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REFLECTIONS HOLIDAY PARK DUNE CONSERVATION WORKS, BYRON BAY, NSW

ABORIGINAL CULTURAL HERITAGE ASSESSMENT REPORT
PREPARED FOR REFLECTIONS HOLIDAY PARKS
August 2021



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Report Reference:

Hill, T., R. Mazlin and M. Finlayson 2021 Reflections Holiday Park Dune Conservation Works, Byron Bay NSW: Aboriginal Cultural Heritage Assessment Report. Everick Heritage Pty Ltd. Unpublished report prepared for Reflections Holiday Parks, Byron Bay, NSW.

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Document Status:

Rev No.	Author(s)	Amended Sections	Date	Authorised
1	R. Mazlin	1.3, 7.3, Appendix A	27.04.2021	T. Robins
2	T. Hill	All	10.05.2021	T. Robins
3	T. Hill	1.3	25.05.2021	T. Robins
4	R. Mazlin	1.3, 7.3	31.05.2021	T. Robins
5	R. Mazlin	3.2	06.07.2021	T. Robins
6	R. Mazlin	Exec. Sum, 3.2, App A	09.08.2021	T. Robins

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EXECUTIVE SUMMARY

The following is a report detailing the results of an Aboriginal Cultural Heritage Assessment Report ('ACHAR') and associated Aboriginal community consultation for the proposed dune stabilisation works at the Reflections Holiday Park, Byron Bay NSW (the 'Proposed Works'). The lands subject to assessment comprise parts of Lots 410 DP729062 and are located to the east of the Clarkes Beach Holiday Park. The intent of this ACHAR is to understand the potential impacts of the dune stabilisation works on the cultural values of the following middens;

- a. Clarkes Beach Holiday Park. 1 (AHIMS #04-5-0358); and
- b. Clarkes Beach Holiday Park. 2 (AHIMS #04-5-0359).

The Proposed Works are located immediately to the west of the Clarkes Caravan Park Midden Site (AHIMS # 04-5-0199) which has been subject to a separate assessment and approval by NSW National Parks and Wildlife Service ('NPWS'). As such this section of the midden has been excluded from the ACHAR, however the ACHAR assumes that the three (3) recorded Aboriginal Heritage Information System (AHIMS) sites comprise a single cultural unit and will be managed accordingly.

Everick Heritage Pty Ltd (the 'Consultant') were commissioned by Reflections Holiday Parks (the 'Proponent') to undertake this Aboriginal Cultural Heritage Assessment. The ACHAR has been commissioned to;

- Investigate and articulate the significance of the midden to the Aboriginal community;
- Map and describe the nature and extent of the midden; and
- Discuss appropriate ongoing management options in support of an Aboriginal Heritage Impact Permit ('AHIP').

The methods used for this assessment are in compliance with the OEH *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW 2010* ('CoPAI') and all relevant legislation as described in Section 2 of this Report. The following are the broad requirements for compliance with the CoPAI:

- a) consultation with the Registered Aboriginal stakeholders for the Project;
- b) searches of applicable heritage registers;
- c) review of ethnographic and historic resources relevant to the region;
- d) review previous archaeological work and the landscape context;
- e) summarise the local and regional character of Aboriginal land use and its material traces;
- f) formulate a predictive model;

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- g) conduct Aboriginal community consultation with respect to management of the midden(s); and
- h) report on findings and recommended management strategies.

The ACHAR has been commissioned by the Proponent to provide for the ongoing management of the Clarkes Beach Holiday Park 1 and 2 middens with the Bundjalung of Byron Bay Aboriginal Corporation ('BOBBAC') and Tweed Byron Local Aboriginal Land Council ('TBLALC'). The Proposed Works have been initiated in response to significant beach sand loss from Clarkes Beach which has resulted in an increase in erosion of the dune system. These works include;

- the removal of the existing temporary sand bag system to stabilise the lower dune face during high tides and storm surge;
- revegetation works to provide medium to long term stability to the dune face, including the use of fabric or plastic material to support the establishment of root structures;
- active salvage of midden material by BOBBAC and TBLALC that has slumped down the dune face and is at imminent risk of loss from storm surge and high tides;
- construction of a beach access to replace the former eastern stairs using pine sleepers, stabilised gravel and kopper logs; and
- reinstatement from the western beach access and the installation of semi-permanent fencing and signage around the dune to mitigate impacts from beachgoers.

A meeting was held on Monday 26 August 2019 with Sharon Sloane from BoBBAC to develop a preliminary understanding of the management issues around the middens and dune stabilisation works. The initial meeting assumed that compliance with *The Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (ACHRCP) was not required due to the determination of Native Title. The consultation meeting on 30 August 2019 generally confirmed the description of the sites from the AHIMS site cards. Given the nature of dune erosion it was not possible to physically inspect the midden lens as the dune had visible signs of slumping.

A copy of this ACHAR was provided to Sharon Sloane (BoBBAC) via email on 02 June 2021 requesting any comments be received by 01 July 2021 (Appendix A). Written support for the proposed mitigation measures was received from Sharon Sloane via email on 05 August 2021 (Appendix A). Specifically, that the BoBBAC Board of Directors agreed:

- to a 5-year plan for the sandbags to stay in place;
- ensuring that they have cultural site monitors on site for any works / planting;
- ongoing salvage program; and

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- no work to take place in the midden area whether it be restoration or stabilisation works / planting without the board being made aware and cultural site monitors in place.

As a result of the desktop study, field inspection and consultation with BoBBAC, the following can be concluded:

- a. The midden comprises predominately Eugarie shell which exists at the interface of the old sand dune profile (identifiable by the grey sand layer) which has been buried by a more recent yellow sand deposit within the historic period.
- b. Eugarie middens typically result from the consumption of locally available shellfish and typically have a narrow species diversity. The middens are more commonly referred to as 'Dinner Time Camps' and typically were discarded by small family groups. However, over time these small sites accumulate into extensive midden deposits which cover a large portion of the fore and hind dune systems.
- c. Based on the results of the NPWS dating program it is reasonable to proceed on the basis that the midden lens within the Project Area dates to the period of early contact (approximately 170BP or 1850's) and is not older than 260BP (Everick 2018). The photographic collection by Mr Thomas Dick from Port Macquarie is a good record of eugarie middens from this period.
- d. The midden likely contains bone material, being swamp wallaby, and has the potential to contain Aboriginal skeletal material. Brian Kelly understood that the burial of Harry Bray was not in the Clarkes Beach area, however this does not discount the potential for historic burials in the dune.
- e. The midden contains a beach cobble chopper and likely contains other stone artefacts.
- f. The midden is similar to Eugarie middens along the Tyagarah Beach, but different to the midden at The Pass. The Eugarie middens were very common along the dune systems, however most of the midden sites have now been lost as a result of historic sand mining and more recently coastal erosion.
- g. The dune system at Clarkes Beach has suffered massive losses of sand since the 1990's and it is expected that a large part of the midden complex has been lost as a result. As such the conservation status of the remaining midden is increased. It is noted that the recent erosion is a result of exceptional circumstances that have eroded into a very old portion of the dune and as such as unprecedented.
- h. It is likely that the midden extended along Clarkes Beach, however is now only partially retained in the sand dune as this section was not subject to intensive sand mining.
- i. There is not community support for removal of the temporary sandbags are the time of the ACHAR. Based on the outcomes of community consultation it is not considered that the temporary sand bag system should be removed until such times as there is a viable alternative long-term management solution.

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- j. There is conditional community support for the interim dune stabilisation works, however it is noted that long-term solutions are considered preferential to short-term solutions. It is generally agreed that doing something is considered preferable to doing nothing.
- k. There is support for dating the shell to increase cultural and scientific knowledge of the midden.
- l. In the absence of long-term solutions to coastal erosion, it is considered that active monitoring and salvage of the midden deposits by members of the Aboriginal community provides the most pragmatic solution to the management of midden material which is under imminent threat of erosion.

The ACHAR has concluded that the Clarkes Beach Holiday Park 1 and Clarkes Beach Holiday Park 2 middens have mostly eroded, and the remaining material exists in a single shell lens which is visible between the interface of the overlying yellow sand layer and the in-situ light grey sand layer. It is considered that the continued erosion of the dune will likely result in a complete loss of the midden over time. The following recommendations are provided to ameliorate these impacts.

Recommendation 1: Sand Bag System

The ACHAR has concluded that there is not community support for the removal of the temporary sand bag system without an alternative long-term solution being put in place. It is considered likely that removal of the sand bags will result in harm to shell material which have fallen from the midden lens down the dune face. Further, the removal of the bags would expose the base of the dune to significant erosion and increase the risk of harm to the midden. As such consideration should be provided for the extension of licensing arrangements for the sand bag system so that permanent solutions can be implemented.

Recommendation 2: Aboriginal Heritage Impact Permit

It is recommended that an AHIP is sought for the following activities;

- Revegetation works to provide medium to long-term stability to the dune face, including the use of fabric or plastic material to support the establishment of root structures (Figure 2 and Figure 3);
- Active salvage of midden material by BBOAC and TBLALC that has;
 - i. slumped down the dune face and retained around the sandbag system;
 - ii. is within the construction footprint of the eastern beach access;
 - iii. and is at imminent risk of loss from storm surge and high tides;
- Completion of radiocarbon dating for a sample of shell and non-human bone fragments; and

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- Reinstatement from the western beach access and the installation of semi-permanent fencing and signage around the dune to mitigate impacts from beachgoers.

It is recommended that the salvaged midden material be temporally stored within a secure area within the Reflections Holiday Park or off-site in the office of either BOBBAC or NPWS until such time as a permanent storage area is identified between BOBBAC and the Proponent. Permanent storage should be in compliance with Requirement 26 of the CoPAI or in accordance with instructions from BOBBAC. It is noted that the permanent reburial area must be recorded as a new AHIMS site and managed as an Aboriginal site.

The area of the AHIP should be restricted to the fore dune area and all construction and maintenance activities with the Project Area not specified in this ACHAR should be excluded from the AHIP. This would include any accommodation or amenities and landscaping not associated with the stabilisation of the dune area.

Recommendation 3: Reporting

It is recommended that a field log is maintained to record basic data from the salvage program. This would include dates of salvage, identified species, volume of material and particulars of the event which resulted in the salvage. Should scientific analysis be undertaken this should also be included within the field log. It is recommended that the field log be attached to the AHIMS site card or the AHIMS Site Impact Card periodically. It is recommended that the field log is provided to other Aboriginal stakeholders which retain or register an interest in the project.

DEFINITIONS

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

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

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

ACHAR means Aboriginal Cultural Heritage Assessment Report

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

AHIMS means Aboriginal Heritage Information Management System

AHIP means Aboriginal Heritage Impact Permit.

BOBBAC means Bundjalung of Byron Bay Aboriginal Corporation (Arakwal People).

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

Due Diligence Code means the OEH *Due Diligence Code for the Protection of Aboriginal Objects in NSW (2010)*.

LALC means Local Aboriginal Land Council.

LEP means Local Environment Plan

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

NSW means New South Wales.

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

Project Area means the Reflections Holiday Park Clarkes Beach foredune located at 1 Lighthouse Road Byron Bay, NSW. The lands subject to assessment comprise parts of Lots 410 and 411 DP729062.

Proponent means Reflections Holiday Parks and all associated employees, contractors and subcontractors of the same.

RAP means Registered Aboriginal Party

TBLALC means Tweed Byron Local Aboriginal Land Council.

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

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1. INTRODUCTION

1.1 Scope of this Assessment

The following is a report detailing the results of an Aboriginal Cultural Heritage Assessment Report ('ACHAR') and associated Aboriginal community consultation for the proposed dune stabilisation works at the Reflections Holiday Park, Byron Bay NSW (the 'Proposed Works'). The lands subject to assessment comprise parts of Lots 410 DP729062 and are located to the east of the Clarkes Beach Holiday Park (Figure 1). The intent of this ACHAR is to understand the potential impacts of the retention and removal of dune stabilisation sandbags along Clarkes Beach on the cultural values of the following middens;

- a) Clarkes Beach Holiday Park. 1 (AHIMS #04-5-0358); and
- b) Clarkes Beach Holiday Park. 2 (AHIMS #04-5-0359).

The Proposed Works are located immediately to the west of the Clarkes Caravan Park Midden Site (AHIMS # 04-5-0199) which has been subject to a separate assessment and approval by NSW National Parks and Wildlife Service ('NPWS'). As such this section of the midden has been excluded from the ACHAR, however the ACHAR assumes that the three (3) recorded AHIMS sites comprise a single cultural unit and will be managed accordingly.

Everick Heritage Pty Ltd (the 'Consultant') were commissioned by Reflections Holiday Parks (the 'Proponent') to undertake this Aboriginal Cultural Heritage Assessment. In support of this assessment. The ACHAR has been commissioned to;

- investigate and articulate the significance of the middens to the Aboriginal community;
- map and describe the nature and extent of the middens; and
- discuss appropriate ongoing management options in support of an Aboriginal Heritage Impact Permit ('AHIP').

It is noted that an AHIP has been previously issued for Reflection Holiday Parks for the sand bag removal, beach stabilisation works including revegetation and the installation of beach access. However, the current ACHAR has been commissioned as a requirement of a development application to Byron Shire Council which is required to extend the approval period for the sand bags. The conditions of the approval imply that the sand bags will be removed at the end of the license period which will likely result in harm to the shell middens.

1.2 Assessment Methodology

The methods used for this assessment are in compliance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (DEECW 2010)* ('CoPAI') and all relevant legislation as described in Section 2 of this Report. The following are the broad requirements for compliance with the CoPAI;

- a) consultation with the Registered Aboriginal stakeholders for the Project;
- b) searches of applicable heritage registers;
- c) review of ethnographic and historic resources relevant to the region;
- d) review previous archaeological work and the landscape context;
- e) summarise the local and regional character of Aboriginal land use and its material traces;
- f) formulate a predictive model;
- g) conduct Aboriginal community consultation with respect to management of the midden(s); and
- h) report on findings and recommended management strategies.

1.3 Project Description

The ACHAR has been commissioned by the Proponent to provide for the ongoing management of the Clarkes Beach Holiday Park 1 and 2 middens with the Bundjalung of Byron Bay Aboriginal Corporation ('BoBBAC'). An ACHAR has previously been prepared for the specific Project Area of this report and was the basis of an AHIP issued to facilitate proposed works being:

- the removal of the existing temporary sandbag system using machinery consistent with an excavator;
- Revegetation works to provide medium to long-term stability to the dune face, including the use of fabric or plastic material to support the establishment of root structures (Figure 2 and Figure 3); and
- Active salvage of midden material by BoBBAC that has slumped down the dune face and is at imminent risk of loss from storm surge and high tides.

The Proposed Works have been initiated in response to significant beach sand loss from Clarkes Beach which has resulted in an increase in erosion of the dune system (Figure 1). This ACHAR augments the previous assessment and will be used to support a Development Application to Byron Shire Council to also enable the temporary retention of the existing sandbag system for a period of 5 years.

1.4 Report Authorship

The ACHAR was prepared by Principal Consultant (Northern NSW) Tim Hill and Archaeologist Matt Finlayson. The Aboriginal community consultation was conducted by Tim Hill and Archaeologist Robbie Mazlin.



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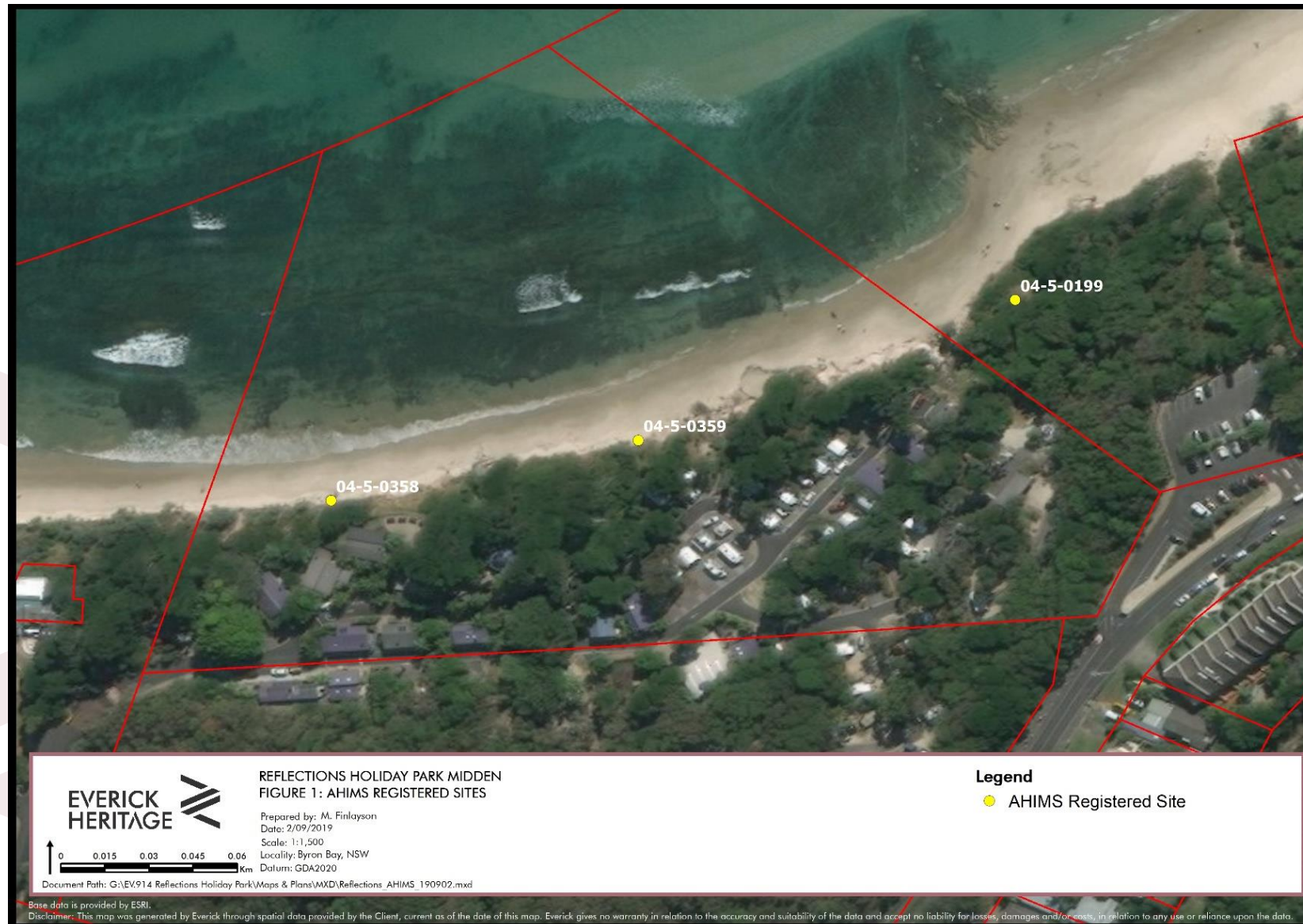


Figure 1: Project Area general location and AHIMS registered sites.

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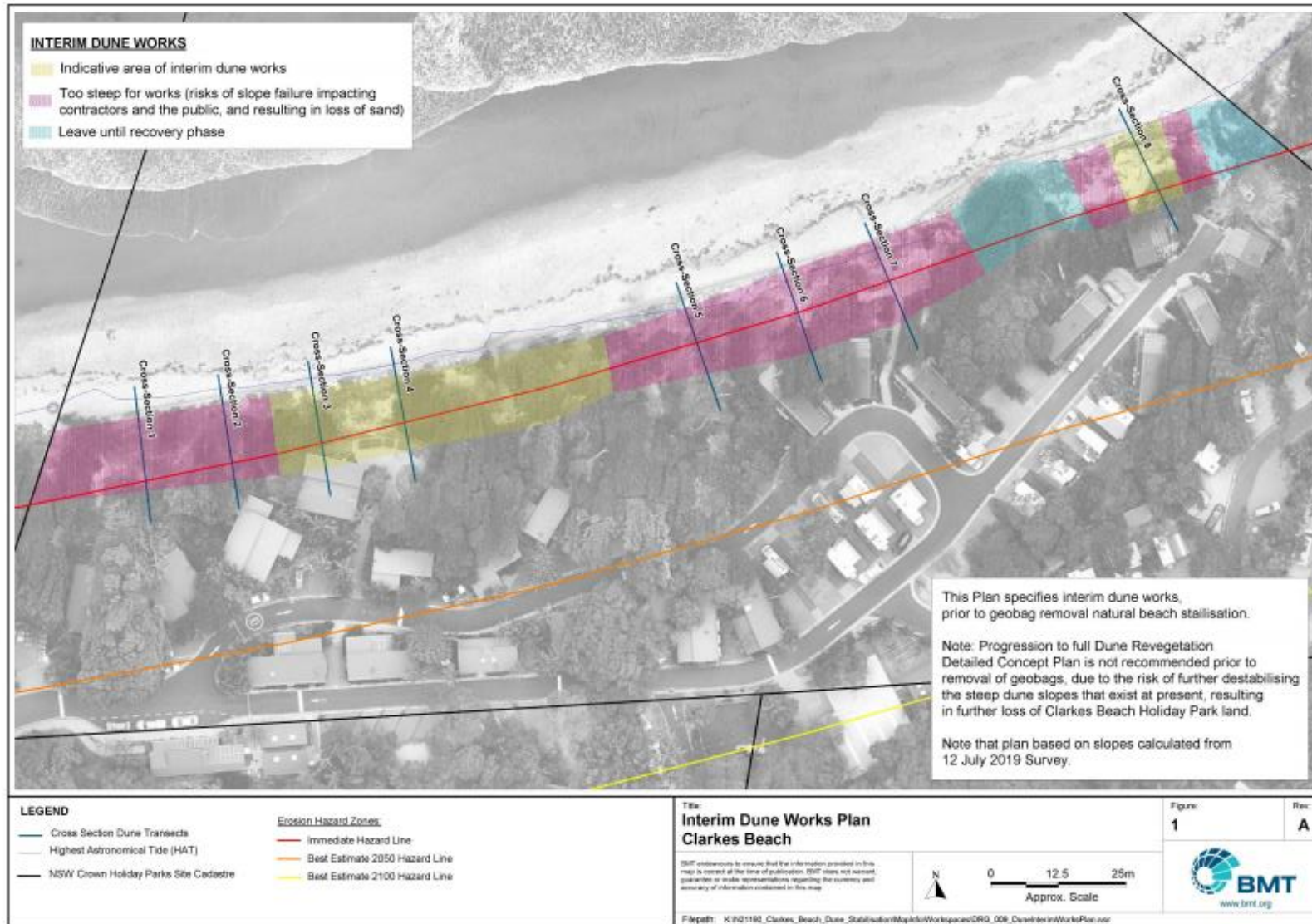


Figure 2: Location of interim dune stabilisation works.

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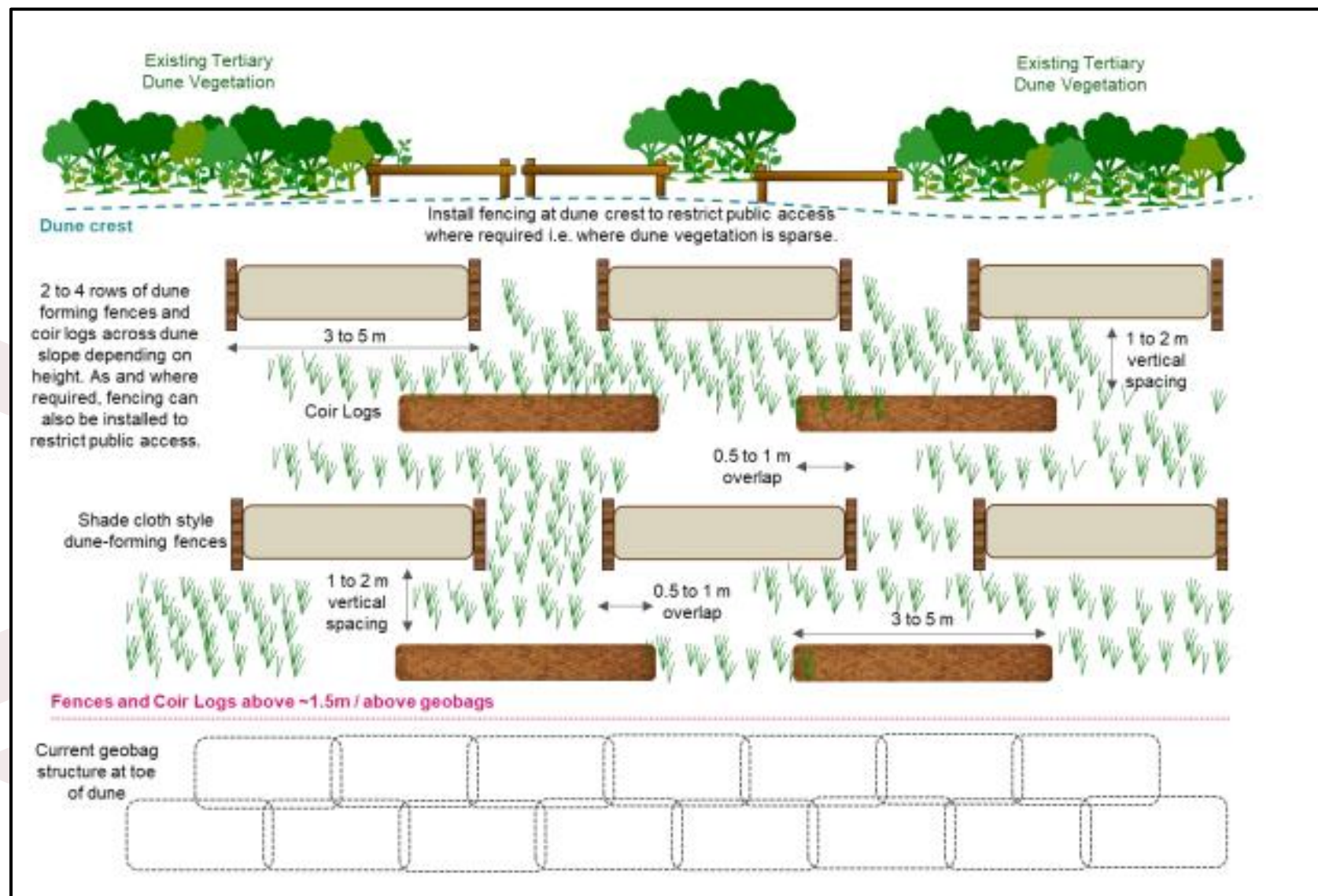


Figure 3: Dune stabilisation works concept plan (source Reflections Holiday Parks).

2. LEGISLATIVE AND PLANNING CONTEXT

The primary State legislation concerning cultural heritage in NSW is the *National Parks and Wildlife Act 1974* (NSW) (NPW Act) and Local Environment Plans (LEP) made under the *Environmental Planning & Assessment Act 1979* (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 *Historic Shipwrecks Act 1976* (Cth).

For the purposes of this assessment the State and local legislation are most relevant. The consent authority will be the Heritage NSW. The information below lists the legislative and policy framework within which this assessment is set.

2.1 The National Parks and Wildlife Act 1974 (NSW)

The 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

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

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

- a) Undertaking activities that are prescribed as 'Low Impact'.
- b) Acting in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (2010) (the 'Due Diligence Code').
- c) Using a consulting archaeologist who correctly applies the CoPAI.
- d) Acting in accordance with an AHIP.

The new regulations allow for a range of low impact activities to be undertaken without the need to consult the Heritage NSW 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. For the purposes of this assessment it is not considered that the proposed management works are 'low impact activities'.

2.2 Due Diligence Code

The Due Diligence Code operates by posing a series of questions for land users before they commence development. These questions are based around assessing the potential for an area of land to contain Aboriginal Objects and previous ground disturbance. An activity will generally be *unlikely* to harm Aboriginal Objects where it:

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

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

2.3 The ACHCRP Guidelines (2010)

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

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

2.4 The Byron Local Environmental Plan 2014

The Byron LEP 2014 provides statutory protection for items already listed as being of heritage significance. It ensures that essential best practice components of the heritage decision-making process are followed. A listed environmental heritage item is an item that is either:

- a) designated as an item of environmental heritage in Schedule 5 of the Byron LEP 2014; or
- b) designated as an item of environmental heritage by the Byron DCP 2010 and the Draft Byron DCP 2014 (Section 2.5).

The up to date heritage lists in the BLEP 2014 has been considered in this assessment and the middens are not listed. Therefore, the heritage provisions of the LEP do not apply.

3. ABORIGINAL COMMUNITY CONSULTATION

Heritage NSW have issued their consultation requirements (ACHCRP Guidelines), which act as a guide for conducting the community consultation process. It contains a number of minimum consultation standards, one of which requires the preparation of a methodology for conducting the Cultural Heritage Assessment. This methodology outlines the basic steps that need to be undertaken to determine the nature of the cultural heritage of the site, and the approaches required to manage that heritage.

3.1 Community Knowledge

We will work with the Aboriginal community to identify and address their concerns; not only about known sites in the region, but also cultural values such as historic and spiritual significance, and other values relating to flora and fauna of the area. We recognise that there may be Traditional knowledge that would have to be treated in a confidential manner, and we would be seeking advice from Aboriginal Parties as to the appropriate protocols to be adopted, in regard to such knowledge.

Everick makes a commitment to the Aboriginal community to document the consultation process as fully as possible. We will include all written comments we receive from the Aboriginal community in our final report to Heritage NSW. This is regardless of whether they are critical of the process we have undertaken or our final recommendations. In doing so, we hope to make an informed and accurate assessment of the significance of any cultural heritage within the Project Area.

3.2 Consultation with the Aboriginal community

A meeting was held on Monday 26 August 2019 with Sharon Sloane from BoBBAC to develop a preliminary understanding of the management issues around the middens and dune stabilisation works. The initial meeting assumed that compliance with the ACHRCPP was not required due to the determination of Native Title.

A site inspection was undertaken on Friday 30 August 2019 with the following representatives;

- a) **BoBBAC** - Brian Kelly, Steven Kelly and Sharon Sloane
- b) **TBLALC** - Uncle Des Williams, Warren Phillips, Maurice Gannon.
- c) **Reflections Holiday Park** - Tristan Rossiter; and
- d) **Everick Heritage** - Tim Hill.

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An email of the outcomes of the consultation meeting was forwarded via email to BoBBAC and TBLALC on Monday 2 September 2019.

A response was received from TBLALC on 2 September providing the following comments;

- minor edits and spelling errors;
- clarifying that the Aboriginal community is supportive of the dune stabilisation works and noted the concern with regard to regulatory delays for more permanent stabilisation measures;
- confirming the source of dating information for the midden (addressed in Section 7.1 below);
- noting that the erosion in the past few years is without precedent and cannot be solely attributed to coastal processes over the past three decades;
- that TBLALC was supportive of the retention of the existing sand bag system.

An email was forwarded to Maurice Gannon to confirm the above summary of the TBLALC response, to which a qualified statement was received on 4 September (see Appendix B). It is considered that the TBLALC is generally supportive of the dune conservation works and salvage proposal, however consider that the focus of the works should be on long term solutions to address dune erosion and not short-term solutions.

An email was received from Sharon Sloan (BoBBAC) confirming support for the TBLALC comments and noting the priority works for the conservation of the midden are to address the underlying cause of erosion, being the instability of the dune.

The following are considered reasonable conclusions from the initial consultation;

- There were no objections to the salvage of slumped shell material, however there was not support for salvage of shell material from the intact midden lens.
- There is not support for the removal of the temporary sandbag system. Any support for the removal of the sandbags would be conditional upon an alternate long-term solution.
- There is support for revegetation of the dune.
- There is no specific objection to the pedestrian access.
- The Aboriginal stakeholders have raised genuine concerns around the investment in temporary measures at the expense of more permanent solutions to manage erosion of the dune and midden.

An email was received from Sharon Sloan (BoBBAC) confirming support for the recommendations outlined in the ACHAR and TBLALC comments regarding dating. The correspondence specifically noted

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that salvage and repatriation on-site is considered appropriate and that midden material salvaged is to be stored correctly at the BOBBAC office at the NPWS Depot and preferably not at Reflections Holiday Parks.

On 04 February 2021 Sharon Sloan (BoBBAC) provided feedback as part of the 'pre-lodgement Community Consultation - Coastal Protection Works - 1 Lighthouse Road, Byron Bay' (Appendix A). The written response highlighted the following:

- Language be amended to reflect the cultural significance of the sites. Specifically, avoiding simple use of the term 'Aboriginal Object' when describing the site, as well as avoiding use of the term 'removal' with respect to the site's management.
- BoBBAC's position that long term management solutions are required, rather than merely providing the options of sandbag removal/retention.
- The need to mitigation to occur in a timely manner, to avoid ongoing harm.
- The need for future consultation to be undertaken in a more meaningful and respectful way.

An email was sent to BoBBAC on 20 April 2021 advising of a planned site meeting on 29 April 2021 (Appendix A). This email was followed up with a phone call to Sharon Sloan (BoBBAC) confirming the meeting. The site meeting was attended by Sharon Sloan as BoBBAC Directors were not available. The meeting discussed;

- the proposed development application;
- the BoBBAC submission;
- the requirements for approval including the requirement for a new AHIP;
- works completed under the existing AHIP; and
- the potential for harm to midden material in the event that the sand bags were removed.

The meeting was not able to conclusively determine when the sand bags would be removed, however noted that the main strategy was to retain the bags for a period but that the general strategy was to withdraw infrastructure from the coastline. It was agreed that an updated ACHAR would be issued to BoBBAC in support of a new development application and that this would be used in support of a new AHIP for the removal of the sand bags. Sharon confirmed that the position of BoBBAC was to retain the sandbags until a permanent solution was in place.

A copy of this ACHAR was provided to Sharon Sloane (BoBBAC) via email on 02 June 2021 requesting any comments be received by 01 July 2021 (Appendix A). Written support for the proposed mitigation measures was received from Sharon Sloane via email on 05 August 2021 (Appendix A). Specifically, that the BoBBAC Board of Directors agreed:

- to a 5-year plan for the sandbags to stay in place;

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- ensuring that they have cultural site monitors on site for any works / planting;
- ongoing salvage program; and
- no work to take place in the midden area whether it be restoration or stabilisation works / planting without the board being made aware and cultural site monitors in place.



4. DESKTOP ASSESSMENT: ABORIGINAL CULTURAL HERITAGE

4.1 Environmental Context

The Project Area is located within an eroding 'hind' dune on Clarkes Beach, Byron Bay. The dune comprises deep Aeolian sand over a coffee rock substrate (west) and coarse river pebbles (east). The sand deposit is approximately 6-7 metres deep and lies above a thick layer of coffee rock and gravels.

4.1.1 *Vegetation types*

The Project Area does not appear to have been subject to sand mining or any form of significant land clearing in the historic period. Vegetation on the dune is a mix of littoral rainforest dominated by Tuckeroo (*Cupaniopsis anacardioides*), Coastal Wattle (*Acacia longifolia* subsp. *sophorae*) shrubland and open areas dominated by Blady Grass (*Imperata cylindrica*). Coast Banksia (*Banksia integrifolia*) has recently collapsed above the midden due to erosion and Beach Morning Glory (*Ipomoea brasiliensis*), Coastal Spinifex (*Spinifex sericeus*) and other native grasses. A significant portion of the dune within Reflections Holiday Park on top of the dune is landscaped with turf and other ornamental plants.

4.1.2 *Water and other Resources*

The closest freshwater to the Clarkes Beach Park Midden comprises the swamps to the south in Arakwal National Park and on nearby Crown Land. The main resources would have been shellfish beds within the inter-tidal zone, rocky shelves located at 'The Pass' and Palm Valley (Curanbah) and the swampland to the immediate south of the midden. It is noted that the hind-dune system to the south of the midden is quite large, however the floral and associated faunal resources of the dune system would not be significant when compared to the other three resources areas.

4.2 The Aboriginal Heritage Information Management System (AHIMS)

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 as an Open Campsite containing shell, rather than a midden, can be a highly subjective exercise, the threshold for which may vary between archaeologists. There can also be errors with the data once it is entered onto the AHIMS database, including datum conversion errors.

An 'Extensive' search of the AHIMS was conducted on 02 September 2019 of Lot 410 DP 729062 with a 200 m buffer. The search returned three (3) sites within the search area (Table 1), being Clarkes Beach Park Midden (#04-5-0199), Clarkes Beach Holiday Park 1 (#04-5-0358) and Clarkes Beach Holiday Park 2 (#04-5-0359).

Table 1: Summary of AHIMS site information.

SITE ID	Site name	Easting	Northing	Features
04-5-0199	Clarkes Beach Park Midden	561100	6831540	Shell
04-5-0358	Clarkes Beach Holiday Park.1	560918	6831486	Shell: 1
04-5-0359	Clarkes Beach Holiday Park.2	561010	6831506	Shell: 1

5. SELECTED ARCHAEOLOGICAL SYNTHESIS AND PREDICTIONS

5.1 Desktop review

5.1.1 *Historic Photos*



Figure 4: Harry Bray and family on dunes at Byron Bay (source Mitchell Library).

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Figure 5: Eugari collection in early contact period at Port Macquarie (source Australian Museum).



Figure 6: Overlay of Parish map, aerial image and Lot boundaries.

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Figure 7: 1958 aerial image showing coastline and beach.



Figure 8: 1920 aerial image of Byron (source Norman Graham NPWS).

5.2 Previous Archaeological Assessments

It is important to review the results of previous studies in proximity to the Project Area as they provide insights and contextual information to inform any assessments of significance and future management decisions. Several regulatory archaeological studies have been undertaken in the sub-coastal area however few research studies have been undertaken on coastal sites as these areas are typically managed as conservation areas.

Hughes (1998) conducted an archaeological assessment over the section of the new motorway and interchanges west of the Byron Bay. A shell midden was located on a sand ridge at the corner bounded by Grays Lane to the east of the old Pacific Highway. The following information is summarised from the AHIMS site report for the site:

“In 1982 RTA construction works exposed an area of a considerable amount of pipi shell and cobble stones. The area of raised sand was flattened, and the shell completely destroyed and dispersed. Hughes found that a shell midden consisting of pipi shells occurred on an isolated sand ridge which rose slightly above the surrounding featureless plain. The midden may have contained stone artefacts or cobbles of rock carried onto the site (referred to as manuports). It is possible that archaeological material occurred more widely across the sand ridge about 90 m x 90 m in area” (Hughes 1998 AHIMS site card #04-5-0150).

A cultural heritage assessment over the Byron Blues and Roots Festival site at Tyagarah recorded an artefact collection from a site on a waterhole adjacent to the old Pacific Highway. The artefacts had been collected after cultivation and comprised hammer-stones/pebbles, stone axes, slabs possibly for grinding with ochre stones/pieces, ochre pieces, cores, bevelled pounder or bungwall basher, truncated pebbles (snapped), pebbles and manuports (stone foreign to the area). The AHIMS site is referred to as Tyagarah Blues Roots 1 (TBR 1) (Robins 2008: 5-6).

Collins (1994) conducted an archaeological assessment of The Pass midden, in Cape Byron SCA, 550 metres north east of the Clarkes Beach Park midden. The study found that it was the last remaining large foredune pipi midden between Ballina and the Queensland border, was regionally unique and highly significant. Radiocarbon dating places the age of first use of the midden at over 1000 years b.p. (Boyd, Collins & Bell 2000). An analysis of samples from midden shows that a wide variety of shellfish was exploited on the adjacent rock platforms, reef and open beach, including pipis (*Donax deltoides*), cartrut shells (*Thais orbita*), sand-plough snails (*Polinices incei*), Spengler's tritons (*Cabestana spengleri*), zebra periwinkles (*Austrocochlea constricta*), scaly scallops (*Chlamys lividus*) and Sydney rock oysters (*Saccostrea cucullata*). Pipis (76% of sample) and cartruts (10%) were the most abundant remains in the midden samples, followed by fish, mammals and other shellfish. Stone artefacts (11%), ochre and charcoal were also recorded. Bones of animals which no longer occur locally were also recovered - red-necked pademelon (*Thylogale thetis*), red-necked wallaby (*Macropus rufogriseus*), eastern grey kangaroo (*Macropus giganteus*) and greater glider (*Petauroides volans*).

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Everick (2018a) undertook an archaeological investigation of a complex of pipi middens located between Tyagarah and Brunswick Heads on the Tyagarah Nature Reserve Coastal Trail. This study has recorded 5 discrete cluster of shell midden (Tyagarah Reserve Middens 01-05) over a distance of approximately 3km. The midden deposits are located on the hind dune and primarily comprise pipi shell. Several small flakes and flake pieces were also recorded in the middens. The spatial distribution of the midden complex primarily relates to an absence of sand mining activity.

Everick (2018b) has completed an ACHAR for the Clarkes Caravan Park Midden immediately east of the Project Area. The assessment made the following conclusions;

- The Clarkes Beach Park Midden Site (#04-5-0199) is a midden deposit eroding from a hind dune.
- Most of the shell material at the site is Pipi (*Donax deltoides*), which is not unexpected for a midden adjacent to the inter-tidal zone. However, the midden is known to also contain bone from a medium sized macropod.
- Preservation conditions are such that it is possible that Aboriginal human remains may be located within the midden deposit or sand dune; however, no burials occur in the area covered by the GPR survey or in the sand auger locations.
- It is expected that the midden deposit has been substantially destroyed because of coastal erosion and stormwater discharge. Approximately 10 % of the midden may be retained in the sand deposit.
- No identifiable midden deposit exists in the area that was covered by the GPR survey or sand auger test pits, as such, it can be inferred that the exposed shell lens forms the majority of what remains of the midden material.
- No additional midden material was identified by the sand auger survey.
- The radiocarbon dates indicate that the midden dates to the 19th century and may be associated with the period of initial European settlement.

A series of three (3) shell samples and 1 bone sample were subject to radiocarbon dating at the Australian National University for Radio Carbon Dating (Table 2 below). The shell specimens were calibrated to accommodate for the increased accumulation of carbon by marine organisms. The results of the dating program are broadly consistent, and indicate that the midden material dates to the period of between 0 and 263 years. The bone sample returned a date of 118-172 years which is consistent with the calibrated shell dates. It is noted that shell specimens 1 and 2 were nearly identical in age whereas shell 3 was slightly younger. Based on the radiocarbon dates it is possible to conclude that the midden represents occupation by Aboriginal people around the time of first European Settlement. It is noted that the dates are much younger than those returned from the Pass Midden (Boyd and Collins

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2000) and as such the younger date may also result from changed sand profiles on the open beach during the historic period.

Table 2: Results of Radiocarbon dating.

Sample ID	Lab Number	¹⁴ C Age	Calibrated (cal BP)
Shell 1	S-ANU-59411	548 ± 24	67-263
Shell 2	S-ANU-59412	547 ± 24	66-262
Shell 3	S-ANU-59412	498 ±24	0-150
Bone 1	S-ANU-59507	145 ±27	118-172

5.3 Predictive Modelling

This ACHAR does not aim to develop a detailed predictive model as the midden site is known and the focus of the investigation. However, the presence of the midden generally supports a predictive model of the use of coastal resources associated with the inter-tidal zone and adjacent forests, but to a lesser extent than the more complex and protected environments associated with headlands, such as The Pass to the east. As much of the material from the midden has been eroded into the ocean it will not be possible to undertake a detailed comparison between the Clarkes Beach Park Midden and The Pass midden sites. The presence of the midden does support a general model of Aboriginal site distribution in areas which have not been subject to sand mining.

The following model can be proposed for coastal shell middens along the Byron Bay coastline;

Shell Midden sites in the coastal zone are invariably found on elevated ground adjacent to the source of the shellfish. The sources are open beaches, rock platforms, tidal mud flats, rocks and mangrove roots. Middens in this area are mainly composed of five edible species pipi, cartrut, cockle, whelk and oyster. The sites may reflect only one source of gathering or a combination of sources. Middens may contain faunal remains, stone artefacts and cooking hearths. Human burials have been associated with a high proportion of NSW North Coast middens.

Burial sites cannot be excluded as there are records of a number of burial locations in the northern NSW coastline. They may exist where soft sediments such as sand dune deposits, riverine alluvial terraces/benches occur and in areas adjacent to early historic settlement. Burials have been found in Pleistocene shoreline contexts where more recently dated middens have accumulated over these deposits (Conah 1975:29, Knuckey 1999:4) and in riverine sediments (Collins and Griffin 1993 in RPS 2012:29).

6. FIELD SURVEY: ABORIGINAL CULTURAL HERITAGE

6.1 Site inspection

The consultation meeting on 30 August 2019 generally confirmed the description of the sites from the AHIMS site cards (Appendix 2, see also Figure 9). Given the nature of dune erosion it was not possible to physically inspect the midden lens as the dune had visible signs of slumping (Figure 9).



Figure 9: Inspection of eroding dune below Reflections Holiday Park.



Figure 10: Example of slumping erosion to dune face.

6.2 Survey Results

The midden primarily comprises weathered eugari shell in a thin stratified lens deposits throughout the sand dune (Figure 10, Figure 11). The shell is expressed along the midden face for a distance of approximately 60 metres. The midden lens is consistent with the nearby Clarkes Caravan Park Midden. The density of shell within the midden varies between very dense and sparse, and the shell lens' are typically thin (<10 cm thickness). The midden lens occurs in varying depths below the dune surface, however the midden is generally associated with a light grey sand layer overlain by yellow sands (Figure 12). Specimens of shell were noted in the sand material at the base of the dune (Figure 11). The midden also included a beach cobble chopper, however detailed analysis of the artefacts was not possible at the time of the inspection (Figure 13).

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Figure 11: Midden lens showing grey sand layer and yellow redeposition layer.



Figure 12: Interface of yellow sands, midden and grey sands showing eroding midden.

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Figure 13: Uncle Des Williams with a beach cobble chopper.

7. RESULTS OF ABORIGINAL CULTURAL HERITAGE ASSESSMENT

7.1 Results of consultation and survey

As a result of the desktop study, field inspection and consultation with BOBBAC, the following can be concluded:

- a. The midden comprises predominately Eugarie shell which exists at the interface of the old sand dune profile (identifiable by the grey sand layer) which has been buried by a more recent yellow sand deposit within the historic period.
- b. Eugarie middens typically result from the consumption of locally available shellfish and typically have a narrow species diversity. The middens are more commonly referred to as 'Dinner Time Camps' and typically were discarded by small family groups. However, over time these small sites accumulate into extensive midden deposits which cover a large portion of the fore and hind dune systems.
- c. Based on the results of the NPWS dating program it is reasonable to proceed on the basis that the midden lens within the Project Area dates to the period of early contact (approximately 170BP or 1850's) and is not older than 260BP (Everick 2018). The photographic collection by Mr Thomas Dick from Port Macquarie is a good record of Eugarie middens from this period.
- d. The midden likely contains bone material, being swamp wallaby, and has the potential to contain Aboriginal skeletal material. Brian Kelly understood that the burial of Harry Bray was not in the Clarkes Beach Area, however this does not discount the potential for historic burials in the dune.
- e. The midden contains a beach cobble chopper and likely contains other stone artefacts.
- f. The midden is similar to Eugarie middens along the Tyagarah Beach, but different to the midden at The Pass. The Eugarie middens were very common along the dune systems, however most of the midden sites have now been lost as a result of historic sand mining and more recently coastal erosion.
- g. The dune system at Clarkes Beach has suffered massive losses of sand since the 1990's and it is expected that a large part of the midden complex has been lost as a result. As such the conservation status of the remaining midden is increased. It is noted that the recent erosion is a result of exceptional circumstances that have eroded into a very old portion of the dune and as such as unprecedented.
- h. It is likely that the midden extended along Clarkes Beach, however is now only partially retained in the sand dune as this section was not subject to intensive sand mining.

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- i. There is not community support for removal of the sandbags at the time of the ACHAR. Based on the outcomes of community consultation it is not considered that the temporary sand bag system should be removed until such times as there is a viable alternative long-term management solution.
- j. There is conditional community support for the dune stabilisation works, however it is noted that long-term solutions are considered preferential to short-term solutions. It is generally agreed that doing something is considered preferable to doing nothing.
- k. In the absence of long-term solutions to coastal erosion, it is considered that active monitoring and salvage of the midden deposits by members of the Aboriginal community provides the most pragmatic solution to the management of midden material which is under imminent threat of erosion.

7.2 Aboriginal Cultural Heritage Statement of Significance

In-situ middens were once abundant on the dunes of the east coast of Australia. Non-Indigenous land use, particularly sand mining of north coast beach dunes, has resulted in the destruction of most of these middens. Because of this, any remaining *in-situ* coastal midden must be considered of high archaeological significance. It is reasonable to conclude that most of the midden has been lost through coastal erosion and, to a lesser extent, due to the impact of poorly managed stormwater discharge.

In terms of **rarity** the site is of high archaeological and scientific significance.

The **antiquity** of the site has been assessed through radiocarbon dates which indicate that the midden dates to the 19th century and may be associated with the period of initial European settlement.

The **representativeness** of the site is bound with it being a physical example of traditional beach gathering of food resources that continues to the present day. Early European observers emphasise the important role of fish and shell fish in the Aboriginal diet between the Richmond, Brunswick and Tweed Rivers. No doubt the site was associated with the seasonal movements of fish along north coast beaches.

The **complexity** of the site is relatively simple, with one shell species and one terrestrial fauna species identified. Nevertheless, doubtless a range of activities may be reflected primarily around marine resources exploitation.

In terms of **integrity** the site is of moderate archaeological significance. Intact midden material was unable to be detected behind the dune face, and it is likely that most of the midden exists as a single shell lens eroding from the sides of the dune.

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The physical **connectedness** of the site to other sites in the locality has been broken to a large extent by the loss of middens caused by sand mining. The closest midden is located at The Pass to the east. The nearest fore-dune middens known to the consultant are north at Belongil.

Based on the site inspections and subsurface investigations, the Clarkes Beach Park Midden Site is determined to be of **cultural or social** significance to the local Aboriginal Community.

The site does not have significant inherent **aesthetic** values.

7.3 Impact Assessment

The potential harm from the Proposed Works include;

- the removal of the existing temporary sandbag system using machinery consistent with an excavator;
- Revegetation works to provide medium to long-term stability to the dune face, including the use of fabric or plastic material to support the establishment of root structures (Figure 2 and Figure 3); and
- Active salvage of midden material by BBOAC that has slumped down the dune face and is at imminent risk of loss from storm surge and high tides.

This ACHAR augments the previous assessment and will be used to support a Development Application to Byron Shire Council to also enable the temporary retention of the existing sandbag system for a period of 5 years.

It is concluded that there will be a partial loss of value from these works (Table 3).

Table 3: Summary of harm

Site number	Type of harm	Degree of harm	Consequence of harm
#04-5-0358	Direct	Partial	Partial loss of value
#04-5-0359	Direct	Partial	Partial loss of value

7.4 Management and Mitigation Measures

The following management and mitigation options have been considered for the Clarkes Beach Holiday Park 1 (#04-5-0358) and Clarkes Beach Holiday Park 2 (#04-5-0359) middens:

- a) complete avoidance;
- b) partial avoidance;
- c) harm with salvage and repatriation on-site; and

d) harm without salvage.

It is concluded that (c) harm with salvage and repatriation on-site is the most appropriate management response for the Clarkes Beach Holiday Park 1 (#04-5-0358) and Clarkes Beach Holiday Park 2 middens (#04-5-0359). This assessment acknowledges the following;

- the views of the Aboriginal community representatives who have participated in the ACHAR (see Appendix A and section 7.1 above);
- the degree to which the midden has already been disturbed by coastal erosion and the potential for additional impacts to the midden in the immediate future;
- the proximity to the Clarkes Caravan Park Midden (#04-5-0199) which has been subject to archaeological investigation and radiocarbon dating;
- the potential to retain midden material with the dune system and actively manage the midden as a cultural resource; and
- the potential for more permanent engineering solutions to protect the sand dune and midden complex.

7.5 Ecological Sustainability Statement

The active management of the Clarkes Beach Holiday Park 1 and Clarkes Beach Holiday Park 2 middens will provide for the retention of a least a portion of what was likely an extensive midden complex along the fore and hind dune systems. Eugarie middens are considered to have been very common prior to the massive disturbance of the dune systems from sand mining, and are now subject to additional threats from coastal erosion. The strategies of minimising erosion by retention of the temporary sand bag system and replacement with a permanent solution; revegetation using native species and salvage of shell material which has slumped down the dune face will provide the Aboriginal community with a range of options for community led research and will ensure, as much as possible, that the shell material is retained 'on country'.

8. RECOMMENDATIONS

The ACHAR has concluded that the Clarkes Beach Holiday Park 1 and Clarkes Beach Holiday Park 2 middens have mostly eroded, and the remaining material exists in a single shell lens which is visible between the interface of the overlying yellow sand layer and the in-situ light grey sand layer. It is considered that the continued erosion of the dune will likely result in a complete loss of the midden over time. The following recommendations are provided to ameliorate these impacts.

Recommendation 1: Sand Bag System

The ACHAR has concluded that there is not community support for the removal of the temporary sand bag system without an alternative long-term solution being put in place. It is considered likely that removal of the sand bags will result in harm to shell material which have fallen from the midden lens down the dune face. Further, the removal of the bags would expose the base of the dune to significant erosion and increase the risk of harm to the midden. As such consideration should be provided for the extension of licensing arrangements for the sand bag system so that permanent solutions can be implemented.

Recommendation 2: Aboriginal Heritage Impact Permit

It is recommended that an AHIP is sought for the following activities;

- Revegetation works to provide medium to long-term stability to the dune face, including the use of fabric or plastic material to support the establishment of root structures (Figure 2 and Figure 3);
- Active salvage of midden material by BOBBAC that has;
 - i. slumped down the dune face and retained around the sandbag system;
 - ii. is within the construction footprint of the eastern beach access;
 - iii. and is at imminent risk of loss from storm surge and high tides;


It is recommended that the salvaged midden material be temporally stored within a secure area within the Reflections Holiday Park or off-site in the office of either BOBBAC or NPWS until such time as a permanent storage area is identified between BOBBAC and the Proponent. Permanent storage should be in compliance with Requirement 26 of the CoPAI or in accordance with instructions from BOBBAC. It is noted that the permanent reburial area must be recorded as a new AHIMS site and managed as an Aboriginal site.

The area of the AHIP should be restricted to the fore dune area and all construction and maintenance activities within the Project Area not specified in this ACHAR should be excluded from the AHIP. This

would include any accommodation or amenities and landscaping not associated with the stabilisation of the dune area.

Recommendation 3: Reporting

It is recommended that a field log is maintained to record basic data from the salvage program. This would include dates of salvage, species, volume of material and particulars of the event which resulted in the salvage. Should scientific analysis be undertaken this should also be included within the field log. It is recommended that the field log be attached to the AHIMS site card or the AHIMS Site Impact Card periodically. It is recommended that the field log is provided to other Aboriginal stakeholders which retain or register an interest in the project.



9. REFERENCES

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APPENDIX A: CORRESPONDENCE WITH ABORIGINAL COMMUNITY

Email 05 August 2021: BOBBAC response in support of ACHAR

From: Sharon Sloane <sharon@arakwal.com.au>
Sent: Thursday, 5 August 2021, 5:02 pm
To: Tim Hill
Subject: Re: FW: Reflections / Beach Byron Bay- Clarkes Beach

Hi Tim,

I am so very sorry for not replying earlier. Quite a lot of things occurred in late June / early July and I took some time off.

I have also handed in my resignation late June with the intention of handing over to someone late this month / early September.

On another note, the Board had moved 2 x motions regarding the ACHAR for the Beach Dune Conservation Works and also the ACHAR for Reflections Dune Works.

Beach Dune - The Board of Directors move that they agree to having Cultural site monitors during any excavation work to the proposed path works and the geo bags to stay in place as required for 2 - 5 years.

Reflection Dune - The Board of Directors move that they agree to a 5 year plan for the sandbags to stay in place. Ensuring that we have cultural site monitors on site for any works / planting / ongoing salvage program / no work to take place in the midden area whether it be restoration or stabilisation works / planting without the board being made aware and cultural site monitors in place. Board was made aware of recent works taking place in the midden area without monitors on site.

Thanks Tim - I will also call you tomorrow to see if we can have a quick catch up.

Cheers,

Kindest Regards,

Sharon Sloane
General Manager

Bundjalung of Byron Bay Aboriginal Corporation RNTBC (Arakwal)
PO Box 1555

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BYRON BAY NSW 2481

Tel: 02 6685 8746

Fax: 02 6685 8726

I would like to acknowledge the Arakwal Bumberlin people of Bundjalung Nation who are the Traditional Custodians of this land which we live, work, and stand on.

I acknowledge their continuing living culture, connection to land, waters and community; I ask that you help look after and respect country.

I acknowledge and extend my respect to Elders both past and present and upcoming future leaders.

Email 02 June 2021: Provision of ACHAR to BoBBAC

From: Tim Hill

Sent: Wednesday, 2 June 2021 9:48 AM

To: Sharon Sloane <sharon@arakwal.com.au>

Cc: Josh Townsend <josh@planitconsulting.com.au>

Subject: FW: ACHAR Reflections Clarkes Beach

Hi Sharon

Please see attached the revised ACHAR for the Reflections Clarkes Beach Project for your comment and records. This is a substantial update on the previous ACHAR and mostly aims to clarify that extension of the period for retention of the sand-bags (now 5 years). Can you please provide comment by Thursday 1 July 2021.

If you need to get back on site with the Directors please let me know and I will arrange an additional site inspection.

Ta

Tim Hill

BA (Hons)

Principal (Coffs Harbour)

Ph: (02) 6655 0225

Mob: 0422 309 822

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Email 20 April 2021: Coordination of site meeting on 29 April 2021 with BOBBAC

Clarks Beach ACHAR - Coastal Protection Works

 **Tim Hill**
Required Sharon Sloane; Robyn Campbell; Josh Townsend; Robbie Mazlin; Rosalie Neve

✓ Accept ▼ ? Tentative ▼ ✗ Decline ▼ ⌚ Propose New Time ▼ ⋮

 Please respond.
This meeting has been adjusted to reflect your current time zone. It was initially created in the following time zone: (UTC+10:00) Canberra, Melbourne, Sydney.

⌚ 29 April 2021 13:00-14:30, (29 April 2021 10:00-12:00) 📍 Clarks Beach

13:00	Clarks Beach ACHAR - Coastal Protection Works Clarks Beach Tim Hill
14:00	

Hi Sharon

Further to our phone call last week- we are hoping to undertake a site inspection/ management meeting for the Clarks Caravan park midden sites to support development applications to 'not remove' the sandbags. This includes 'not removing' the sandbags in front of both **Reflections** and Beach Byron Bay Café.

We hope to issue a draft ACHAR which was issued to the AHIP to remove the sandbags, only this one will be better as it will support an AHIP to 'not remove' the sandbags. We need to figure out collaboratively what actual harm might occur to the midden and how far the former sand mining took place in the area of the café.

Give me a call if it's easier.

Ta

Tim Hill

BA (Hons)

Principal (Coffs Harbour)

Ph: (02) 6655 0225

Mob: 0422 309 822

Everick Heritage Pty Ltd

ABN 78 102 206 682

Brisbane - Townsville - Sydney - Coffs Harbour - Tweed Heads - Canberra - Alice Springs

Web: www.everick.com.au

Email 04 February 2021: BOBBAC response to pre-Lodgement Community Consultation

From: Sharon Sloane <sharon@arakwal.com.au>

Sent: Thursday, 4 February 2021 3:38 PM

To: info <info@planitconsulting.com.au>; Tim Hill <t.hill@everick.net.au>

Subject: Re: Coastal Protection Works - Reflections Holiday Park

Hi Josh,

EVERICK HERITAGE

Thank you for your letter dated 18th January 2021 regarding 'pre-lodgement Community Consultation - Coastal Protection Works - 1 Lighthouse Road, Byron Bay'

Please see our attached response.

Many thanks,

Kindest Regards,

Sharon Sloane
General Manager

Bundjalung of Byron Bay Aboriginal Corporation RNTBC (Arakwal)
PO Box 1555
BYRON BAY NSW 2481

Tel: 02 6685 8746
Fax: 02 6685 8726

I would like to acknowledge the Arakwal Bumberlin people of Bundjalung Nation who are the Traditional Custodians of this land which we live, work, and stand on.

I acknowledge their continuing living culture, connection to land, waters and community; I ask that you help look after and respect country.

I acknowledge and extend my respect to Elders both past and present and upcoming future leaders.

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BUNDJALUNG OF BYRON BAY ABORIGINAL CORPORATION (ARAKWAL) ICN: 2663
PO Box 1555, Byron Bay, NSW, 2481
Phone: 0266858746 Fax: 0266 858726
ABN: 99 508 925 629

4 February 2021

Planit Consulting Ref: J6839

Josh Townsend
Planit Consulting
KINGSLIFF NSW 2487

Via email: info@planitconsulting.com.au

Dear Josh,

Re: Coastal Protection Works, 1 Lighthouse Road, Byron Bay

Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) RNTBC ("Arakwal Corporation") is the Registered Native Title Body Corporate for the *Bundjalung People of Byron Bay #3* native title determination as recognised by the Federal Court in *Nicholls on behalf of the Bundjalung People of Byron Bay and Attorney General of New South Wales* [2019] FCA 527.

Native Title Holders expect to be consulted and involved in all proposals that may impact on their Aboriginal Cultural Heritage. This includes proposals that may affect the many special Aboriginal sites and places, and their related stories, which are essential to the maintenance of Arakwal culture and the wellbeing of their community.

We refer to your letter dated 18 January 2021 in relation to pre-lodgement community consultation for coastal protection works at 1 Lighthouse Road, Byron Bay. In that letter you requested feedback regarding a proposal to retain sandbags at two locations on Clarkes Beach until the Byron Shire Council ("BSC") has completed a Coastal Management Plan ("CMP").

Given the short timeframe for providing a response, we have been unable to consult widely with the Directors and relevant Native Title Holders. For this reason the following feedback is preliminary in nature. We will brief the Directors on this proposal and participate in the BSC community consultation process should the proposal reach a formal assessment stage.

Language should reflect the significance and extent of the Aboriginal sites

We note that the language used in your letter undermines the significance of the Aboriginal sites of significance within the vicinity of the coastal protection works. Referring to Aboriginal shell middens simply as an "Aboriginal Object" does not reflect their cultural value, extent and importance.

Rather, they consist of two deep and extensive coastal shell middens which are sites of spiritual and cultural heritage significance to Arakwal Traditional Owners ("ACH site"). The ACH site contains material recorded as Aboriginal objects registered on the Aboriginal Heritage Information Management System and are protected from harm under the National Parks and Wildlife Act. The ACH site provides Arakwal People with an important link to their culture and their ancestors.

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The ACH site also may have archeological importance, providing valuable information about Aboriginal use of the coast and can show changes in diet, behavior and activities over tens of thousands of years. Aboriginal shell middens are an important part of the heritage of all Australians.

Further, using the term “removal” in reference to proposed works under an AHIP suggests the intention of the AHIP is not to preserve the ACH site, but rather to get rid of it so that it does not impede works. Instead, any disturbance of the ACH site under an AHIP should be for the purpose of retrieval and preservation. Notwithstanding this, as outlined below, it is Arakwal Corporation’s preference that the ACH site material is protected at its current location.

Misrepresentation of Arakwal Corporation’s position

Your letter is drafted in a way that suggests Arakwal Corporation supports the sandbags remaining in place at the exclusion of other options available to BSC and Crown Lands. We consider this to be a misrepresentation of our views. While our priority is the protection of the Aboriginal Cultural Heritage, we should not be put in a position where we are forced to choose between supporting the removal of sandbags (which we know will likely destroy the ACH site), and leaving what was supposed to be a temporary solution in place (which will may have aesthetic, environmental and unknown erosion consequences).

Is it the case that there has been no progress in designing a long term, or even interim solution addressing these issues? Given the proposal set out in your letter would see the sandbags remain in place until the completion of the CMP, does this mean that leaving the temporary sandbags in place is the only proposed solution for managing the ongoing threat to the ACH site and potential catastrophic dune erosion for the next 3 years while the CMP is developed?

Upon the ACH site being identified and registered, we supported leaving the temporary sandbags in place for a period of time to ensure the ACH site was protected while BSC and Crown Lands finalized and put in place a solution that provides for long term and ongoing ACH site protection and erosion management. Our expectation was that this would be a priority project and a solution would have been put in place within a reasonable period of time.

Our only position has been that we do not support the removal and/or destruction of the ACH site, and this continues to be our view. We consider that the protection of Aboriginal Cultural Heritage benefits the whole community by promoting and contributing to reciprocal understanding, spiritual wellbeing and community cohesion.

Failure to militate against damage in a timely manner

It is well understood that Aboriginal shell middens are among the most fragile cultural sites and can be degraded and destabilized by water erosion and unregulated walking tracks. Management of these areas should include dune stabilization through mature and diverse vegetation coverage and restricted access. The focus should be on protecting the ACH site rather than access by the public.

We do not understand why BSC and Crown Lands has failed to take action to implement these strategies in a timely manner. We are disappointed that we are now in a position where emergency works are regularly required to prevent extensive erosion and damage to the ACH site, and Arakwal Corporation is put in these types of complicated situations.

Meaningful and respectful consultation required

Native Title Holders, as the Traditional Owners of Arakwal Country – the land on which this proposal is situated – deserve to be consulted in a meaningful and respectful manner. We urge you to update your own consultation processes including by providing adequate consultation time, using culturally

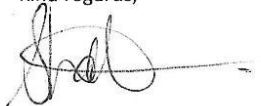
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appropriate language, and considering the content of the proposal in light of the cultural significance of area to which the proposal applies.

We will participate in the BSC consultation process should the proposal be put through formal assessment.

If you have any questions, please do not hesitate to contact me on (02) 6685 8746.

Kind regards,



Sharon Sloane
GENERAL MANAGER
BUNDJALUNG OF BYRON BAY ABORIGINAL CORPORATION (ARAKWAL) RNTBC

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Email 14 October 2019: BOBBAC response to ACHAR

From: Sharon Sloane <sharon@arakwal.com.au>

Sent: Monday, 14 October 2019 5:57 PM

To: Tim Hill <t.hill@everick.net.au>

Subject: Clarkes Beach

Hi Tim,

Sorry for the delay in replying to you regarding the ACHAR on Reflections Dune Conservation Works.

BOBBAC agrees with the report you have provided and also with Maurice Gannon's comments regarding the dating etc.

We also agree that salvage and repatriation on-site is appropriate and that midden material salvaged is stored correctly at the BOBBAC office at the NPWS Depot and preferably not at Reflections Holiday Parks.

Thank you,

Kindest Regards,

Sharon Sloane
General Manager

Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

PO Box 1555

BYRON BAY NSW 2481

Tel: 02 6685 8746

Fax: 02 6685 8726

I would like to acknowledge the Arakwal Bumberlin people of Bundjalung Nation who are the Traditional Custodians of this land which we live, work, and stand on.

I acknowledge their continuing living culture, connection to land, waters and community; I ask that you help look after and respect country.

I acknowledge and extend my respect to Elders both past and present and upcoming future leaders.

Email 5 September 2019: BOBBAC

From: Sharon Sloane <sharon@arakwal.com.au>

Sent: Thursday, 5 September 2019 4:54 PM

To: Tim Hill <t.hill@everick.net.au>; Sites <sites@tblalc.com>

Subject: Fwd: FW: Reflections Holiday Park Midden Consultation Meeting Outcomes EV914 190902

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Tim,

Sorry about the delay in replying.

I agree with Maurice's comments dated 2nd September regarding the Outcomes of Community Consultation Meeting with Evericks / TBLALC / Arakwal / Reflections

Yes, the AHIMS is 01-5-0199 on the first page.

Harry Bray is the correct spelling.

Considerations from Maurice's notes.

I have now had time to talk to Brian and Steven and read over both reports from Tim and Maurice and Arakwal agree entirely with Maurice's considerations from the Consultation and wish to support those dot points.

I am waiting to hear back about the sandbags from OEH and my understanding is that this may not be a solution that will likely happen but am yet to get clearer information.

Arakwal wholeheartedly agrees that the dunes need to be revegetated but there is no point in revegetating in the first instance.

Arakwal also wants it noted that building pedestrian access over the unstable dunes is not the priority, but stabilising the dunes first is.

Thank you!

Sorry, got to run to a meeting!

Cheers,

Kindest Regards,

Sharon Sloane
General Manager

Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

PO Box 1555

BYRON BAY NSW 2481

Tel: 02 6685 8746

Fax: 02 6685 8726

I would like to acknowledge the Arakwal Bumberlin people of Bundjalung Nation who are the Traditional Custodians of this land which we live, work, and stand on.

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Email 4 September 2019: Tweed Byron LALC

From: Sites <sites@tblalc.com>
Sent: Wednesday, 4 September 2019 1:20 PM
To: Tim Hill <t.hill@everick.net.au>
Subject: Clarkes Beach / Reflections dune erosion

Hi Tim,

Yes. With the following elaborations (sorry to be such a pedant):

From: Tim Hill [<mailto:t.hill@everick.net.au>]
Sent: Wednesday, 4 September 2019 11:13 AM
To: Sites <sites@tblalc.com>
Subject: FW: Clarkes Beach / Reflections dune erosion

Hi Maurice

I know it's a risk- but does the below adequately summarise your comments from yesterday?

A response was received from TBLALC on 2 September providing the following comments;

- Minor edits and spelling errors;
- Clarifying that the Aboriginal community is supportive of the dune stabilisation works and noted the concern with regard to regulatory delays for more permanent stabilisation measures; *with the specific note that the preservation of ACH is not the cause for delay. The Aboriginal community has not impeded any erosion control works and it is a PR concern for the Aboriginal community that it should not be 'typecast' as such. I'm not suggesting that this has occurred but we all know that such 'bad PR' for the Aboriginal community in situations such as this is not unprecedented.*
- Confirming the source of dating information for the midden (addressed in **section XX** below); *- with the note that we can't age what has already been lost. The erosion is loss to scientific knowledge as well an environmental and Aboriginal heritage concern – we can only now age a remnant of what was previously present. Therefore, any age data will have a lesser degree of 'meaning' than it would have if the midden was intact in its original state.*
- Noting that the erosion in the past few years is without precedent and cannot be solely attributed to coastal processes over the past three decades; *Virtually*

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all of the erosion has definitely occurred during the past twelve months. The damage is sudden, recent and intense. We've all seen it happen during the past year.

- That TBLALC was supportive of the retention of the existing sand bag system – *as a partial, temporary erosion mitigation measure.*
- *TBLALC is of the opinion that sand dune batter stabilisation and revegetation works are essential. Some call this 'obtaining the angle of repose' – regardless of what it is called, what it means is that the slope of the dune at the beach front has to be restored to one at which the sand doesn't continue to 'run-off' (like water – as we all saw occurring). Then it needs to be revegetated (it is pointless to even try to revegetate it while it is eroding so actively). The causes of the erosion (tidal flows, suburban run-off onto the beach via man-made drains, and beach sand depletion need to be addressed longer-term.)*
- *Beach pedestrian access shouldn't be reconstructed until the dunes are stabilised. It doesn't make economic sense, apart from all other considerations, to prioritise the building of beach access, because anything that is built will be destroyed in the short-term as a result of the ongoing erosion. It will be a waste of time and money.*

Ta

Tim

Email 2 September 2019: Tweed Byron LALC response

From: Sites <sites@tblalc.com>

Sent: Monday, 2 September 2019 5:10 PM

To: Sharon Sloane <sharon@arakwal.com.au>; Ceo <ceo@tblalc.com>; Tim Hill <t.hill@everick.net.au>

Subject: Clarks Beach / Reflections dune erosion

Folks

Please see my DRAFT comments re the record of community consultation.

Please reply to me and cc Tim Hill with any additions / deletions / amendments / comments.

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Kind Regards

Maurice Gannon

Maurice Gannon
Conservation Planning Officer
Tweed Byron Local Aboriginal Land Council
PO Box 6967, Tweed Heads South NSW 2486
Ph: 07 5536 1926 **Mb:** 0407 643 349
www.tblalc.com



TWEED BYRON LOCAL ABORIGINAL LAND COUNCIL

September 2, 2019

Your ref: EV.914

Tim Hill
Everick Heritage Consultants Pty Ltd
PO Box 146
Red Hill QLD 4059

CC: Ms. Sharon Sloane, General Manager, Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

COMMENTS RE "REFLECTIONS HOLIDAY PARK MIDDENS, CLARKES BEACH BYRON BAY, NSW. OUTCOMES OF COMMUNITY CONSULTATION MEETING"

Dear Tim

Thank you for the abovenamed draft record of outcomes of the meeting that we attended on 30 August 2019.

Some minor typos and possible / suggested corrections:

- Last line Page 1: I think the AHIMS number is probably Q4-5-0199. I'm not sure of the numbering protocol but I haven't seen a 14 before;
- Point c Page 2: is it Harry Bray and not Brae? I don't know but I have the surname with an 'e' in my mind

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- Line 1 Page 3 – advice;
- Second line Page 4: ‘were noted’.

More substantive considerations:

- Whilst we are, obviously, discussing these matters in the context of Aboriginal cultural heritage (ACH) management, I think it is imperative that it be clearly stated that the Aboriginal community is not in any way delaying the stabilisation of the dunes. The erosion that is occurring is, in my opinion, an exceptionally unusual and severe event. The Aboriginal community has not, in any way, caused any delay and is highly motivated to see urgent action taken. My not too subtle point is that this must not be cast by the parties that are responsible for control and repair of coastal erosion as a problem that has been caused or exacerbated by Aboriginal community demands and / or delays. To the extent that I can voice Aboriginal community concerns I am stating up-front, in writing, that the Aboriginal community want this problem dealt with as a matter of urgency. The cause is severe erosion. One of the effects is harm to ACH. The cause requires urgent management, not merely the effects.
- Page 2 – point b: It would be appreciated if you would state the source for the statement that the midden is “not older than 260BP”.
- Page 2 – point e: ‘since the 1990’s’
 - I don’t doubt the statements but it is a *remnant* of a midden, much of which has been eroded, that is being aged. It is due to the erosion that we do not know the details of what has already been lost. I think the exposure of ten-thousand-year-old indurated sands is cause for real alarm. This indurated sand layer was exposed in only one location only 12 months ago. It is now exposed on the beach itself and virtually all the way along the base of the dune system of the Reflections beach front. Most of the erosion has occurred in the past year, not the past 30 years. I haven’t seen the evidence to conclude that this is simply a failure of beach sand replenishment due to a change in continental shelf sand drifts but, even if this is the case, it is nevertheless apparently unprecedented. If this is the primary cause, then it happened this year and not over two or three decades past. I don’t understand the logic of waiting for something unprecedented to revert to normal being adopted as a preferred solution to what is clearly an intense and very recent impact.
- TBLALC agrees that it is preferable not to remove the sandbags. The 90-day time-frame is a procedural construct. The practical considerations are that the sand bags are providing some protection and removing them will cause ‘harm’ and will also remove the protection that is in place. Compliance with one set of regulations / procedures will cause a breach of another set. I think all parties would be wise to reconsider. In my opinion, the bags are best left as is (permanently).
- Revegetation works: The dunes certainly need to be revegetated but whilst ever the dunes are actively eroding there is no point attempting to revegetate them. In fact, attempting to do so will probably exacerbate the problem. The dunes will only be stabilised by reinstating the natural batter i.e.; rebuilding them to the natural gradient (like all of the current stable dunes along the beach) – then revegetate them. If these dunes are not stabilised the erosion will continue along the beach and even the remaining stable dunes will be undercut. It is very clear that the erosion is progressing from east to west; it is the long-shore wash that is starting the undercutting and the tides are probably reaching the foot of the dunes like never before because the beach has been denuded. The midden bearing eroded dunes

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should be covered with ag- cloth / jute / hessian and the sand necessary for batter stabilisation should be taken from the beach itself (i.e.; local, not introduced). Leave the midden material in-situ, cover it, reconstruct the batter and then revegetate the dunes. If and when coastal sand drift reverts to normal, it will replenish the beach more rapidly than it will the dune system so, if the long-term plan is to wait for natural replenishment, I believe it is preferable to take sand from the beach to the dunes now.

- Pedestrian access: there is no point reconstructing pedestrian access over a highly unstable sand dune system. Stabilise the dunes first, then re-construct the access. The stabilisation work can be done quite quickly (and it is an urgent situation); then build the access on footings set in stable ground. The Aboriginal community don't care about the beach access, they just want the ACH protected and managed.

Respect, such as not building over ACH materials and / or walking through it, helps. The Aboriginal community will gladly assist in the management process and will happily seek to educate holiday-makers and edify their experiences but, surely, first we need to make sure the ACH actually continues to exist without further damage.

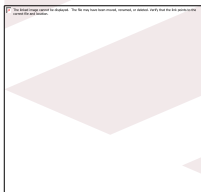
Yours sincerely

Maurice Gannon

Conservation Planning Officer

Cultural Heritage Unit (CHU)

W: 07 5536 1926 **M:** 0407643349 **E:** sites@tblalc.com



ABN: 44 992 419 248

21/25 Ourimbah Road, Tweed Heads NSW 2485 PO Box 6967, Tweed Heads South, NSW 2486

Email 2 September 2019: Outcomes of consultation meeting

From: Tim Hill

Sent: Monday, 2 September 2019 1:38 PM

To: Sharon Sloane <sharon@arakwal.com.au>; Maurie Gannon <maurie@tblalc.com>

Cc: Andrew Stone <Andrew.Stone@reflectionsoliday.com.au>; Tristan Rossiter <Tristan.Rossiter@reflectionsoliday.com.au>

Subject: FW: Reflections Holiday Park Midden Consultation Meeting Outcomes EV914 190902

Hi Sharon and Maurice

Please see attached a draft of the outcomes from the consultation meeting on Friday. I have committed to getting Reflections a draft report on Wednesday afternoon and yourself a draft on Friday afternoon. Could you please make comments on Friday morning so I can include them. We will commence the 28 day comment period from Friday (all going to plan anyways).

If there is a large disagreement- please call tomorrow- sorry I have a Board meeting at Kempsey tonight.

Ta

Tim Hill

BA (Hons)

Principal (Coffs Harbour)

02 September 2019

Our Ref: EV.914

Ms Sharon Sloane
General Manager
Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)
PO Box 1555
BYRON BAY NSW 2481.

CC. Uncle Des Williams, Chair, Tweed Byron Local Aboriginal Land Council

Dear Sharon,

**RE: REFLECTIONS HOLIDAY PARK MIDDENS, CLARKES BEACH BYRON BAY, NSW
OUTCOMES OF COMMUNITY CONSULTATION MEETING**

Thank you for your participation at the initial consultation meeting on Friday 30 August 2019 to discuss the short-term management of the Middens at the Reflections Holiday Park, Clarkes Beach Byron Bay NSW. Please find below concise points summarising the outcomes of the discussions for your revision and amendment. These will be included as the framework for an Aboriginal Cultural Heritage Assessment Report ('ACHAR') to be submitted in support of an Aboriginal Heritage Impact Permit ('AHIP') for management works on the dune.

Please note that I have left a message with Ms Rosalie Neve at the Department of Planning, Infrastructure and Environment ('D,PIE') to confirm that Bundjalung of Byron Bay Aboriginal Corporation ('Arakwal') will be considered the primary Registered Aboriginal Party for the assessment project, however that Arakwal have requested the participation of the Tweed Byron Local Aboriginal Land Council ('TBLALC') in the assessment process. The consultation meeting was attended by the following;

- e) **Arakwal People** - Brian Kelly, Steven Kelly and Sharon Sloane
- f) **TBLALC** - Uncle Des Williams, Warren Phillips, Maurice Gannon.
- g) **Reflections Holiday Park (Reflections)** - Tristan Rossiter; and
- h) **Everick Heritage** - Tim Hill.

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The below are the outcomes of the meeting with respect to the management of the Middens.

NPWS Sites - It was noted at the meeting that the midden will be considered as a single cultural site, however that the midden now has three separate AHIMS site numbers, being;

- c. Clarkes Caravan Park Midden Site (AHIMS # 14-5-0199);
- d. Clarkes Beach Holiday Park. 1 (AHIMS #04-5-0358); and
- e. Clarkes Beach Holiday Park. 2 (AHIMS #04-5-0359).

It is considered appropriate that the three sites are managed consistently, irrespective of the AHIMS numbers. However, any applications for an AHIP by Reflections Holiday Park will only cover Clarkes Beach Holiday Park 1 and 2 (#04-5-0358 and #04-5-0359).

Please also note that we have not yet received copies of the AHIMS site cards from NPWS and as such we will request copies through the AHIMS portal.

It was generally agreed that the midden deposits represent a discontinuous midden with the following characteristics;

- l. Predominately Eugarie shell which exist at the interface of the old sand dune profile (identifiable by the grey sand layer) which has been buried by a more recent yellow sand deposit within the historic period.
- m. The midden dates to the period of early contact (approximately 170BP or 1850's) and is not older than 260BP.
- n. The midden contains bone material, being swamp wallaby, and has the potential to contain Aboriginal skeletal material. Brian Kelly understood that the burial of Harry Bray was not in the Clarkes Beach Area, however this does not discount the potential for historic burials in the dune.
- o. The midden is similar to Eugarie middens along the Tyagarah Beach, but quite different to the midden at The Pass. The Eugarie middens were very common along the dune systems, however most of the midden sites have now been lost as a result of historic sand mining and more recently coastal erosion.
- p. The dune system at Clarkes Beach has suffered massive losses of sand since the 1990's and it is expected that a large part of the midden complex has been lost as a result. As such the conservation status of the remaining midden is increased.
- q. It is likely that the midden extended along Clarkes Beach, however is now only partially retained in the sand dune as this section was not subject to intensive sand mining.

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Temporary Sand Bags - It was noted that the temporary sand bag structures were installed by Reflections Holiday Park to mitigate impacts from coastal erosions which result from a loss of beach sand in front of the caravan park. This loss of sand has resulted from a combination of southerly swells and king tides which have decreased the replenishment of sand from the beach front over winter. Advice from coastal engineers is that the sands will replenish over time and provide additional protection for the dune. The sand bags were approved for 90 days only, and approximately 45 days remains for the approval at which time it is understood that Reflections are required to remove the sand bags. The removal will involve a mechanical excavator and will result in harm to the Aboriginal shell midden.

Both the Arakwal people and TBLALC do not support the removal of the sand bag structure without replacement by a medium to long term solution for the management of the midden. The preference of the Arakwal people and TBLALC is to retain the sand bags beyond the 90- day permit period until a permanent solution or management arrangement was in place.

Midden salvage program - It was noted that the Arakwal People and TBLALC had met with National Parks and Wildlife Service ('NPWS') on the previous day (Thursday 29 August 2019) to progress the salvage of midden material from the Clarkes Caravan Park Midden. The extension of the salvage program across the entire midden was identified as the most appropriate short- term management response for the midden material. However, this would include only the shell material which had come down the dune face with slumped sand deposits and not the in-situ midden lens which was exposed on the dune face. This was due to the following;

- a. The potential that removal of the intact midden material may increase the rate of erosion of the dune face;
- b. The risks of increasing erosion by walking up the dune face to collect the midden; and
- c. The physical risks to sites officers that might arise by walking up the steep dune face.

It was noted that the salvage program would include temporary storage of shell in the NPWS depot/ office and permanent reburial in a safe portion of the hind dune once stabilised. The salvage program would be undertaken by sites officers from the Arakwal People and TBLALC.

Revegetation works - Reflections noted that stabilisation of the dune face using native vegetation was the preferred method to control coastal erosion along the dune. This would involve planting native grasses and plants by hand and may include additional materials such as fill, mulch, fabric or plastic structures to increase the viability of the replanting program. These works would result in harm to the midden. Both the Arakwal People and TBLALC supported this as a longer-term management response, however noted that this would be conditional upon an AHIP and other necessary government approvals.

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Stone revetment wall - The previous discussions in 2018 regarding a stone revetment wall, or similar, were noted, however it was agreed that this would be excluded from the initial AHIP application.

Pedestrian access - It was noted that there were two beach access points from Reflections Holiday Park, being a steeply eroded dune access to the east of the holiday park and a partially eroded access to the west of the park above a water drain. It was considered that the westerly access was the preferred option as the drain had already been subject to significant ground disturbance. However, support from Arakwal and TBLALC would be conditional upon provision of technical drawings and engineering plans showing any physical structures which might impact on the intact dune and midden (demarcated by light grey sands).

It was noted that pedestrian access and impacts from visitors was a potential threat to the midden and as such signage and simple barriers would be erected on the holiday park and the beach front to inform the public about the rehabilitation works and reduce erosion from people climbing the dune face.

Additional investigation - Having consideration for the outcomes of the previous works on the Clarke's Caravan Park Midden, it was not considered that additional archaeological investigation was required to understand the nature, extent or significance of the midden. This was substantially due to the consistency and connection of the midden deposit along the dune. Dating of salvaged midden material in the immediate vicinity of the Reflections Holiday Park was not specifically discussed.

Please contact Principal Archaeologist (Coffs Harbour) Tim Hill on 0422 309 822 or at t.hill@everick.net.au should you wish to discuss this advice further.

Yours faithfully,



Tim Robins
Director
Everick Heritage Pty Ltd