Attachment 15

Aboriginal Heritage Due Diligence Assessment

RPS



AREAS 18, 19 & 20, BERRY & RIVER ROAD AND HOLDWORTH AVENUE, ST LEONARDS SOUTH

Aboriginal Heritage Due Diligence



ABORIGINAL HERITAGE DUE DILIGENCE

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1 INTRODUCTION

RPS has been engaged by CIFI St Leonards Development Management Pty Ltd to prepare an Aboriginal Heritage Due Diligence assessment as requested by Lane Cove Council on the advice of the Aboriginal Heritage Office for Development Application 60/2022.

This Aboriginal heritage due diligence assessment has been prepared in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010).* The purpose of an Aboriginal heritage due diligence assessment is to demonstrate that reasonable and practicable measures have been taken to avoid harm to an Aboriginal object and/or place.

1.1 **Project Location**

The project area forms part of the St Leonards South Masterplan Precinct, which includes the area south of the Pacific Highway bounded by the railway line to the east, River Road to the south and Park Road to the west. The precinct has been divided in to 23 areas. This report will assess areas 18, 19 and 20 which comprise of 22-34 Berry Road, 21-31 Holdsworth Avenue and 42-46 River Road, St Leonards, in the Lane Cove Local Government Area (LGA) (Figure 1).

1.2 **Project Background**

The project will involve the demolition of existing properties and site preparation works for the construction of five residential flat buildings, ranging from 3 to 9 storeys high that include:

- A total of 245 residential apartments (82 x 1 bedroom (33%), 114 x 2 bedroom (47%) and 49 x 3 bedroom (20%)
- A total of 2,411m₂ of communal open space (28% of the site area) including a central north south 'green spine' including swimming pool (with kids paddle pool, water lounge, stepping stone crossing and water cascade) with an area of 2,189m²;
- A 4 storey + mezzanine basement with a total of 418 car parking spaces, motorcycle and bicycle parking;
- Vehicular access provided from Holdsworth Avenue via a single egress/ingress point;
- Tree removal and replacement planting;
- A 9m wide 'public' east west through-site link connecting Holdsworth Avenue and Berry Road; and
- Associated landscape works.

1.3 Authorship and acknowledgements

This report has been prepared by Dani Mitchell (BSc, GDPAHM) (Senior Heritage Consultant). Figures in the report have been prepared by GIS Spatial Analyst Natalie Wood. This report was reviewed by Sarah van der Linde (Senior Heritage Consultant) RPS Senior Principal / Practice Leader (Heritage Sydney) Susan Kennedy.

Figure 1 Project Area



2 APPLICABLE LEGISLATION

2.1 National Parks & Wildlife Act 1974

Aboriginal cultural heritage (objects and places) in NSW are protected by the *National Parks and Wildlife Act 1974* which is overseen by Heritage NSW (formerly DECCW and OEH). In some cases, Aboriginal heritage may also be protected under the *Heritage Act 1977*, overseen by Heritage NSW (formerly the Heritage Branch of the Department of Planning). The *Environmental Planning and Assessment Act 1979*, overseen by the Heritage NSW, and other environmental planning instruments trigger the requirement for the investigation and assessment of Aboriginal cultural heritage as part of the development approval process.

The *National Parks and Wildlife Act 1974* (NPW Act) is the principal Act providing protection for Aboriginal cultural heritage (objects and places) in NSW. It provides protection for Aboriginal cultural heritage irrespective of the level of archaeological or cultural heritage significance or land tenure. Heritage NSW is responsible for the administration of the NPW Act. The NPW Act provides protection for Aboriginal cultural heritage in NSW. Section 86 of the NPW Act states:

- "A person must not harm or desecrate an object that the person knows is an Aboriginal object"
- "A person must not harm an Aboriginal object"
- "A person must not harm or desecrate an Aboriginal place"

Under the NPW Act, it is an offence to harm an Aboriginal object or place. Harming an Aboriginal object or place may result in a fine of up to \$550,000 for an individual and imprisonment for two years; and in the case of a corporation, a fine of up to \$1.1 million. The fine for a strict liability offence (s86 [2]) is up to \$110,000 for an individual and \$220,000 for a corporation.

Harm under the NPW Act is defined as any act that: destroys defaces or damages the object; moves the object from the land on which it has been situated; causes or permits the object to be harmed. However, it is a defence from prosecution if the proponent can demonstrate 1) that harm was authorised under Section 90 of the NPW Act, or 2) that the proponent exercised due diligence in respect to Aboriginal cultural heritage. The due diligence defence states that if a person or company has exercised due diligence, liability from prosecution under the NPW Act will be removed or mitigated if it later transpires that an Aboriginal object was harmed. If an Aboriginal object is identified during the proposed activity, all activity within that area must cease and Heritage NSW notified (DECCW 2010:13). The due diligence defence does not authorise continuing harm.

2.1.1 Notification of Aboriginal objects

Under Section 89A of the NPW Act, the proponent must report all Aboriginal objects and places to the Director General of the Heritage NSW within a reasonable time, unless already recorded on the Aboriginal Heritage Information Management System (AHIMS). Fines of \$11,000 for an individual and \$22,000 for a corporation may apply for each object not reported.

2.1.2 Investigating and assessing Aboriginal cultural heritage

There are a number of procedural publications governing archaeological practice in NSW. The publications relevant to the investigation and assessment of Aboriginal cultural heritage include:

- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (2011);
- Code of practice for archaeological investigation of Aboriginal objects in New South Wales (the Code) (DECCW 2010); and,
- Aboriginal cultural heritage requirements for proponents (DECCW 2010)

The Aboriginal cultural heritage consultation requirements for proponents (2010) codifies a process for consultation with Aboriginal people who hold cultural knowledge relevant to determining the significance of Aboriginal cultural heritage. The requirements are consistent with the NPW Act and seek, inter alia, to conserve Aboriginal objects and places of significance to Aboriginal people. Consultation is therefore a fundamental part of the Aboriginal cultural heritage assessment process.

2.2 National Parks & Wildlife Regulation 2019

The National Parks & Wildlife Regulation 2019 (NPW Regulation) provides a framework for undertaking activities and exercising due diligence in respect to Aboriginal heritage. The NPW Regulation 2019 outlines the recognised due diligence codes of practice which are relevant to this report. It also outlines procedures for AHIP applications and Aboriginal cultural heritage consultation requirements amongst other regulatory processes.

2.3 Environmental Planning and Assessment Act 1979

The Environmental Planning & Assessment Act 1979 (EP&A Act) is administered by the NSW Department of Planning, Industry and Environment and provides planning controls and requirements for environmental assessment in the development approval process. This Act has three main parts of direct relevance to heritage. Namely, Part 3 which governs the preparation of planning instruments, Part 4 which relates to the development assessment process for local government (consent) authorities and Part 5 which relates to activity approvals by governing (determining) authorities.

Planning decisions within LGAs are guided by Local Environmental Plans (LEPs). Each LGA is required to develop and maintain an LEP that includes Aboriginal and historical heritage items which are protected under the EP&A Act and the NPW Act.

The project area is located within the Lane Cove LGA. The Lane Cove LEP 2009 is the current planning instrument for the LGA.

2.4 Lane Cove Local Environmental Plan 2009 (LEP)

Under Section 5.10 of The Lane Cove Local Environment Plan 2009, the following requirements are listed:

5.10 Heritage conservation

Note: Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

(1) Objectives The objectives of this clause are as follows-

- (a) To conserve the environmental heritage of Lane Cove,
- (b) To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) To conserve archaeological sites,
- (d) To conserve Aboriginal objects and Aboriginal places of heritage significance.

(2) Requirement for consent Development consent is required for any of the following-

- (a) Demolishing or moving any of the following or altering he exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—
 - (i) A heritage item,
 - (ii) An Aboriginal object,
 - (iii) A building, work, relic or tree within a heritage conservation area,
- (b) Altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,

- (c) Disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) Disturbing or excavating an Aboriginal place of heritage significance,
- (e) Erecting a building on land-
 - (i) On which a heritage item is located or that is within a heritage conservation area, or
 - (ii) On which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.
- (3) When consent is not required However, development consent under this clause is not required if-
 - (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development—
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
 - (b) the development is in a cemetery or burial ground and the proposed development-
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
 - (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
 - (d) the development is exempt development.
- (4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).
- (5) Heritage assessment The consent authority may, before granting consent to any development-
 - (a) on land on which a heritage item is located, or
 - (b) on land that is within a heritage conservation area, or
 - (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) **Heritage conservation management plans** The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

- (7) Archaeological sites The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies)—
 - (a) notify the Heritage Council of its intention to grant consent, and
 - (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.
- (8) **Aboriginal places of heritage significance** The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—
 - (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
 - (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.
- (9) **Demolition of nominated State heritage items** The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item—
 - (a) notify the Heritage Council about the application, and
 - (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.
- (10) Conservation incentives The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—
 - (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
 - (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
 - (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
 - (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
 - (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

3 METHODOLOGY

Prior to any development taking place, the precautionary principle to avoid potential harm to Aboriginal heritage allows for a heritage 'due diligence' process in order to ensure Aboriginal objects, Potential Archaeological Deposits (PAD), sites and Places are not impacted. It provides guidance on whether the proposed development requires further Aboriginal heritage investigations before the commencement of construction works.

To satisfy the requirements of the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW NSW 2010) the scope of the assessment included undertaking the following tasks:

- A desktop review of previous studies and reports from around the project area
- Extensive Aboriginal Heritage Information Management System (AHIMS) search
- Significance of the archaeological and landscape contexts of the project area and its land use history
- Assessment of any identified Aboriginal objects, sites PAD and Places; and
- Recommendations on the management of any identified Aboriginal objects, sites PAD and Places if identified within the boundary of proposed works.

3.1 Assessment Process

The due diligence process involves a combination of desktop research and a site inspection of the proposed project area.

The steps involved in the due diligence process include the following questions:

- Will the activity disturb the ground surface?
- Are there any relevant confirmed site records or other associated landscape feature information on AHIMS?
- Are there any sources of information of which a person is already aware?
- Are there landscape features that are likely to indicate the presence of Aboriginal objects?
- Can the harm or the activity be avoided?
- Does the desktop assessment and visual inspection confirm that there are Aboriginal objects or that they are likely?
- Are further investigations and impact assessments required?

The advantages of conducting a due diligence are:

- It assists in avoiding unintended harm to Aboriginal objects;
- Provides certainty to land managers and developers about appropriate measures for them to take;
- Encourages a precautionary approach;
- Provides a defence against prosecution if the process is followed; and
- Results in more effective conservation outcomes for Aboriginal Cultural Heritage.

This Aboriginal heritage due diligence assessment has been undertaken in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (DECCW, 2010).* This due diligence assessment includes a site inspection.

4 ENVIRONMENTAL CONTEXT

In order to assess the potential for Aboriginal heritage at the sites, contextual information relating to Aboriginal cultural heritage resources have been considered. An understanding of environmental context is important for the predictive modelling and interpretation of Aboriginal sites. The local environment provided natural resources for Aboriginal people, such as stone (for manufacturing stone tools), food and medicines, wood and bark (for implements such as shields, spears, canoes, bowls, shelters, amongst others), as well as landforms suitable for camping and other activities. The nature of Aboriginal occupation and resource procurement is inextricably linked to the local environment and, therefore, needs to be considered as part of the cultural heritage assessment process. The environmental context is provided in this section as required under the Due Diligence Code (DECCW 2010).

4.1 Geology

The project area is located on the Triassic Hawkesbury Sandstone, which consists of medium to coarsegrained quartz sandstone, very minor shale and laminate lenses (Herbert, 1983). In the northern section of the project area, the Hawkesbury Sandstone is capped by the Ashfield Shale, which forms part of the Wianamatta Group. The Ashfield Shale caps many of the urbanised ridges to the north of Sydney and consists of black to dark-grey shale and laminate (Herbert, 1983).

4.2 Soils

The project area is located on the Glenorie soil landscape which is underlain by the Wianamatta Group Ashfield Shale formation. The Glenorie soil landscape consists of shallow to moderately deep (<100 cm) Red Podzolic Soils on crests; moderately deep (70–150 cm) Red and Brown Podzolic Soils on upper slopes; deep (>200 cm) Yellow Podzolic Soils and Gleyed Podzolic Soils along drainage lines (Chapman and Murphy, 1989).

4.3 Topography and hydrology

The Glenorie soil landscape has low rolling and steep hills. Local relief 50–120 m, slopes 5–20%. Convex narrow (20–300 m) ridges and hillcrests grade into moderately inclined sideslopes with narrow concave drainage lines. Moderately inclined slopes of 10–15% are the dominant landform elements (Chapman and Murphy, 1989).

The topography of the project area is undulating to the east with steeper valleys to the south. From the Pacific Highway in the north there is a steep decline to River Road in the south, turning southeast towards Canberra Avenue. The nearest hydrological feature is Berrys Creek which is a first order stream located approximately 130m south of the project area and is fed by an open drainage channel.

4.4 Vegetation

The project area was cleared of vegetation prior to subdivision and residential development. Prior to development, the area comprised of Sydney Coastal Sandstone Foreshores Forest. The dry Sclerophyll forest was an open forest with hardy trees that could survive long periods of dry such as Eucalyptus trees, Banksias and Wattle. The shrub layer was moist with a ground cover of ferns, rushes and grasses (Chapman and Murphy, 1989).

4.5 Land use and disturbance

The project area is residential housing, with construction of homes beginning as early as 1913. It was around this time that the land was cleared in preparation for subdivision and sale (Appendix A). Since that time, the homes have undergone renovations with backyard modifications such as swimming pools and garden sheds. By the nature of the land use itself, the project area has been subjected to significant disturbance.

5 ARCHAEOLOGICAL CONTEXT

Archaeology is important for ascertaining the timeline of human colonisation, carried out in excavations of sites in order to align artefacts used or made by humans to the stratigraphy of which they are found. This allows archaeologists to estimate the age of occupation at a specific site (Hiscock, 2008:27).

There is now evidence of human occupation as early as 65,000 years ago in northern Australia, determined using in situ stone tool assemblages and the stratigraphic units they were found in (Clarkson et al, 2017). The use of genetic evidence indicates that Aboriginal people have been in Australia for at least 50,000 years (Clarkson et al., 2017), adapting to climatic and environmental changes and moving across every part of the continent (Hiscock, 2008).

It is uncertain when the Sydney Basin was first occupied but evidence suggests it was during the Pleistocene around 40,000 years ago. Jo McDonald (2005) reports some of the oldest dates for the Sydney Basin, as early as 30,000 BP, from the findings of a salvage excavation at Parramatta.

The oldest site with physical evidence of occupation in the Sydney coastline dates from around 7000 years before present (BP). It is believed that older sites may have been submerged during rising sea levels approximately 20,000 years BP with levels stabilising 6000BP (Lane Cove Council).

The landscape plays an important role as it contains the imprint of human use with perceptions, beliefs, stories, experiences and practices. Aboriginal groups have a long and complex relationship with the land, which embodies traditional knowledge of spirits, land uses and places. There is connectivity between plants, animals, soils and water (DECCW, 2010a).

The Lane Cove LGA has many recorded sites that range from middens, shelter with midden, shelter with art, engravings and grinding grooves. These sites demonstrate the way the landscape was utilised by the people with shelters providing refuge, shells, fish and other animals species providing nutrition, and forests with trees and plants for crafting and eating.

5.1 **Previous archaeological investigations**

A review of previous studies undertaken in the area, including archaeological surveys and excavations, is used to establish a better understanding of the archaeological potential of the project area.

2006 Royal North Shore Hospital, St Leonards

In 2006 Dominic Steele Consulting Archaeology undertook an Aboriginal heritage impact assessment for a proposed upgrade at the Royal North Shore Hospital, St Leonards. It was established during the desktop research that the site has been severely disturbed. A site inspection was conducted and found no Aboriginal artefacts present. It was determined that the site was unlikely to contain any Aboriginal objects and works could proceed with no further investigation.

2019 International Chinese School, 211 Pacific Highway, St Leonards

In 2019, Coast History and Heritage prepared an Aboriginal Cultural Heritage Assessment report as part of a State Significant Development Application at 211 Pacific Highway, St Leonards. During the background research, it was determined that the site was located on a high ridge that was vulnerable to weathering and has been subjected to historical disturbance since the 1800s. A visual inspection was carried with no evidence of undisturbed natural ground and no Aboriginal artefacts found. It was concluded that the area of and around the existing building was unlikely to have any intact or extensive archaeological material. Another area used as a pickup and drop off may possibly have isolated or low-density stone artefacts in partially or fully disturbed contexts.

It was determined that no further archaeological investigations were necessary but recommended archaeological monitoring for the pickup and drop off area.

5.2 Aboriginal Heritage Information Management System (AHIMS)

The Aboriginal Heritage Information Management System (AHIMS) is a database managed by Heritage NSW and regulated under section 90Q of *the National Parks and Wildlife Act 1974*. AHIMS contains records and associated reports of registered Aboriginal archaeological sites (Aboriginal objects, as defined under the Act) and declared Aboriginal places (as defined under the Act) in NSW.

A search of the Aboriginal Heritage Information System (AHIMS) was conducted on the 23rd of August 2022 (client service ID: 710876) to identify registered Aboriginal sites or places within or surrounding the project area (Appendix B).

The AHIMS extensive search was conducted with the following parameters (GDA, Zone 56):

Eastings: 331269 - 334094

Northings: 6254588 - 6256612

Buffer: 0 – Search incorporated a large area outside the project location.

The AHIMS search resulted in:

- 42 Aboriginal sites are recorded in or near the above location
- 0 Aboriginal places have been declared in or near the above location

The 42 recorded sites are located outside of the project area as shown in figure 2. A summary of site types is listed in Table 1.

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Table 1: AHIMS extensive search results - Site Types
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Site Type	Number of Sites	Percentage of Total
Shelter with midden	17	40
Shelter with midden/burial	1	2
Shelter with midden/art	2	5
Midden	9	21
Shelter with art	4	10
Potential archaeological deposits (PAD)	5	12
Rock engraving open site	2	5
Artefact open site	2	5
Total	42	100%

The nearest registered site is AHIMS 45-6-3880 located approximately 330m south of the project area on the west side of Berrys Creek. It is described as a shelter with art (pigment or engraved).

5.3 **Predictive Model**

The archaeological potential of the site is based upon the review of the landscape features and the environment characteristics of the project area. These include potential areas of resources (Owen and Cowie 2017), the disturbance of the landscape, the stream order model (White and MacDonald 2010), a review of nearby AHIMS sites and previous archaeological reports within the area.

5.3.1 Stream Order, Topography and Artefact Concentrations

The project area is 130 metres north of Berrys Creek, a 1st order stream that drains into the harbour to the south. McDonald and White (2010) designed a model to identify the potential of archaeological sites in relation to the stream order using Strahler's hierarchy of tributaries. Higher artefact densities are likely on terraces and lower slopes within 50-100m of 4th order streams and within 50m of 2nd order streams. They found that 1st order streams had very low artefact counts. Berrys Creek is a 1st order stream and therefore has low potential for Aboriginal artefacts.

5.3.2 Scarred Trees

There is potential for scarred trees to be present in the Pittwater subregion. Aerial imagery of the project area from 1943 shows that all the original vegetation has been removed. The land has been used for residential housing. There is no potential for scarred trees within the project area.

5.3.3 Rock Shelters

Rock shelters are common around the harbour and are often associated with middens and art (pigment and engraving). There are no rock shelters within the project area.

5.3.4 Grinding Grooves

In the Pittwater subregion, grinding grooves are normally present on sandstone exposures, often along creek lines and where water is present. Sandstone exposed within the project area showed no indication of grinding grooves.

5.3.5 Stone Raw Material Quarries and Source Locations

There are no known raw material sources within the project area. The project area indicates that the geology is the Hawkesbury Sandstone capped by the Ashfield shale (Wianamatta Group) which are not typically used for stone artefacts.

5.3.6 Ceremonial Grounds

There are no known ceremonial grounds in the project area. The landscape has been significantly disturbed and there is unlikely to be visible remains of ceremonial structures in the project area.

5.3.7 Burials

There is very low potential for burials in the project area.

5.4 **Predictive Model Summary**

The project area is unlikely to contain any Aboriginal places or items due to the significant level of disturbance.

Figure 2 Extensive AHIMS search results



6 ARCHAEOLOGICAL SITE SURVEY

A site visit of project area was carried out on 26 August 2022 by Dani Mitchell (Senior Heritage Consultant). The visit was primarily focussed on inspecting the sandstone outcrops at 34 Berry Road, 42-46 River Road, 31 Holdsworth Avenue and the public land between Berry Road and River Road, St Leonards.

Berry Road

Berry Road is extensively developed with houses dating from circa 1920s. The northern most property in the project area, number 22, is at the highest elevation with a decline moving south. Yards of the properties 22-32 Berry Road were inspected and were visibly disturbed (**Plate 1**, **Plate 2** and **Plate 4**). Yards appear to have been levelled and landscaped with garden beds and in number 28, a swimming pool (**Plate 3**). There is no exposed sandstone on these properties.

Number 34 Berry Road is substantially lower than number 32. The northern boundary of the property has a sandstone outcrop ranging from 1m tall to approximately 2.4m and runs in an east-west direction, continuing to the next property (**Plate 5**). There are smaller sandstone outcrops visible in the rear of the property and the yard has been landscaped around them (**Plate 6**). There are no visible signs of art or engravings.

At the southern end of Berry Road is a small public area with stairs that lead down to River Road. The area has a reasonable amount of sandstone (**Plate 21** to **Plate 24**). Upon investigation of the outcrops, no Aboriginal art, engraving or grinding grooves were visible.

River Road

Number 46 River Road has undergone extensive modification in the rear of the property. There are sandstone retaining wall and cement slabs with no visible natural sandstone.

Number 44 River Road has a steep backyard with multiple levels of sandstone outcrops. There is no evidence of Aboriginal art, engraving or grinding associated with the outcrops (**Plate 7** to **Plate 9**).

Number 42 River Road has a multilevel back yard. Immediately at the rear of the house, there is paving and a sandstone retaining wall. The yard is relatively flat with large sandstone outcrops at the rear of the property (**Plate 10** and **Plate 11**). The sandstone rises several metres high and is covered with plants and trees. The sandstone is being mechanically eroded with large tree roots growing throughout (**Plate 12**). There is no evidence of Aboriginal art, engraving or grinding grooves associated with the outcrop.

Holdsworth Avenue

Number 31 Holdsworth Avenue has a levelled front carport that has been tiled, concreted and covered with pebbles. This property sits on top of the outcrop mentioned at Number 42 River Road. Construction of the house has been around and over the natural sandstone outcrop (**Plate 14** to **Plate 16**) with sandstone visible within the house build and inside the home. The basement/additional living space of the property has sandstone inside (**Plate 13**). There is no evidence of Aboriginal art, engraving or grinding grooves associated with the outcrop.

The remaining properties on Holdsworth Avenue have been heavily modified and have no visible sandstone outcrops (**Plate 17** to **Plate 20**). Sandstone is only visible on the southernmost properties which happen to be at the lowest elevation, declining towards the valley and Berry Creek.

Results

The sandstone outcrops are most prominent in the south of the project area where the elevation is lowest. There was no evidence of Aboriginal art, engraving or grinding grooves associated with the outcrops. The area has been extensively developed and modified and is highly unlikely to contain any Aboriginal objects.

Plate 1 Backyard of 24 Berry Road (RPS 2022)



Plate 3 Pool at 28 Berry Road (RPS 2022)



Plate 2 Backyard of 26 Berry Road (RPS 2022)



Plate 4 Backyard of 32 Berry Road (RPS 2022)





34 Berry Road (RPS 2022)





Plate 7 Sandstone outcrop at rear of 44 River Road (RPS 2022)



Plate 8 Sandstone outcrop at rear of 44 River Road (RPS 2022)



Plate 9 Sandstone in rear of 44 River Road (RPS 2022)



Plate 11 Sandstone at 42 River Road (RPS 2022)



Plate 10 Large sandstone outcrop at 42 River Road (RPS 2022)



Plate 12 Sandstone at 42 River Road (RPS 2022)



Plate 13 Sandstone inside property at 31 Holdsworth Avenue (RPS 2022)



Plate 15 Sandstone under the property 31 Holdsworth Avenue (RPS 2022)



Plate 14 Sandstone under property at 31 Holdsworth Avenue (RPS 2022)



Plate 16 Backyard of 31 Holdsworth Avenue (RPS 2022)



Plate 17 Backyard of 29 Holdsworth Avenue (RPS 2022)



Plate 19 Backyard of 25 Holdsworth Avenue (RPS 2022)



Plate 18 Backyard of 27 Holdsworth Avenue (RPS 2022)



Plate 20 Backyard of 23 Holdsworth Avenue (RPS 2022)



Plate 21 Public reserve end of Berry Road (RPS 2022)



Plate 23 Public reserve end of Berry Road (RPS 2022)



Plate 22 Public reserve end of Berry Road (RPS 2022)



Plate 24 Public reserve end of Berry Road (RPS 2022)



7 DISCUSSION

7.1 Due Diligence assessment process

STEP 1: Will the activity disturb the ground surface?

Yes. The development will disturb the entirety of the project area.

STEP 2A: Are there any relevant confirmed site records or other associated landscape feature information on AHIMS?

There are no sites recorded on AHIMS within the project area.

STEP 2B: Are there any sources of information of which a person is already aware?

There are no sources of information of which a person is already aware.

STEP 2C: Are there landscape features that are likely to indicate the presence of Aboriginal objects?

Based on the survey, environmental context, and the results of previous archaeological investigations undertaken in proximity to the project area, it is considered the most likely site type to occur in the area would be:

- Art (pigment or engraving)
- Artefact
- Grinding Groove

The Due Diligence Code identifies sensitive landscapes features that indicate the likely existence of Aboriginal objects. These include landscapes features within 200 metres of waters, within 20 metres of a cave/cave mouth/rock shelter, located on a ridgeline/headland, located within 200 metres of a cliff face and located within a sand dune.

The site is located in the Hawkesbury Sandstone and encompasses many rock shelters that could contain art or artefacts. The sandstone outcrops in the project area had no Aboriginal objects, art or engraving.

STEP 3: Can the harm or the activity be avoided?

The proposed works are unlikely to harm Aboriginal objects. The project area has been subjected to residential development and is highly disturbed.

STEP 4: Does the desktop assessment and visual inspection confirm that there are Aboriginal objects or that they are likely?

The desktop assessment and visual inspection shows that the landscape has been disturbed due to residential development. The Due Diligence Code specifies:

'Land is disturbed if it has been the subject of human activity that's has changed the lands surface, being changes that remain clear and observable'

The project area is unlikely to contain any Aboriginal objects.

STEP 5: Further investigations and impact assessments

No further investigations or assessments are required as it is unlikely harm will come to any Aboriginal objects, sites or PADs.

8 CONCLUSION AND RECOMMENDATIONS

No Aboriginal archaeological sites, objects, PADs or Places were located within the project area. The proposed works are considered unlikely to harm Aboriginal objects, sites or PADs. No Aboriginal heritage constraints have been identified for the site of the project area.

Due to historical disturbance and modification of the landscape at the location, the project area is considered to have low to nil archaeological potential to retain extant archaeological sites, objects, or PADs. **No further investigations or assessments are required within the project area in relation to Aboriginal heritage.**

The following recommendations are provided based on the recognition of the legal requirements and automatic statutory protection provided to Aboriginal 'objects' and 'places' under the terms of the National Parks and Wildlife Act of 1974, and as outlined in the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales 2010.

Recommendation 1: Aboriginal cultural heritage induction

Prior to works commencing, it is recommended that an induction is presented to ensure that all construction personnel and subcontractors involved in the proposed work are aware of their obligations under the *National Parks and Wildlife Act (NSW) 1974* ('the NPW Act').

Recommendation 2: Unexpected finds procedure, Aboriginal object/s

If suspected Aboriginal objects are identified during works, the following procedures must be followed:

- Immediately cease all activity at the location and notify the site manager.
- Do not move or handle the object. Secure the area where the find is located.
- Contact a suitably qualified archaeologist experienced in the assessment and management of Aboriginal Cultural Heritage to assess the find.
- If the consultant confirms the find is an Aboriginal object, notify the Heritage NSW pursuant to s89A of the NPW Act and Metropolitan Local Aboriginal Land Council.
- If the consultant determines the find is not an Aboriginal object, the consultant will provide written advice to the client that works may re-commence and proceed with caution.

If any human remains are discovered, you must cease work immediately and:

- Not further disturb or move the remains
- Notify NSW Police
- Notify Heritage NSW Environment Line on 131 555 as soon a practicable and provide available details of the remains and their location
- Not recommence any work at the location unless authorised in writing by Heritage NSW.

If human remains unexpectedly encountered are believed to be Aboriginal, the Metropolitan Aboriginal Land Council must be notified immediately.

Recommendation 3: Record keeping

This due diligence assessment must be kept by CIFI St Leonards Development Management Pty Ltd so that it can be presented, if needed, as a defence from prosecution under Section 86(2) of the *National Parks and Wildlife Act 1974*.

9 **REFERENCES**

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Appendix A Residential sites auction





Appendix B Extensive AHIMS Search Results

The following information is considered culturally sensitive and should be redacted from public exhibition



Your Ref/PO Number : PR152835 Client Service ID : 710876

Date: 23 August 2022

RPS Australia East Pty Ltd - Pitt Street Sydney Level 13 255 Pitt Street Sydney New South Wales 2000 Attention: Dani Mitchell

Email: dani.mitchell@rpsgroup.com.au

Dear Sir or Madam:

AHIMS Web Service search for the following area at Datum :GDA, Zone : 56, Eastings : 331269.0 -334094.0. Northings : 6254588.0 - 6256612.0 with a Buffer of 0 meters, conducted by Dani Mitchell on 23 August 2022.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

42	Aboriginal sites are recorded in or near the above location.	
0	Aboriginal places have been declared in or near the above location. *	

	AHIMS Web Services Extensive search - Site list r									PO Number : PR15283 It Service ID : 71087
<u>SiteID</u>	SiteName	<u>Datum</u>	<u>Zone</u>	Easting	Northing	Context	Site Status **	SiteFeatures	<u>SiteTypes</u>	Reports
15-6-2192	Split Roof Cave;	AGD	56	332760	6254430	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	Contact	Recorders	Mich	nael Guider				Permits		
15-6-3092	Bushland Park 2 LCC096	GDA		331410	6255800	Open site	Valid	Potential Archaeological Deposit (PAD) : 1		
F (0050	<u>Contact</u>	Recorders		riginal Herita		o ::	T7 1.1	Permits		
5-6-3873	Glenview Shelter 2 LCC091	GDA		332394	6255130	Open site	Valid	Potential Archaeological Deposit (PAD) : 1		
	Contact	Recorders		Phil Hunt				<u>Permits</u>		
15-6-2266	Gore Cove 6;Wollstonecraft;	AGD		332340	6254550	Open site	Valid	Shell : -, Artefact : -	Midden	
	<u>Contact</u>	Recorders	3771/402 02302	nael Guider				Permits		
5-6-2193	Honeycomb Hole Cave;	AGD		332760	6254430	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	Contact	Recorders	201.00001202	nael Guider				<u>Permits</u>		
5-6-3678	Darling Walk Midden	GDA	56	333600	6255000	Open site	Valid	Aboriginal Resource and Gathering : 1, Shell : 1		
	Contact	Recorders	Com	ber Consulta	ants Pty Limite	d,Ms.Jillian Comber	r	Permits		
5-6-3125	Osborne Park IF1	GDA	56	331280	6255930	Open site	Valid	Artefact : -		
	Contact	Recorders	Mr.F	Phil Hunt				<u>Permits</u>		
5-6-3589	Gore Creek 12 Hand Stencil - LLC 115	GDA	56	331750	6255140	Closed site	Valid	Art (Pigment or Engraved) : 1		
	Contact	Recorders	Mr.F	Phil Hunt	25.47			<u>Permits</u>		
5-6-2101	Nameless third visit cave / Gore ck;reserve 2;	AGD	56	331750	6255050	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	Contact	<u>Recorders</u>		Attenbrow				<u>Permits</u>		
5-6-2262	Gore Cove 1;Greenwich;	AGD		332160	6254540	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	<u>Contact</u>	<u>Recorders</u>	10000	nael Guider		22 2 2	Constraint	<u>Permits</u>		
5-6-2191	WB6 Cave;	AGD		332710	6254460	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
F < 004 -	Contact	Recorders	11000230	nael Guider	(25,222)	61 1 1		Permits		
5-6-2244	Northwood Wharf;	AGD		331360	6254770	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	Contact	Recorders	5. (PA)		lichael Guider	0		Permits		
5-6-3091	Bushland Park 1 LCC095	GDA		331470	6255830	Open site	Valid	Potential Archaeological Deposit (PAD) : 1		
	<u>Contact</u>	<u>Recorders</u>	Abo	riginal Herita	age Office			<u>Permits</u>		

Report generated by AHIMS Web Service on 23/08/2022 for Dani Mitchell for the following area at Datum :GDA, Zone : 56, Eastings : 331269.0 - 334094.0, Northings : 6254588.0 - 6256612.0 with a Buffer of 0 meters.. Number of Aboriginal sites and Aboriginal objects found is 42

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	AHIMS Web Servic Extensive search - Site li) Number : PR152835 Service ID : 710876
<u>SiteID</u>	SiteName	Datum	<u>Zone</u>	Easting	Northing	<u>Context</u>	Site Status **	SiteFeatures	SiteTypes	Reports
45-6-2962	Gore Cove 9 NSC-065	GDA	56	332379	6254590	Open site	Valid	Shell : -		
	Contact	Recorders	Mr.F	hil Hunt,Abo	original Heritag	e Office		Permits		
45-6-2102	Sandy crumble Gore creek;reserve 5;	AGD	56	331660	6255020	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	<u>Contact</u>	<u>Recorders</u>	Val 4	Attenbrow				<u>Permits</u>		
45-6-1042	Bay Street Park;Crows Nest;	AGD	56	331790	6254580	Open site	Valid	Shell : -, Artefact : -	Midden	1809
	Contact	<u>Recorders</u>	Val A	Attenbrow				<u>Permits</u>		
45-6-2264	Gore Cove 3;Greenwich;	AGD	56	332310	6254660	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	Contact	<u>Recorders</u>		1ael Guider		200		<u>Permits</u>		
45-6-2965	Milray Shelter NSC-072	GDA	56	332434	6254650	Open site	Valid	Potential Archaeological Deposit (PAD) : -		
	Contact	<u>Recorders</u>			riginal Heritag	52.52 Str. 22.5		<u>Permits</u>		
45-6-2247	Woodford Bay_3;	AGD		331320	6254790	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	Contact	<u>Recorders</u>		nael Guider				<u>Permits</u>		
45-6-2964	Milray Midden 1 NSC-071	GDA	56	332424	6254650	Open site	Valid	Shell : -		
	Contact	Recorders	Mr.F	hil Hunt,Abo	original Heritag	e Office		Permits		
45-6-3880	Glenview Shelter 1 (LCC0110)	GDA		332535	6255195	Open site	Valid	Art (Pigment or Engraved) : 1		
15 4 0050	Contact	Recorders		hil Hunt	(05555 (0)	2		Permits		
45-6-0270	Upper Cliff Road;Northwood;	GDA Recorders		331504	6255540	Open site	Valid	Art (Pigment or Engraved) : - Permits	Rock Engraving	
45-6-3881	Contact Glenview Shelter 3 (LCC0111)	GDA		1ael Guider 332380	6255045	Open site	Valid	Art (Pigment or		
45-0-5001	Contact	Recorders		Phil Hunt	0233043	Open site	Valid	Engraved) : 1 Permits		
45-6-2252	Gore Creek 10;	AGD		331490	6254910	Open site	Valid	Shell : -, Artefact : -	Midden	
	Contact	Recorders	Mic	nael Guider				Permits		
45-6-2146	Gore Creek Reserve 7 Gore CReek Reserve	AGD	5.57 (5.52	331660	6254790	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	1809,1911
	Contact	Recorders	Val /	Attenbrow				Permits		
45-6-1043	Crows Nest;Wharf Garden Cave;Bay St Wharf Cave;	AGD	56	331740	6254580	Closed site	Valid	Shell : -, Artefact : -, Burial : -	Burial/s,Shelter with Midden	1809
	Contact	Recorders	2002-014		ichael Guider	2000		<u>Permits</u>		
45-6-3093	Bushland Park 3 LCC097	GDA	56	331530	6256020	Open site	Valid	Shell : 1		
	Contact	Recorders	Abo	riginal Herita	age Office			Permits		
45-6-3882	Gore Creek 11 (LCC 003)	GDA	56	331725	6255260	Open site	Valid	Shell : -		
	Contact	Recorders	Mr.F	hil Hunt				Permits		

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	AHIMS Web Services Extensive search - Site list	. ,) Number : PR152835 Service ID : 710876
SiteID	SiteName	Datum	Zone	Easting	Northing	<u>Context</u>	Site Status **	SiteFeatures	SiteTypes	Reports
5-6-2267	Gore Cove 8 Wollstonecraft	GDA	56	332369	6254600	Open site	Valid	Artefact : -	Open Camp Site	
	Contact	Recorders	Mich	nael Guider,A	boriginal Herit	age Office		Permits		
45-6-2152	Gore Creek Reserve 6 Gore Creek Reserve	AGD	56	331580	6255040	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	1809,1911
	<u>Contact</u>	Recorders	Val A	Attenbrow	Had Holder Soles	500X 22	and the state of the	<u>Permits</u>	2014 DE 2 20204	0.5 0 - 0.14
15-6-2096	Choked up cave /Gore ck reserve 1;	AGD		331780	6255060	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	1809
	Contact	Recorders	120,000	Attenbrow,K				<u>Permits</u>		
45-6-1447	Woodford Bay;Longueville;	GDA	56	331319	6255135	Closed site	Valid	Artefact : -, Art (Pigment or Engraved) : -	Shelter with Art,Shelter with Deposit	
	<u>Contact</u>	Recorders	Mich	nael Guider,N	1iss.b Jackson			<u>Permits</u>		
45-6-1390	Berowra	AGD		331300	6254800	Open site	Valid	Art (Pigment or Engraved) : -	Rock Engraving	
C (2254	Contact	Recorders	14 A.		(354000	Classed alter	V-1: J	Permits Chall Autofast	Shelter with	
5-6-2251	Gore Creek 9;	AGD		331510	6254990	Closed site	Valid	Shell : -, Artefact : -	Midden	
E 4 2002	Contact Gore Creek 13 (LCC 0116)	Recorders	10000	nael Guider	6355310	Onen eite	Walid	Permits Potential		
45-6-3883	Gore Creek 13 (LCC 0116)	GDA	50	331750	6255310	Open site	Valid	Archaeological Deposit (PAD) : -		
	<u>Contact</u>	Recorders	Mr.F	hil Hunt				<u>Permits</u>		
15-6-0279	Greenwich;Gore Creek Reserve;Unpainted stair ladder cave;	AGD		331720	6255070	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	1809
	<u>Contact</u>	<u>Recorders</u>	10/0/20			Mecader,D Munro	And the second sec	<u>Permits</u>		
45-6-3341	Greenwich PS KL 01	GDA		331832	6255700	Closed site	Valid	Art (Pigment or Engraved) : -		
	Contact	<u>Recorders</u>	100000		The second s	tage Connections	and a second second	<u>Permits</u>		
45-6-2265	Gore Cove 5;Greenwich;	AGD		332380	6254680	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
	Contact	Recorders	010-0418	nael Guider	6055050			Permits	61 14 141	
15-6-2250	Gore Creek 8;	AGD		331610	6255050	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	
E (0200	Contact	Recorders	10200	nael Guider	(255000	CI I N	** + +	Permits	Charles and the	1000
5-6-0280	Greenwich;Bicycle Tyre Cave;Gore Creek Reserve;Hole Cave;Gore creek 7;	AGD	56	331690	6255000	Closed site	Valid	Shell : -, Artefact : -, Art (Pigment or Engraved) : -	Shelter with Art,Shelter with Midden	1809
	Contact	<u>Recorders</u>	Val A	Attenbrow,M	lichael Guider,N	Ir.R Taplin		<u>Permits</u>		
5-6-2273	Gore Cove 4;	GDA	56	332424	6254820	Open site	Valid	Shell : -, Artefact : -	Midden	
	<u>Contact</u>	Recorders	Mich	nael Guider				Permits [Variable]		
5-6-2263	Gore Cove 2;Greenwich;	AGD	56	332230	6254610	Closed site	Valid	Shell : -, Artefact : -	Shelter with Midden	

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ABORIGINAL HERITAGE DUE DILIGENCE

	V	AHIMS Web Services (AWS) Extensive search - Site list report					f/PO Number : PR152835 ent Service ID : 710876
SiteID	SiteName	<u>Datum Zone Eas</u>	sting <u>Northing Context</u>	Site Status **	SiteFeatures	<u>SiteTypes</u>	Reports
	Contact Recorders Michael Guider P		Permit	s			

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

Destroyed - The site has been completely impacted or harmed usually as consequence of permit activity but sometimes also after natural events. There is nothing left of the site on the ground but proponents should proceed with caution. Partially Destroyed - The site has been only partially impacted or harmed usually as consequence of permit activity but sometimes also after natural events. There might be parts or sections of the original site still present on the ground Not a site - The sile has been originally entered and accepted onto AHIMS as a valid site but after further investigations it was decided it is NOT an aboriginal site. Impact of this type of site does not require permit but Heritage NSW should be notified

Report generated by AHIMS Web Service on 23/08/2022 for Dani Mitchell for the following area at Datum :GDA, Zone : 56, Eastings : 331269.0 - 334094.0, Northings : 6254588.0 - 6256612.0 with a Buffer of 0 meters.. Number of Aboriginal sites and Aboriginal objects found is 42

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