consultation undertaken and its outcomes;
- Follow the Due Diligence Assessment Steps by:
 - Assessing Ground Disturbance and Impact on Marked Trees;
 - Undertake an AHIMS Search;
 - Undertake a Landscape Analysis;
 - Determine if Impact can be Avoided;
 - Examine Previous Reporting on the Area;
- Conduct a Site Survey;
- Conclude whether it is Safe to Proceed with Caution or Apply for AHIP; and
- Determine Management Requirements for the Site.

1.8 Limitations

The current study did not go beyond the scope of a Due Diligence assessment, as outlined by The Code, except in consulting with the Local aboriginal Land Council. Additionally, the site survey was designed to assess areas of higher potential and not cover every part of the site in detail. No sub-surface archaeological investigation was undertaken.

1.9 Authorship and Acknowledgements

The report was written by Cultural Heritage Specialist Matt Alexander of Ainsworth Heritage and the field survey was undertaken by Archaeologist David Salt of Ainsworth Heritage.

Assistance was received in compiling this report from:

- Chris Spencer – Coffs Harbour LALC; and
- Shaun Lawer – GHD.

2.0 Site Description and Background

2.1 Aboriginal Background

The Mullaway area is part of the land of the Gumbalngirr people whose home lands stretched from the Clarence River to the area north of Nambucca.¹ Like many large Aboriginal groups, the Gumbalngirr were made up of several sub-groups, with each tied to a different area of the Gumbalngirr region. However, these groups did interact with one another through ceremonial occasions and seasonal resource gathering.²

As was the case right along the NSW coastline, the arrival of Europeans severely impacted upon the patterns of land use practiced by the local Aboriginal people. Although minimal at first, this impact became more and more severe as land holdings were taken up and the Aboriginal people displaced and prevented from moving along their old routes for seasonal activities.



Figure 4: Tindale's 1974 Map of the Aboriginal Tribes of Australia with the Gumbalngirr called the Kumbainggiri tribe by Tindale
(<http://www.samuseum.sa.gov.au/archives/collections/tribes>)

The earliest recording of the Aboriginal in the area by Europeans come from Matthew Flinders in 1799 and from Surveyor General Perry in 1839. The latter observed the locals of the Clarence river in their encampments as well as noting the presence of paperbark canoes moored in front of the camps.³

The edge of the ecotones of the local lands well endowed with native flora and fauna that could be easily exploited by the local aboriginal people, especially with the sea and additional fresh water sources so close by. Longer term encampments were often established in areas that provided shelter from the elements, allowing for a semi-sedentary seasonal lifestyle. BCA noted in a recent report that:

¹ Collins, J. 2008. Proposed carpark In the vicinity of the fish cleaning facility off Boronia Street, Sawtell Headland, NSW mid-north coast. Report prepared for Coffs Harbour City Council. p.9.

² Collins, J. 2008. Proposed carpark In the vicinity of the fish cleaning facility off Boronia Street, Sawtell Headland, NSW mid-north coast. Report prepared for Coffs Harbour City Council. p.9.

³ BCA. 2004. *Archaeological assessment of Lot 1 DP 390752 Lyons Road, North Bonville, NSW*. A report for Geoff Slattery & Partners Pty. Ltd. Coffs Harbour, NSW, 2450. BCA, Mudgerabba, Qld. p.5.

“The largest camps are said to have been situated at Bagawa near the confluence of Bucca Bucca Creek and the Orara River (Holder 1984: 20 Cited in Collins 2002) but substantial coastal camps were also located at Moonee and Woolgoolga.”

Piper noted in 1980 that information from a local resident indicated that a large Aboriginal camp was located near the site in the 1920s and that it accessed a nearby spring before the camp was moved north to Pipe Clay Beach along with the nearby fish traps.⁴ A large percentage of the local population was located on the coasts, with inland camps being more migratory than those located closer to the ocean, where a greater abundance of resources were available.⁵

Additionally, it is known that massacres of Aboriginal people in the area occurred, with the best known starting at Arrawarra Creek and ending at Red Rock, not far to the north of the subject site in mid to late 1800s. Red Rock was also an important ceremonial meeting place for the local people and remains Culturally significant to this day.⁶

The Gumbalngirr were rounded up after the passing of the Aboriginal Protection Board in 1883, with reserves set up across the Clarence and Coffs regions. This event effectively disowned the Gumbalngirr from the last of the lands on which they were living a traditional lifestyle. However, at Corindi, a group existed outside of the reserves system, maintaining a closer link with their past and traditional lifestyles.⁷

A paper by Burke in 1997 also examined the utilisation of the Corindi Lake sites post-contact after 1883 and noted that the Aboriginal people of the area, the Gumbalngirr, maintained a closer link with the traditional past due to avoiding the reserves system.

Appleton also noted that the “...Arrawarra area is highly significant to the local Aboriginal people...as the... Arrawarra Headland is revered by the Arrawarra people as a men's ceremonial site associated with rainmaking”. Appleton also stated that the beach to the west of the headland is considered to be a special area to the local people.⁸ A midden from the headland area was dated from 1,000 to 1,300 years old, indicating long term occupation of the site, which is still of great importance to the local people as a ceremonial meeting place.⁹

Additional historical evidence for the area's importance comes from a fight between approximately 1,000 Aboriginals in the late 1800s. The fight was said to involve members of the Sawtell and Clarence River tribes and those injured remained for some time in the region of modern day Sawtel.¹⁰

2.2 European Use of the Site

The settlement of the immediate project area was limited for many years to pastoral activities: the taking up of land and its preparation for use through the clearing of native vegetation and the construction of road and rail corridors over time. The following Parish

⁴ Piper, A. 1980. *An Archaeological Survey For Aboriginal Sites And Relics In Lots 1-4 And 6 D.P. 255457, Corner Pacific Highway And Arrawarra Beach Road Arrawarra New South Wales.* p.3.

⁵ Collins, J. 2010. *Pacific Highway Sapphire To Woolgoolga Upgrade: Aboriginal Cultural Heritage Assessment Of Project Area, Arrawarra.* Report prepared for the RTA. p.13.

⁶ Burke, H. 1997. *The history and Archaeology of Corindi Lake.* Research Paper. p.6.

⁷ Burke, H. 1997. *The history and Archaeology of Corindi Lake.* Research Paper. p.7.

⁸ Appleton, J. 2003. *The archaeological subsurface investigation for sites of Indigenous significance Arrawarra Beach Recreation Reserve Mid-North Coast NSW.* Report prepared for Coffs Harbour City Council. p.11.

⁹ Murphy, D. 1999. *A Preliminary Report on Monitoring For Aboriginal Sites During The Arrawarra Recreation Area Upgrade.* Unpublished report for Coffs Harbour City Council.

¹⁰ Harvie, in Collins, J. 2008. *Proposed carpark In the vicinity of the fish cleaning facility off Boronia Street, Sawtell Headland, NSW mid-north coast.* Report prepared for Coffs Harbour City Council. p.9.

maps show that apart from some simple track and road corridors, the immediate project area was only used for rural purposes, until the expansion of Woolgoolga and Mullaway in the late Twentieth Century saw the subdivision of rural land for urban purposes. Only in recent decades has such urban disturbance encroached on the site.

However, the site has been modified by the nearby activities, including bushfire management, as much of the site surface has been bulldozed, especially near the edges of the residential areas. Other modifications to the site are consistent with rural use of the site following land clearance and later grazing.

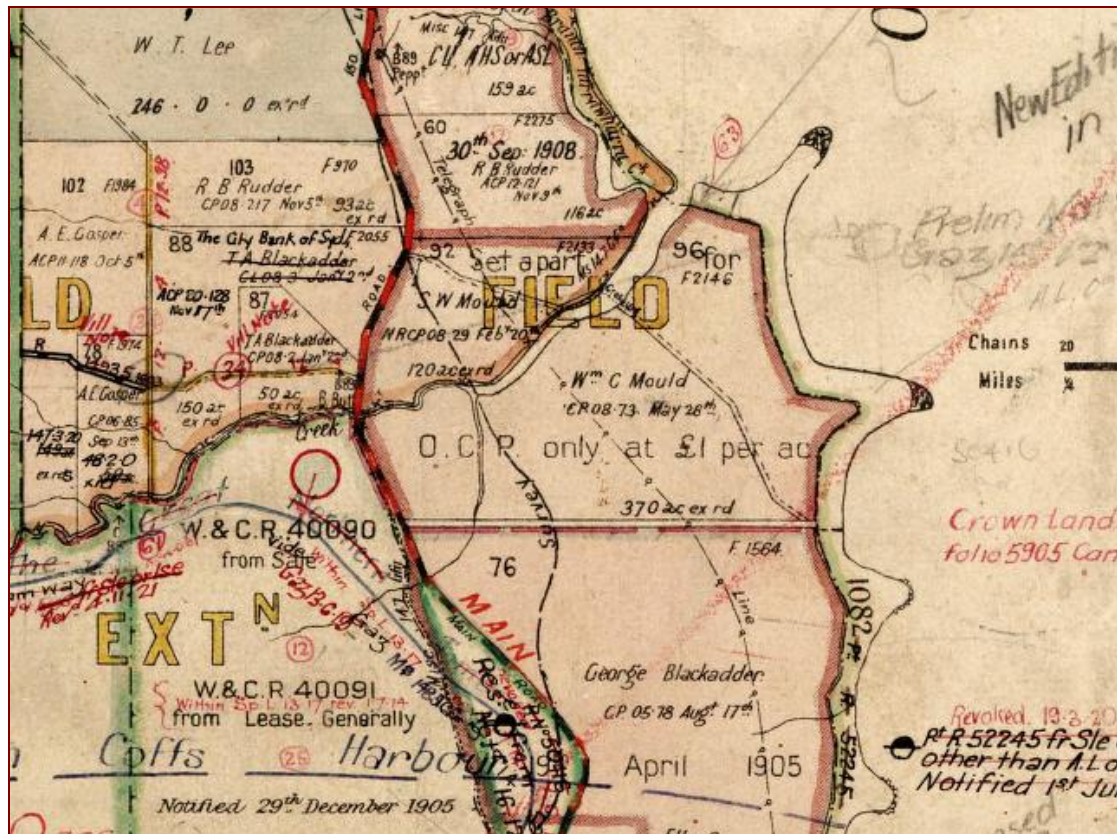


Figure 5: Site in 1914. Note that few roads are in place. Site is located in the land of George Blackadder at image's bottom (Parish Map Preservation Project).

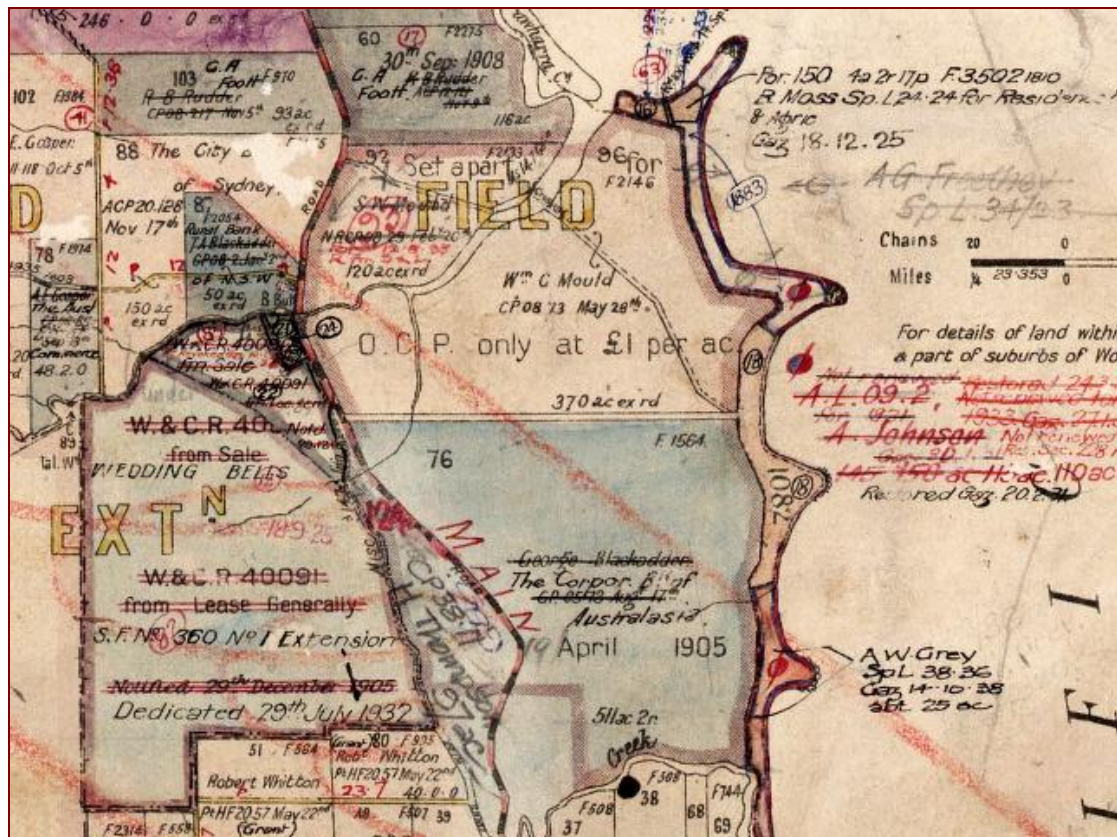


Figure 6: site in 1923. What would become the Pacific Highway is now present, and Blackadder had mortgaged the land to the Bank of Australia (Parish Map Preservation Project).

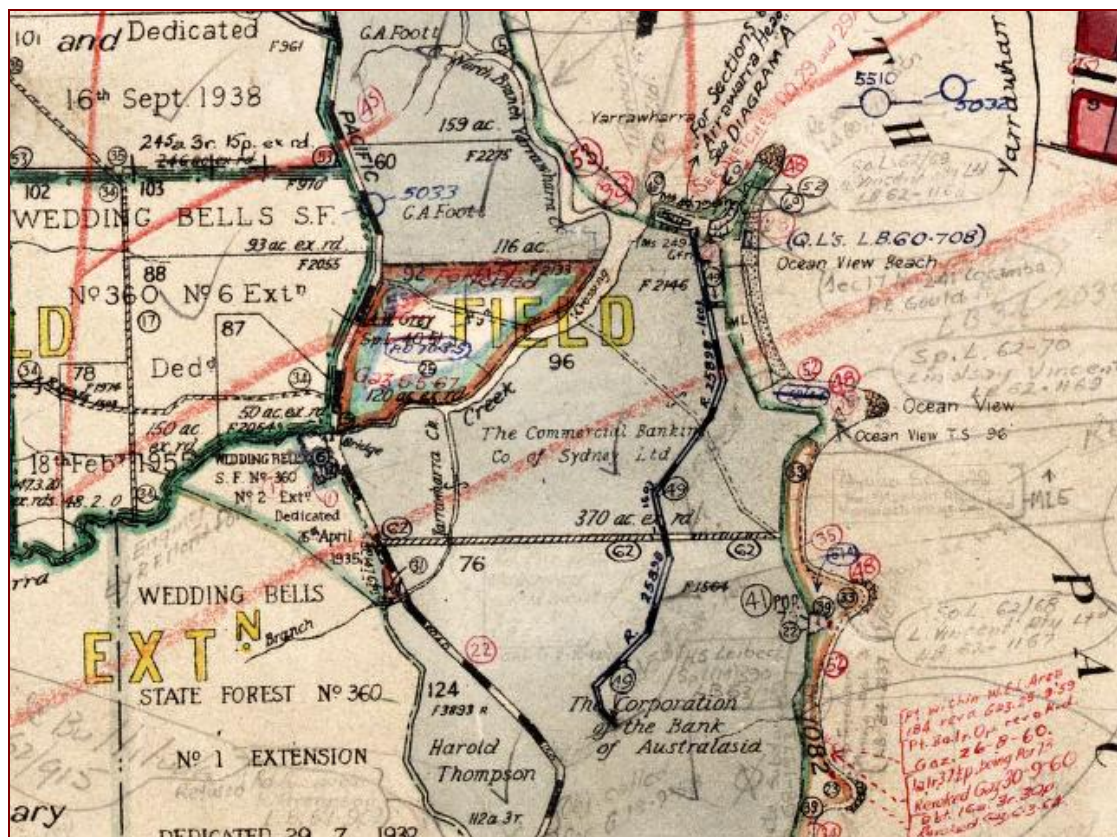


Figure 7: Site in 1958. Both Mullaway Drive and Darkum Road are now gazetted, but development on Mullaway had still not yet begun (Parish Map Preservation Project).

2.3 Recent Developments

Aerial maps show that recent development in the immediate area has been limited over the past decade, with the Mullaway Seniors Development the largest development expansion to the area in some years.



Figure 8: Site in 2004 (Google Earth).



Figure 9: Site in 2010. Note new development to the north and east (Google Earth)

2.4 Current Site Condition and Description

The site is a partially cleared, former rural lot, with development intruding on the north east corner and is a mix of more open grassed areas and areas of denser, older growth vegetation. The recent Statement of Environmental Effects for the site stated that:

“The eastern portion of the site, within which the proposal would be located, is vegetated with native vegetation including the endangered ecological community (EEC) known as Sub-tropical Coastal Floodplain Forest (STCFF) of the New South Wales North Coast Bioregion listed under the NSW Threatened Species Conservation Act 1995 (TSC Act). This vegetation has also been classified as Secondary Koala Habitat by CHCC. The subject site has been substantially modified from its natural state by previous land use activities including cattle grazing, horses, bushfire and edge effects from adjoining residential development.”

A single dwelling and concrete pads associated with the approved ecological retreat are located on the western portions of the site and constitute the only built features currently existing on the property.



Figure 10: Site entrance from Darkum Road (Ainsworth Heritage).



Figure 11: Looking south from proposed entrance along property border with Darkum Road (Ainsworth Heritage).



Figure 12: Looking south-west from proposed entrance along property border with Darkum Road (Ainsworth Heritage).



Figure 13: Bulldozed mound indicating previous site disturbance (Ainsworth Heritage).



Figure 14: Landscape in the vicinity of the proposed restaurant on sites western edge (Ainsworth Heritage).



Figure 15: Bulldozed mound in area of eco lodge development site (Ainsworth Heritage).



Figure 16: Central area of site looking north-west to man made pond (Ainsworth Heritage).



Figure 17: South east portion of site looking north showing slope (Ainsworth Heritage).



Figure 18: Bulldozed site disturbance in north east of site looking south west (Ainsworth Heritage).

3.0 Determining Investigative Requirements

The first step in the Due Diligence process is determining if Due Diligence is required in the first place. The following steps address this requirement.

3.1 Is the Activity Part 3A?

Part 3A development is also known as State Significant Development and has been altered in the *Environmental and Assessment Act 1979* (EP&A Act) to now be covered under Parts 4 and 5. State significant Development follows a different approvals path to most development and does not use the Due Diligence Code when assessing Aboriginal Heritage.

The Mullaway Seniors Development is not a Part 3A Development.

3.2 Is the Activity Exempt?

Due Diligence still applies to activities considered as complying or exempt development under the EP&A Act. Only certain activities are considered exempt under the NP&W Act Regulations. These exempt activities are defined as:

- *Aboriginal people and their dependants when carrying out non-commercial traditional cultural activities;*
- *Any emergency fire fighting or bush fire hazard reduction work within the meaning of the Rural Fires Act 1997 that is authorised or required to be carried out under that Act;*
- *Emergency activities carried out under the State Emergency and Rescue Management Act 1989 that are reasonably necessary in order to avoid an actual or imminent threat to life or property;*
- *Works by, or directed by, authorised EPA officers to protect or conserve Aboriginal objects; and*
- *Anything specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of the NPW Act.*

The Mullaway Seniors Development is not any of the above exempt activities.

3.3 Will Harm be Trivial or Negligible?

Trivial or negligible harm is defined as activities that do not disturb or damage an Aboriginal object, such as picking up and replacing an artefact, damaging one through simple recreational activities or through standard maintenance activities on a regular home.

The Mullaway Seniors Development is not a trivial or negligible undertaking.

3.4 Will the Activity Impact a Known Site or Place?

Declared Aboriginal places can only have works undertaken in them following an AHIP application. These places are registered with EPA and are protected under the Act. Additionally, if previous investigations of the site have located Aboriginal objects and impact cannot be avoided (determined by later steps), then an AHIP will be required.

The site is not part of an Aboriginal Place.

The site contains a single site located by a previous Coffs Harbour LALC survey in 2011, however, a search of the AHIMS database did not return the site as a result. However, the site location is mapped in this report (see Chapter 5).

3.5 Is the Activity Recognised as Low Impact?

Certain low impact activities are allowed under the Regulations to the NP&W Act and therefore do not require a Due Diligence Assessment. However, these actions cannot be undertaken if they will impact a known site and do not provide a proponent with the authority to knowingly impact a site or place.

Section 80B of the Regulations state that the following are considered low impact activities:

(1) It is a defence to a prosecution for an offence under section 86 (2) of the Act, if the defendant establishes that the act or omission concerned:

(a) was maintenance work of the following kind on land that has been disturbed:

- (i) maintenance of existing roads, fire and other trails and tracks,*
- (ii) maintenance of existing utilities and other similar services (such as above or below ground electrical infrastructure, water or sewerage pipelines), or*

(b) was farming and land management work of the following kind on land that has been disturbed :

- (i) cropping and leaving paddocks fallow,*
- (ii) the construction of water storage works (such as farm dams or water tanks),*
- (iii) the construction of fences,*
- (v) the construction of irrigation infrastructure, ground water bores or flood mitigation works,*
- (vi) the construction of erosion control or soil conservation works (such as contour banks), or*

(c) was farming and land management work that involved the maintenance of the following existing infrastructure:

- (i) grain, fibre or fertiliser storage areas,*
- (ii) water storage works (such as farm dams or water tanks),*
- (iii) irrigation infrastructure, ground water bores or flood mitigation works,*

- (iv) fences,*
 - (v) erosion control or soil conservation works (such as contour banks), or*
- (d) was the grazing of animals, or*
- (e) was an activity on land that has been disturbed that comprises exempt development or was the subject of a complying development certificate issued under the Environmental Planning and Assessment Act 1979, or*
- (f) was mining exploration work of the following kind on land that has been disturbed:*
 - (i) costeaning,*
 - (ii) bulk sampling,*
 - (iii) drilling, or*
- (g) was work of the following kind:*
 - (i) geological mapping,*
 - (ii) surface geophysical surveys (including gravity surveys, radiometric surveys, magnetic surveys and electrical surveys), but not including seismic surveys,*
 - (iii) sub-surface geophysical surveys that involve downhole logging,*
 - (iv) sampling and coring using hand-held equipment, except where carried out as part of an archaeological investigation, or*

Note. Clause 3A of this Regulation provides that an act carried out in accordance with the Code of Practice for Archaeological Investigation in NSW is excluded from meaning of harm an objects or place for the purposes of the Act.

- (h) was the removal of isolated, dead or dying vegetation, but only if there is minimal disturbance to the surrounding ground surface, or*
- (i) was work of the following kind on land that has been disturbed:*
 - (i) seismic surveying,*
 - (ii) the construction and maintenance of ground water monitoring bores, or*
- (j) was environmental rehabilitation work including temporary silt fencing, tree planting, bush regeneration and weed removal, but not including erosion control or soil conservation works (such as contour banks).¹¹*

The Mullaway Seniors Development is not considered a low impact activity under the Regulations.

¹¹ National Parks and Wildlife Regulation 2009, Section 80B

3.6 Is an Industry Specific Code to be Used?

Certain industries have developed their own recognised Codes of Practice for undertaking Aboriginal Due Diligence. These Codes can substitute for the EPA Code of Practice when used properly.

An Industry Specific Code of Practice is not to be used.

3.7 The Next Step

Based on the steps above, Ainsworth Heritage believes that the Due Diligence process is required due to the Mullaway Seniors Development's nature and impact and therefore the EPA *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* will be used to guide the assessment of the Mullaway Seniors Development.

4.0 Consultation

Although the EPA *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* does not require consultation with Aboriginal Groups to be undertaken, in order for a Due Diligence assessment to be as accurate as possible, it is advisable to seek advice from the Local Aboriginal Land Council (LALC).

The LALC is the Aboriginal body with the legislated duty to protect Aboriginal objects and places within its jurisdiction. These Councils are made up of members of the local Aboriginal peoples and are able to provide both advice and site officers who can assist with field surveys.

Proponents must also understand that a LALC is rarely composed of a single tribal group and often overlaps areas from several tribes, with various tribes represented on more than one Land Council. This can, at times, lead to confusion for proponents, so at this initial stage of investigations, dealing with the relevant LALC is the simplest option for the proponent.

However, in areas where a Native Title Claim has been approved, the Native Title Holders are authorised to speak for country and are the legislated body for Aboriginal Cultural heritage in their area.

The Mullaway Seniors Development lies within the Coffs Harbour LALC area and no land claims have been approved over the site area.

The Coffs Harbour LALC was contacted by phone on Wednesday, May 25th with additional information emailed on the same date. Advice from the LALC CEO Chris Spencer regarding the site was sought, as to additional non-registered sites or nearby places of cultural significance. The LALC was able to provide details through prior correspondence with the proponent and knowledge of the site (see Appendix 1) in 2010.

The advice provided in the letter was:

“Objects of Aboriginal origin were identified during this assessment; however these objects were located outside of the proposed development envelope. These objects are now recorded and protected under the National Parks and Wildlife Act 1974.

With these findings in mind the following recommendations are provided; The Coffs Harbour and District Local Aboriginal Land Council strongly recommends from the assessment results that monitoring will need to be undertaken by suitably qualified members of Coffs Harbour and District Local Aboriginal Land Council during any earth disturbance works that take place within the property.

This monitoring program will enable Coffs Harbour and District Local Aboriginal Land Council to gauge Cultural Heritage values that may exist and inform of legislative requirements for Aboriginal objects should they occur in the property.

If you require any further information or have any questions in relation to this matter.”

Additionally, although Coffs LALC was invited to join Ainsworth Heritage’s site survey, the LALC site’s officer was away at the time of the survey. However, Ainsworth Heritage believes that the LALC’s previous survey of the site may likely sufficient to satisfy their needs. On the other hand, if the Coffs Harbour LALC wishes to view the current section of the site in more detail, the proponent should allow this, with their recommendations incorporated into any ongoing reporting.

The Draft Due Diligence Assessment was forwarded to the Coffs Harbour LALC for comment on Monday, 18 June, 2012, but a follow up call with the LALC indicated that the LALC CEO, Chris Spencer, who reviews reports for the LALC was away for a fortnight.

However, as the recommendations of this report follow the advice received from the LALC previously, it is expected that the LALC will support the finding of this report. However, should the LALC have additional requirements, any submissions received by the client from the LALC, must also be forwarded to Coffs Harbour Council.

5.0 Due Diligence Assessment

As the earlier steps identified that a Due Diligence assessment was required, the EPA *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* was used to guide the following steps.

5.1 Ground Disturbance and Marked Trees

The first step in the Due Diligence process is to determine if the Mullaway Seniors Development will harm and known marked tree or if ground disturbance will be undertaken. Ground disturbance by machines or otherwise has a higher likelihood of disturbing Aboriginal sites, as sites can be laid down over successive generations, leaving deposits at depths that can remain undisturbed even in heavily modified areas. Even in areas where disturbance has occurred, Aboriginal objects are still protected from harm.

As the Mullaway Seniors Development will cause ground disturbance, an AHIMS search must be undertaken (Go to 5.2).

No known marker trees are present.

5.2 AHIMS Search

The EPA AHIMS (Aboriginal Heritage Information Management System) database contains information on the known Aboriginal sites within NSW, with new sites reported to AHIMS as they are discovered. AHIMS is a useful tool in providing archaeological context for an area, as well as assisting in determining if there are known sites within the DEVELOPMENTS footprint.

An AHIMS search was undertaken for an area around the site, extending out to 5km and returned 66 number of sites, which are listed in the following table:

Site Id	Type	Notes
22-1-0123	Arrawarra Fishtrap Site Complex	Shell, Artefact
22-1-0120	CHSS-14	Artefact
22-1-0121	CHSS-13	Artefact
22-1-0104	Arrawarra Headland	Ceremonial Ring (Stone or Earth)
22-1-0098	STUARTS ROAD CAMP	Artefact
22-1-0038	Corindi Beach;	Artefact
22-1-0057	CV 1;Wedding Bells State Forest;	Artefact
22-1-0076	Corindi 51-55;	Artefact
22-1-0077	Corindi 56-59;	Artefact
22-1-0079	Arrawarra Ck Midden;	Shell, Artefact
22-1-0021	Arrawarra;	Shell, Artefact
22-1-0022	Woolgoolga;	Shell, Artefact
22-1-0023	Corindi Beach;Pipeday Beach;	Shell, Artefact
22-1-0024	Arrawarra Fishtraps	Fish Trap
22-1-0025	Woolgoolga;	Shell, Artefact
22-1-0032	Arrawarra 2;Arrawarra;	Shell, Artefact
22-1-0033	Arrawarra 1;Arrawarra	Shell, Artefact
22-1-0034	Arrawarra 3	Artefact
22-1-0144	CHSS-1	Artefact
22-1-0146	Lorikeet Park 1	Shell, Artefact
22-1-0149	A5_Arrawarra Rd	Aboriginal Resource and Gathering, Artefact

22-1-0150	A4_Knoby's Lookout	Aboriginal Resource and Gathering, Artefact
22-1-0151	B2_Morgans Road	Artefact
22-1-0152	C1_Poundyard Ck	Aboriginal Resource and Gathering, Artefact
22-1-0154	Melalueca Waters Estate modified tree	Modified Tree (Carved or Scarred)
22-1-0153	Melalueca waters estate	Artefact
22-1-0155	Melalueca Waters Estate.	Modified Tree (Carved or Scarred)
22-1-0156	Melalueca Waters Estate 2	Artefact
22-1-0158	Arrawarra Scar Tree	Modified Tree (Carved or Scarred)
22-1-0161	Safety Three	Artefact
22-1-0162	Safety Two	Artefact
22-1-0163	Safety One	Artefact
22-1-0164	Safety Four	Artefact
22-1-0190	Arrawarra Creek South Arm	Aboriginal Resource and Gathering, Shell
22-1-0206	Garby NR/1	Artefact
22-1-0207	Garby NR/2	Artefact
22-1-0209	S2W-6	Artefact
22-1-0210	S2W-5	Artefact
22-1-0211	S2W-7	Artefact
22-1-0232	HL-2	Aboriginal Ceremony and Dreaming
22-1-0234	HL-1	Aboriginal Ceremony and Dreaming
22-1-0308	Darlington Park Midden 1	Shell
22-1-0344	WWC 37	Artefact
22-1-0345	WWC 26	Artefact
22-1-0346	WWC 18	Artefact
22-1-0347	WWC 7	Artefact
22-1-0348	WWC 5	Artefact
22-1-0359	Hearnes Rd Lot 21 Ridge Site	Artefact
22-1-0365	CHCC IF 1	Artefact
22-1-0366	CHCC AS 1	Artefact
22-1-0367	CHCC AS 2	Artefact
22-1-0373	S2W-14	Artefact
22-1-0368	S2W-8	Artefact
22-1-0369	S2W-9	Artefact
22-1-0370	S2W-10	Artefact
22-1-0371	S2W-11	Artefact
22-1-0381	S2W-17	Artefact
22-1-0382	S2W-18	Artefact
22-1-0395	S2W-21 Redeposit	Artefact
22-1-0396	S2W-22	Artefact
22-1-0397	S2W-22 Redeposit	Modified Tree (Carved or Scarred)
22-1-0393	Mullaway Midden	Shell
22-1-0394	S2W-21	Artefact
22-1-0392	Arrawarra Headland Site	Shell, Artefact
22-1-0401	Sherwood Ck Rd-Kangaroo TI PAD	Potential Archaeological Deposit (PAD)
22-1-0402	Sherwood North	Potential Archaeological Deposit (PAD)

Table 1: AHIMS Sites

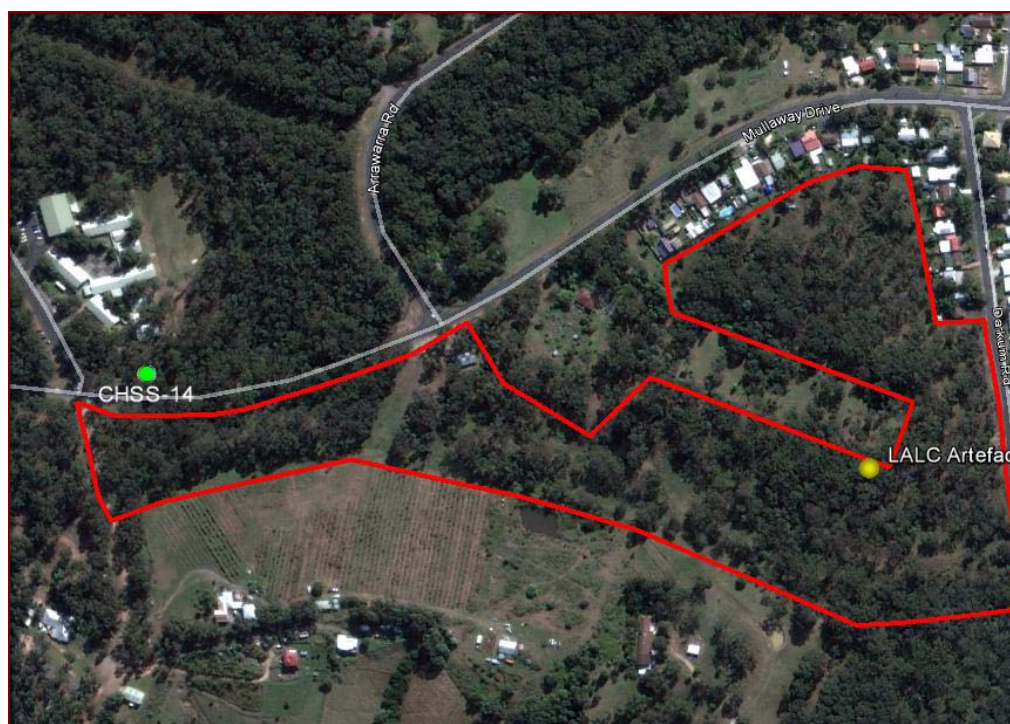


Figure 4: AHIMS Site Locations

Of the sites returned by the search, only the artefact CHSS-14 was located close to the site, being on the north side of Mullaway Drive. This site will not be impacted by works on the current development.

The artefact site located by the 2011 LALC survey did not appear in the AHIMS search, however, it was mapped in the Statement of Environmental Effects and is again mapped here. However, the LALC report did not provide details as to the site type and the Ainsworth Surface Survey did not relocate the site. However, as the site is within an area that will not undergo disturbance, the recommendations in Chapter 8 will ensure the site's protection.

5.3 Landscape Analysis

A landscape analysis is undertaken to determine if the area in which the Mullaway Seniors Development lies is one in which additional Aboriginal objects are likely to be found. Certain landscapes, especially those in proximity to water, are more likely to contain sites than other landscapes and therefore this step is used to determine the potential for the Mullaway Seniors Development to contain additional sites.

The EPA *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* notes that areas of development that are within certain landscape features are likely to contain additional materials. These area are:

Criteria	Site Notes
Within 200m of waters	Site not within 200m of water
Located within a sand dune system	Site is adjacent to a sand dune system
Located on a ridge top, ridge line or headland	Site is adjacent to a ridgeline and part of its side and foot slopes
Located within 200m below or above a cliff face	Not applicable
Within 20m of or in a cave, rock shelter, or a cave mouth	Not applicable

As the Mullaway Seniors Development is adjacent to the ridge and nearby dunes, the next step is to proceed with the Due Diligence Assessment in 5.4, as AHIMS results were positive and the landscape has a higher, though not the highest probability of sites being present.

5.4 Avoiding Impact

Avoiding impact upon areas of high potential or known sites is a critical step in progressing a development project, as at this stage, if impact can be avoided, costly and time consuming AHIP applications can be avoided, as well as protecting the heritage in question.

In order to avoid the impact, the nature of the impact must be understood and then options for avoidance presented.

5.4.1 Impact Assessment

Currently, the site development plan for the project, indicates that the known sites will be avoided and the nature of urban development allows a general impact assessment to be made for the site based on the following types of urban development:

- Residential Areas for home lots. Although these areas suffer heavy disturbance, good zoning plans can protect known sites;
- Recreational Areas, with their larger open areas can be utilised in protecting known sites despite their disturbance footprint; and
- Environmental Areas, can be utilised to protect known sites within their boundaries.

Each type of work, excepting the environmental would involve site preparation and vegetation clearance, causing high level of surface and sub-surface disturbance, impacting both known and potential sites. This disturbance to known sites would trigger an AHIP, as it would in areas of expected high probability.

For each of the impacts listed, the impact by that type of development, should the site be in an area undergoing that development on sites is rated as:

- None – No impact from works;
- Low – Mainly indirect impact from nearby works;
- Moderate – Indirect impact and some direct impact from nearby works;
- High – Direct impact upon the Site from works;
- Total – Site destroyed by works; and
- Some – Impact expected but cannot yet be categorised.

However, since sites located through AHIMS are outside the development footprint, and only areas of some potential exist on the site (the north east corner of the site) impact can be considered to be low on any potential archaeology. This is due to the fact that although the site is within 200m water, better and more accessible locations for occupation exist along the ridge to the north and higher ground to the east, as well the headland areas and dune systems nearby.

Site No.	Type	Urban	Recreational	Environmental
NA	Ridge foot slope	High	Moderate	None-Low
CHSS-14	Artefact	Total	High	None-Low
LALC Artefact	Artefact	Total	High	None-Low

Table 3: Impacts on known sites and Areas

5.4.2 Alternate Design options

Considering the nature of the area containing sites is to be avoided during development and that there is a lower, but not total absence of the likelihood of finding additional sites, additional design options for avoiding impact are not seen as necessary, as long as the recommendations provided by the LALC are followed (see Chapter 8).

5.4.3 Impact Avoidance Conclusions

Due to the nature of the impact outlined above and the options presented for the avoidance of the impact and their feasibility the client should Proceed With Caution (See Chapter 7).

5.5 Previous Reporting

The AHIMS database also links into the EPA's library of previous Archaeological reports, many of which can be accessed for use in assessments. The reports provided a more detailed contextual overview of the nearby area and allow for further investigation into the proposed development's potential to contain additional Aboriginal Cultural Heritage.

Piper investigated the juncture of Arrawarra road and the Pacific Highway (2.5km north) in 1980 and found three s open sites with the remains of destroyed shell middens and some stone tools recorded.¹² The reporting was for limited development proposed in the area and the report also noted that residents of the area were familiar with many more non-listed Aboriginal sites being present in the area.

Both Appleton and Murphy examined the Arrawarra Recreation Area (2km north) in 1999 and 2003 respectively. Murphy noted that a midden from the area was dated from 1,000 to 1,300 years old, indicating long term occupation of the site, which is still of great importance to the local people as a ceremonial meeting place.¹³ During Murphy's survey, multiple artefacts, both in concentrations and individually were noted across the reserve area, which conflicts with Appleton's report of 2003.¹⁴ No sites were located during the appleton survey of 2003, which sought to investigate the potential of the Arrawarra recreational area. However, despite the lack of physical material found by Appleton, the area is considered of high significance to the local Aboriginal people.¹⁵

¹² Piper, A. 1980. An Archaeological Survey For Aboriginal Sites And Relics In Lots 1-4 And 6 D.P. 255457, Corner Pacific Highway And Arrawarra Beach Road Arrawarra New South Wales. p.15.

¹³ Murphy, D. 1999. *A Preliminary Report on Monitoring For Aboriginal Sites During The Arrawarra Recreation Area Upgrade*. Unpublished report for Coffs Harbour City Council. p.8.

¹⁴ Murphy, D. 1999. *A Preliminary Report on Monitoring For Aboriginal Sites During The Arrawarra Recreation Area Upgrade*. Unpublished report for Coffs Harbour City Council. p.10.

¹⁵ Appleton, J. 2003. *The archaeological subsurface investigation for sites of Indigenous significance Arrawarra Beach Recreation Reserve Mid-North Coast NSW*. Report prepared for Coffs Harbour City Council. p.3.

Collins survey of the Sapphire to Woolgoolga Pacific Highway upgrade project in 2010 located only one open site along the course of the upgrade to the highway, which consisted of eight stone artefacts.¹⁶

From the reports above, the local area has returned several positive results, however, these appear to be more concentrated around Arrawarra and Corindi to the North and Safety Beach and Woolgoolga to the south. Although this spread of known sites is driven by development research, the records of camps being located in these areas supports this spread of sites. It would appear that the Mullaway area, although utilised, may have been of lesser importance to the local Aboriginal people.

5.6 Site Survey

In order to assess the areas of higher potential in the proposed development which may be impacted, a surface survey of those areas was undertaken on Tuesday, 5 June, 2012. The survey was undertaken by David Salt – Archaeologist, Ainsworth Heritage.

5.6.1 Methodology

The field survey aimed to investigate the areas of higher probability by undertaking a foot survey in transects through the areas indicated in Figure 19.

Each transect was walked and recorded using GPS and digital photography. Areas of high potential were surveyed first, along with known sites, with areas of lesser potential surveyed last. Due to the nature of the site and development, straight transects were not seen as required, so routes through the site were taken that accessed areas where development would occur and previous sites had been recorded. However, the transects did cover all portions of the site.

No new sites were located during the survey and the site was noted to have some older growth and new vegetation.

¹⁶ Collins, J. 2010. *Pacific Highway Sapphire To Woolgoolga Upgrade: Aboriginal Cultural Heritage Assessment Of Project Area, Arrawarra*. Report prepared for the RTA.

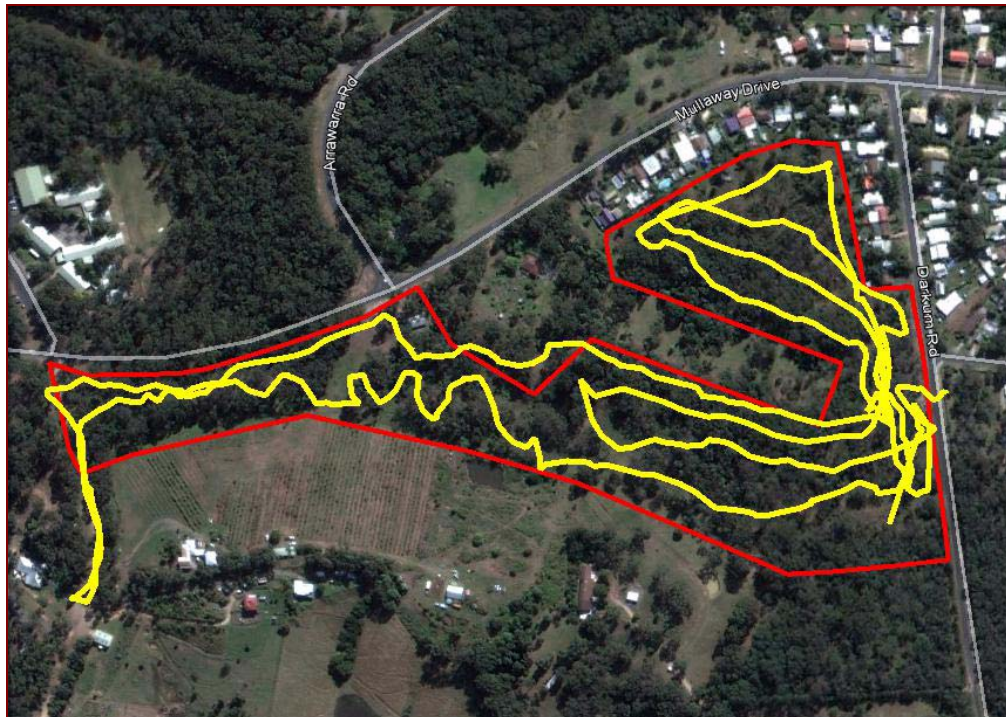


Figure 19: Site Survey Transects (Google Earth)

5.6.2 Constraints

The site survey was constrained by the following conditions:

- Vegetation and grasses that caused ground surface visibility to be less than 10%;
- No sub-surface excavations were undertaken.

Although the effective area surveyed seems relatively low it does provide effective data on where any additional cultural heritage could remain on site.

With this information, it can be determined that had the site had similar vegetation patterns in the past, Aboriginal access to, and use of the site would have been limited to occasional passage through the site, due to better camping areas being located to the east, north and west. This level of visibility is common for the NSW north coast in which visibility and site access rarely allow for greater than 25% effective area coverage.

6.0 Conclusions

Following the steps of the Due Diligence process, it was determined that the proposed development could Proceed with Caution and reference Chapter 8, due to impact upon known sites being avoided, no site being located in the development areas, and the project area not possessing features related to high archaeological potential in areas to be disturbed.

Therefore, Ainsworth Heritage believes that the proponent should be allowed to Proceed With Caution, as long as the guidelines in Chapter 8 are followed.

As part of the guidelines, advice is provided regarding unexpected finds and the requirements for AHIPs, should such a find be made on the site. The proponent will need to ensure that they are familiar with the Proceed With Caution guidelines and when and where AHIPS and Stop Work Procedure are to be implemented to ensure that there is no breach of the Nation Parks and Wildlife Act.

7.0 National Parks and Wildlife Act

The *NSW National Parks and Wildlife Act, 1974* (NP&W Act) is the main statutory instrument for the protection of Aboriginal Cultural Heritage within NSW. The NP&W Act's Aboriginal Cultural Heritage provisions are administered by the Office of the Environment and Heritage (OEH – formerly known as DECCEW), part of the Department of Premier and Cabinet, and the provisions of Part 6 of the NP&W Act must be satisfied for to consent to any development that may affect Aboriginal Cultural Heritage.

The NP&W Act specifies an Aboriginal Object as

...any deposit, object or material evidence (not being a handcraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.¹⁷

Several offences relating to Aboriginal objects by people unauthorised to do so are identified within Section 86 as follows:

(1) *A person must not harm or desecrate an object that the person knows is an Aboriginal object.*

Maximum penalty:

(a) in the case of an individual—2,500 penalty units or imprisonment for 1 year, or both, or (in circumstances of aggravation) 5,000 penalty units or imprisonment for 2 years, or both, or

(b) in the case of a corporation—10,000 penalty units.

(2) *A person must not harm an Aboriginal object.*

Maximum penalty:

(a) in the case of an individual—500 penalty units or (in circumstances of aggravation) 1,000 penalty units, or

(b) in the case of a corporation—2,000 penalty units.

(3) *For the purposes of this section, circumstances of aggravation are:*

(a) that the offence was committed in the course of carrying out a commercial activity, or

(b) that the offence was the second or subsequent occasion on which the offender was convicted of an offence under this section.

This subsection does not apply unless the circumstances of aggravation were identified in the court attendance notice or summons for the offence.

(4) *A person must not harm or desecrate an Aboriginal place.*

Maximum penalty:

(a) in the case of an individual—5,000 penalty units or imprisonment for 2 years, or both, or

(b) in the case of a corporation—10,000 penalty units.

(5) *The offences under subsections (2) and (4) are offences of strict liability and the defence of honest and reasonable mistake of fact applies.*

¹⁷ <http://www.legislation.nsw.gov.au/viewtop/inforce>. Accessed 05-08-2010.

(6) Subsections (1) and (2) do not apply with respect to an Aboriginal object that is dealt with in accordance with section 85A.

(7) A single prosecution for an offence under subsection (1) or (2) may relate to a single Aboriginal object or a group of Aboriginal objects.

(8) If, in proceedings for an offence under subsection (1), the court is satisfied that, at the time the accused harmed the Aboriginal object concerned, the accused did not know that the object was an Aboriginal object, the court may find an offence proved under subsection (2).¹⁸

Only when consent has been granted to a person by OEH can any of the above actions be undertaken. OEH can at any time grant or withdraw a permit should they believe it necessary to do so.

The above statutory requirements make it abundantly clear that any actions that harm and Aboriginal object are breaches of the act.

However, the following are considered defences under the Act:

(1) It is a defence to a prosecution for an offence under section 86 (1), (2) or (4) if the defendant shows that:

(a) the harm or desecration concerned was authorised by an Aboriginal heritage impact permit, and

(b) the conditions to which that Aboriginal heritage impact permit was subject were not contravened.

(2) It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the defendant exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed.

(3) The regulations may provide that compliance with requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, is taken for the purposes of subsection (2) to constitute due diligence in determining whether the act or omission constituting the alleged offence would harm an Aboriginal object.

(4) It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the act or omission constituting the alleged offence is prescribed by the regulations as a low impact act or omission.

The application process and AHIPs themselves are discussed in Appendix 2.

¹⁸ <http://www.legislation.nsw.gov.au/viewtop/inforce>. Accessed 05-05-2011.

8.0 Proceed With Caution Management Guide

The following Management Guide for Proceeding With Caution is designed to ensure that the proponent of the Mullaway Seniors Development is able to undertake the proposed works without impacting upon Aboriginal heritage.

8.1 Training and Communication

All on site workers need to be provided with this section of the assessment in order to assure that they are familiar with the site, its cultural heritage and how to avoid impacting upon that cultural heritage.

In order to assure this is done, a register of workers will need to be kept, recording inductions, with the signatures of the workers involved. The inductions will need to address all of the material covered in this chapter prior to an individual or group commencing work on the site.

8.2 On Site Monitoring

Site monitoring by an Archaeologist or LALC Sites Officer should be undertaken for the site during ground disturbing works, as indicated by the correspondence received from the Coffs Harbour LALC, as some areas have some, albeit low, potential for additional archaeology, but are not high probability areas. Should items be located, the standard Stop Works Procedure (see 8.7) must be implemented.

The archaeologist or LALC site officer will need to work closely with the project supervisor on site to direct works to ensure no impact occurs. It must be clearly understood that at no time can the project supervisor make demands of the archaeologist/site officer that would put potential or known Aboriginal cultural heritage at risk. Additionally, if the archaeologist/site officer determines that the Stop Work Procedure must be implemented, work must cease on the area in question until such time as it is safe to do so.

8.3 Managing Known Sites

The known sites within or close to the project area need to be protected from harm by ensuring that on site workers are familiar with the areas within which those sites are found and how to avoid them.

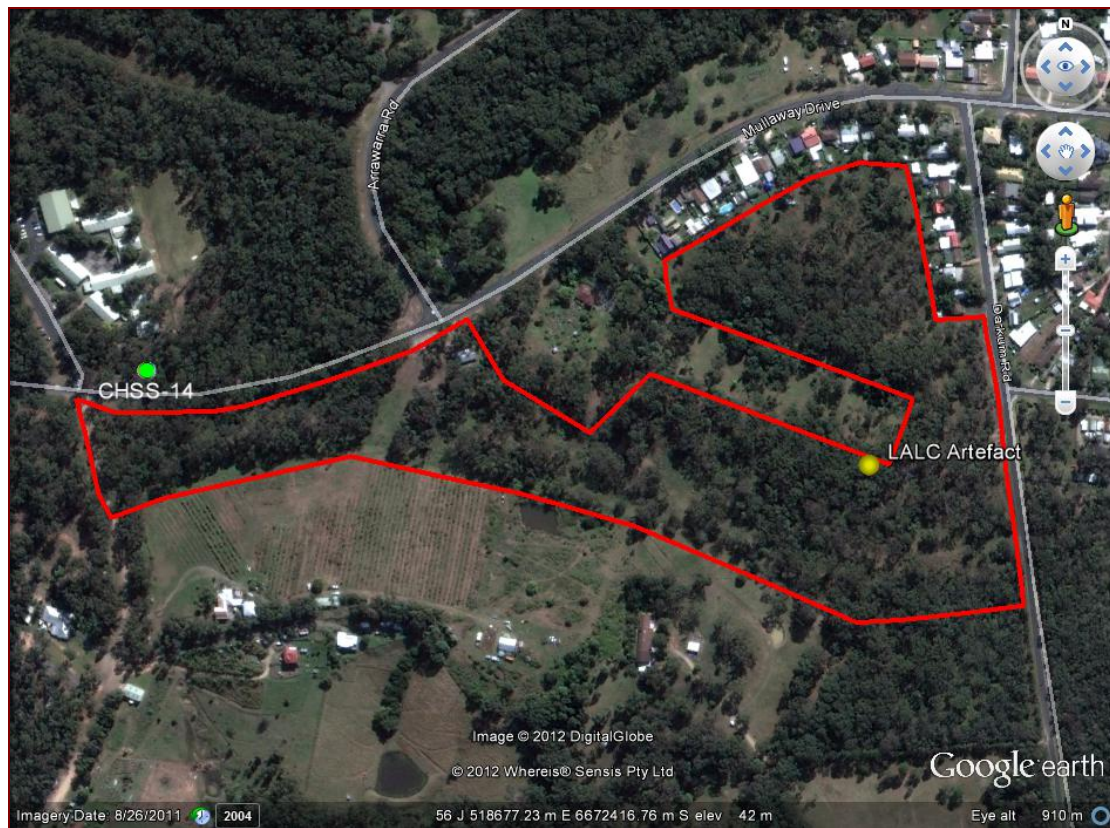


Figure 7: Sites in or Near to the Development Footprint

The following table outlines the sites at risk, what they are and what should be done to avoid impact upon them.

Site	Management
CSS-14	None, site is on north side of Mullaway Drive away from development.
LALC Artefact	<ul style="list-style-type: none"> • Get more accurate site details upon return of LALC CEO; • Ensure a buffer of twenty meters is maintained around the site during all construction works; • Ensure that future site managers are aware of the site and their obligations to protect it; • Ensure future grounds staff are aware of site's location and avoid impact upon it; and • That the LALC inspect the site after each stage of construction to ensure it remains unaffected.

Table 5: Site Management Requirements

8.4 Post-Works Inspection

Following the completion of works, each site and high potential area should be examined to ensure that it has not been impacted upon by works undertaken during the project. This inspection can be undertaken by the archaeologist or LALC site officer or by the proponent. However, should any impact be found, it must be immediately reported to the EPA for investigation.

8.5 Stop Work Procedure

Heritage and archaeological assessments may, at times, fail to identify a heritage issue and this normally relates to potential (sub-surface) archaeological resources or those that could not be located due to site or survey constraints. Note that any works which may reveal or disturb archaeological resources require an AHIP from EPA.

If any unexpected archaeological resources, whose disturbance is not covered under a current AHIP, the following Stop Work Procedure should be followed:

STOP WORK	Immediately
CONTACT	A qualified archaeologist as soon as possible
NOTIFY	The archaeologist should notify the RVC's Heritage Officer, the Aboriginal Stakeholder Groups and EPA
ASSESS	<p>The archaeologist in conjunction with EPA and the Aboriginal Stakeholder Groups should assess the significance of the resource and recommend a course of action eg:</p> <ul style="list-style-type: none">• Protect and avoid; or• Investigate, record and remove; or• Excavate, record and preserve
APPLY	To EPA for an AHIP if necessary
RECOMMENCE	Only when EPA has approved a course of action

Should the work being undertaken be of a large nature, it is possible in some instances to isolate the discovered site and continue working without further disturbing the site. See the Type Policies (Section 7.4) for details regarding what courses of action should be followed in each particular case.

8.6 Sites Types for Unexpected Finds

Scarred Trees

Should any additional or potential scarred or marked trees be located (likely along the sites ridgelines), follow the Stop Works Procedures. The site should be recorded and no works should be undertaken with the potential to impact the tree and any work with the potential to impact the tree should be monitored, with the tree being roped off to prevent accidental damage, until such time as it is properly recorded and OEH has agreed to the planned management and/or mitigation of impact to the site.

Artefact Concentration, Isolated Artefacts and Open Campsites

These sites represent places of aboriginal occupation. *"These sites are mostly surface scatters of stone, sometimes near fireplaces. Recent studies have shown them to have*

*significant scientific and cultural value.*¹⁹ These sites can also indicate where further sub-surface archaeological materials may be encountered,

Should a concentration of artefacts or an isolated artefact be identified, follow the Stop Works Procedures. Additionally, any work with the potential to impact the site should also stop until the site can be properly investigated and the standard Stop Work Policy followed, until such time as it is properly recorded and OEH has agreed to the planned management and/or mitigation of impact to the site.

These sites are often the location of PADS and should be treated as such until test pitting can determine if a PAD is present or not.

Grinding Grooves and Dishes

Grinding grooves have the potential to occur either close to water source, both spring and creeks, or within them. Additionally, some may be found on larger boulders and stones moved by farmers. These grooves are typically very smooth and do not match the natural patterns of weathering of nearby stone of a similar type.

Should a grinding groove be identified, follow the Stop Works Procedures. Additionally, any work with the potential to impact the site should also stop until the site can be properly investigated and the standard Stop Work Policy followed until such time as it is properly recorded and OEH has agreed to the planned management and/or mitigation of impact to the site.

Carved Stones

These ceremonial markers can be important sign posts within the landscape for Aboriginal people. Should stone exhibiting linear or spiral patterning, not consistent with weathering or fractures caused by slasher/dozer blades, the stone should be treated as a site until it is determined otherwise.

Should a carved stone be identified, follow the Stop Works Procedures. Additionally, any work with the potential to impact the site should also stop until the site can be properly investigated and the standard Stop Work Policy followed until such time as it is properly recorded and OEH has agreed to the planned management and/or mitigation of impact to the site.

Quarries

Quarries will exist where stone of sufficient quality and usefulness can be found. Should an Aboriginal quarry be identified, follow the Stop Works Procedures. Additionally, any work with the potential to impact the site should also stop until the site can be properly investigated and the standard Stop Work Policy followed until such time as it is properly recorded and OEH has agreed to the planned management and/or mitigation of impact to the site.

¹⁹ Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW.

Burials

Should any human remains or any unidentifiable bone material be encountered during any works on the project area, **all work must stop immediately** and the site should be protected from additional disturbance.

The NSW Police should be contacted and the Police will then work with OEH to determine whether or not the remains are of Aboriginal origin. Further works on site will need to be undertaken in accordance with Police and/or OEH guidance and, in the case that the remains are Aboriginal, the local Aboriginal groups.

Shell Middens

Shell middens are the physical remains of Aboriginal occupation and use of a landscape and are analogous with our modern dumps. They are found in proximity to both salt and fresh water right across NSW in all landscapes. Shell middens are the most common type of midden, being found in abundance along the NSW coastline. These sites can also contain artefacts, shell, fish bones, other animal bones and occasionally human remains.

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Legislation and Standards

Australia ICOMOS *Burra Charter*;

OEH's *Aboriginal Cultural Heritage Standards & Policies Kit*;

OEH's *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*;

OEH's *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*;

OEH's *Draft Code of Practice for Archaeological Investigation in NSW*;

James Semple Kerr's *The Conservation Plan*

The NSW Heritage Branch's *Conservation Management Documents*; and

The NSW Heritage Branch's *Assessing Heritage Significance*.

NSW National Parks and Wildlife Act 1974

Websites

<http://www.parishmaps.lands.nsw.gov.au> Image No. 14926903. Accessed 15/12/2010.

<http://www.parishmaps.lands.nsw.gov.au> Image No. 10713501. Accessed 15/12/2010.

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Accessed 02/08/2010

<http://www.legislation.nsw.gov.au/viewtop/inforce>. Accessed 05-08-2010.

Appendix 1: Consultation Correspondence



Coffs Harbour & District Local Aboriginal Land Council

Cnr Pacific Highway & Arthur Street, Coffs Harbour 2450
PO Box 6150, Coffs Harbour Plaza NSW 2450

Phone: (02) 6652 8740

Fax: (02) 6652 5923

26th April 2012

Attention: Mr Ben Luffman

GHD Pty Ltd
PO Box 1340
Coffs Harbour NSW 2450

**Re: Cultural Heritage Assessment – Lot 1 DP 1128964, Darkum Road,
Mullaway.**

Dear Mr Luffman,

I write to you regarding a Cultural Heritage assessment that was undertaken by Mr Mark Flanders and Mr Ken Craig of the above mentioned property on 25th February 2011 to ascertain if any Cultural Heritage constraints exist for the proposed development of this property.

Objects of Aboriginal origin were identified during this assessment; however these objects were located outside of the proposed development envelope. These objects are now recorded and protected under the National Parks and Wildlife Act 1974.

With these findings in mind the following recommendations are provided;

The Coffs Harbour and District Local Aboriginal Land Council strongly recommends from the assessment results that monitoring will need to be undertaken by suitably qualified members of Coffs Harbour and District Local Aboriginal Land Council during any earth disturbance works that take place within the property.

This monitoring program will enable Coffs Harbour and District Local Aboriginal Land Council to gauge Cultural Heritage values that may exist and inform of legislative requirements for Aboriginal objects should they occur in the property.

If you require any further information or have any questions in relation to this matter please do not hesitate to contact me on the number listed above.

Yours truly,

Chris Spencer
Chief Executive Officer

Appendix 2: Cultural Heritage Assessments for AHIP's and Community Consultation

The provisions of Part 6 of the *National Parks and Wildlife Act, 1974* require that any action that may disturb, excavate for research (beyond sanctioned, limited test pit excavation) or remove an Aboriginal object or destroy, deface or damage an Aboriginal Place **must have a permit** issued by the Director-General, allowing such action to take place.

Should a developer continue to the development stage of the project, an Aboriginal Heritage Impact Permits (AHIP) and must be applied for and granted before any works that would affect known or potential Aboriginal sites in the proposed project area begin.

AHIP's are applied for under Section 90 of the Act and the application form for an AHIP is included in Appendix C and is also available from EPA at:

<http://www.environment.nsw.gov.au/conservation/aboriginalculture.htm#whattodo>

When submitting an AHIP application, the following material must accompany the application (one paper copy and one electronic copy of Objects 1 to 6 are required):²⁰

1. Aboriginal Heritage Information Management System (AHIMS) site numbers or, for new sites, the correctly filled out AHIMS site cards with a unique site identifier.
2. Documentation demonstrating Aboriginal community consultation (as required by the Community Consultation Guidelines for Applicants), specifically:
 - a. A consultation log, detailing the consultation undertaken;
 - b. Evidence that the applicant has written to EPA and other parties to obtain information on known Aboriginal groups to be consulted (copies of letters will be sufficient);
 - c. Evidence of advertisement or other public media seeking community input; and
 - d. The outcome of the consultation, including the views of the Aboriginal community on the methodology and impact of the proposed activities, how these views have been addressed, and any mitigation and conservation measures that have been negotiated.
3. Maps:
 - a. A topographic map (e.g. 1:25,000) clearly showing the location of the subject lands, development boundary, impact area and sites or Potential Archaeological Deposits (PADs) for which a permit is sought (aerial photographs, detailed Wooroowoolgan site maps, title plans etc. may also be provided). The map should include clear cadastre information including a lot and DP number (as identified in the application), and the local government area, parish and zone (as applicable), as well as
 - b. A map of the location of the land to be subject of the application which clearly defines the boundaries and proposed geographic extent of the application.
4. Description of research activities to be undertaken for applications, if applicable.
5. Any development consent, Environmental Impact Assessment and/or Review of Environmental Factors, if applicable.

²⁰ OEH. 2009. *Supporting Information Requirements for AHIP Applications*.

6. Information about what the applicant intends to do with collected objects, for example, if objects will be transferred to the Australian Museum, or whether a care and control agreement will be sought.
7. Three paper copies, plus one electronic copy of an Aboriginal Cultural Heritage Impact Assessment Report, which conforms to the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*. Any archaeological surveying, site recording and research methodology that is included in the Assessment Report must be consistent with the requirements in the Standards and Guidelines Kit and the Code of Practice. The Aboriginal Cultural Heritage Impact Assessment Report must contain, but is not limited to:
 - Table of contents – Include a table of contents, including a list of tables, charts, plates, figures and appendices.
 - Summary – Unless the report is very short, include a summary or abstract at the front of the report. This should be an overview of the main findings, interpretation of the results, and recommendations.
 - Introduction – Include:
 - details of the proponent
 - explanation of the purpose of the archaeological investigation
 - project brief
 - subject area, and how this is defined
 - objectives of the assessment
 - overall project framework (development application, zoning study, etc.)
 - Investigator and contributors – Include details of the qualifications and experience of the person carrying out the investigation and a list of contributors and their affiliations, specifically: reviewers, advisors, participants in survey activities
 - Description of development proposal – Describe the proposed development, highlighting activities that have the potential to harm Aboriginal objects
 - Previous archaeological work
 - Landscape context
 - Regional character
 - Predictions
 - Sampling strategy – Provide the information set out in Requirement 5 and Section
 - Field methods – Describe how the archaeological survey, and if relevant, the archaeological test excavation, was conducted and how information was recorded, including the dates and people involved
 - Results – Describe what was found during the survey (and if relevant, archaeological test excavation). Include an interpretation of the results, a table of survey coverage data as set out in Requirement 10, and a table of findings as follows:

- Analysis and discussion – The results must be interpreted using an archaeological framework that constructs an Aboriginal settlement history of the subject area.
- The settlement history must be placed in a local and regional archaeological context.
- Use graphs, charts and tables to effectively summarise data to support the interpretations where informative.
- Scientific values and significance assessment – Identify the archaeological values and assess their significance. The assessment must be supportable and the assessment criteria must reflect best practice assessment policies as set out in the Burra Charter.
- Impact assessment – Evaluate and discuss the potential archaeological impacts of the proposal. For known sites and areas of archaeological potential, the information must also be summarised in a table as follows:
- Management and mitigation measures – Evaluate the various options for management of the archaeological impacts, and justify those that are recommended.
- Recommendations – These must be clear recommendations for the conservation of archaeological values and mitigation of impacts to the values. If further archaeological work such as salvage excavation is recommended, justification must be provided for this in the ‘Management and mitigation’ section of the report.
- References – Use Harvard style (author, date) referencing.
- Maps and figures – These must be used as necessary to support the report, as set out in the preceding requirements.
- Appendices – AHIMS and other heritage register information must be included as appendices to the report.

Additionally, the EPA publication *Guide to determining and issuing Aboriginal heritage impact permits* should be used when compiling an AHIP to ensure that the application will provide the required information in the correct format for the application to be properly assessed. This guide can be downloaded from:

<http://www.environment.nsw.gov.au/chpublications/index.htm>

Additionally, part 2.d above indicates that consultation with Aboriginal Groups will need to be undertaken in accordance with the legislated requirements as described in the EPA’s *Aboriginal Cultural Heritage Consultation requirements for proponents*. The following are the main stages and the timeframes that must accompany them:

The main phases of consultation with Aboriginal people are:

1. Informing Aboriginal people about the nature and scope of the proposal through advertisements and contacting the relevant agencies (2 weeks preparation and 4 Weeks notification);
2. Understanding what might be present in the landscape and its cultural significance (Consultation meeting at end of stage 1 and 4 weeks to respond);

3. Determining the potential impacts and the proposed strategies to deal with them (usually integrated with actions in stages 2 and 4); and
4. Reviewing the report (4 weeks to review the draft report and provide input into the final report).