

89 JOHN WHITEWAY DRIVE, GOSFORD NSW

Aboriginal Cultural Heritage Management Plan



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89 John Whiteway Drive,
Gosford NSW
2.0
20 May 2022

REPORT

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Susan Kennedy



20 May 2022

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Prepared by:

RPS

Kristen Tola

Heritage Coordinator

Unit 2A, 45 Fitzroy Street
Carrington NSW 2294

T +61 2 4940 4200

E kristen.tola@rpsgroup.com.au

Prepared for:

**The Trustee for JWD Developments Unit Trust
c/- Artazan Property Group (APG)**

Joe Wood

Project Manager

7 Essex Street
Sydney NSW 2000

T +61 2 8035 5450

E joe@apg.com.au

EXECUTIVE SUMMARY

RPS has been engaged by APG on behalf of JWD Developments Unit Trust to prepare an Aboriginal Cultural Heritage Management Plan (ACHMP) for State Significant Development (SSD) Consent SSD 10321 relating to 89 John Whiteway Drive, Gosford NSW (the Project Area) in the Central Coast Council Local Government Area (LGA).

In 2020 RPS was initially engaged by ADG Architects on behalf of The Trustee for JWD Developments Unit Trust to prepare an Aboriginal Cultural Heritage Assessment Report (ACHAR) for 89 John Whiteway Drive, Gosford NSW in the Central Coast Council LGA. Consultation in accordance with the *Aboriginal Cultural Heritage Consultation Requirements For Proponents* (DECCW 2010) was undertaken with the relevant Registered Aboriginal Parties (RAP) as part of the assessment. The ACHAR documents the process of investigation, consultation and assessment undertaken.

On 14 October 2021, JWD Development was granted consent for the proposed residential development (SSD 10321) at 89 John Whiteway Drive, Gosford NSW. On 22 December 2021, Ethos Urban gained approval on behalf of The Trustee for JWD Developments Unit Trust pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify the development on the Project Area.

This ACHMP has been created to manage Aboriginal heritage items within the proposed development area as stipulated in the project approval and granted under Section 4.38 of the *Environmental Planning and Assessment Act 1979*. This document is intended to provide guidance for the management of Aboriginal cultural heritage within the Project Area both during construction and into the future. This ACHMP applies to the entire Project Area (**Figure 1**).

For the practical management of Aboriginal cultural heritage, a clear outline of roles and responsibilities is provided along with operational flow charts to be used by Land Managers and contractors who may need to access, or conduct works, within the Project Area.

The following outlines the report layout with the relevant sections:

- Section 1 provides background detail and describes the Conditions of Approval.
- Section 2 outlines the legislative context of the project with respect Aboriginal cultural heritage.
- Section 3 details consultation with the Registered Aboriginal Parties (RAP).
- Section 4 outlines registered AHIMS Aboriginal sites.
- Section 5 outlines the heritage management protocols which must be implemented.
- Section 6 provides details for the potential impacts on Aboriginal cultural heritage from development activities.
- Section 7 provides an update to the Aboriginal cultural heritage values and a new statement of significance of the area.
- Section 8 outlines the Heritage contingency protocols to be implemented if previously unidentified Aboriginal objects or sites are located.
- Section 9 provides protocols for compliance, dispute resolution and review procedures.
- Section 10 outlines the roles and responsibilities of stakeholders for the implementation of this ACHMP.

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1 INTRODUCTION

Aboriginal people have occupied Australia for over sixty thousand years and have been recognised as the oldest continuously living culture in the world (Clarkson, Jacobs et al. 2017). The importance of the land to Aboriginal people is evident in the strong spiritual connection and sense of belonging which they have to the land and the environment, including the plants, animals, waterways and sacred sites. The arrival of Europeans in the late 18th century severely disrupted traditional Aboriginal lifestyles and practices. Until the 1960s, little or no recognition was given to Aboriginal Australian culture and history or to citizenship rights and responsibilities. As a result of the colonisation of Australia, many Aboriginal communities have experienced significant disadvantage, which has been acknowledged on a national level, but is not always acknowledged at a local level.

Aboriginal cultural heritage provides essential links between the past and present – it is an essential part of Aboriginal people's cultural identity, connection and sense of belonging to Country. The effective protection and conservation of this heritage is important in maintaining the identity, health and wellbeing of Aboriginal people. Aboriginal cultural heritage sites are a very important part of Australia's cultural heritage.

The development project at 89 John Whiteway Drive, Gosford (Lot 100 DP 1075037 and Lot 1 DP 45551), in the Central Coast Local Government Area (LGA), gained Project Approval (SSD 10321) under Section 4.38 of the *Environmental Planning and Assessment Act 1979* when the Approval was signed under delegation by the NSW Minister for Planning and Infrastructure on the 14 October 2021.

The project, which entails the construction of a residential development comprising four residential flat buildings, was declared a State Significant Project under Part 3A of the *Environmental Planning and Assessment Act* (1979) on 23 May 2009. As part of the requirements for Project Approval, RPS undertook an Aboriginal Cultural Heritage Assessment Report (ACHAR) (RPS 2020) on the portion of land proposed for the development project. No Aboriginal cultural heritage sites were found.

This Aboriginal Cultural Heritage Management Plan (ACHMP) has been developed with reference to the 2020 ACHAR in consultation with RAPs.

1.1 Overview

The Project Area was most recently used for the storage of construction materials. It was historically used as a sandstone quarry until 1985. In 2003 the site appears to have been used for parking and remains unoccupied since approximately 2010. The area is relatively flat, with a gradual fall towards the south-west. The northern portion of the site includes an elevated horseshoe shaped area with a series of cut sandstone faces stepping up to relatively flat benched areas. The western section of the site includes a cut sandstone face. The northern and western section of the site is covered with dense, native vegetation including a continuous canopy of trees. Council recognises that site is located within the Darkinjung and Guringai/Kuringai Traditional Country, whose peoples have cultural connections to the area.

1.2 Purpose

This ACHMP has been prepared to provide JWD Developments Unit Trust with guidance for the management of Aboriginal cultural heritage in the Project Area for activities occurring before construction commences, during works and after development is complete. For the practical management of Aboriginal cultural heritage, a clear outline of roles and responsibilities is provided along with operational flow charts to be used by Land Managers and contractors who may need to access, or conduct works within the Project Area.

1.3 Scope

This ACHMP applies to 89 John Whiteway Drive (the Project Area) situated southeast of Gosford's town centre and at the north end of the Brisbane Water branch of Broken Bay in the Central Coast Council LGA (Figure 1). The Project Area comprises Lot 100 DP 1075037 and Lot 1 DP 45551 including the quarried area and less disturbed ridgeline in the north. This ACHMP is the heritage management document for the Project Area until such time as the practical completion of the development.

1.4 Intended Land Use

The development approval (SSD 10321) for the Project Area is for the construction of a residential development comprising four residential flat buildings to accommodate 201 dwellings, basement car parking, associated landscaping and public domain works.

1.5 Ministers Conditions of Approval

The Development Consent for Regional Assessments included Administrative Conditions, as detailed under *Condition 18 of Schedule 2*. That Condition included a requirement that prior to commencement of construction an Aboriginal Cultural Heritage Management Plan be produced and that it addresses, but not be limited to, the items as listed (**Table 1**):

Table 1: Ministers Conditions of Approval – Aboriginal Cultural Heritage Management Plan

Condition	Addressed in this report
(a) be prepared by a suitably qualified and experienced expert in consultation with the Registered Aboriginal Parties; and	Section 3
(b) be consistent with the conclusions and recommendations of the Aboriginal Cultural Heritage Assessment Report prepared by RPS and dated 10 February 2020; and	Sections 3.2, 4, 5, 8 & 10
(c) include measures for the mitigation and management of any unexpected finds that may be found.	Section 8



FIGURE 1: PROJECT AREA LOCATION

LOCATION: 89 JOHN WHITEWAY DRIVE, GOSFORD

VERSION: A
DATE EXPORTED: 1/03/2022
TECHNICIAN: Natalie.Wood

DATA SOURCES
RPS, Client

0 20 40 60 80 100 120 140 160
m
SCALE 1:2,000 AT A3 SIZE / Projection: GDA2020 MGA Zone 56

CLIENT: RPS
PROJ: 151356
PURPOSE: HERITAGE

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2 LEGISLATION AND GUIDELINES

The following overview of the legal framework is provided solely for information purposes for the client, it should not be interpreted as legal advice. RPS will not be liable for any actions taken by any person, body or group as a result of this general overview and recommend that specific legal advice be obtained from a qualified legal practitioner prior to any action being taken as a result of the summary below.

Aboriginal cultural heritage (places, sites and objects) in NSW are protected by the *National Parks and Wildlife Act 1974*, which is overseen by Heritage NSW (HNSW) (formerly the Office of Environment and Heritage, and Department of Planning, Industry and Environment). The *Environmental Planning and Assessment Act (1979)* is overseen by HNSW, along with other environmental planning instruments, trigger the requirement for the investigation and assessment of Aboriginal cultural heritage as part of the development approval process.

2.1 Commonwealth

2.1.1 Native Title Act 1993

The Commonwealth Government enacted the *Native Title Act 1993* to formally recognise and protect native title rights in Australia following the decision of the High Court of Australia in *Mabo & Ors v Queensland (No. 2)* (1992) 175 CLR 1 ("Mabo").

The Native Title Act 1993 establishes processes to determine where native title exists, how activities affecting upon native title may be carried out, and to provide compensation where native title is impaired or extinguished. The Act provides Aboriginal people who hold native title rights and interests, or who have made a native title claim, the right to be consulted and in some cases, to participate in decisions about activities proposed to be undertaken on the land.

Although there is a presumption of native title in any area where an Aboriginal community or group can establish a traditional or customary connection with that area, there are a number of ways that native title can be extinguished. For example, land that was designated as having freehold title prior to 1 January 1994 extinguishes native title, as does any commercial, agricultural, pastoral or residential lease. Land that has been used for the construction or establishment of public works also extinguishes any native title rights and interests for as long as they are used for that purpose. Other land tenure, such as mining leases, may be subject to native title depending on when the lease was granted.

Ten (10) determinations within the Central Coast Council have been made between 2000 and 2019. All applications were made by Darkinjung Local Aboriginal Land Council and all outcomes were 'Native title does not exist'. Twenty-seven (27) other applications have been made by other applicants that have either been discontinued, dismissed, or withdrawn.

2.2 State

2.2.1 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act (NPWA) 1974* provides protection of Aboriginal objects, places and sites within the State of New South Wales.

Under Section 89A of the NPW Act, the proponent must report all Aboriginal objects and places to the Director General of the DPI 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.

Under the Act 'relics' are confined to the physical evidence of Aboriginal occupation. Additionally, the Act also protects Aboriginal Places, which are locations that may or may not contain physical evidence of Aboriginal occupation but are significant to an Aboriginal community or individuals and have been specially declared by the Minister as an Aboriginal Place. Under Section 90 of the NPW Act it is an offence to 'harm' an Aboriginal object or place unless an AHIP has been issued by the Director General of the DPIE.

Key sections of the NPWA include:

- penalties for Aboriginal cultural heritage offences, in some cases from \$22,000 to up to \$1.1 million in the case of companies who do not comply with the legislation;
- provisions so that companies or individuals cannot claim 'no knowledge' in cases of serious harm to Aboriginal cultural heritage places and objects by creating new strict liability offences under the Act;
- remediation provisions to ensure people who illegally harm significant Aboriginal sites are forced to repair the damage, without need for a court order;
- unified Aboriginal cultural heritage permits into a single, more flexible permit; and,
- offences around breaches of Aboriginal cultural heritage permit conditions.

2.2.2 Environmental Planning & Assessment Act 1979 (EP&A Act)

This Act regulates a system of environmental planning and assessment for NSW. Land use planning requires that environmental impacts be considered, including the impact on cultural heritage. Assessment documents prepared to meet the requirements of the *EP&A Act 1979* including Reviews of Environmental Factors (REF), Environmental Impact Statements (EIS) and Environmental Impact Assessments (EIA) should address cultural heritage, and planning documents such as Local Environment Plans (LEP) typically contain provisions for cultural heritage where relevant.

In 2011 Part 3A, of the EP&A Act, was repealed and an approval mechanism for State Significant Development was implemented; the State and Regional Development State Environmental Planning Policy 2011 (SEPP). This project was approved under the project provisions of Section 75J and remains subject to those provisions. This negates the need for an AHIP.

The project approval for the residential development at 89 John Whiteway Drive, Gosford NSW (Lot 100 in DP 1075037 and Lot 1 in DP 45551) was issued on 14 October 2021 (SSD 10321) and this ACHMP was written to meet these approvals.

2.2.3 Heritage Act 1977

Historical archaeological relics, buildings, structures, archaeological deposits and features are protected under the *Heritage Act 1977* (as amended 1999) and may be identified on the State Heritage Register (SHR) or by an active Interim Heritage Order. Certain types of historic Aboriginal sites may be listed on the SHR or be subject to an active Interim Heritage Order; in such cases they would be protected under the *Heritage Act 1977* and may require approvals or excavation permits from the NSW Heritage Branch.

2.2.4 Aboriginal Land Rights Act 1983

The purpose of this legislation is to provide land rights for Aboriginal people within New South Wales and to establish Local Aboriginal Land Councils. There are currently no land use agreements over the Project Area.

2.3 Guidelines

2.3.1 Ask First: A guide to respecting Indigenous heritage places and values

Ask First (2002) was commissioned by the Australian Heritage Commission to help Australians protect different aspects of their natural and cultural heritage places, and is intended to be complementary to the Australia ICOMOS Burra Charter and the Australian Natural Heritage Charter. Ask First is a practical guide for land developers, land users and managers, cultural heritage professionals and others who may have an impact on Aboriginal heritage. The main focus of the guidelines is to emphasise that consultation and negotiation with Aboriginal parties is the best means of addressing Aboriginal heritage issues. The guidelines also emphasise the need to comply with relevant Territory and Commonwealth Aboriginal cultural heritage legislation and statutory authorities.

Ask First states that in recognising the rights and interests of Aboriginal peoples in their heritage, all parties concerned with identifying, conserving and managing this heritage should acknowledge, accept and act on the principles that Aboriginal people:

- are the primary source of information on the value of their heritage and how it is best conserved;
- must have an active role in any Aboriginal heritage planning process;
- must have input into primary decision-making in relation to Aboriginal heritage so that they can continue to fulfil their obligations towards this heritage; and
- must control intellectual property and other information relating specifically to their heritage, as this may be an integral aspect of its heritage value.

These guidelines have been considered in the development of this ACHMP.

3 ABORIGINAL COMMUNITY CONSULTATION

3.1 The Aboriginal Cultural Heritage Consultation Requirements

The *Aboriginal Cultural Heritage Consultation Requirements For Proponents* (DECCW 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.

The Aboriginal community consultation undertaken for the 2020 ACHAR followed the four stage Consultation Requirements (DECCW 2010). The Consultation Requirements outline a four stage Aboriginal consultation process and mandate specific timeframes for each stage. The four stages are summarised in section 3 of the ACHAR (2020). At the completion of Stage 1 of the Consultation Requirements a total of 22 Aboriginal people or organisations were registered for the project (**Table 2**), with only two of those organisations providing feedback to RPS' proposed methodology. Two RAPs participated in the 2020 fieldwork and these RAPs were invited for an onsite meeting for this ACHMP (**Table 3**).

Table 2: RAPs

Organisation
A1 Indigenous Services (Caroline Hickey)
Amanda Hickey Cultural Services (Amanda Hickey)
Awabakal & Guringai Pty Ltd (Tracey Howie & Kerrie Brauer)
Awabakal Descendants Traditional Owners (Peter Leven)
Awabakal Traditional Owners Aboriginal Corporation (Kerrie Brauer)
B-H Heritage Consultants (Nola, Darren and Ralph Hampton)
Name Withheld
Darkinjung Local Aboriginal Land Council
Didge Ngunawal Clan (Paul Boyd and Lilly Carroll)
Guringai Tribal Link Aboriginal Corporation (Tracey Howie)
Kawul Pty Ltd trading as Wonn1 Sites (Arthur Fletcher)
Lower Hunter Aboriginal Incorporated (David Ahoy)
Roger Matthews Consultancy (Roger Matthews)
Wattaka Wonnarua CC Service (Des Hickey)
Widescope Indigenous Group (Steven Hickey)
Yinarr Cultural Services (Kathleen Steward Kinchela)
Kevin Duncan
Sharon Hodgetts
Kyle Howie
David Pross
Trudy Smith
Yvette and Jackson Walker

PR144394 Gosford ACHAR (2020)

Table 3: RAPs who attended site visits

Organisation
Darkinjung Local Aboriginal Land Council (Corrine Quinlan)
Guringai Tribal Link Aboriginal Corporation (Tracey Howie)

3.2 ACHAR Conclusions and Recommendations

In accordance with the Ministers Conditions of Approval (b), this ACHMP is consistent with the conclusions and recommendations of the Aboriginal Cultural Heritage Assessment Report prepared by RPS and dated 10 February 2020.

The ACHAR (RPS 2020) conclusions were drawn from the available environmental, cultural and archaeological information for the Project Area as well as the results of the archaeological survey conducted for the assessment. During the archaeological site survey, no aboriginal objects were located, and much of the site has been historically disturbed through quarrying. As such, the potential for further subsurface deposits within the Project Area was determined to be low.

The 2020 ACHAR recommendation 1 is for all site workers and personnel involved in works within the Project Area to undertake Cultural Inductions led by Darkinjung LALC. Recommendation 2 is to ensure all contractors are aware of their obligations while working onsite. All relevant staff and contractors should be made aware of their statutory obligations for heritage under the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*. Recommendation 3 is an unexpected finds procedure for Aboriginal objects and recommendation 4 is an unexpected finds procedure for human skeletal remains.

This ACHMP is guided by these conclusions and recommendations and outlined in Sections 5, 8 and 10.

4 ABORIGINAL CULTURAL HERITAGE SITES

4.1 AHIMS listed sites within the Project Area

The purpose of reviewing the relevant heritage information is to assist in identifying whether Aboriginal objects or places are present, or likely to be present within the Project Area. It also assists in defining areas of archaeological potential.

It is important to note that the AHIMS register only contains information on Aboriginal sites for which site cards have been submitted, and the presence/absence of recorded Aboriginal sites on the AHIM register does not preclude other sites from being present.

An extensive search was undertaken of the AHIMS on 18 February 2022 by RPS Heritage Coordinator Kristen Tola (client service ID: 660817) encompassing Eastings: 345660 - 346660 and Northings: 6299230 - 6300230 (**Appendix C**). This extensive search identified three (3) sites within the search parameters, none of which are located within the Project Area (**Table 4, Figure 2**).

4.2 AHIMS listed sites near the Project Area

Table 4: Summary of AHIMS within the searched coordinates

AHIMS#	Site Name	Site Type	Site Status	Distance to Project Area (m)
45-3-3699	ATO Mann Street	Artefact scatter	Valid	400
45-3-3430	Rumbalara 2	Artefact Scatter and Midden	Valid	380
45-3-3340	Dane drive PAD	PAD	Valid	590

Source: AHIMS 18/02/2022; Search eastings: 345660 - 346660 and northings: 6299230 – 6300230 no buffer.

No AHIMS sites are located within the Project Area. The closest site to the Project Area is AHIMS 45-3-3430 located approximately 380 metres to the northeast of the Project Area in the Rumbalara Reserve (**Figure 2**). No Aboriginal sites or objects were identified during the 2020 ACHAR visual inspection and assessment.

Therefore, there are no sites recorded within the Project Area.

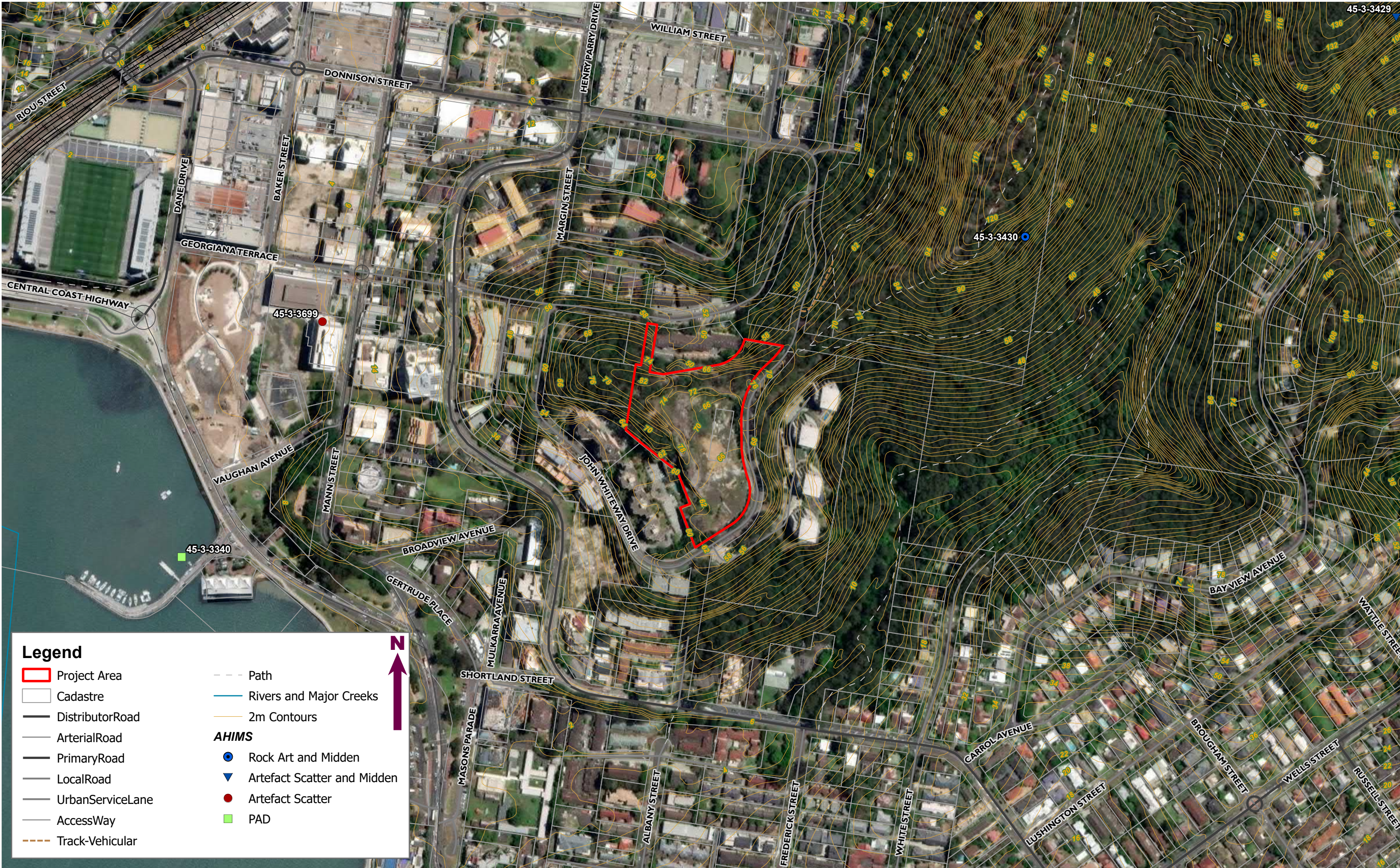


FIGURE 2: PROJECT AREA WITH AHIMS LOCATION

LOCATION: 89 JOHN WHITEWAY DRIVE, GOSFORD

VERSION: A
DATE EXPORTED: 1/03/2022
TECHNICIAN: Natalie.Wood

DATA SOURCES
RPS, Client, Heritage NSW, Maxar

50 0 50 100 150 200 m
SCALE 1:4,000 AT A3 SIZE / Projection: GDA2020 MGA Zone 56

5 HERITAGE MANAGEMENT PROTOCOLS

This section outlines the heritage management protocols for known (previously identified) objects and these protocols must be followed for the proposed development. Protocols for managing unexpected/unidentified Aboriginal and historic objects/sites and are detailed in Section 8.

5.1 Aboriginal Cultural Heritage

There are no identified Aboriginal cultural heritage objects in the Project Area.

To ensure that no Aboriginal or historic cultural heritage items are inadvertently impacted, all works associated with the proposed development at 89 John Whiteway Drive Gosford should be contained wholly within the designated Project Area. If unexpected objects or sites are identified through works, then protocols outlined in Section 8.1 must be followed.

If there is a requirement that works be conducted outside the Project Area, a new Aboriginal Cultural Heritage Assessment must be initiated in accordance with *National Parks and Wildlife Act 1974* and the *Heritage Act (1977)*.

6 POTENTIAL IMPACTS ON ABORIGINAL CULTURAL HERITAGE SITES

While there are no sites recorded within the Project Area, AHIMS in the wider region include artefact scatters, rock art, midden and Potential Archaeological Deposit (PAD). This section provides descriptions of these site types and the potential risk of harm by the proposed works. Descriptions of and potential risks to Dreaming sites and Aboriginal Places are also included due to the values RAPs discussed at the onsite meeting.

If these site types are identified unexpectedly during works, follow the heritage contingency procedures outlined in Section 8.

6.1 Artefact Scatters and Isolated Finds

Surface artefacts (artefact scatters and isolated finds) are the most often encountered evidence of Aboriginal occupation (Holdaway et al 2002). An isolated find, as the name suggests, comprises a single stone artefact which is not associated with other artefacts in the landscape. Artefact scatters contain more than one artefact and generally have more interpretive value because they have the potential to provide information on processes such as procurement, manufacture, usage and discard (Holdaway et al 2002). These two types of sites are usually classified as “open” because they are usually set in exposed landscape (i.e., not a rock shelter) and the extent of these sites are based on an arbitrary boundary according to changes in density level and/or landform units (for artefact scatters). Isolated finds occur as a single artefact and are usually 50m or more from any other surface artefacts.

6.1.1 Potential Risk of Harm to Artefact Scatters and Isolated Finds

Artefact scatters and isolated finds are located on the ground surface and are generally at risk of harm when works involve ground surface activity such as earthmoving works (i.e.: buildings, stockpile areas, excavation etc). Ground surface movement generally poses little harm to artefact scatters and isolated finds, but any form of displacement due to activity would still be regarded as an offence under legislation. The assessment of harm to artefact scatters and isolated finds must be assessed on a case-by-case scenario because the complexity and density of the site coupled with the ground surface integrity influences the potential harm posed to the site.

6.2 Rock Shelters and Rock Art

Rock shelters often occur in large outcrops of sandstone or boulders which have been weathered to form a cavity, or shelter. Rock shelters are used as occupation sites or temporary camping grounds and were often used in inclement weather. “Rock shelters are vertical or overhanging rock formations, including any flat or not steeply inclined ground surface below the overhang or at the base of the vertical face, which contain, or may be reasonably expected to contain, material traces of past Aboriginal land use (objects)” (DECCW 2010:38).

Rock art occurs on pagodas, cliff faces, outcrops and open platforms and in rock shelters. Drawings and paintings made from a variety of pigment materials and binding agents and found in shelters throughout NSW. Engravings and peckings also occur. “Rock art is one of the oldest surviving art forms, and rock art sites can provide a link between contemporary and traditional Aboriginal life and customs” (DECC2007).

6.2.1 Potential Risk of Harm to Rock Shelters and Rock Art

Although natural processes such as the constant water flow over sandstone structures can cause erosion, and surface exfoliation can occur due to the heat of bush fires, construction activities may also cause harm to rock shelter and rock art sites.

The risks associated with substantial collapse or vibration of the sandstone cliff may lead to surface cracking, exfoliation or sheering of rock shelter sites. Secondary risks which will need to be considered include the intensification of erosion and sheet wash over sandstone sites as a result of surface clearing and modification to the site for the construction related activities.

6.3 Potential Archaeological Deposits

Potential archaeological deposits (PADs) are areas where sub-surface stone artefacts and/or other cultural materials are likely to occur. Sites are usually assessed as containing PADs when there is reasonable depth of sedimentation below artefact scatters and/or where the landform unit has been assessed to have been a likely occupation area for Aboriginal people. Sometimes rock shelters also contain PAD, that is, they have accumulated sufficient sediment to allow for the preservation of archaeological material, such as stone artefact or food refuse (animal bone, for example).

6.3.1 Potential Risk of Harm to Potential Archaeological Deposits

PADs can be associated with other site types such as artefact scatters, middens, and rock shelters, but can also be identified on landforms with reasonable potential to contain archaeological deposit. Ground surface disturbance can have an impact on PADs, leading to the loss of stratigraphic and site integrity.

6.4 Midden

Shell middens occur in dunes, coastal scrub and woodlands, within rock shelters or on exposed cliff tops with good vantage points. They occur near rocky or sandy shores, close to wetlands, inlets, estuaries and bays. They contain the remains of shellfish eaten by Aboriginal people and comprise shells from many different meals eaten in the same location over many years. They can also contain the remains of a more varied diet including fish, land mammals and sea mammals.

6.4.1 Potential Risk of Harm to Midden

Although natural processes such as wind and water erosion, and animal activity can cause harm to rock midden sites, construction activities may also cause harm to midden sites. Destabilisation of the ground surface by constructions activity, excavation, walking tracks and vehicles can expose and deteriorate midden sites. Middens are amongst the most fragile cultural sites.

6.5 Dreaming sites and Aboriginal Places

Aboriginal Dreaming/spiritual sites are linked to cultural traditions and their function and significance are determined by the Traditional Owners. These types of sites can be for different types of purposes and would therefore need to be assessed individually. Although archaeological material may be associated with this site type, often these sites comprise specific locations in the landscape or landscape features such as mountains, rock formations and similar which are associated with Aboriginal tradition, historical events significant to Aboriginal history, are part of Aboriginal Dreaming or rituals and/or Aboriginal oral histories.

An Aboriginal Place is declared by the Minister under Section 84 of the *National Parks and Wildlife Act 1974*. The Aboriginal Place may be deemed to have been or is of special significance to Aboriginal Culture.

6.5.1 Potential Risk of Harm to Dreaming sites and Aboriginal Places

Though Aboriginal Dreaming/spiritual sites comprise specific locations in the landscape or landscape features, they can still be impacted physically and in terms of their heritage value. Landscape features may be physically harmed through construction activities and heritage values associated with the landscape may be harmed through interruption of sight lines and visibility of particular landscape features.

7 ABORIGINAL CULTURAL HERITAGE VALUES AND STATEMENT OF SIGNIFICANCE

This section provides an update to the Aboriginal cultural heritage values as discussed during the recent onsite consultation and assesses those values as they relate to the Project Area and the surrounding cultural landscape.

7.1 Social and Cultural Value

Social cultural value refers to “the associations that a place has for a particular community or cultural group and the social or cultural meanings that it holds them to” (Australia ICOMOS 2013).

The 2020 ACHAR identified that objects within the Project Area and its surrounding landscape have significant social and cultural value to the Registered Aboriginal Parties. Based on the landscape, ‘the Project Area was identified as a significant vantage point for connecting other sights and to escape the elements’ (RPS 2020:19). Further discussions with RAPs expanded upon this; the cultural landscape surrounding and incorporating the Project Area has social and cultural value as it provides clear ‘sight lines’ or views of perspectives to the south, east and west; allowing people to see across land and water.

RAPs also identified the ridgeline within the Project Area as part of well traversed transit routes on which people travelled from coastal tracks up to Rumbalara Hill. With a remnant creek line running below ground from Narara into Brisbane Waters at Gosford, food sources were abundant. The high rock outcrop would also have provided a key vantage point across abundant shores and low-lying areas right up to Mount White.

The sight lines, vantage point, transit route, and resource rich surrounding landscape evident at the Project Area are associated with meaningful social and cultural values for Aboriginal peoples today. The Project Area has significant social and cultural values that need to be maintained under this ACHMP.

7.2 Spiritual Value

Spiritual value refers to: “the intangible values and meaning embodied in or evoked by a place which give it importance in the spiritual identity, or the traditional knowledge, art and practices of a cultural group. Spiritual value may also be reflected in the intensity of aesthetic and emotional responses or community associations and be expressed through cultural practices and related places” (Australia ICOMOS, 2013).

In 2020, Guringai Tribal Link Aboriginal Corporation responded:

The Project Area is situated on a high vantage point, with sight lines to various sites in particular Mount White which is culturally significant. (RPS 2020:19)

Recent RAP consultation revealed the aforementioned sight lines, vantage point, transit route and resource rich landscape associated with the social and cultural values are also associated with spiritual value. This is due to the traditional knowledge and practices that are associated with Mount White, vantage points and transit routes. The Project Area has significant spiritual values that need to be maintained under this ACHMP.

7.3 Aesthetic Value

Aesthetic value refers to “the sensory, scenic, architectural and creative aspects of the place” this is often linked with social values. These values may consider colour, texture, scale, form, sensory association with place or usage including sound and smell and the fabric or material of the landscape (OEH 2011).

The 2020 ACHAR concluded that due to ‘to the extent of disturbance and landscape modification at the site, the aesthetic value of the site is low. However, the connected sightlines that relate to other significant areas suggests the site was previously significant’ (RPS 2020:21). However, recent consultations with RAPs indicate that despite the extensive disturbance and landscape modification of the Project Area, the aesthetic value of the site is moderate. Taking in to account the uninterrupted views with social, cultural and spiritual significance, the Project Area provides clear sight lines to Mount White, and the Somersby plateau, which

was considered a significant area for women's business. The Project Area has moderate aesthetic values that need to be maintained under this ACHMP.

7.4 Historical Value

Historical value refers to the associations Aboriginal people have with places, historically important people, and events.

During the 2020 ACHAR consultation it was noted that the Awabakal have a continued historical connection to the area for their cultural practices, however 'very little has been documented in regard to first contact in this area' (RPS 2020:20).

Guringai traditional owners understand that Bungaree identified Rumbalara Hill as an important place. Furthermore, Gother Kerr Mann, Gosford's local magistrate from 1839 and a renowned colonial engineer, is known to have recorded Aboriginal language in his interactions with Bunagree and his wife Kora, in the local area. Bungaree, also known as Boongaree, was an Aboriginal man who spoke excellent English and acted as an intermediary between Europeans and local Aboriginal people in the Gosford area (Central Coast Council 2018).

The Project Area is situated in a landscape associated with historically important people and places for Aboriginal peoples, and therefore in a landscape with significant historical value. The Project Area itself has moderate historical value due to the proximity of the historical events.

7.5 Scientific/Archaeological Value

The scientific and archaeological values are assessed through further defining the rarity, representativeness, integrity, connectedness, complexity and potential for further archaeological deposits (Table 5).

Table 5: Archaeological significance criteria

Summary	
Criteria	Description
Rarity	Is the subject important in demonstrating a distinctive way of life, custom, process, land-use, function or design no longer practiced? Is it in danger of being lost or of exceptional interest?
Representativeness	How much variability (outside and /or inside the subject area) exists, what is already conserved, how much connectivity is there?
Research Potential	Is the subject area important in demonstrating a distinctive way of life, custom, process, land-use function or design no longer practised? Is it in danger of being lost or of exceptional interest?
Education Potential	Does the subject area contain teaching sites or sites that may have teaching potential?

The archaeological significance of the Project Area has been assessed as low given the extensive disturbance and lack of surface artefactual material. The disturbance to the Project Area is extensive due to the previous sandstone quarrying undertaken at the site. The soils are also extensively disturbed and on a considerable portion of the site down to bedrock already. No further sites were identified during the field survey, due to the extensive disturbance it is unlikely that further Aboriginal sites and/or objects would be present within the Project Area.

7.6 Connectedness

The Project Area is part of a broader landscape, rich with cultural sites including middens, PADs and artefact sites. The coastline landforms are associated with more permanent habitation and resource gathering sites. Midden sites (AHIMS 45-3-3430, AHIMS 45-3-3429) located to the northeast of the Project Area are associated with the Rumbalara ridgeline. The PAD with midden is located on the lower slope below the

Ridgeline of the President Hill Lookout northwest of the Project Area the artefact scatter is located closer to Brisbane Waters to the east of the Project Area.

The ridgeline has been identified as an extremely significant vantage point, due to clear sight lines of other significant areas. Aboriginal people of the area traversed from the water through the hinterland to seek shelter and utilise resources (Vinnicombe 1980). It is therefore considered the Project Area is linked to other significant sites which demonstrates the site's connectedness.

7.7 Statement of Significance

RPS acknowledges that all artefacts hold cultural significance to Aboriginal people as they form part of the wider cultural landscape. RPS acknowledges that the Project Area is culturally significant as part of the wider Aboriginal cultural landscape and is considered significant to the Aboriginal cultural knowledge holders of the area. Although no AHIMS sites were identified within the Project Area, it possesses significant social, cultural and spiritual values, and moderate historical and aesthetic values. The Project Area has low scientific/archaeological value.

The significant social, cultural and spiritual values, and moderate historical and aesthetic values associated with the Project Area must be preserved and upheld in accordance with this ACHMP.

8 HERITAGE CONTINGENCY PROTOCOLS

Section 5 of this ACHMP outlined the protocols to be followed for known heritage sites in the Project Area (nil). This section outlines the heritage contingency procedures that have been developed for unexpected finds; it includes procedures for unexpected Aboriginal objects and the discovery of human remains. These protocols must be followed.

8.1 Heritage contingency protocol for unexpected Aboriginal objects

Heritage contingency protocols for unexpected Aboriginal objects that are found in the Project Area during construction are outlined in **Figure 3**. Should unexpected Aboriginal objects/features be encountered, work must stop immediately, and the area cordoned off with a high visibility barrier. The Land Manager is to be notified of the situation as soon as possible. The Land Manager is to then contact the heritage consultant who is to assess the object(s) in consultation with RAPs and recommend appropriate mitigation measures.

The Land Manager is to implement reasonable heritage mitigation measures that are recommended by the heritage consultant and agreed with the RAPs and in accordance with HNSW regulations. If additional investigation and salvage is recommended, the Land Manager is to arrange for the heritage consultant to undertake those works.

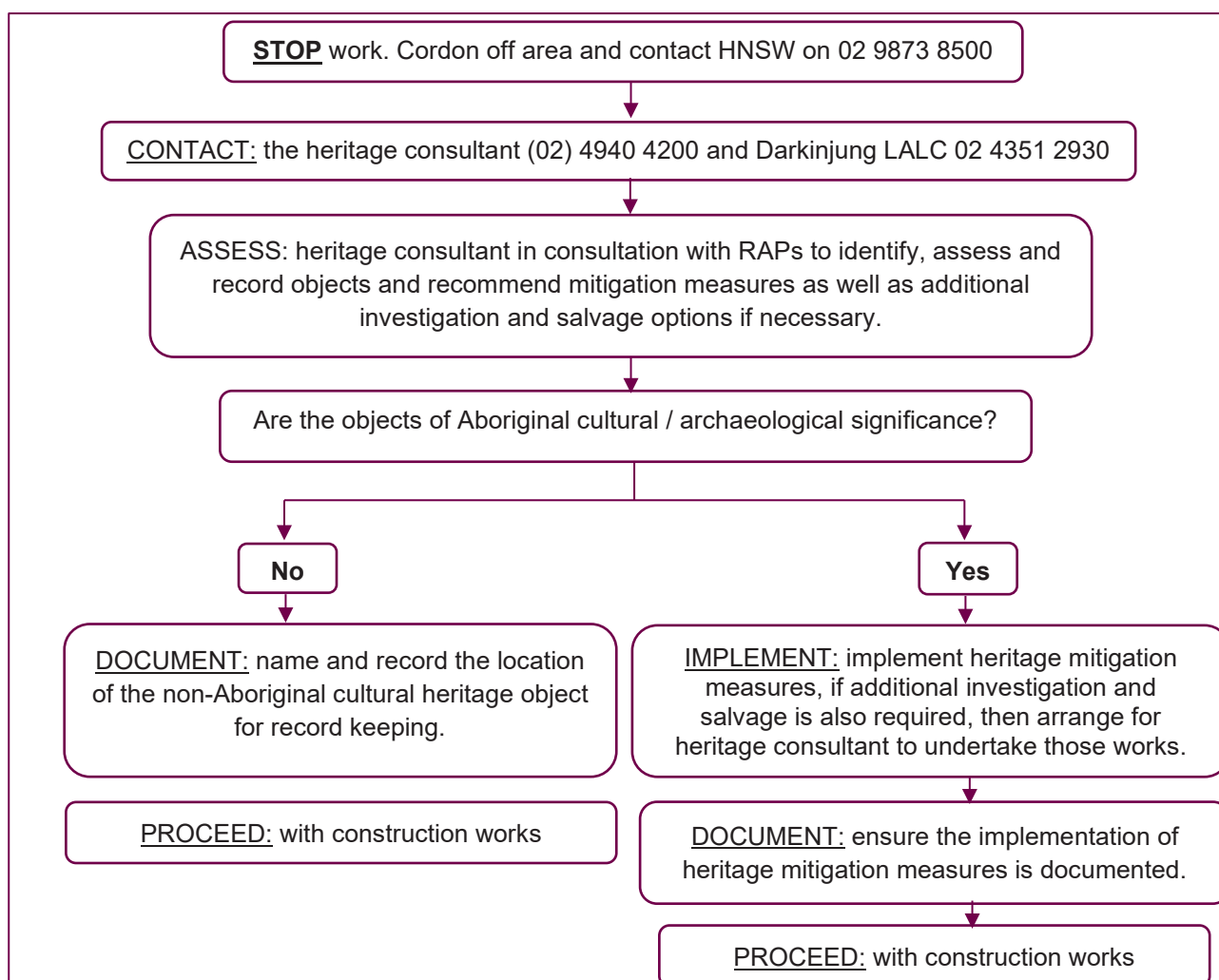


Figure 3: Unexpected Finds Protocols

8.2 Heritage contingency protocol for unexpected discovery of human remains

Human skeletal remains are of the highest importance to Aboriginal peoples and all care, caution, respect and dignity must be utilised by all parties and onsite workers should identifiable human remains or probable human remains be discovered.

Where human skeletal remains are discovered within the Project Area, the NSW Government sanctioned process for the reporting and management of skeletal remains will be implemented. Heritage contingency protocols for the discovery of human skeletal remains during construction are outlined in **Figure 4**. Should any clearly identifiable human remains or possible human remains be encountered, work must stop immediately, and the area cordoned off with a high visibility barrier. Notify the NSW Police, NSW Coroner's Office, the Darkinjung Local Aboriginal Land Council, and HNSW (formerly DPIE, OEH).

If determined to be a Police matter, Police instructions are to be followed. Clearance to recommence construction works should be sought directly from the Police.

If Heritage NSW confirms that the remains are Aboriginal, Heritage NSW (in consultation with RAPs and the heritage consultant) will develop a human remains management strategy. The Land Manager is to ensure that this strategy is implemented and must document its implementation.

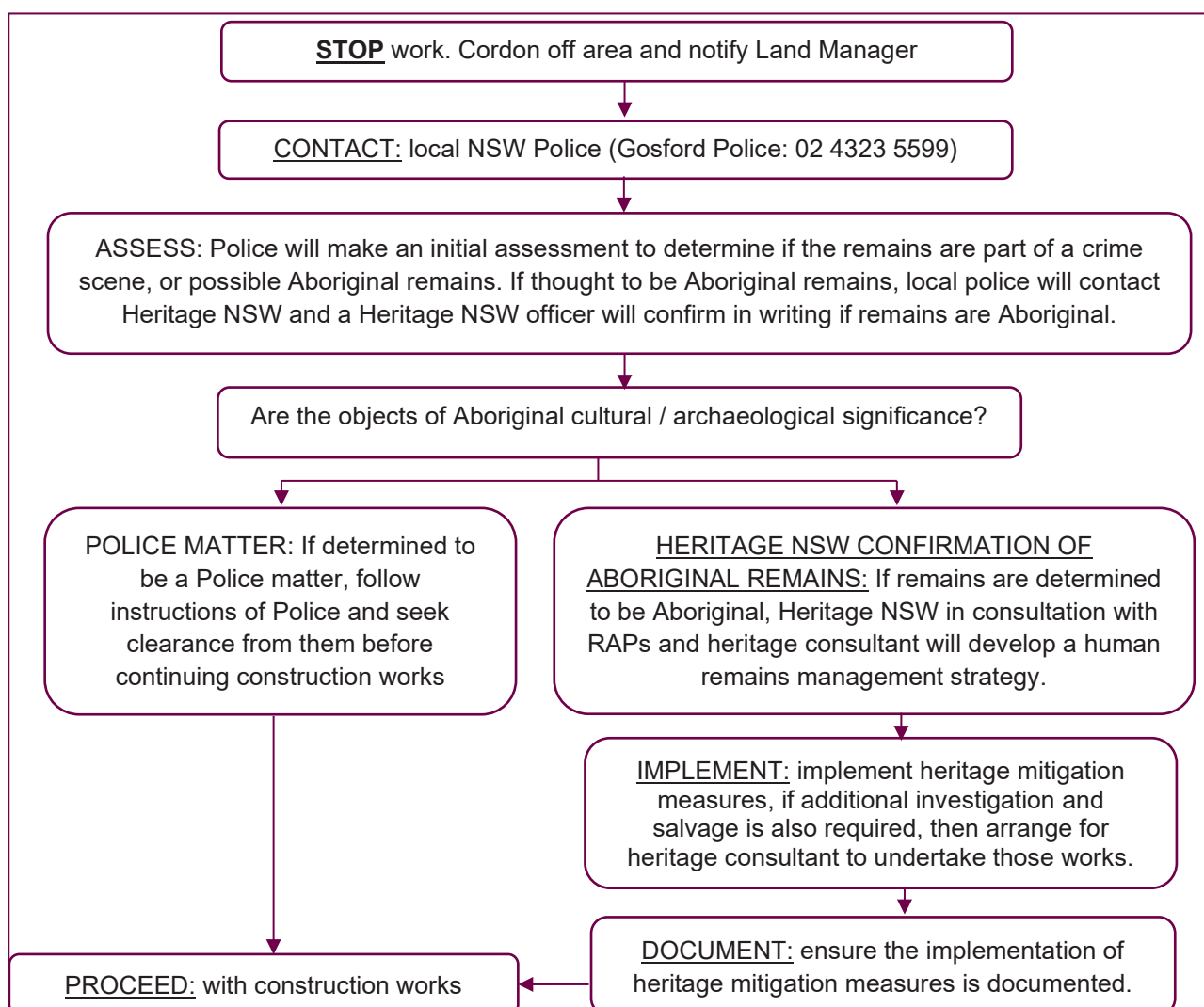


Figure 4: Unexpected Human Remains Protocol

8.3 Preservation of Aboriginal Cultural Heritage Values

Section 7 of this ACHMP outlined the Aboriginal cultural heritage values associated with the Project Area and the surrounding cultural landscape. This section outlines recommendations for the preservation of those values.

Preserve and/or enhance the Aboriginal social, cultural, spiritual and aesthetic values of the sightlines. This can be achieved through a heritage interpretation strategy and signage in consultation with cultural knowledge holders in the area (RAPs listed in **Table 2**).

8.4 Heritage Interpretation Strategy

Heritage can add value and meaning to the character of a new development and can enhance the area surrounding it. Interpretation should be considered in line with the Gosford CBD Heritage Interpretation Strategy and the Central Coast Regional Plan 2036.

The rock outcrop along the ridgeline of the Project Area is publicly accessible and will continue to be. As a vantage point, it provides scenic views across Brisbane Water towards Mount White and looks down on the former Gosford Quarry site to the west. For authentic interpretation of and preservation of Aboriginal cultural heritage values, RAPs should be consulted.

9 COMPLIANCE, DISPUTE RESOLUTION AND REVIEW PROCEDURES

To ensure compliance with this ACHMP with regard Aboriginal cultural heritage, a dispute resolution process and a method of reviewing and amending this document have been developed. If required, the following procedures will apply.

9.1 Implementation and Compliance

The Land Manager is to implement the ACHMP and ensure that it is complied with as per Section 10. Meetings between the Land Manager and RAPs are to occur in accordance with the below:

- The Land Manager will maintain liaison with RAPs, as necessary;
- RAPs may choose to meet if there is a change in Land Manager;
- Any future applications required for development or extension works will be developed in consultation with RAPs.

9.2 Dispute Resolution

- Any party may advise the other of an issue of dispute verbally, whereupon the Land Manager and RAPs will discuss and seek to resolve the issue;
- Where verbal notice does not result in resolution of an issue of dispute within 24 hours, the party that raised the issue of dispute must advise the other in writing of the details of the issue of dispute. The Land Manager will, on receipt of a written advice, or in the event it issues such a notice, convene a meeting of the parties at the earliest convenience (wherever possible within 14 days of receiving the written advice);
- At a meeting of the parties convened in accordance with a written notice, the parties will negotiate in good faith in an attempt to resolve the dispute;
- If the dispute is not resolved at the meeting, then the parties must agree within 7 days of that meeting on an appointment of an Independent Expert (who might be a mutually agreeable third-party heritage consultant or an officer from HNSW) to mediate the dispute;
- The Land Manager must use reasonable endeavours to convene a meeting of the parties as soon as possible after the Independent Expert is appointed;
- At the meeting to be chaired by the Independent Expert, each of the parties may present their issues in the dispute to the Independent Expert for consideration and decision; and
- In so far as the Independent Expert's decision is consistent with all relevant legislative and regulatory obligations, all parties to the dispute agree to be bound by the decision of the Independent Expert in relation to the resolution of the dispute.

10 ROLES AND RESPONSIBILITIES

This section defines the roles of persons associated with the implementation of this ACHMP, as well as their responsibilities under this ACHMP. This section identifies the individuals who will take on an active role in the implementation of the Aboriginal Heritage Management Protocols outlined in Section 7. Responsibilities in respect to confidentiality and intellectual property rights applies to all roles identified and are outlined.

10.1 Land Manager

10.1.1 Definition

The person nominated by the landowner, or equivalent, to manage the lands within the Project Area. For the purposes of this ACHMP the Land Manager is the on-site supervisor from JWD Developments Unit Trust.

10.1.2 Responsibilities

- Read, understand, implement and ensure the practical application of this ACHMP. Any queries should be directed to the heritage consultant, in this case, RPS;
- Be the point of contact for all onsite personnel and maintain a list of all onsite personnel;
- In accordance with recommendation 1 in the 2020 ACHAR, ensure that all onsite personnel understand their responsibilities in this ACHMP by means of a heritage induction. Permanent and upper management personnel should undertake a heritage induction provided Darkinjung LALC;
- Provide a copy of this ACHMP for use onsite, and maintain a list of onsite personnel who have completed a heritage induction/s;
- In accordance with recommendation 2 in the 2020 ACHAR, ensure that all onsite personnel are made aware of their statutory obligations for heritage under the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*;
- Be aware that all onsite activities are to occur only in the defined Project Area (which must be visually defined prior to activities being undertaken). In the case of onsite works, particularly ground disturbance, or works that require vehicles and machinery, fencing must be erected to define the Project Area;
- In accordance with recommendation 3 in the 2020 ACHAR, follow instructions outlined in flow charts under the Heritage Management Protocols and Heritage Contingency Protocols sections of this ACHMP;
- In accordance with recommendation 3 in the 2020 ACHAR, Contact organisations and individuals where required under the Heritage Management Protocols and Heritage Contingency Protocols. This may include, but is not exclusive to, government authorities, heritage consultants and the RAPs to this ACHMP;
- In accordance with recommendation 4 in the 2020 ACHAR, be aware that there is an immediate **STOP WORK** requirement for the discovery of Aboriginal objects and human skeletal remains as outlined the Heritage Contingency Protocols (Section 8), to and ensure that onsite personnel have the necessary procedures in place, and equipment available, to secure the area in such situations;
- Maintain a contact list for organisations and individuals who may need to be contacted under this ACHMP;
- Organise meetings with RAPs;
- Ensure the ACHMP is updated if and as required until the practical completion of works; and
- Where meetings or fieldwork with the RAPs is required, a minimum of two weeks' notice is to be given.

10.2 Registered Aboriginal Parties (RAPs)

10.2.1 Definition

Registered Aboriginal parties are those Aboriginal Parties who have registered for the project in accordance with the Aboriginal Cultural Heritage Consultation Requirements for Proponents.

10.2.2 Responsibilities

- Provide advice in a timely manner on Aboriginal cultural heritage management matters subject to the provisions of this ACHMP;
- Attend fieldwork (if required);
- Assist in the identification of Aboriginal cultural heritage sites and values, as necessary;
- In accordance with recommendation 1 in the 2020 ACHAR, assist with Darkinjung LALC's heritage induction process; and,
- Participate in the Aboriginal cultural heritage activities in this ACHMP.

10.3 Onsite Personnel

10.3.1 Definition

Any individual undertaking works in the development area subject to this ACHMP under the relevant approval.

10.3.2 Responsibilities

- Permanent and upper management personnel must read and understand this ACHMP and direct any queries to the Land Manager as appropriate and as required under the provisions of this ACHMP;
- In accordance with recommendation 1 in the 2020 ACHAR, undertake a heritage induction. Permanent and upper management personnel should undertake a heritage induction provided Darkinjung LALC;
- In accordance with recommendation 2 in the 2020 ACHAR, be aware of statutory obligations for heritage under the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*;
- In accordance with recommendation 3 in the 2020 ACHAR, follow instructions outlined in flow charts under the Heritage Management Protocols and Heritage Contingency Protocols sections of this ACHMP;
- In accordance with recommendation 4 in the 2020 ACHAR, be aware that there is an immediate **STOP WORK** requirement for the discovery of unexpected Aboriginal heritage objects and human skeletal remains; and,
- Be aware that all onsite works and activities are to occur only in the defined Project Area (which must be visually defined prior to works being undertaken).

10.4 Heritage Consultant

10.4.1 Definition

An individual or organisation engaged by the Land Manager who possesses the appropriate technical qualifications and experience to undertake the heritage assessment and management activities required for the ongoing implementation of the provisions of this ACHMP.

10.4.2 Responsibilities

- Assist the Land Manager with the implementation of this ACHMP, as required;
- Provide heritage advice to the Land Manager and RAPs in accordance with the relevant legislation;
- Undertake the assessment and recording of any new Aboriginal sites identified within the Project Area in accordance with the provisions of this ACHMP;
- Assist with Darkinjung LALC's heritage induction process;
- Provide advice and assistance to the Land Manager and RAPs with the review and amendment of this ACHMP as required;
- Liaise with RAPs, as required; and
- Liaise with the NSW Heritage Office as required.

10.5 Confidentiality

All individuals and organisations as outlined above will respect that some information shared will remain confidential. This may include:

- Commercial information,
- Sensitive Aboriginal cultural information, and
- Any material or information identified as sacred.

Other than in accordance with a written agreement by the identified individuals/organisations, no confidential information will be provided to any other persons other than to:

- Enable project works, or
- As required by law.

11 CONCLUSION

There are no identified Aboriginal cultural heritage objects in the Project Area.

To ensure that no Aboriginal or historic cultural heritage items are inadvertently impacted, all works associated with the proposed development at 89 John Whiteway Drive Gosford should be contained wholly within the designated Project Area. If unexpected objects or sites are identified through works, then protocols outlined in Section 8 must be followed.

This document has been prepared as a guiding document for the management of Aboriginal cultural heritage within the Project Area at 89 John Whiteway Drive, Gosford NSW. It is supported by a previous document prepared by RPS (2020) and the consultation process between RPS, on behalf of the Proponent and RAPs.

This document should be used for the management of cultural heritage in the Project Area until practical completion of the development.

12 REFERENCES

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Appendix A

Consultation

Aboriginal Consultation

The Consultation Log that precedes this can be found in the RPS (2020) *Aboriginal Cultural Heritage Assessment Report for 89 John Whiteway Drive, Gosford NSW*.

Date	Method	Consultation Description
16.02.2022	Email	Initial email from RPS to Guringai Tribal Link Aboriginal Corporation enquiring about sites officer availability.
16.02.2022	Email	Initial email from RPS to Darkinjung LALC enquiring about sites officer availability.
23.02.2022	Letter via email	Formal request from RPS to Awabakal & Guringai Tribal Link Aboriginal Corporation (corporation has amalgamated) for onsite visit and consultation. Accepted 25.02.2022.
23.02.2022	Letter via email	Formal request from RPS to Darkinjung LALC for onsite visit and consultation. Accepted 23.02.2022.
26.04.2022	Email	Formal request for feedback/comment on draft to Darkinjung LALC
26.04.2022	Email	Formal request for feedback/comment on draft to Awabakal & Guringai Tribal Link Aboriginal Corporation
11.05.2022	Email	Follow up on request for feedback to Darkinjung LALC
11.05.2022	Email	Follow up on request for feedback to Awabakal & Guringai Tribal Link Aboriginal Corporation
17.05.2022	Email	Follow up on request for feedback to Awabakal & Guringai Tribal Link Aboriginal Corporation
19.05.2022	Phone call	Follow up on request for feedback to Awabakal & Guringai Tribal Link Aboriginal Corporation

Appendix B
Heritage Induction Attendance Sheet

REPORT

HERITAGE INDUCTION REGISTER

By signing the below, I hereby confirm that I have attended the heritage induction, have been informed of the requirements under the Aboriginal Cultural Heritage Management Plan (ACHMP) and my legal obligations in accordance with the *National Parks and Wildlife Act 1974*; I will abide all the heritage protocols and requirements under the ACHMP:

[illegible]

Appendix C

AHIMS Search

AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref/PO Number : PR151356

Client Service ID : 660817

<u>SiteID</u>	<u>SiteName</u>	<u>Datum</u>	<u>Zone</u>	<u>Easting</u>	<u>Northing</u>	<u>Context</u>	<u>Site Status **</u>	<u>SiteFeatures</u>	<u>SiteTypes</u>	<u>Reports</u>
45-3-3430	Rumbalara 2	GDA	56	346582	6299973	Open site	Valid	Artefact : -, Shell : 2		
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							
45-3-3340	Dane drive PAD	AGD	56	345600	6299600	Open site	Valid	Potential Archaeological Deposit (PAD) : 1		100693
	<u>Contact</u> T Russell	<u>Recorders</u>	<u>Permits</u> 4020							
45-3-3699	ATO Mann Street	GDA	56	345764	6299874	Open site	Valid	Artefact : 2		
	<u>Contact</u>	<u>Recorders</u>	<u>Permits</u>							

**** Site Status**

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

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

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

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

Report generated by AHIMS Web Service on 18/02/2022 for Kristen Tola for the following area at Datum :GDA, Zone : 56, Eastings : 345660.0 - 346660.0, Northings : 6299230.0 - 6300230.0 with a Buffer of 0 meters.. Number of Aboriginal sites and Aboriginal objects found is 3

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