



# 9 BYRON BAY ROAD LENNOX HEAD, NSW: ABORIGINAL CULTURAL HERITAGE ASSESSMENT

PREPARED FOR BALLINA SHIRE COUNCIL

EVERICK HERITAGE CONSULTANTS  
NOVEMBER 2018





**Report Reference:**

Piper, A. T. Hill and R. Mazlin. 2018. 9 Byron Bay Road, Lennox Head NSW: Cultural Heritage Assessment (November 2018). Everick Heritage Pty Ltd. Unpublished report prepared for Ballina Shire Council.



**Document Status:**

Rev No.	Version	Author(s)	Amended Sections	Date	Authorised
1	Draft	T. Hill	All	05.11.2018	T. Robins
2	Draft	A. Piper	All	06.11.2018	T. Robins
3	Draft	T. Hill & R. Mazlin	All	09.11.2018	T. Robins
4	Revisions	R. Mazlin	All	12.11.2018	T. Robins

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## EXECUTIVE SUMMARY

Everick Heritage Consultants (the 'Consultant') was commissioned by Ardill Payne & Partners on behalf of Ballina Shire Council (the 'Proponent') to undertake an Aboriginal Cultural Heritage Assessment at Lot 1 and 2 DP 620838 located at 9 Byron Bay Road Lennox Head, New South Wales (Figure 1). The objective of the investigation was to identify any Indigenous or non-Indigenous archaeological or cultural heritage constraints to amend the Ballina Local Environmental Plan 2012 and if found, establish ways in which any impacts could be mitigated or avoided.

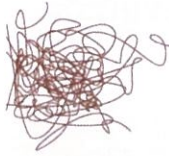
The brief for this Project was to undertake a Cultural Heritage Assessment in support of a planning proposal to amend the Ballina Local Environmental Plan 2012 ('LEP') by rezoning land within the Project Area (see Section 1.4 and Appendix A). In accordance with the relevant administrative and legislative standards for NSW (see Section 2), the methods employed in this assessment included:

- a) a search of relevant heritage registers;
- b) a review of environmental resources for the region;
- c) a review of relevant archaeological and ethnographic studies for the region;
- d) a site inspection to be conducted with a representative of the Jali Local Aboriginal Land Council ('LALC');
- e) assessments of archaeological and cultural heritage significance and impact; and
- f) report on findings and recommended management strategies.

The methods used for this assessment are in compliance with the Office of Environment and Heritage ('OEH') *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010) (CoPAI) and all relevant legislation as described in Section 2 of this Report. The following report complies with the accepted methodology for undertaking a Due Diligence Assessment under the *National Parks and Wildlife Act 1974* ('NPW Act').

An extensive search of the AHIMS was conducted on 29 October 2018 for Lot 2 DP620838 with a buffer of 1000 m (Service ID 379276). The search identified 6 registered Aboriginal sites within the search area however no sites have been previously recorded within the Project Area. The majority of sites are recorded in the old AGD datum using topographic maps and as such the accuracy of the AHIMS data is not considered reliable. However, the results do indicate the overall nature of the archaeological and Aboriginal cultural heritage record in Lennox Head.

The Project Area is within the area administered for Aboriginal cultural heritage purposes by the Jali Local Aboriginal Land Council. A pedestrian survey for Aboriginal cultural heritage of the Project Area was arranged for



Mr Grant Rhodes, Sites Officer of the Jali LALC, and Adrian Piper of Everick Heritage Pty Ltd on the 5<sup>th</sup> November 2018.

As a result of the desktop study and field inspection the following conclusions were established with Sites Officer Mr Grant Rhodes of Jali LALC:

- a) No Indigenous cultural heritage sites or objects were identified within the lands subject to the planning proposal to amend the Ballina Local Environmental Plan at 9 Byron Bay Road Lennox Head.
- b) Consultation with Grant Rhodes found no places of Aboriginal 'intangible' cultural heritage in the Project Area, or association with spiritual or mythological stories or places elsewhere.
- c) The Project Area was found to be highly disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.

There were no items of historic heritage found therefore no recommendations are warranted.

Having regard to the low archaeological potential of the Project Area, the following recommendations are cautionary in nature and considered adequate for application in both planning proposal and development application stages.

#### Recommendation 1: Aboriginal Objects Find Procedure

It is recommended that if suspected Aboriginal material has been uncovered because of development activities within the Project Area:

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

#### Recommendation 2: Aboriginal Human Remains

Although it is unlikely that Aboriginal Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The site should be cordoned off and the remains themselves should be left



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

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

### Recommendation 3: Notifying the OEH

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

### Recommendation 4: Conservation Principles

It is recommended that all effort must be taken to avoid any impacts on Aboriginal Cultural Heritage values at all stages during future earthworks works. If impacts are unavoidable, mitigation measures should be negotiated between the Ballina Shire Council, the Aboriginal community and OEH.



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## DEFINITIONS

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

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

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

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

**AHIMS** means Aboriginal Heritage Information Management System

**AHIP** means Aboriginal Heritage Impact Permit.

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

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

**GSV** means Ground Surface Visibility.

**Jali LALC** means the Jali Local Aboriginal Land Council.

**LEP** means Local Environment Plan.

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

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

**NSW** means New South Wales.

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

**PAD** means Potential Archaeological Deposit.

**Project Area** means the land subject to this assessment is situated at 9 Byron Bay Road, Lennox Head, NSW, being Lots 1 and 2 DP 620838.

**Proposed Works** means the planning proposal to rezone to provide for low density residential housing subject to Development Consent and all subsequent earthworks and ground disturbing activities including road access and temporary work storage areas.

**Proponent** means Ballina Shire Council and all associated employees, contractors and subcontractors of the same.

**The Project** means all earthworks activities that arise from the rezoning or reclassifying of lands at 9 Byron Bay Road Lennox Head NSW.

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





## 1. INTRODUCTION

### 1.1 Proponent, Project Brief & Methodology

Everick Heritage Consultants (the 'Consultant') was commissioned by Ardill Payne & Partners on behalf of Ballina Shire Council (the 'Proponent') to undertake an Aboriginal Cultural Heritage Assessment at Lot 1 and 2 DP 620838 located at 9 Byron Bay Road Lennox Head, New South Wales (see Figure 1). The objective of the investigation was to identify any Indigenous or non-Indigenous archaeological or cultural heritage constraints to amend the Ballina Local Environmental Plan 2012 and if found, establish ways in which any impacts could be mitigated or avoided.

The brief for this Project was to undertake a Cultural Heritage Assessment in support of a planning proposal to amend the Ballina Local Environmental Plan 2012 ('LEP') by rezoning land within the Project Area (see Section 1.4). In accordance with the relevant administrative and legislative standards for NSW (see Section 2), the methods employed in this assessment included:

- a) a search of relevant heritage registers;
- b) a review of environmental resources for the region;
- c) a review of relevant archaeological and ethnographic studies for the region;
- d) a site inspection to be conducted with a representative of the Jali Local Aboriginal Land Council ('LALC');
- e) assessments of archaeological and cultural heritage significance and impact; and
- f) report on findings and recommended management strategies.

The methods used for this assessment are in compliance with the Office of Environment and Heritage ('OEH') *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010) (CoPAI') and all relevant legislation as described in Section 2 of this Report. The following report complies with the accepted methodology for undertaking a Due Diligence Assessment under the *National Parks and Wildlife Act 1974* ('NPW Act').

### 1.2 Objective of the Cultural Heritage Assessment

In particular, the assessment aims to identify the nature and extent of Aboriginal sites in the Project Area and determine the likelihood that these values can be managed through the planning process, in particular through development consent conditions. An assessment for historic heritage will be conducted concurrently.



### 1.3 Defining the Project Area

The Project Area is situated within the Ballina Shire Local Government Area ('Ballina LGA'). The land subject to assessment is identified as 9 Byron Bay Road, Lennox Head and includes Lot 1 and 2 DP620838 (Figure 1).

### 1.4 Description of Planning Proposal (Appendix A)

Ballina Shire Council seek to amend the Ballina LEP to rezone the Project Area to R2 Low Density Residential with a minimum Lot size of 600m<sup>2</sup>.

On 16 October 2018, the Department of Planning and Environment issued a conditional Gateway Determination. Council, by letter dated 20 October 2018, advised that prior to commencement of community consultation, an Aboriginal Cultural Heritage Assessment be undertaken.

### 1.5 Report Authorship

This report was written by Adrian Piper and Tim Hill with support from archaeologist Robert Mazlin. Technical review was completed by Senior Archaeologist Tim Hill.



Figure 1: Project Area.



## 2. LEGISLATIVE AND PLANNING CONTEXT

The primary State legislation concerning cultural heritage in NSW are the NPW Act and the Council Local Environment Plans ('LEP') and Development Control Plans. The Commonwealth also has a role in the protection of nationally significant cultural heritage through the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), *The Protection of Movable Cultural Heritage Act 1986* (Cth) and *the Historic Shipwrecks Act 1976* (Cth).

For the purposes of this assessment the State and local legislation are most relevant. Approval from the NSW Office of Environment and Heritage ('OEH') will be required should the project impact on identified Aboriginal Objects. The information below lists the legislative and policy framework within which this assessment is set.

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

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

An Aboriginal Place is an area of particular significance to Aboriginal people which has been declared an Aboriginal Place by the Minister. The drafting of this legislation reflects the traditional focus on Objects, rather than on areas of significance such as story places and ceremonial grounds. With the introduction of the *National Parks and Wildlife Amendment Act 2010* (NSW) the former offence provisions under Section 86 of 'disturbing', 'moving', 'removing' or 'taking possession' of Aboriginal Objects or Places have been replaced by the new offence of 'harming or desecrating'. The definition of 'harm' is 'destroying, defacing or damaging an Object'. Importantly, in the context of the management recommendations in this assessment, harm to an Object that is 'trivial or negligible' will not constitute an offence.

The penalty for individuals who inadvertently harm Aboriginal objects is up to \$55,000, while for corporations it is up to \$220,000. Also introduced is the concept of 'circumstances of aggravation' which allows for harsher penalties for individuals (up to \$110,000) who inadvertently harm Aboriginal objects in the course of undertaking a commercial activity or have a record for committing similar offences. For those who knowingly harm Aboriginal objects, the penalty is greater at \$275,000 or one-year imprisonment for individuals or \$1,100,000 for corporations.



Where a land user has or is likely to undertake activities that will harm Aboriginal objects, the Director General (OEH) has a range of enforcement powers, including stop work orders, interim protection orders and remediation orders. The amended *National Parks and Wildlife Regulations 2009* (NSW) ('NPW Regulations') also allow for a number of penalties in support of these provisions. The NPW Act also now includes a range of defence provisions for unintentionally harming Aboriginal objects:

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

## 2.2 *Due Diligence Code of Practice for the Protection of Aboriginal Objects 2010*

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

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

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

The Due Diligence Code is supported by the CoPAI, which provides guidelines on archaeological investigation, reporting and sets out the minimum requirements for compliance with AHIPs and the permanent storage of Aboriginal Objects.



## 2.3 OEH Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010) (ACHCRP)

The ACHCRP sets out a guide for conducting the Aboriginal community consultation process. It requires that the Proponents must notify and register Aboriginal people who hold cultural knowledge relevant to determining the cultural significance of Aboriginal Objects and Places in the proposed Project. Aboriginal Parties who register to participate in the cultural heritage assessment process were provided with further information about the proposed Project. In accordance with the minimum consultation standards provided by the OEH ACHCRP, a methodology must be prepared for conducting the cultural heritage assessment. This methodology outlines the basic steps that need to be undertaken to determine the nature of the Aboriginal cultural heritage of the site, and the approaches required to manage that heritage.

## 2.4 The Ballina Local Environment Plan 2012

The Ballina LEP 2012 provides statutory protection for items already listed as being of heritage significance. It ensures that essential best practice components of the heritage decision-making process are followed.

A listed environmental heritage item is an item that is either:

- a) designated as an item of environmental heritage in Schedule 5 of the Ballina Shire LEP 2012; or
- b) designated as an item of environmental heritage by the DCP 2012.

As per Part 5 Clause 5.10(2) of the Ballina Shire LEP 2012, for listed heritage items, a person must have the consent of the Council for:

- a) demolishing or moving any of the following or altering the 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; and
- f) subdividing 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.

Consent should only be given once the Council considers the effect of the proposed development on the heritage significance of the area. The Council may also require a heritage management document to be prepared. This document must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the area concerned. After this the Council may also require a heritage conservation management plan for the heritage item that was assessed.

If the proposed development will require the demolition of a nominated State Heritage item, then the Council must notify the Heritage Council of the application and consider any responses received within 28 days. Similarly, if the development is on an archaeological site, the Council must notify the Heritage Council of intentions to grant consent and consider any responses received within 28 days.

Should the development be on an Aboriginal Place of heritage significance, the Council must notify the local Aboriginal communities about the application and consider any responses received within 28 days. Additionally, the Council must consider the effect that the development would have on the heritage significance of the Aboriginal Place and any Aboriginal Objects that are known or likely to be within the development. This must be done by means of an adequate investigation and assessment.

The Council may also grant consent for a development on a heritage item, land, or Aboriginal place that would not otherwise be allowed in this Plan, if the Council 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. ABORIGINAL COMMUNITY CONSULTATION

The Aboriginal community consultation for this project has been guided by the OEH Due Diligence Code. Although it is not a strict requirement of the Due Diligence Code to undertake consultation with the Aboriginal community unless Aboriginal heritage is being impacted by the project, it is recommended in many instances.

#### 3.1 Traditional Owner Knowledge

The Aboriginal community is the primary determinant of the significance of their cultural heritage. Members of the Aboriginal community will be consulted, and will continue to be consulted, regarding their concerns not only about known archaeological sites in the region, but also about cultural values such as areas with historic and spiritual significance, and other values relating to flora and fauna of the area. Everick Heritage recognises that there is Traditional Owner knowledge associated with the region that may have to be treated in a confidential manner. We will be seeking advice from Aboriginal stakeholders as to the appropriate protocols to be adopted regarding such knowledge.

Email correspondence was provided to Jali LALC on Monday 29 October (see Appendix A) requesting attendance at the site inspection. Due to poor weather conditions the date for the site inspection was postponed to 1 November 2018 and subsequently rescheduled to the 5 November 2018.

#### 3.2 Consultation with the Aboriginal stakeholders

A site inspection was undertaken with the following Aboriginal stakeholders on Monday 5th November;

- Grant Rhodes, Jali LALC.

Mr Rhodes is familiar with Aboriginal sites and places in the Ballina LGA and is experienced in the identification of Aboriginal sites.



## 4. PROJECT AREA ENVIRONMENT AND LANDSCAPE

### 4.1 Topography

Slopes fall from below a broad crest carrying North Creek Road west toward a residential area. Relief is 20m - 40m, elevations range between 60m AHD and 20m AHD, slopes are gentle (average 6%) to moderate (average 20%). An artificial embankment forming the high batter to Byron Bay Road is the northern boundary. The most obvious land form is a broad slope between Byron Bay Road, the Project Area to Henderson Lane. There is no evidence of active aggradation or soil movement across the project site (Figure 2).

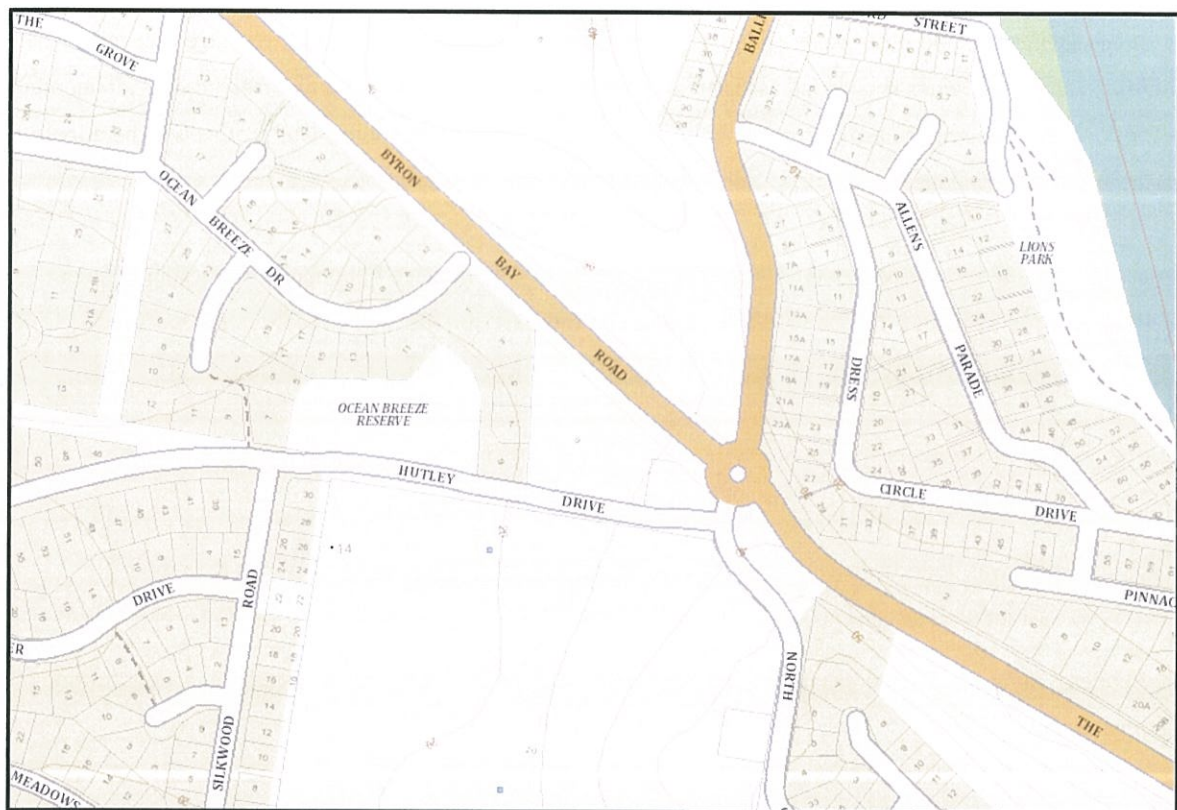


Figure 2: Topographic map of the Project Area.

### 4.2 Geology and Soils Landscapes

The geology is Lamington Volcanics: Lismore Basalts which contain a variety of rock types used by Aboriginal people in the production of stone tools including basalts, silcretes, quartzites, chalcedonies and cherts. The Project Area is mapped as part of the 'Bangalow' soil landscape which comprises deep to moderately deep Krasnozems soils (Morand 1994:88).

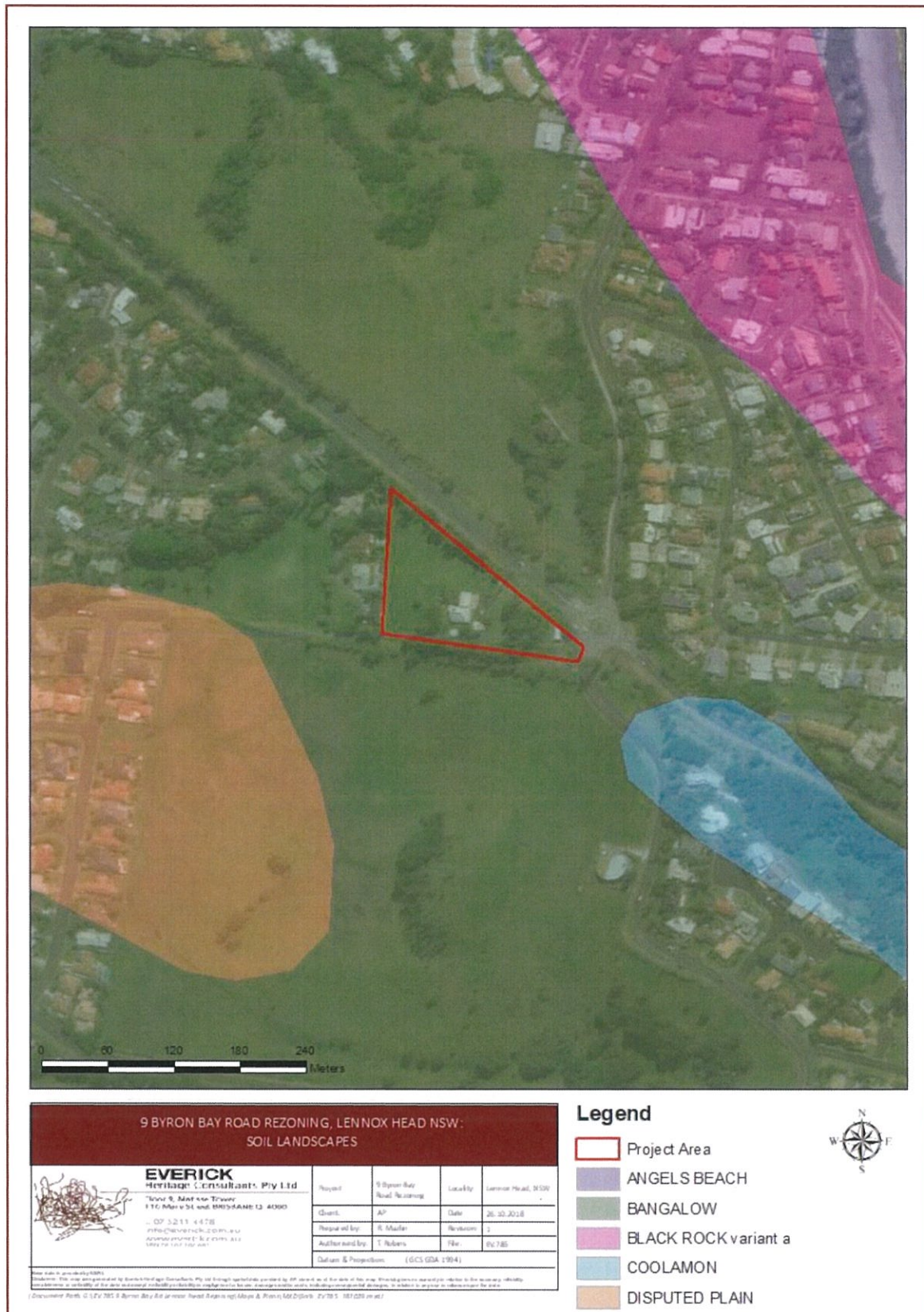


Figure 3: Soil Landscapes



### 4.3 Vegetation

Vegetation of the Bangalow landscape comprises extensively cleared closed-forest of the “Big Scrub”. The “Big Scrub” was the term given to the subtropical rainforest that originally extended between Lismore and the Brunswick River. Present vegetation is dominated by closed sod grassland with extensive areas of closed-forest communities of the exotic camphor laurel (*Cinnamomum camphora*) and regrowth littoral rainforest (mainly tuckeroo) along fence lines and protected gullies. Land uses are predominantly pasture, horticulture and expanding residential development (Morand 1994: 82). Slashed and mown grass cover prevails throughout, with the exception a dense thicket of regrowth and exotics between Lot and Lot 2.



## 4.4 Land Use and Disturbance History

The Project Area has long since been cleared of original forest vegetation which can be expected to have been a mosaic of littoral rainforest on the north eastern slopes, rainforest and wet sclerophyll forest on more wind protected western slopes. This probably occurred post 1902 when the land was originally granted to a William Kennedy although North Creek had been open to 'selectors' since 1866 (Wilson: 4). The history of European land uses of the Project Area is within the broader historical context of settlement of the Alstonville Plateau. European settlement/land use was dominated by timber getting, sugar cane farming, dairying and more recently horticulture and residential development. The surface of basalt derived soils in this hilly locality were covered by small to medium boulders and stones that were hand cleared, heaped and used for wall building, yards, fill etc so that cropping and later dairying could take place.

A number of farms in the North Creek locality were cultivated for arrowroot and sugar cane although there is no specific reference to the Project Area. As with the majority of farms on the North Creek hills dairying became the main land use (see Wilson 2003). The historic markers of such industries are still visible within the landscape as dry-stone walls, planting of screens of exotic and indigenous trees and remnant buildings, machinery and roads/tracks. These features form an important part of the historical landscape, relating to land use and labour practices. Items of particular historical significance may be registered as being of State or Local Heritage Significance and protected under various statutory 'instruments' from the Heritage Act (State) to Council LEP'S (Local).

The Due Diligence Code (OEH 2010) provides the following definition of 'disturbed land';

*"Land is disturbed if it has been the subject of human activity that has changed the land surface, being changes that remain clear and observable. Examples include ploughing, construction of rural infrastructure (such as dams and fences), construction of roads, trails and tracks (including fire trails and tracks and walking tracks), clearing vegetation, construction of buildings and erection of other structures, construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water and sewerage pipelines, stormwater drainage and other similar infrastructure) and construction of earthworks"* (OEH 2010:18)

The Project Area is located within land subject to the following types of disturbance:

- Original forest clearing;
- mechanical rock/boulder removal;
- grazing (dairying);
- infrastructure Telstra facility (Lot 1);



- residence and outbuildings (Lot 2).

In terms of Aboriginal cultural heritage there is no possibility that above ground cultural heritage sites such as earthen ceremonial rings would survive or objects of organic materials such as bark or wood. If there were surviving old growth trees scarred or carved trees are possible. It is possible that Aboriginal archaeological sites such as Aboriginal artefact scatters of stone tools could exist however these are likely to be randomly scattered by clearing and post clearing disturbance events and undetectable by surface inspection.



## 5. SYNTHESIS OF PREVIOUS ARCHAEOLOGICAL INVESTIGATIONS AND ETHNOHISTORY

### 5.1 Heritage Register Searches

#### 5.1.1 OEH Aboriginal Heritage Information Management System

Care should be taken when using the AHIMS database to reach conclusions about site prevalence or distribution. There may be errors with the AHIMS data particular when data is recalibrated between AGD and GDA mapping. A lack of sites in a given area should not be seen as evidence that the area was not occupied by Aboriginal people. It may simply be an indication that it has not been surveyed for cultural heritage or that the survey was undertaken in areas or at times of poor ground surface visibility.

An extensive search of the AHIMS was conducted on 29 October 2018 for Lot 2 DP620838 with a buffer of 1000 m (Service ID 379276 see Appendix C). The search identified 6 registered Aboriginal sites within the search area however no sites have been previously recorded within the Project Area (Figure 4 and Table 1). The majority of sites are recorded in the old AGD datum using topographic maps and as such the accuracy of the AHIMS data is not considered reliable. However, the results do indicate the overall nature of the archaeological and Aboriginal cultural heritage record in Lennox Head.

**Table 1: AHIMS Extensive Search Results**

<u>Site ID</u>	<u>Site name</u>	<u>Datum</u>	<u>Easting</u>	<u>Northing</u>	<u>Site features</u>
<b>04-5-0143</b>	Site 1; Fern St;	AGD	557300	6814575	Artefact : -
<b>04-5-0048</b>	Lennox Head;	AGD	557320	6813900	Shell : -, Artefact : -
<b>04-5-0052</b>	Lennox Head;	AGD	558000	6813200	Shell : -, Artefact : -
<b>04-5-0009</b>	Lennox Head Public School Lennox Head	AGD	557300	6813720	Artefact : -, Shell : 1
<b>04-5-0018</b>	Lennox Head;	AGD	558100	6814500	Burial : -
<b>04-5-0305</b>	Seven Mile Beach Fishing Traps	GDA	558100	6814119	Aboriginal Resource and Gathering : 1

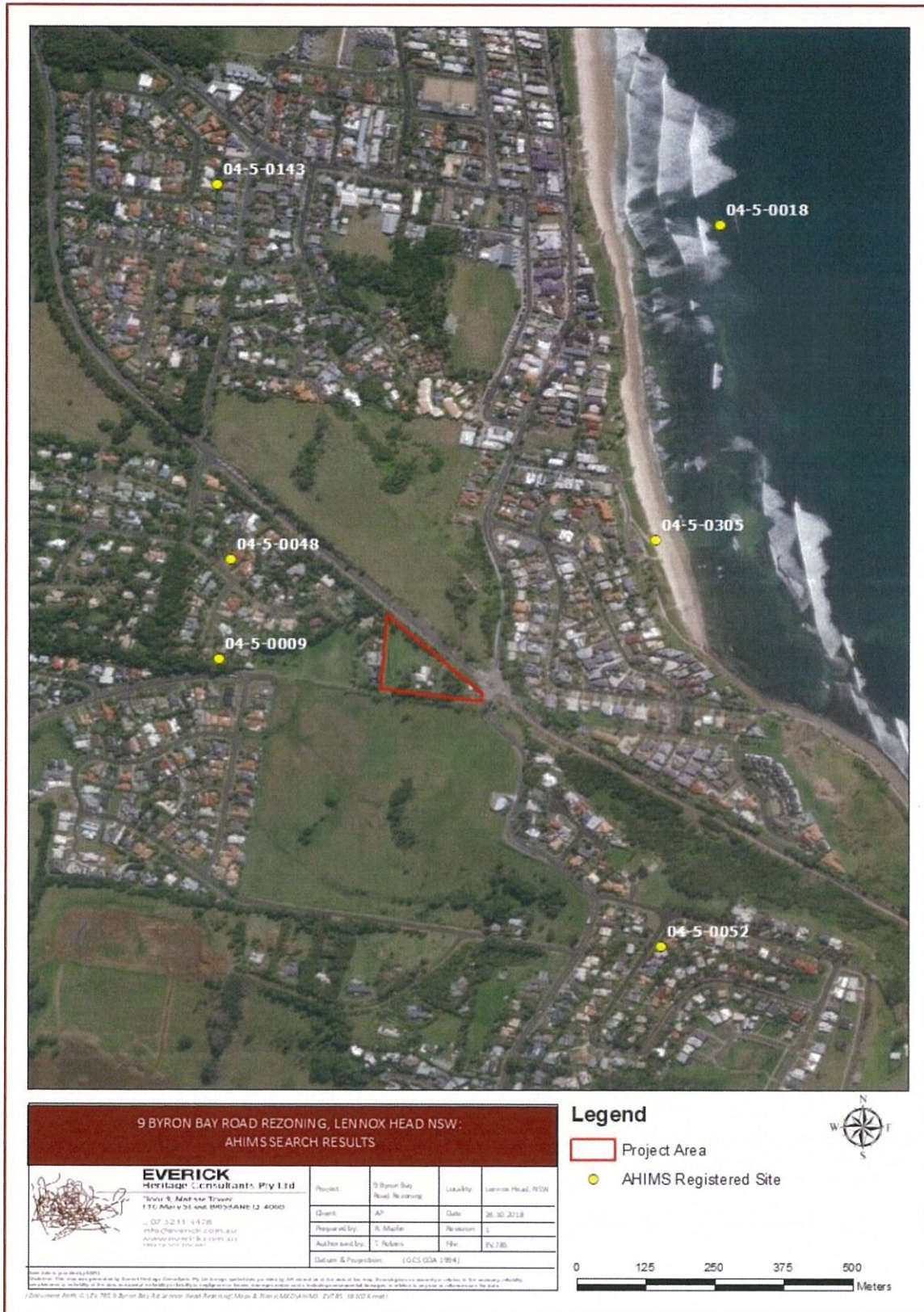


Figure 4: AHIMS sites within 1000 m of the Project Area





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

The following heritage registers were accessed on 10 September 2018 for Indigenous and historic places within the Ballina Shire LGA:

- **The World Heritage List:** Contains no places within proximity to the Project Area.
- **Commonwealth Heritage List** (Australian Heritage Council): Contains no places within proximity to the Project Area.
- **The National Heritage List** (Australian Heritage Council): Contains no places within proximity to the Project Area.
- **Register of the National Estate** (Australian Heritage Council): Contains no places within proximity to the Project Area.
- **The State Heritage Register** (NSW Heritage Office): Contains no places within proximity to the Project Area.
- **Ballina Shire LEP 2012:** Contains no areas of Indigenous or historic heritage significance within proximity to the Project Area, however the Henderson Farm Group is located to the west of the Project Area along Hutley Drive (Figure 5).

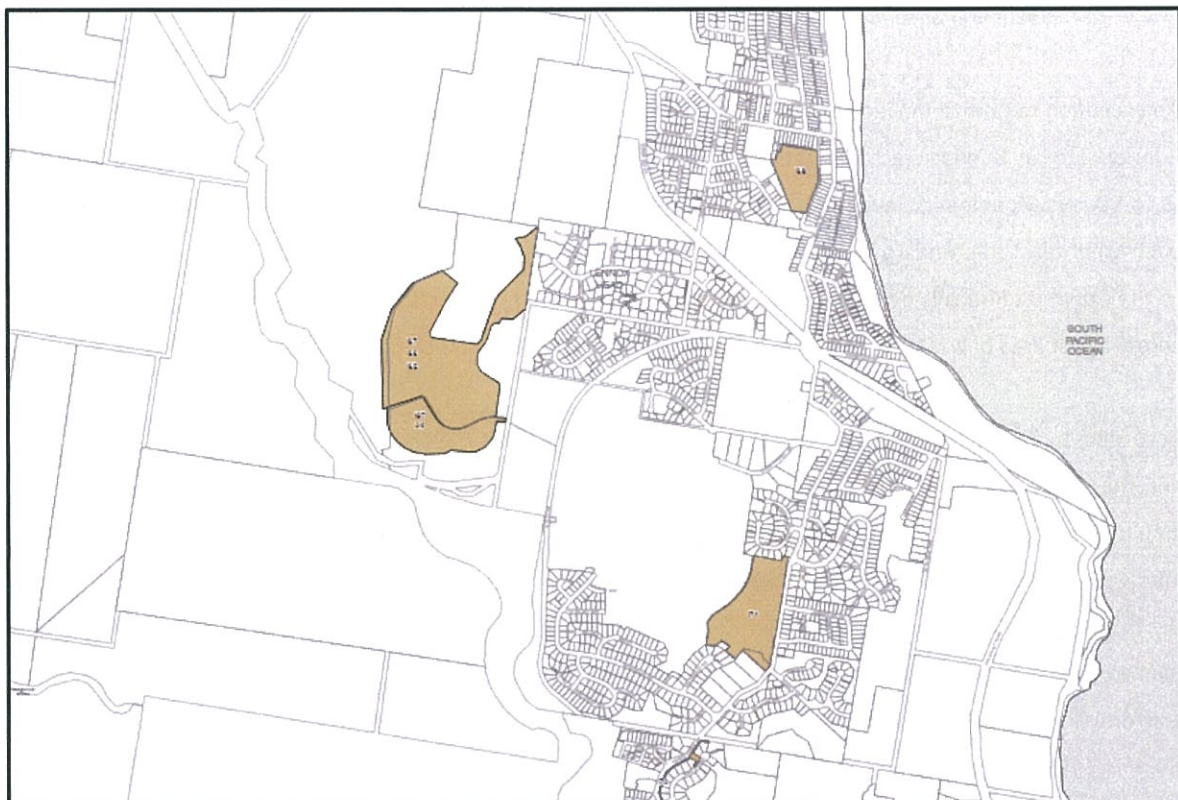


Figure 5: Ballina LEP Heritage Map.



## 5.2 Ethnohistorical Summary

Crowley (1978) in Sharpe (1985) proposes that the Aboriginal people of the Ballina area are known as Nyangbal, a coastal Bundjalung dialect spoken between the Evans River north through to Broken Head and west to the uplands of the Alstonville Plateau. The Wiyabal and Bandjalang adjoined the Nyangbal to the west and south west (Crowley 1978). They were part of a larger linguistic group, the Bundjalung, which spoke a range of closely linked dialects in the area between the Upper Clarence region extending west to Tenterfield, Warwick and Beaudesert joining the coast at near to Beenleigh. Crowley's (1978) maps place the Minyanbal to the north and the Gumbayngirr to the south of the Evans River. Linguistically Sharpe suggests "...a time depth for the cultural differences of less than 500 years..." (Sharpe 1985:103-104). Dialect groups and sub clans composed of interlinked family groups occupied distinct areas within the wider Bundjalung association. Land belonged to individual clans whose territorial boundaries had been established in mythology (Creamer and Godwin 1984).

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

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

An exception to normal movement practices across tribal boundaries was that documented by Petrie (1904) and Bundock (1898). Bundock recorded the movement of the upper Richmond River Aborigines in the Wyangarie area to the Bunya Mountain, '... every third year or so ... under a sort of 'Truce of God'... for the blacks went through each other territories unharmed' (Bundock 1898). These gatherings occurred every fourth year, attracting groups to their own traditionally defined camping areas and served to promote trade and strengthen kinship networks across a vast area of western Queensland, south-east Queensland, and north-east NSW.

According to Ainsworth (1922: 43-44) the coastal Nyangbal (Crowley 1978) people relied on '... fish and oysters and the varied products of the chase...' He refers to the spearing of salmon on the beaches and the netting of estuarine fish by means of '... a "tow-row"-a finely meshed net attached to a stick of bamboo bent in the shape of a bow ...' He is not specific about which estuarine fish were caught by this method, although an excavation of a North Creek shell midden at Ballina did indicate the exploitation of flathead and bream (Bailey 1975: 55). Ainsworth places an emphasis on the consumption of oyster to the exclusion of other estuarine, coastal rock platform and open shore molluscs, all of which are recorded in local shell middens (Bailey 1975; Campbell 1982; Hughes 1991). Modern research supports Ainsworth's assessment as to the prominence of oyster at least for certain periods in the diet of the Ballina group, to the extent that this species comprises the greatest volume of estuarine shellfish represented in Aboriginal middens (Hughes 1991).



From the few eye witness sources available for the North Coast we can suggest that contact between elements of the coastal clans was frequent and may have involved relatively large numbers. Bray records that the coastal Coodjinburra ‘...used to mix very much with the Ballina Richmond River Blacks’ (Bray 1901: 9). However it may have been a way of life that rapidly disappeared under the impacts of disease and restrictions on Aboriginal groups by ‘authorities’ on the movement of Aboriginal people. A review of sightings of Aboriginal coastal groups in Coleman’s review of ethno historical sources led her to a conclusion that in the initial stages of European contact, observers of coastal groups describe, ‘...consistently high, semi sedentary local populations on the coast with a highly sophisticated organic material culture which vanished almost overnight with European contact’ (Coleman 1982).

The resources of sub-tropical rainforest were used extensively in the technology of the Richmond to Tweed Rivers, which is heavily dependent on wood and bark fibre (McBryde 1978:197). McBryde’s sources refer to shields (McFarlane 1934; Dawson 1935), single point fire-hardened spears, three types of boomerang (Dawson 1935), clubs-nulla nulla and pademelon sticks, bark and palm leaf bags, wooden water vessels, possum rugs, cane and shell necklaces and stone knives (Bundock 1898). Bark was used for containers and shelter. Stone axes are referred to by Dawson (1935:22) and Byrne (1946:2). Fishing nets and rope was made from twine spun from the flame tree (Byrne *ibid*). Fishing nets were made a couple of yards long with a stick at each end used individually or in combination with many of the same (Seymour in Piper 1976). Bundock (1898) and Ainsworth (1922) described the same type of nets used for game drives in rainforests.

An indication of the importance of rainforest foods and material resources can be synthesised from ‘*Records of Times Past*’ dealing with ethno history (Sullivan 1978: 101, Pierce: 115) and *Museum Collections from the Richmond River District*, edited by Isabel McBryde (1978). Items of material equipment and weapons fashioned from rain forest materials includes water carrying vessels (Bangalow Palm), string bag, woven bag (Stinging tree), shield (Stinging tree), nets (Stinging tree) tow row (Stinging tree, lawyer cane), axe handles (lawyer cane), necklets (lawyer cane, shelter supports (lawyer cane), cane bugles (lawyer cane) cordage (Stinging tree, fig tree), clubs (Black bean). Food sources: possums, paddymelon, bandicoot, Moreton Bay Chestnut, cunjevoi, macadamia, wild grapes, Burrawang tree or palm, wild cherries. The above items are only those gleaned from the authors Richmond River sources and do not include many other foods e.g. rainforest birds and resources e.g. medicinal plants.

The most detailed analysis of material culture of the North Coast has been that undertaken by McBryde (1978) much of which was reliant upon rainforest woods and fibres. The region of the Tweed, Richmond and Clarence Rivers would seem to form a distinct unit. This is particularly so in the case of fishing technology. The multi-pronged fishing spear and the shellfish hook are both absent from this region. Fish were caught in nets or speared in the shallows (McBryde 1978:187). Spears were single pointed fire hardened weapons (Dawson 1935: 22), of both a lighter and heavier variety (Byrne 1946: 3). Neither the woomera nor the spear throwing stick were used in this



region (Dawson *ibid*). The range of materials is considered wider than central Australian tribes with fewer all-purpose items, few composite tools and a number of specialised ones. This may reflect a more sedentary life style in a rich environment requiring fewer specialised tools (*Ibid*: 187). The stone tool element in the material culture was small and unspecialised. The archaeological evidence suggests changes to a simpler stone technology took place only centuries before European settlement. The stone tools in use immediately prior to European settlement, '... show little typological sophistication and did not demand highly skilled craftsmanship' (*Ibid*: 198).

Aboriginal land use models based on ethnographic sources identify broad patterns of settlement and movement in the region and are useful but not conclusive in predicting the potential nature of archaeological remains within the Project Area. McBryde (1974) proposes that groups ranged between the sea coast and foothills of the coastal ranges on a seasonal basis (*i.e.* McBryde 1974) utilising the immediate coast and main rivers as the focus of occupation. Early sources support this view to some extent as there are records describing the movement of inland groups of the Clarence River to the coast during winter (McFarlane 1934; Dawson 1935:25).

Coleman (1982) proposes an alternate model where it is suggested that movement of coastal people was not frequent, and that semi sedentary groups moved north and south within the coastal plain rather than to the upper rivers (Coleman 1982).

Byrne (1987) developed a state-wide land use model specifically around the use and occupation of rainforests. Byrne distinguishes between the 'Lowland' and 'Upland' rainforests and proposes;

*...The lowland rainforests were situated within what might be termed the core areas of the coastal lowland tribes. The North Coast of New South Wales supported some of the heaviest populations of Aborigines in the prehistoric Australia. The foci of settlement of these tribes were the immediate coastal strip, the estuaries and valleys of the major rivers. The key attribute of the lowland rainforests was their proximity to the main areas of settlement and, hence, the accessibility of their resources...Most of these rainforests could be exploited from bases in other and neighbouring environments. It is likely that major campsites were located close to the productive margins of these rainforests. Campsites may also have been situated in clearings within rainforests where they acted as bases for the exploitation of core areas of extensive forests and as staging camps for travel through such forests... (Byrne 1987:54, 55).*

Godwin (1999a and 1999b) argues that neither of the above 'models' is supported by the archaeological record and that local conditions dictated exploitation strategies on the north coast of NSW. In this model:

*Sub-coastal groups journeyed to the coast, but only in small numbers: there was not the large-scale migration of people posited by McBryde. The data suggests that this took place throughout the*



*year and could have been for both ritual and secular reasons. Groups also journeyed through the "Falls" country throughout the year. There are also reports of movement in a north-south direction along the sub-coastal strip from river valley to river valley, and from the sub-coastal zone to the tablelands which appears to have been associated with ceremonial gatherings. These ranged from clan-sized gatherings through to inter-tribal meetings (Godwin 1999a:123)*

### 5.3 Previous Archaeological Assessments

The review of previous archaeological assessments forms part of the basis for making predictive statements as to the type and densities of Aboriginal sites and the environmental contexts in which they might be found.

Previous assessments of this locality can be grouped within three broad landform categories: those studies which have assessed areas of coastal uplands, low hills which originally carried rainforests (Morand 1994:55), a second group of studies of sand barriers and inter-barrier swamps of the coastal plain (Morand 1994:231, 232), a third group the immediate foreshores of North Creek. On the basis of soil type and topography, the landform under assessment is consistent with the first group of studies which have attempted to assess landform elements of coastal uplands and the slopes that emanate from them. In this case the Project Area is a small area of western side slope from the North Creek hills.

It is of note that virtually all substantial areas of land with a potential for residential or similar development to the east and west of North Creek Road between Lennox Head and Ballina have been the subject of Aboriginal cultural assessment and archaeological investigation. No Aboriginal cultural heritage has been found in or near the Project Area in the Bangalow soil landscape i.e. red/brown kraznozem soil slopes originally supporting subtropical rainforest. The exception within the area defined above has been, sand based soil conditions as exist in the Angels Beach estates where Aboriginal cultural heritage has been 'extensive' in terms of the numbers, variety and contents of Aboriginal sites. For the purposes of this review of previous archaeological assessments those assessments between Lennox Head and Skennars Head Road that include the North Creek hills and slopes are reviewed here.

Coastal uplands include the area of hills that extend from the southern edge of the village at Lennox Head south to Skennars Head Road. They are bounded by the coastline to the east and North Creek to the west. North Creek Road extends on the crest for the length of the ridge. Most of the western and eastern slopes of the North Creek hills to The Coast Road not already under residential sub divisions have been the subject of archaeological impact assessments. These assessments were undertaken by Collins (1992), Everick (2010, 2010a, 2016, 2017 and 2018) and Piper (1994, 1997, 1999, 2003, 2004 and 2005). No Aboriginal sites have been recorded on the hill crests or



the upper and lower slopes with the exception of a midden at Amber Drive adjacent to a coastal swamp (Marcus Ferguson pers. comm. 25-02-15).

The entire western slope between North Creek Road and the North Creek wetlands, north to the Byron Bay Road and south to Skennars Head Road, has been archaeologically assessed by Collins (1992), Piper (1999, 2003, 2004, 2005) and Everick (2010a, 2010b). These studies have included approximately 165 ha of slopes in an area of c. 2.5 km north / south and up to approximately 1.0 km east / west. The effective ground coverage, meaning the percentages of bare soils possible to inspect was low, due to generally closed ground cover and low surface visibility.

In 1992, Collins assessed 28.5 ha of lower slopes adjoining the northern boundary of Pacific Pines Estate. Only 5% of the assessed land could be effectively inspected due to heavy grass cover. No Aboriginal archaeological sites were found (Collins 1992:14). Adjoining parcels to the east extending to Byron Bay Road were assessed by Everick 2010b and Piper 2004. The 15ha of slopes was considered highly disturbed under the Due Diligence Code Guidelines. Assessment conditions were poor due to closed ground covers throughout. No Aboriginal cultural heritage was found.

The remaining stages of the Pacific Pines Estate north to Henderson Lane were assessed by Piper (2003). Approximately 80 ha of slopes of the Pacific Pines Estate were inspected. Surface visibility was restricted to c.3% of the total area. No Aboriginal sites were found (Piper 2003:33). The Pacific Pines Estate was subject to a cultural heritage assessment under the *DECCW Interim Community Consultation Requirements for Applicants 2005*. No further archaeological or cultural heritage issues arose in addition to the 2003 report. Everick (2018) assessed 4.5ha on Mountwood Dr of low lying and lower slope terrain adjoining parts of the Pacific Pines estate, without locating Aboriginal heritage.

The 41 ha Summit Estate west of North Creek Road and south of Pacific Pines Estate was assessed with the result that two sites of Aboriginal shell middens (North Creek 1) and (North Creek 2), were located on the eastern bank of North Creek approximately 0.5—1.0 m above the high water mark (Piper 1999:36).

The Hutley Drive easement linking the lower slopes of the proposed Summit Estate and Pacific Pines Estate was assessed for Aboriginal cultural heritage by Everick 2010b. During the survey an Aboriginal midden site was identified approximately 50 m to the west of the proposed route alignment. It is almost certain that subsurface cultural material extends further than that visible on the surface. Adopting a cautionary approach, it was anticipated that the midden stretches from north to south for approximately 50 m, is approximately 30 m wide and up to 50 cm deep. The midden is high in organic content with evidence of extensive shell and fish bone found on the exposed ground surface (Everick 2010b). The midden was evaluated as being of a high cultural significance to the Aboriginal community and potentially high scientific significance (Ibid: 42).



Approximately 40 ha of the slopes falling towards Skennars Head Road and former swamp/wetlands south of the road was assessed by Piper (1994). The Project Area was open grazing land with low visibility conditions. The conclusion of the 1994 study was surface visibility was low and the possibility of *in situ* sites was considered unlikely due to its low lying context and European land uses (Piper 1994:20). No Aboriginal cultural heritage was found. A small area of Bangalow soil landscape at Tara Downs Road was assessed for cultural heritage by Everick (2016). No cultural heritage was found. Similarly, a heritage assessment of lower slope and sand plain at the Skennars Head Playing Fields found no cultural heritage (Everick: 2017).

The eastern slope of the coastal escarpment from Blue Seas Parade was assessed by Piper and Robins 2006. The 70ha property adjoined the 1994 Skennars Head Road assessment area to the south. Two AHIMS sites listed as located on the eastern slope to the Coast Road were found to be errors in recalibration from 1:1 mile map sheets. Exposed surfaces were only 3% of total area. No Aboriginal sites were found. Immediately to the west of the 2006 assessment, 10ha from Survey Street were inspected without locating Aboriginal sites (Piper 1997:19). Everick has since been informed of a midden site uncovered at the lower end of Amber Drive at the 'head' of a fresh water swamp (Marcus Ferguson pers. comm., 25-02-15).

### 5.3 Aboriginal Sites Predictive Model

The Due Diligence Code of Practice of Aboriginal Objects in NSW states: *Aboriginal objects are often associated with particular landscape features as a result of Aboriginal people's use of those features in their everyday lives and for traditional cultural activities. Examples of such landscape features are rock shelters, sand dunes, waterways, waterholes and wetlands. Additionally, if a proposed activity is: within 200m of waters, or located within a sand dune system, or located on a ridge top, ridge line or headland, or located within 200m below or above a cliff face, or within 20m of or in a cave, rock shelter, or a cave mouth and is on land that is not disturbed land...* (DDCoP 2010: 12), there is a far higher probability that Aboriginal sites or objects could be present.

On the basis of the results of previous archaeological and cultural heritage assessments the Project Area would appear to contain none of the above attributes which would suggest it was a preferred campsite option, unlike the coastal dunes to the east and west of The Coast Road, although a midden has been identified at the head of a swamp west of The Coast Road. At best assessment the Project Area is a small area of side slope without any features that would enhance its potential for Aboriginal heritage sites. Clearly it was a short distance to ephemeral water sources, of which there are many in this locality but without any other identifiable resource. It is probable that the Project Area was part of a vast expanse of catchment area for food and resources to the occupants of campsites on the dune fields to the north but not a focal point of occupation.



The results of many cultural heritage assessments and archaeological investigations confirms a view that Aboriginal sites in this locality are located on low dune fields or eucalypt woodlands on hills adjacent to the dune fields. No cultural heritage has yet been recorded within the former rainforest environment that characterises the Project Area. It is possible that randomly scattered stone artefacts could have been discarded or lost in this environment but there is no scientific or systematic means of predicting and recovering such objects.

In the unlikely event that Aboriginal objects did exist they would be limited to single isolated artefacts or the remains of artefact scatters representative of what archaeologists call 'background scatter' which as the term implies there is no means of predicting. Middens or low density shell scatters must also be considered a possibility, although unlikely. Unless there are old growth trees there will be no evidence of Aboriginal tree scarring or carving. There are no prominent landscape features within the Project Area that are likely to contain spiritual or ceremonial significance although this is a matter for the Aboriginal community. Given the prior land uses and the totally disturbed surface conditions there is a very low or no potential for significant Aboriginal archaeological sites or objects to be found. For the above reasons the archaeological potential of the Project Area can be expected to be low. The following types of sites are reviewed as having a potential, be it low, to exist in the Project Area.

#### 5.3.1 *Isolated artefacts*

These will consist of single stone artefacts, which may have been randomly discarded during fabrication or due to breakage. They may occur in almost any environmental context exploited by Aboriginal people. They are commonly tools, including stone axes, hammer stones, bevelled edged pounders and abraded pebbles, and usually include flakes and cores. Their presence may indicate that more extensive scatters of stone artefacts exist or existed nearby, perhaps obscured by vegetation or dispersed by mechanical means. Predicting isolated finds with precision is impossible; their detection in the disturbed sediments and dense ground cover of the Project Area is unlikely.

#### 5.3.2 *Artefact scatters*

Approximately 41% of known sites in the Ballina-Lennox Head area are artefact scatters (Collins 1996). To date they have been found in sand dune or sand plain conditions in this locality. They consist of scatters of stone artefacts and possibly bone and hearths. Their exposure to the elements means that evidence of food resources used on the site (with the exception of shellfish) is usually lacking. Artefact scatters are invariably found in elevated positions adjacent to creeks or wetlands. They consist of low or high density scatters of primary and secondary flakes in addition to the types of artefacts found as isolated finds. Given the former rainforest and slope conditions which prevailed in the Project Area in the past and present, artefact scatters are considered highly unlikely.





### 5.3.3 *Middens*

Middens are campsites which are dominated in volume by shellfish remains. Middens may be composed of deep compacted debris reflecting consistent use over long periods of time, or thin scatters of shell which reflect use on a single occasion by a small group, perhaps in transit or gathering food away from a large campsite. Approximately 39% of known sites in the Ballina-Lennox Head area are middens. Middens are usually situated near a source of shellfish and comprise predominantly, mature oyster, pipi, whelk, cockle and cartrut species in addition to terrestrial animal and fish bone, stone artefacts, charcoal and ash from fireplaces. The largest midden complexes at Ballina are located adjacent to the Chickiba Creek and North Creek systems (Barz 1980a; Bailey 1972; Lourandos 1979). These middens date from the late Holocene period to less than 200 years BP. Human burials have been associated with a number of middens between the Tweed and Richmond Rivers (Barz1980b; Bailey1972; Lourandos1979).

All recorded middens have been located in elevated positions beside estuarine waterways or on elevated sand substrates close to wetlands. The dominant species found in estuarine middens is oyster, while locations away from the waterways contain pipi or combinations of estuarine, open beach and rock platform species. Middens are considered highly unlikely in the Project Area.



## 6. FIELD SURVEY: ABORIGINAL CULTURAL HERITAGE

### 6.1 Survey Team

The Project Area is within the area administered for Aboriginal cultural heritage purposes by the Jali Local Aboriginal Land Council. A pedestrian survey for Aboriginal cultural heritage of the Project Area was arranged for Grant Rhodes, Sites Officer of the Jali LALC, and Adrian Piper of Everick Heritage Pty Ltd on the 5<sup>th</sup> November 2018.

### 6.2 Survey Strategy and Conditions

The archaeological field assessment was targeted at inspecting the areas which were considered to have increased archaeological potential based on the predictive model from the review of previous studies and the results of the AHIMS search. The assessment also aims to establish if there are sites or areas of a non-archaeological nature significant to the Aboriginal community. At this stage of the assessment, if required, this would be through consultation with Jali LALC.

The desktop predictive modelling (Section 5.3) suggests that in this locality and to a limited degree, the greatest potential for Aboriginal archaeological sites in the former 'Big Scrub' locality would be the level areas and rises on the North Creek upland that is south of the Project Area, the dune fields to the north and west and the rocky shoreline and headlands to the east.

The archaeological or scientific aim of the cultural heritage survey was to locate physical evidence of Aboriginal occupation the evidence of which is most commonly stone artefact scatters; individual (isolated) artefacts; shell debris and in clear ground situations traces of bone (human and animal) and ash-stained earth that might represent fireplaces. Woodland areas or isolated 'old growth' trees would be inspected for evidence of Aboriginal scarring due to bark removal or holes/notches cut into bark and tap wood. Other features such as rock scree slopes would be inspected for evidence of Aboriginal stone extraction.

For the purpose of survey coverage description, the Project Area has been divided into two areas, Area A Lot 1 and Area B Lot 2. The only topographic feature of the Project Area is broad gentle to moderate slope. Area A contains a dense thicket of regrowth littoral forest types, palms, exotic growth and a Telstra facility. Area B contains a residence, sheds and sealed driveways. There are no distinctive topographic features such as a through ridge crest, access to fresh water or level areas that would suggest a particular potential for Aboriginal sites.

As this assessment relates to an investigation to support a rezoning proposal for a relatively small area of approximately 1.16 Ha, a total coverage strategy was intended. The survey was carried out on foot by two persons.



As grass conditions are closed throughout, limiting soil exposures and visibility to very low percentages, a systematic search in a grid pattern was rendered completely impractical. Therefore, an opportunistic approach was undertaken where any randomly scattered soil exposures within shade lines were inspected. The evaluation for historic heritage was conducted concurrently.

### 6.3 Assessment Methods

The assessment methods aimed to inspect exposed ground surfaces as conditions would allow; to record any archaeological material found and assess its significance; and assess the potential for concealed Aboriginal archaeological sites. Photographs were taken as a record of general features and conditions and to document the degree of surface visibility. Notes were made of the degree of surface visibility, the area of visibility, ground cover, land uses and any other relevant features. A hand-held GPS (GDA 94 datum) is used to record locations of Aboriginal sites found, the extent of survey coverage except where fence lines, google and topographic mapping provided clear reference points. Mapping and plans used in this assessment were provided by Ballina Shire Council and represent the level of information provided to Everick Heritage Pty Ltd and the Aboriginal participants.

Had any sites or Aboriginal objects been found their location would have been photographed, generally described and recorded with a GPS (WSG94 datum). A note would be made of artefact types and their numbers. General characteristics of the artefacts would be noted including; raw material type and condition; the degree of weathering and heat cracking; and the length, width and thickness of all or a sample number of artefacts. The details would be logged on standard OEH Site Recording Forms for registration with the OEH AHIMS.

### 6.4 Constraints to Site Detection

An assessment of the constraints to site detection is made to assist in formulating a view as to the effectiveness of the field inspection to locate Aboriginal sites and cultural materials. It also assists in the forming of a view of the likelihood of concealed sites keeping in mind a site-specific knowledge of the impacts that European land uses and natural processes may have had on the 'survivability' of Aboriginal sites in the Project Area. The constraints to site detection are almost always most influenced by post European settlement land uses and in some areas by natural erosion processes. The area of surface exposure and the degree of surface visibility within exposed surfaces are usually the product of 'recent' land uses e.g. ploughing, road construction, natural erosion and accelerated (manmade) erosion (McDonald et al 1990:92).

The review of land uses (Section 4.3) concluded that all of the land within the Project Area has been subject to a high degree of historic and recent ground disturbance that would be highly destructive to Aboriginal sites had they existed (see Figure 6-Figure 10). Table 2 summarises the landscape features and broad disturbance types



influencing the conditions for Aboriginal site detection in both Survey unit A and B (Figure 11). Table 2 summarises ground conditions for the detection of Aboriginal objects.



**Figure 6: Lot 1 Telstra facility, view north.**



Figure 7: Lot 2 Residence precinct, view west.



Figure 8: Lot 2 Northern sector, view north.



Figure 9: Lot 2 Western sector, view west.



Figure 10: Lot 2 Southern Boundary, view east.



**Table 2: Summary of Environment and Ground Disturbance for Survey Units.**

Survey Unit	Environmental Description	Ground Disturbance Summary
<b>Area A Lot 1</b>	Area: ca 0.19Ha Slopes: Gentle/moderate. Closed regrowth thicket and grass covers. Telstra facility.	Forest clearing. Land/rock clearing, grazing. Excavation of pad, trenching.
<b>Area B Lot 2</b>	Area: ca 0.97Ha Slopes: Gentle. Closed slashed grass covers and managed lawns Residence and outbuildings	Forest clearing. Land/rock clearing, grazing. Excavation of house pad, drainage.



Figure 11: Location of survey units A and B.





## 6.5 Ground Surface Visibility

Ground Surface Visibility ('GSV') is a measure of how much ground surface (or bare earth) can be seen at the time of an archaeological survey. It is usually worked out as a percentage (%) of the overall Project Areas, although it can also be worked out as a range when GSV changes dramatically within the Project Areas. For this assessment, GSV was worked out by assessing a 1 m x 1 m area and inferring how much ground surface was seen within that. This gave a percentage of GSV within the square, which was extrapolated to an entire Project Area- so long as the ground conditions did not fundamentally change.

Table 3 presents information on the extent to which survey data provides sufficient evidence for an evaluation of the distribution of archaeological materials across the Project Area. The evaluation of survey coverage provides a measure of the potential for each of the landform elements to reveal archaeological evidence. In this case landform elements are only the variation in the degree of slope between gentle and moderate. Approximately 47% (893 sq m) of Area A was excluded from survey as it was under the Telstra facility or dense undergrowth leaving approximately 1007 sq m possible to inspect. Approximately 9.2% (892 sq m) of Area B was excluded, being house, outbuildings and driveways leaving 8808 sq m possible to inspect for Aboriginal cultural heritage. The calculations in 3 do not provide an exact percentage of surveyed area but a reasonable estimate.

**Table 3: Survey coverage.**

<i>Unit</i>	<i>Area (sqm)</i>	<i>Exposure %</i>	<i>Area of Exposure (sqm)</i>	<i>Visibility %</i>	<i>Area for Site Detection (sqm)</i>	<i>% of Lf for Site Detection</i>	<i>Sites Found</i>
<b>A</b>	1007	2	20	50	10	1	0
<b>B</b>	8808	2	176	80	140	1.5	0



## 7. DISCUSSION

The predictive model suggested that given the highly destructive disturbance history, the results of heritage assessments in identical local terrain it was unlikely that significant Aboriginal archaeological sites could be found. In the unlikely event that Aboriginal objects did exist they would be limited to single isolated artefacts lost or randomly discarded, representative of what archaeologists call 'background scatter,' cultural objects without any specific provenance and as the term implies not detectable by scientific means. Therefore the overall assessment of the potential for Aboriginal sites was assessed as low. In terms of substantial archaeological and Aboriginal cultural sites such as middens, scarred or modified trees, prominent landscape features with Aboriginal significance, the potential was assessed as equally low.

An area of approximately 0.98ha was searched, the greater proportion of which is closed grass cover with poor surface visibility. The areas of exposure (2%) where any soil was visible were restricted to shade lines on the southern boundary and garden. The overall proportion of the survey units where site detection is possible is approximately 1.0 to 1.5% or 20sqm (Lot 1) and 176sqm (Lot 2) of the area possible to inspect. The limited areas of soil exposure for archaeological assessment are common in this locality of former rainforest and littoral rainforest, where ground exposure percentages of less than 5% are common and less than 10% are the norm, invariably due to closed vegetation covers of pasture grasses. Given the anticipated highly disturbed nature of the site due to historical disturbances and more recent excavation of pads, trenching and drainage in the vicinity of the residence and Telstra facility, Aboriginal sites are highly unlikely.

Considering the low potential for Aboriginal archaeological sites to occur in the Project Area, the field survey was considered adequate to make a reasonable conclusion as to a lack of significant Aboriginal archaeological sites or cultural heritage within the Project Area.

### 7.1 Results Aboriginal Heritage

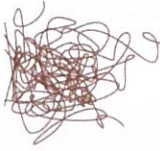
As a result of the desktop study and field inspection the following conclusions were established with Sites Officer Mr Grant Rhodes of Jali LALC

- a) No Indigenous cultural heritage sites or objects were identified within the lands subject to the planning proposal to amend the Ballina Local Environmental Plan at 9 Byron Bay Road Lennox Head.
- b) Consultation with Gavin Rhodes found no places of Aboriginal 'intangible' cultural heritage in the Project Area, or association with spiritual or mythological stories or places elsewhere.
- c) The Project Area was found to be highly disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.



## 7.2 Results non-Aboriginal Heritage

There were no items of historic heritage found therefore no recommendations are warranted.



## 8. RECOMMENDATIONS ABORIGINAL CULTURAL HERITAGE

Having regard to the low archaeological potential of the Project Area, the following recommendations are cautionary in nature and considered adequate for application in both planning proposal and development application stages.

### Recommendation 1: Aboriginal Objects Find Procedure

It is recommended that if suspected Aboriginal material has been uncovered because of development activities within the Project Area:

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

### Recommendation 2: Aboriginal Human Remains

Although it is unlikely that Aboriginal Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The site should be cordoned off and the remains themselves should be left untouched. The nearest police station, the Jali Local Aboriginal Land Council and the OEH Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and the OEH should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

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

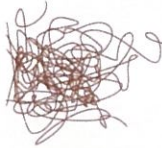
### Recommendation 3: Notifying the OEH



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

#### Recommendation 4: Conservation Principles

It is recommended that all effort must be taken to avoid any impacts on Aboriginal Cultural Heritage values at all stages during future earthworks works. If impacts are unavoidable, mitigation measures should be negotiated between the Ballina Shire Council, the Aboriginal community and OEH.



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## APPENDIX A: GATEWAY DETERMINATION

**Klaus Kerzinger**  
Principal Planner  
LEP Amendment Request Lots 1 and 2 Byron Bay Road (1918)

20 October 2017

Mr Paul Snellgrove  
Ardill Payne and Partners  
PO Box 20  
BALLINA NSW 2478



Dear Mr Snellgrove

**Re: Gateway Determination – Ballina LEP 2012 Amendment – Lots 1 and 2 DP 620838  
Byron Bay Road, Lennox Head**

I refer to Council's letter to you, dated 1 August 2017, regarding the subject LEP Amendment request. It is advised that the Department of Planning and Environment has now issued a Gateway determination on 16 October 2017 which allows the planning proposal to proceed to public exhibition.

The Gateway determination incorporates both Lot 2, which was the subject of your original LEP amendment request as well as Lot 1 owned by the Telstra Corporation. Could you please now confirm that you are also acting on behalf of Telstra with respect to the further processing of this amended planning proposal.

Prior to the planning proposal being placed on public exhibition the following reports and other documentation, relating to both Lots 1 and 2, will be required to be submitted:

- Detailed site survey which shows the location of site improvements including the dwelling and garage, Telstra exchange, significant vegetation, fencing and boundaries;
- Preliminary Subdivision Concept Design Plan. Access to the site is preferred from the proposed extension of Hutley Drive via a cul-de-sac road. A shared path connection linking the proposed shared pathway in Hutley Drive with the existing shared path located in Byron Bay Road is also required to be incorporated within the subdivision concept plan;
- Preliminary stormwater concept plan complying with the requirements contained within Council's *Stormwater Management Standards for Development*;
- Land Contamination Assessment prepared in accordance with the requirements of SEPP 55 and Council's *Management of Contaminated Land Policy*. The assessment is to demonstrate that the site is suitable for the proposed change in land zoning with or without remediation. Consideration should be had to past land uses and the existing dwelling house, Telstra exchange, and other structures on the site which may have resulted in the contamination of the land.
- Flora and Fauna (Ecological) Assessment Report; and
- Aboriginal Cultural Heritage Assessment including consultation with the Jali LALC prior to the report being finalised.

Council will now commence consultation with airport authorities regarding this planning proposal. In respect to consultation with the other authorities referenced in the Gateway

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determination this will be undertaken following the submission of the information detailed above.

It is also advised that Stage 3 Post Gateway Fees are now payable and an invoice for \$6,330 will be forwarded to you under separate cover. The quoted fee assumes that the information required to be submitted will not require detailed expert review or additional follow up work to be undertaken. If this is not the case then additional fees will be levied in accordance with Council's adopted 2017 /18 Fees and Charges.

Should you have any questions or wish to discuss this matter further then please contact the undersigned on telephone 6686 1201.

Yours faithfully

Klaus Kerzinger  
**Strategic Planner**  
**Strategic and Community Facilities Group**

Enclosed: Gateway determination dated 16 October 2017



## APPENDIX B: CORRESPONDANCE WITH JALI LALC

**From:** Mik Smith <[ceo@jalilalc.com.au](mailto:ceo@jalilalc.com.au)>  
**Sent:** Monday, 29 October 2018 2:52 PM  
**To:** [gmanrhodes@hotmail.com](mailto:gmanrhodes@hotmail.com)  
**Cc:** [r.mazlin@everick.com.au](mailto:r.mazlin@everick.com.au)  
**Subject:** FW: Sites Officer Request - Site Inspection

Hi Grant,

Are you available to do Sites Work this coming Thursday?  
If yes please reply all to this email and meet Robert Mazlin on site at Lennox at 9.30.  
If no I will seek alternatives.

Thanks

Mik Smith  
Chief Executive Officer  
Jali LALC

**Phone:** 66867055 **Mobile:** 0438 668 344 **Fax:** 66868255 **Email:** [ceo@jalilalc.com.au](mailto:ceo@jalilalc.com.au)



**From:** [r.mazlin@everick.com.au](mailto:r.mazlin@everick.com.au) <[r.mazlin@everick.com.au](mailto:r.mazlin@everick.com.au)>  
**Sent:** Monday, 29 October 2018 3:11 PM  
**To:** Mik Smith <[ceo@jalilalc.com.au](mailto:ceo@jalilalc.com.au)>  
**Cc:** 'Tim Hill' <[t.hill@everick.net.au](mailto:t.hill@everick.net.au)>; 'Adrian Piper' <[adripip@onthenet.com.au](mailto:adripip@onthenet.com.au)>  
**Subject:** Sites Officer Request - Site Inspection

Good afternoon Mik,

Everick have been engaged to undertake a Cultural Heritage Assessment for the proposed rezoning of lands at 9 Byron Bay Road, Lennox Head NSW. The lands subject to this assessment are identified as Lot 1 & 2 DP620838. It is understood that the proposal allows for a rezoning of lands from RU1 Primary Production to R2 Low Density Residential with associated change to minimum lot size.

I have attached a preliminary Project Area plan. The site survey will be conducted by Senior Archaeologist Adrian Piper, and will be coordinated by Tim Hill and myself who can be contacted on 0422 309 822 (Tim) and 0410 198 656 (Robbie).



Can you please confirm availability of a sites officer to undertake the survey, which we are hoping to complete this week at **9:30am on Thursday 01 November 2018** if possible.

Please let me know if you have any questions.

Kind regards,

Robert Mazlin

**Archaeologist**

**EVERICK Heritage Consultants Pty Ltd**  
ABN 7802206682

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

Ph: (07) 3211 4478

Email: [r.mazlin@everick.com.au](mailto:r.mazlin@everick.com.au)

Web: [www.everick.com.au](http://www.everick.com.au)





## APPENDIX C: AHIMS SEARCH RESULTS



Office of  
Environment  
& Heritage

### AHIMS Web Services (AWS) Extensive search - Site list report

Your Ref/PO Number : EV.785 Byron Bay Road

Client Service ID : 379276

SiteID	SiteName	Datum	Zone	Easting	Northing	Context	Site Status	SiteFeatures	SiteTypes	Reports
04-5-0143	Site 1:Fern St:	AGD	56	557300	6814575	Open site	Valid	Artefact : -	Open Camp Site	
	<u>Contact</u>	<u>Recorders</u>	Mr.Adrian Piper						<u>Permits</u>	1101.1102
04-5-0048	Lennox Head:	AGD	56	557320	6813900	Open site	Valid	Shell : -, Artefact : -	Midden	1957
	<u>Contact</u>	<u>Recorders</u>	Graeme Bailey						<u>Permits</u>	
04-5-0052	Lennox Head:	AGD	56	558000	6813200	Open site	Valid	Shell : -, Artefact : -	Midden	1957
	<u>Contact</u>	<u>Recorders</u>	Graeme Bailey						<u>Permits</u>	
04-5-0009	Lennox Head Public School Lennox Head	AGD	56	557300	6813720	Open site	Valid	Artefact : -, Shell : 1	Open Camp Site	48,51,540,699, 700,1209,1237, 1254,1926,203 7,2182
	<u>Contact</u>	<u>Recorders</u>	Unknown Author						<u>Permits</u>	
04-5-0018	Lennox Head:	AGD	56	558100	6814500	Open site	Valid	Burial : -	Burial/s	
	<u>Contact</u>	<u>Recorders</u>	Isabel McBryde						<u>Permits</u>	
04-5-0305	Seven Mile Beach Fishing Traps	GDA	56	558100	6814119	Open site	Valid	Aboriginal Resource and Gathering : 1		
	<u>Contact</u>	Jali Local Aboriginal Land Coun	<u>Recorders</u>	Jali Local Aboriginal Land Council					<u>Permits</u>	

Report generated by AHIMS Web Service on 29/10/2018 for Robbie Mazlin for the following area at Lot : 2. DP:DP620838 with a Buffer of 1000 meters. Additional Info : site location. Number of Aboriginal sites and Aboriginal objects found is 6

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

