

Item Number:	Electronic Determination
Application Number:	DA-793/2019/A
Proposed Development:	Modification to Development Consent DA-793/2019 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 involving additional stormwater infrastrucutre within Lot 9 DP 776297 and Eleventh Avenue to replace the approved temporary basin, deletion of the stages, removal of eleven trees and rectification of the error in the lot numbering and associated inconsistencies. <u>Approved Application DA-793/2019</u> Existing approval under DA-793/2019 is for the demolition of existing structures and subdivision of one (1) lot into fourteen (14) low density residential lots, three (3) environment living residential lots and (1) RE1 lot for public open space over three stages
Property Address	231-245 Eleventh Avenue, Austral NSW 2179
Legal Description:	Lot 11 DP 1304045; Lot 9 DP776297
Applicant:	The Trustee for Crown Trust 28
Land Owner:	Crownland Austral Pty Ltd; Liverpool City Council
Cost of Works:	Nil
Recommendation:	Approval subject to modified conditions of consent
Assessing Officer:	Sarah Ilma

1. EXECUTIVE SUMMARY

This report serves as a supplement to the original assessment report submitted to the Liverpool Local Planning Panel (LLPP) for the public meeting held on 26 May 2025. It outlines the events and actions taken by both Council officers and the applicant and provides an analysis of the applicant's most recent response to the request for additional information. The full assessment of the proposal is included in the original report, available as **Attachment A**.

On May 2025, LLPP considered the application and deferred the determination for three months to allow the applicant to undertake an Aboriginal Archaeological Assessment noting:

The Panel endorses the Council Officers' report but remains concerned at the implications for this project of the decision of the Land and Environment Court in Dahua Group Sydney Project 6 Pty Ltd vs Shellharbour City Council [2024] NSW LEC 1814.

In response, the following documents were submitted on behalf of the applicant in June 2024:

- A letter from McCardle Heritage dated 4 June 2025, drawing differences between the project associated with the Dahua case law *NSW LEC 1814* and the subject application to address the concerns raised by the LLPP. The submission confirmed the proposal's compliance with relevant legislation and noted the applicant's intention to undertake the Aboriginal Cultural Heritage Assessment Report (ACHAR).
- A letter from Colliers International Engineering and Design (Colliers) dated 12 June 2024 summarising the findings of McCardle Heritage and informing Council that the applicant was in the process of undertaking an ACHAR to adhere to the requirements of the LLPP.

The advice provided by Council's Heritage Officer on 13 June 2025 in response to the submitted information indicated that a Due Diligence Assessment alone is not adequate for assessment of Aboriginal Cultural Heritage as it does not involve consultation with Aboriginal stakeholders, detailed site assessment or survey.

On 26 June 2025, Colliers requested that the application is approved with a draft ACHAR and a condition requiring the final ACHAR to be submitted prior to the issue of a Subdivision Works Certificate is imposed, in line with the draft conditions. This request was made due to the extended timeframe involved in consulting with Aboriginal stakeholders. Colliers expressed concern that requiring the ACHAR to be completed prior to determination could result in its delay until 2026. They also noted that the requirement for an ACHAR was only raised by Council in May 2025, despite the application having been lodged in November 2024.

Council's Heritage Officer responded on 1 July 2025 stating that the applicant's request could not be supported as the report was required to assess the impacts of the proposal. Council clarified that only an Aboriginal Archaeological Assessment (AAA) was required at this stage which could be completed in three months i.e. half the time required for an ACHAR. The AAA serves a similar purpose without the physical testing and detailed reporting components associated with the ACHAR process. This advice was formally conveyed to the applicant on 11 July 2025.

The applicant submitted an amended report on 15 July 2025. Following advice from Heritage NSW, which essentially left the decision to Council, the Heritage Officer recommended approval of the application with the imposition of conditions relating to the following to cover the gaps in the amended report, noting it which essentially had the same contents as the original report:

- Supervision of all creek alignment excavation by a qualified Aboriginal Cultural Heritage Archaeologist
- Implementation of an Unexpected Finds Protocol

2. DEVELOPMENT APPLICATION HISTORY

Key dates associated with the application are provided below:

Date	Action
29 November 2024	Modification Application was lodged with Council
16 January 2025	General Terms of approval issued by Department of Planning and Environment-Water
24 January 2025	External consultant appointed due to conflict of interest
19 February 2025	Additional information request issued to the applicant
28 February 2025	Additional information submitted by the applicant
7 February – 10 March 2025	Public notification of the application
13 March 2025	Bushfire Safety Authority and amended conditions of approval issued by the NSW RFS
4 April 2025	Further changes were made to the modification application to delete staging
26 May 2025	The application was considered at the LLPP determination meeting, with a decision to defer for further investigation of Aboriginal Archaeological Assessment
12 June 2025	Additional information submitted by the applicant to address the concerns raised in the determination meeting.
25 June 2025	Applicant informed that the additional information is not adequate.
26 June 2025	Applicant's request to approve the application with a condition for ACHAR
1 July	Applicant advised that the request cannot be supported, and clarification provided on the type of assessment (AAA) requested
15 July 2025	Amended report (AAA) submitted by the applicant.

3. APPLICANTS RESPONSE TO ADDITIONAL INFORMATION

The applicant's initial response included a letter from McCardle Heritage, which outlined the adequacy of the submitted Archaeological Due Diligence Assessment (ADDA) and provided detailed reasons for not requiring an Aboriginal Cultural Heritage Assessment Report (ACHAR) for the proposed development. A copy of the information submitted is provided as **Attachment B**.

To address concerns raised by Council, the letter distinguished the subject application from the project referenced in Dahua case law. It highlighted that the ACHAR submitted in the Dahua case did not assess the entire development site and excluded areas where significant works were proposed. In contrast, the ADDA submitted with the current application surveyed the entire site and encompassed the full scope of proposed works.

Further, the Dahua ACHAR declined to undertake test excavations for potential subsurface archaeological deposits. The ADDA, however, found no archaeological objects or Potential Archaeological Deposit (PAD) sites which warranted further investigation.

The mapping and assessment in the Dahua case were deemed insufficient, lacking adequate information on the likelihood of disturbing relics. The report did not specify how impacts to known artefacts would be minimised or mitigated, nor did it outline measures to protect unidentified artefacts. In comparison, the ADDA provided a comprehensive evaluation of the potential to encounter unknown Aboriginal artefacts, thereby reducing uncertainty around cultural heritage risks. An unexpected finds protocol during construction is proposed as a mitigation measure. Refer to Table 2 of the letter from McCardle Heritage for details.

Notwithstanding the above, the applicant's correspondence mentioned the intention to undertake an ACHAR as required by Council.

However, Council's Heritage officer raised concerns that a due diligence assessment does not provide a detailed assessment of impact. In subsequent correspondences between the applicant and Council, it was also clarified that a AAA would be adequate to address Council's concerns which required a shorter timeframe than an ACHAR.

A copy of the AAA submitted by the applicant is provided in **Attachment C**. While the Heritage Officer noted that the submitted information is essentially the same as the ADDA, the development was recommended for approval, subject to the following conditions to address any potential impacts during works.

- *All excavation within the creek alignment is to be supervised by an experienced Aboriginal Cultural Heritage Archaeologist. No excavation is to be undertaken within the creek alignment without the Archaeologist on site and monitoring the material being excavated.*

- *An Unexpected Finds Protocol is to be implemented for the project. Should any objects which may potentially be Aboriginal Object or human skeletal remains be uncovered, all works are to cease, the area is to be secured with temporary fencing and an Archaeologist is to be engaged to inspect and analyse the objects. Heritage NSW and Liverpool City Council are to be notified and provided copies of any assessments prepared by the Archaeologist. No works are to be resumed without authorisation from Heritage NSW and Liverpool City Council.*

4. CHANGES TO THE CONDITIONS OF CONSENT

As a result of the additional information and further review by the Council's Heritage Officer the following changes have been made to the modified conditions of consent which were previously submitted to LLPP for determination:

- Condition 2 has been updated to reflect the AAA report instead of the ADDA
- Proposed condition 129.2 requiring an ACHAR has been removed
- Previously proposed condition 44.1 for an Aboriginal Heritage Impact Permit has been removed
- Added Condition 69.1 for supervision of works within the creek
- Added Condition 69.2 for an Unexpected Finds Protocol.

Amended conditions of consent are attached as **Attachment D**.

5. CONCLUSION

The additional information from McCardle Heritage clearly distinguishes the archaeological assessment for the subject proposal from that referenced in the Dahua case. The site has been assessed as having very low Aboriginal heritage value, with no Aboriginal objects or Potential Archaeological Deposit (PAD) sites identified. This significantly reduces uncertainty regarding cultural heritage risks.

To further safeguard heritage values, an unexpected finds protocol will be implemented during construction, along with supervision of works within the creek alignment by a by an experienced Aboriginal Cultural Heritage Archaeologist, as recommended by Council's heritage officer. These measures are considered sufficient to ensure appropriate protection of Aboriginal heritage.

As summarised in the original report, the assessment of the proposed modification has been undertaken in accordance with the provisions of Sections 4.15(1) and 4.55(2) of the Act, relevant environmental planning instruments, including applicable State policies, the Liverpool Growth Centres DCP, and relevant codes and policies of Council.

The proposal has demonstrated that it is substantially the same as the originally approved development, with no adverse environmental impacts. It demonstrates compliance with relevant planning instruments and includes appropriate mitigation measures to minimise impacts.

6. RECOMMENDATION

That Liverpool Local Planning Panel, as the consent authority, grants consent to DA-793/2019/A for the proposed modification application involving additional stormwater infrastructure within Lot 9 DP 776297 and Eleventh Avenue to replace the approved temporary basin, removal of eleven trees and rectification of the error in the lot numbering and associated inconsistencies, and deletion of staging, subject to the modified conditions as outlined within **Attachment D**.

ATTACHMENTS

1. Original Local Planning Panel Report
2. Additional Information submitted
3. Aboriginal Archaeological Assessment and Impact Assessment
4. Modified Conditions of Consent

Item Number:	2
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Land Owner:	Crownland Austral Pty Ltd; Liverpool City Council
Cost of Works:	Nil
Recommendation:	Approved subject to modified conditions of consent
Assessing Officer:	Leena Sebastian – Monteath & Powys

1 EXECUTIVE SUMMARY

This development application (DA) seeks to modify Development Consent DA-793/2019 for subdivision on the subject site, pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The subject site is legally described as Lot 11 DP 1304045 and is known as 231-245 Eleventh Avenue, Austral.

The original Development Application DA-793/2019, for the subdivision of the subject site was approved by Liverpool City Council (the Council) as a deferred commencement consent on 8 January 2023, under Section 4.16(3) of the EP&A Act. The deferred commencement condition required the submission of evidence demonstrating that the proposed subdivision would not be adversely affected by odour from the neighbouring poultry farm at 200 Eleventh

Avenue, Austral. This condition has now been satisfied, and an operative consent letter was issued by the Council on 21 February 2025.

The existing approval for DA-793/2019 includes an onsite detention and bioretention basin on approved Lot 14, as part of the stormwater management system. The conditions of consent require this basin to remain operational until regional flood detention and water quality basins for the precinct are constructed.

The proponent, also the developer of several other sites within the broader precinct, has developed an alternative stormwater strategy aimed at optimising land use. This strategy proposes direct discharge into the nearby Kemps Creek, eliminating the need for temporary detention.

The proposed modification seeks to replace the approved stormwater management system with the alternative strategy, which will remove the onsite detention basin. This will require tree removal and stormwater pipe installation on adjoining Council-owned land at Lot 9 DP776297. Owner's consent for these works has been obtained from Council's Property Services Manager and is submitted with this application.

In addition to tree removal and modifications to the stormwater system, this application also seeks to correct an error in the lot numbering and associated discrepancies in the proposal description. The low-density residential lots in the approved subdivision plan are numbered from 1 to 14, excluding the number '11'. As a result, the lot yield has been incorrectly described as 'fourteen low-density residential lots' instead of 'thirteen low-density residential lots' in the Notice of Determination (NoD). Changes to the lot numbering and proposal description are included in this modification to rectify these inconsistencies.

The application was notified in accordance with Council's Community Engagement Strategy and Community Participation Plan 2022 from 7 February 2025 to 10 March 2025, and no submissions were received.

During the assessment of this application, the application was amended to include an additional change, being, the deletion of the staging of the development. Renotification was not undertaken due to the minor nature of this change.

The extent of impacts from the proposed modification has been considered in this assessment report, and it has been determined that the modified proposal is substantially the same as the originally approved development. In assessing the application in accordance with Section 4.55(2) of the EP&A Act, it is considered to have merit for approval, subject to amended conditions of consent.

This application is referred to the Liverpool Local Planning Panel for determination, in accordance with the Liverpool Local Planning Panel's Direction – *Development Applications*

and Applications to Modify Development Consent, on May 6, 2024, as the development falls within the category of:

- **Conflict of Interest** – Development for which Council is the landowner

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is a split-zoned parcel with an approximate area of 2.26 hectares. It is located at the western end of Eleventh Avenue adjoining Lot 9 DP 776297, a Council-owned land containing a designated drainage zone. A tributary of Kemps Creek traversing this drainage zone is closely located to the western boundary of the site.

Access to the subject site is gained through Eleventh Avenue which remains unformed at its western end. Most of the site is cleared and vacant, except for some dwellings, sheds, and vegetation in the eastern and northern parts, as shown in **Figure 1**.



Figure 1: Aerial Photo of the Subject Site (Source: Six Maps, March 2025)

2.2 The locality

The subject site and the entire suburbs of Austral and Leppington form part of the South West Growth Centre Precinct identified in the *State Environmental Planning Policy (Precincts Western Parkland) 2021*. Despite the identified development potential, the surrounding area remains sparsely developed, retaining a rural residential character. However, it is noted that the proponents of this development have secured DA approvals for other sites to the east, between Twelfth Avenue and Eleventh Avenue, as shown in **Figure 2**. A transition to low-density residential development is anticipated in the near future, with the implementation of these approvals.



Figure 2: Sites with existing DA approvals (Source: Colliers, November 2024)

3. BACKGROUND / HISTORY

DA-793/2019 for the demolition of existing structures on the subject site and subdivision to create fourteen low density residential lots and three environmental living lots, and one RE1 public open space lot and associated civil works, in three stages was approved by Council on 8 January 2023. The consent was issued with a deferred commencement condition which required the consent holder to provide evidence of closure of the poultry farm at 200 Eleventh Avenue to ensure no odour impacts to the proposed development, within 24 months from the date of approval.

The timeframe for satisfying the deferred commencement condition was extended by 12 months by Council on 10 July 2024, under Section 4.7(2)g of the EP&A Act.

Figure 3: Approved Plan of Subdivision (Source: GDS, December 2022)

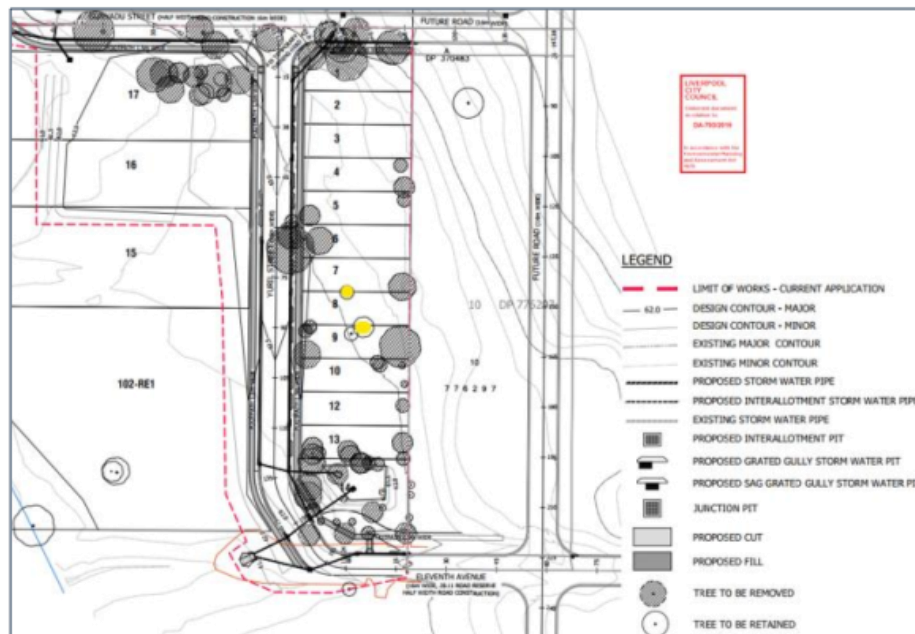


Figure 4: Approved Tree Removal Plan (Source: Colliers, November 2024)

4. DETAILS OF THE PROPOSAL

The proposed modification involves the removal of the approved bioretention/detention basin on Lot 14, and construction of stormwater outlets draining directly into the adjoining creek, as indicated in **Figures 5 and 6**. Direct discharge into the creek via a tail out drain and spreader, with appropriate water quality control through Gross Pollutant Traps (GPTs) eliminates the need for onsite detention. The proposal aligns with a new stormwater strategy for the broader precinct which is subject to separate development approvals.

Specifically, this application includes works on the subject site and adjoining Council-owned land (Lot 9 DP 776297), as detailed below:

- Installation of a new 1050-1200mm trunk stormwater pipe, complete with a GPT, to extend the trunk stormwater drainage along Eleventh Avenue, as detailed at Outlet 1 in **Figure 5**. The proposed pipe and headwall will extend into Lot 9 DP 776297 necessitating the removal of four trees.
- Incorporation of a GPT for the approved stormwater pipe at the northern part of the site and works at the outlet, identified as Outlet 2 in **Figure 5**. Five trees on Lot 9 DP 776296 will be affected by these works.
- In addition to the clearing of nine trees from Lot 9 DP 776297, two medium-sized trees located on the subject site are also proposed for removal. These trees are affected by the proposed lot boundaries and such their removal is not a result of the proposed works under this modification, but rather an oversight in the previous application.

Other amendments include rectification of the following errors and removal of the staging of the subdivision, which do not result in any material change to the development.

- Renumbering of lots to include Lot 11 as shown in the Proposed Subdivision Plan in **Figure 7**.
- Modify the description of the proposed development in the NoD to accurately reflect the lot yield and deletion of staging, as below:

*"The application is seeking consent for the demolition of existing structures and subdivision of one (1) lot into ~~fourteen (14)~~ **thirteen (13)** low density residential lots, three (3) environment living residential lots and (1) RE1 lot for public open space. over three stages"*

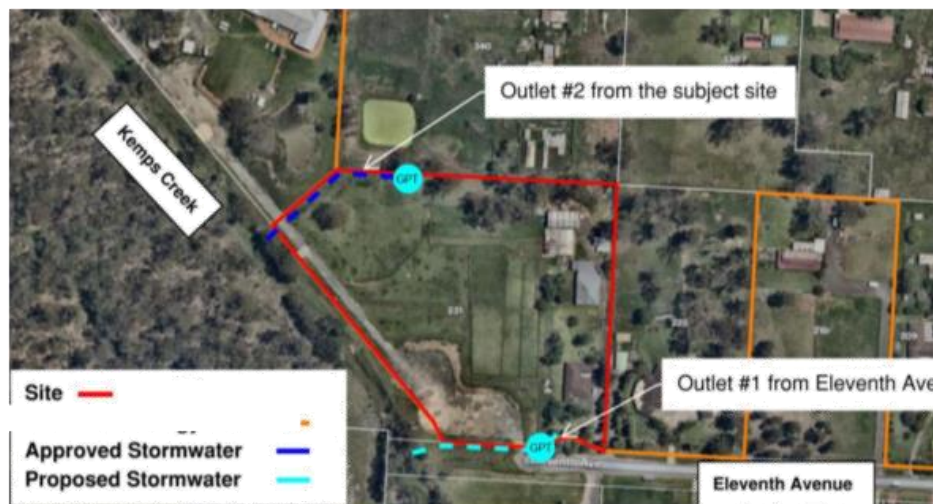


Figure 5: Proposed Stormwater Concept (Source: Colliers, November 2024)

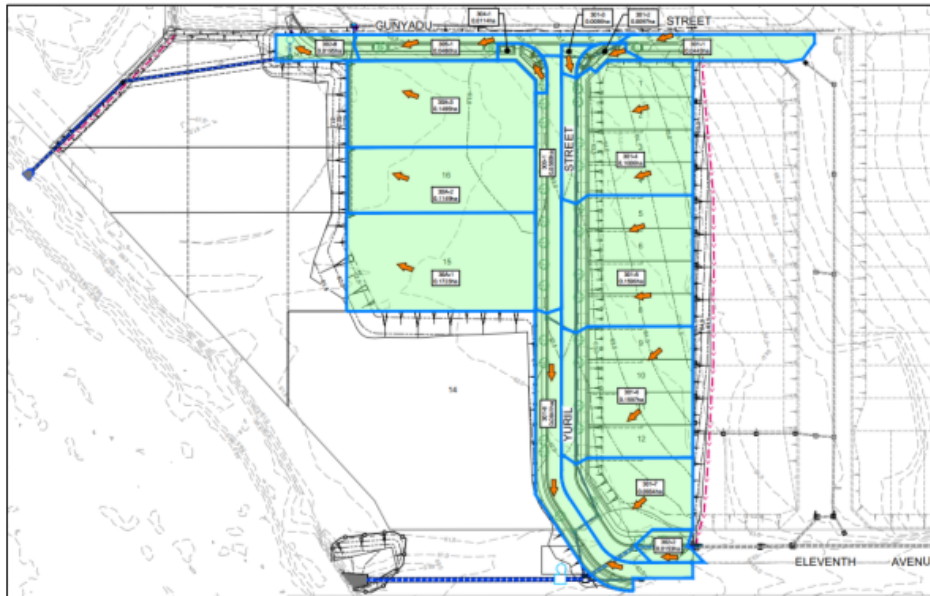


Figure 6: Proposed Catchment Plan (Source: Colliers, October 2024)

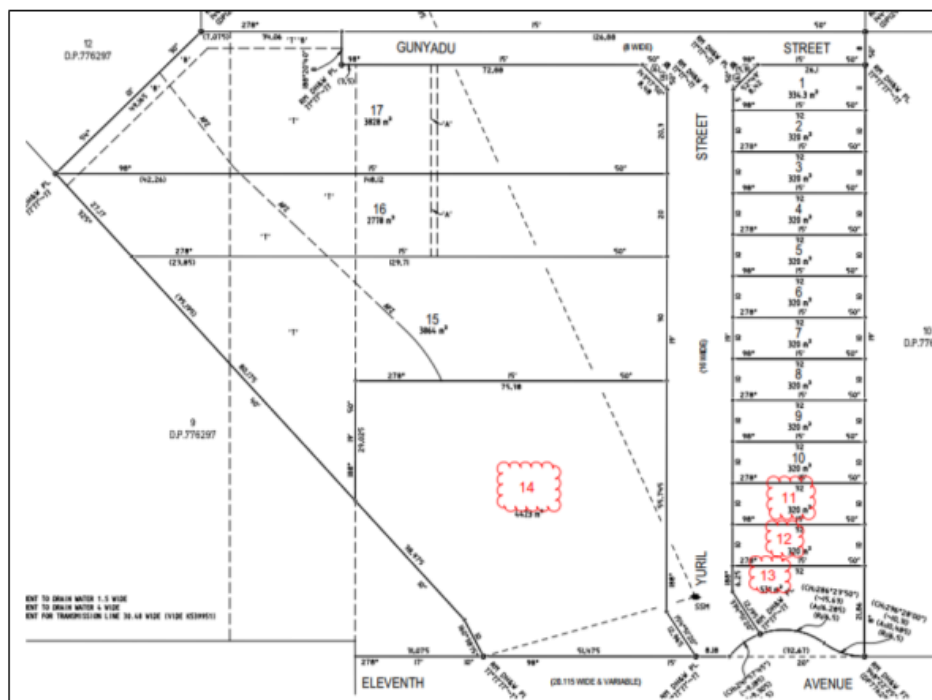


Figure 7: Proposed Subdivision Plan (Source: Stephen Craig Bishop)

Attachment 1 contains the proposed subdivision plan. The stages of the proposed subdivision are not mutually dependent and therefore the proposal to undertake the development in a single stage does not impact the planning outcomes on the site.

The proposed modification will require modification to a number of conditions to reflect the amended proposal and General Terms of Approval obtained from NSW RFS and Department of Planning and Environment - Water. Some additional conditions are also required for the work required. The modified conditions of consent attached to this report provides details of the amendments required.

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The relevant environmental planning instruments and policies applicable to the proposed modification are listed below:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Precincts Western Parkland) 2021
- State Environmental Planning Policy (Biodiversity Conservation) 2021
- Liverpool Growth Centre Precincts Development Control Plan 2021
- Community Engagement Strategy and Community Participation Plan 2022

6. ASSESSMENT

6.1 Section 4.55 of the Environmental Planning & Assessment Act 1979

The development application has been lodged pursuant to Section 4.55(2) of the EP&A Act which states:

“(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The proposed changes to the stormwater management system do not affect the approved subdivision layout or any other aspects of the development. Removal of the detention basin will enable efficient use of residential land on the site while managing the

post development flows through the proposed stormwater outlets to the creek. Water quality and erosion control measures included in the proposal to maintain the integrity of the riparian corridor. An assessment of the tree removal and other works associated with the modified stormwater management system did not identify any significant environmental impact. Other changes involved in the application are to rectify the description and annotation errors, with no bearing on the outcome of the development. On this basis, it can be concluded that the modified proposal is substantially the same as the originally approved development.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Comment: The application was referred to NSW RFS as minor corrections were required to the lot numbers in the conditions of approval, and amended GTAs have been obtained. Similarly, GTAs have been obtained from DPE-Water due to the proximity of the proposed works to Kemps Creek.

(c) it has notified the application in accordance with—
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: The application was notified for 28 days from 7 February 2025 to 10 March 2025 in accordance with Council's Community Participation Plan 2022, and no submission were received.

From the above considerations, it can be confirmed that the application can be assessed as a modification under Section 4.55(2) of the EP&A Act.

Section 4.15(1) of the EP&A Act provides the matters for consideration by the consent authority in the assessment and determination of a development application. According to Section 4.55(3), the considerations for a modification application under Section 4.55 are limited to those of relevance to the proposed works associated with the modified proposal, as stated below:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section

4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Relevant matters for consideration in the assessment of this application are addressed in this report. Further, it is noted that the proposal is substantially the same as the original development and therefore the reasons for granting of consent for this modification is consistent with that for the existing consent. While some amendments to the conditions are required, they do not change the reasoning behind the granting of the approval.

6.2 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument

(a) State Environmental Planning Policy (Precincts - Western Parkland City) 2021

The subject site along with the entire suburb of Austral and Leppington are identified in the South West Growth Centre under the State Environmental Planning Policy (Precincts - Western Parkland City) 2021 (the Western Parkland City SEPP). This policy is the main planning instrument for developments on the subject site, containing provisions for the orderly release of land for residential, employment and other urban developments in Sydney region growth centres.

(i) Zoning

The subject site is zoned R2 Low Density Residential, E4 Environmental Living and RE1 Public Recreation zone under the Western Parkland City SEPP, as shown in **Figure 8**.

The drainage works and tree removal proposed under this application will occur within the SP2 Infrastructure (local Drainage) Zone of Lot 9 DP 776297, as well as the SP2 and RE1 zoned areas of the road reserve to the south.

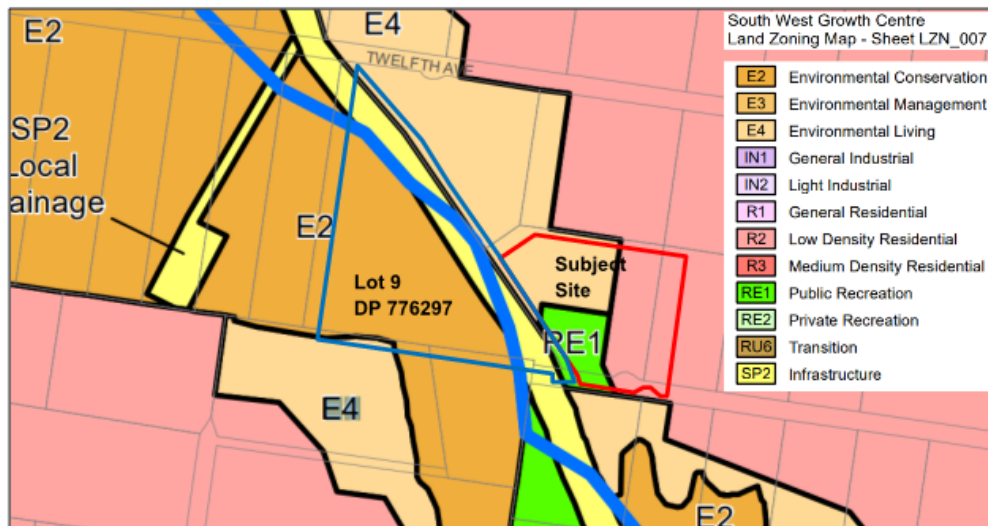


Figure 8: Zoning map (Source: Western Parkland City SEPP, 2025)

(ii) *Permissibility*

As per the land use table for the SP2 zone, developments for the purposes shown on the Land Zoning Map, as well as any development that is ancillary or incidental to the primary development, are permitted with consent.

The SP2 zoned areas where the stormwater works are proposed are designated for drainage in the Land Zoning Map (refer to **Figure 8**). Therefore, the proposed drainage works, and ancillary tree removal are permitted with consent in the SP2 Infrastructure Zone.

Drainage is listed as a permissible use in the land use table for the RE1 zone.

Accordingly, the proposal is permissible with consent pursuant to the provisions of Schedule 4, Part 2 of the Western Parkland City SEPP.

(ii) *Objectives of the zone*

SP2 Infrastructure (local Drainage) Zone

The objectives of zone are as follows:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The proposed works align with the objectives of the SP2 Infrastructure Zone by facilitating stormwater drainage for the proposed subdivision on the subject site.

RE1 Public Recreation zone

The objectives of zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposed drainage works do not conflict with the objectives of the RE1 zone, as they are entirely contained within the road reserve of Eleventh Avenue, without compromising the use of the land for public recreational purposes.

Chapter 3, Part 3.2, Section 3.10 outlines the provisions for developments in various precincts within the South West Growth Centre. Specifically, Appendix 4 contains the requirements for the Liverpool Growth Centres Precinct Plan, which includes Austral.

The sections relevant to the proposed modification are outlined in **Table 2**.

Table 2 – Consideration of relevant matters in Appendix 4 – the Western Parkland City SEPP

Appendix 4 - Part 5 – Miscellaneous Provisions		
Development provision	Requirement	Comments
5.9 - Preservation of trees or vegetation	Development consent is required for clearing of vegetation.	Complies. This application includes the removal of nine trees for the proposed stormwater works. The impacts of the proposed clearing have been addressed in a Threatened Species Assessment conducted by ACS Environmental. Additionally, an Arboricultural Impact Appraisal and Method Statement, prepared by Naturally Trees, provides an assessment of the amenity values of the trees to be removed, as well as the protection measures required for the trees to be retained. For further details, refer to the discussion under Section 6.6 of this report. In summary, the assessments have

		concluded that the removal of these nine trees will not have a significant impact on the amenity or biodiversity values of the locality. It is also noted that the remaining two trees requiring removal from the subject site are located within a Biodiversity Certified area, the impact of which has already been assessed as part of the previous approval.
5.10 – Heritage conservation	This section requires development consent for altering, demolition, or disturbing items, relics or places of heritage significance. Consent is also required for works in a heritage conservation area	Complies. The subject site and Lot 9 DP 776297 do not contain any items of European heritage significance, nor are they within a heritage conservation area. However, Lot 9 DP776297 where the stormwater works are proposed is identified as a high Archaeological Sensitivity Area in Schedule 1 of the Liverpool Growth Centre Precincts Development Control Plan (Liverpool Growth Centre DCP). As such, an Archaeological Due Diligence Assessment of the proposed works has been undertaken by McCardle Heritage, which concluded that the likelihood of insitu cultural materials is low to have any adverse impacts. Refer to the discussion under Section 6.6 of this report.
6.2 - Development controls – native vegetation retention areas	Clearing of trees from a 'native vegetation retention area' identified under this policy will require development consent. Approval for clearing should not be granted unless the consent authority is satisfied of the	Complies on merit. The proposed clearing will occur within land identified as a 'native vegetation retention area,' as shown in the figure below. As mentioned previously, this application seeks consent for the removal of nine trees from an overall footprint of 150 m². With regard to the proposed clearing, it is noted that:

	following: • There is no reasonable alternative to clearing of native vegetation • As little native vegetation as possible will be disturbed • Disturbance will not increase salinity • Native vegetation disturbed will be reinstated where possible on completion of construction • Vegetation loss will be offset by compensatory plantings on or near the land to avoid net loss of remnant native vegetation. • No more than 0.5 hectares of native vegetation will be cleared In addition to the above, the consent authority is required to give consideration to the zone objectives in the context of the proposed clearing.	Minor clearing for the installation of stormwater outlets and energy dissipation works is inevitable for any development that involves discharge into the creek. The extent of disturbance is limited to a footprint of 15 m x 5 m at each stormwater outlet, which equates to 150 m². This is considered minimal when compared to the extent of native vegetation on the site. The proposed area of works is not affected by saline soils. The disturbed areas on the site will be rehabilitated as part of the sediment and erosion control plan required for the development. Compensatory plantings will be imposed through conditions of consent to offset the vegetation loss. The proposed clearing is well below the limit of 0.5 hectares prescribed in this section. The proposed vegetation removal will occur within the SP2 Infrastructure Zone, identified for local drainage. Therefore, the proposal is considered consistent with the objectives of the zone. The Threatened Species Assessment (refer to discussion under Section 6.6) concluded that the proposed disturbance to a small patch of Coastal Valley Riparian Forest will not have any significant impacts.
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In addition to the considerations under Appendix 4, Part 3.5, Section 3.26 of the Western Parkland City SEPP provides the development control for flood prone and major creeks land. The consent authority is required to consider the impact of flooding provided in Section 3.26(b) prior to approving development on flood prone and major creeks land.

The proposed stormwater pipes and energy dissipaters will be located within an area affected by 1% Annual Exceedance Probability (AEP) event, as shown in **Figure 9**.

In reviewing the considerations under Section 3.26(b), it is noted that the proposed stormwater management works involve tree removal, the installation of a tail-out drain, and spreaders at the outlet of each pipe. These works are of minor scale and confined to a small footprint near the two outlets. No significant changes to the existing site conditions will occur that would aggravate the flood behaviour or cause additional risks to the site and adjoining properties.

The proposal was reviewed and supported by Council's Floodplain Management Engineer, subject to a condition requiring the design and sizing of the proposed stormwater pipe on Eleventh Avenue to accommodate all storm events up to the 1% AEP and compliance with Engineering requirements for flood depth and velocity*depth criteria.



Figure 9: LGA Flood Wide Map (Source: Liverpool City Council, March 2025)

(c) **State Environmental Planning Policy (Biodiversity Conservation) 2021**

Chapter 2 of this policy applies to clearing of vegetation in non-rural areas which includes Liverpool Local Government Area. However, the clearing associated with the development has been considered under the Western Parkland City SEPP, and therefore these requirements do not apply to the proposal.

The site is situated within the Hawkesbury-Nepean Catchment Area. Chapter 6 outlines the key considerations for consent authorities when assessing development proposals in a water catchment. Relevant matters have been reviewed, and it has been determined that the water quality or quantity, aquatic ecology, wetlands, riverine habitats, scenic values, and the recreational use of the watercourse will not be impacted by the proposed works. As the proposal involves appropriate water quality treatment measures prior to direct discharge into the creek, no prohibitions apply to the development. An assessment is provided in the table below.

Table - Assessment against relevant provision in Chapter 6 of State Environmental Planning Policy (Biodiversity Conservation) 2021

Division 2 – Controls on development generally		
Development provision	Requirement	Comments
6.6 - Water quality and quantity	The consent authority must consider the requirements under Section 6.6 (1) to ensure that the quality of the water entering the waterway and the quantity of run off will not adversely impact the waterflow in the natural waterbody. Impact of the development on the quantity and quality of the water table and cumulative environmental impact should be considered. As per Section 6.6(2), a consent can be granted only if the consent authority is satisfied that the quality of the water entering the watercourse is as close as possible to neutral or beneficial, and the impact on waterflow in a natural body is minimised.	Due to the site's location in the immediate vicinity of the creek, post development flows can be conveyed rapidly into the watercourse through the proposed piped drainage, with energy dissipators at the outlets to prevent scouring and erosion. Also, there are no other developments downstream of the subject site which could be impacted by the runoff from the subject site. The proposed direct discharge into the creek is considered acceptable although the post development flows will not match the predevelopment scenario The design and sizing of the trunk main will be required to cater for fully developed upstream catchments for all flows up to 1%AEP. The design will also require compliance with Council's road flood depth criteria ($d < 0.2\text{m}$) and velocity * depth criteria ($vd < 0.4\text{m}^2/\text{s}$) to ensure safety. Although the development will increase the flow rates, the construction of the trunk main in accordance with Council's standards will ensure that runoff is safely conveyed to the creek, without adversely impacting adjacent properties or increasing flood risks. The development will be required to install a sediment control basin to manage sediment and pollutant discharge downstream during the works

		as a condition of consent. The proposed stormwater design has been assessed and supported by Council's Flood Plain Management Engineer, subject to a condition requiring the construction to meet Council's standards.
6.7 – Aquatic ecology	Section 6.7(2) requires the authority to ensure the following before granting consent: • Direct, indirect and cumulative impacts on terrestrial, aquatic and migratory animals or vegetation are minimised. • No adverse impact will occur on the aquatic reserves. • If a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994, these have been obtained. • Erosion of land abutting the natural waterbody is minimised. • Adverse impact on wetlands are minimised.	The proposed water quality measures have been assessed and considered adequate to minimise any direct, indirect or cumulative impacts on aquatic ecology and reserves. The proposed vegetation removal is no significant to adversely impact the terrestrial habitat or species. The application was referred to DPE-Water under Section 91 of the <i>Water Management Act 2000</i>, and GTAs have been obtained. While a controlled activity approval has not yet been issued, it has been imposed as a requirement in the GTAs. This is consistent with the current practices where the developments are required to obtain a controlled activity approval prior to commencement of works on waterfront land. The development will be required to provide adequate sediment and erosion control measures to minimise impacts during works. No wetlands exist in the vicinity of the proposed works.
6.8 - Flooding	The consent authority should be satisfied that the development will not release pollutants that affect the water quality of	The proposed stormwater system with the GPTs are designed to minimise the discharge of pollutants into the creek during flooding. Further, it is noted that the proposal is not a type of

	the watercourse in the event of flooding.	development that involves storage of hazardous substances or chemicals to result in adverse environmental impacts in the event of any inundation.
6.9 – Recreation and public access	The recreational use of the watercourse and foreshore access should not be impacted by the development.	The location of the proposed works are not directly accessible to the public. Notwithstanding, the proposal will not obstruct the access or impede the use of the creek.
Division 3 – Controls on development in specific areas		
6.11 – Land within 100m of natural waterbody	The consent authority is required to consider the type of use and the potential for land use conflicts while determining development within 100m of a natural body.	The proposal is not a water-dependent use, nor does it cause any land use compatibility issues.
6.13 – Hawkesbury-Nepean sub-catchments	The consent authority is required to consider the human interference with the conditions of the catchment, impact on the structure and floristics of native vegetation, the scenic quality of the locality and whether the development has been previously carried out on the development site, prior to determining the application	The proposed stormwater management system is not a type of use that will result in significant human interference with the sub-catchment. Removal of nine trees from a substantially vegetated riparian corridor will not result in any perceivable change in the structure or floristics of native vegetation. Given the low profile nature of the works and the minor scale of tree removal from a dense canopy area, no significant change will occur to the visual environment
Division 4 – Controls on development for specific uses		
6.21 Stormwater management	Stormwater management works in a regulated catchment will require development consent. Section 6.21(3) prohibits works that discharge untreated stormwater into a natural waterbody.	No discharge of untreated water will occur. GPTs are incorporated into the proposed stormwater management works to remove pollutants and sediments.

(b) State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4, Section 4.6 of this policy requires the consent authority to assess whether the land is contaminated and ensure that it is either suitable in its current state or can be made suitable through remediation for the intended use, before determining a development application. The proposed modification will result in additional disturbance on Lot 9 DP 776297, requiring a contamination investigation around the area of the proposed drainage works. A Detailed Site Investigation, prepared by GeoEnviro Consultancy Pty Ltd, has been submitted with this application.

As part of the investigation, twenty-one soil samples were collected from eleven test pit locations and analysed for a range of potential contaminants of concern (COPC), including heavy metals and asbestos. The results indicated that the concentrations of COPC did not exceed the relevant assessment criteria, although asbestos was detected in one sample near Outlet 2. As a result, this location has been flagged as an Area of Environmental Concern (AEC). In addition, the samples near Outlet 1 contained topsoil with traces of anthropogenic materials such as brick fragments and terracotta tile pieces. While these materials do not pose a significant risk, further investigation of the fill material may be necessary during construction to ensure that no significant contaminants or asbestos are present. An excerpt from the contamination investigation can be found in **Figure 10**.

The overall absence of widespread chemical contamination suggests a low potential for groundwater contamination at these locations and minimal risk for offsite impacts to groundwater or other water bodies.

A Remediation Action Plan (RAP) has been prepared by GeoEnviro Consultancy Pty Ltd to address the AEC identified on the site. The plan proposes offsite disposal of impacted soils as the most appropriate method of remediation for the site and recommends the preparation of a Validation Plan and Site Management Plan.

The report concludes that the implementation of these strategies will effectively remediate the site and ensure its suitability for the proposed use. Council's Environmental Health Officer has reviewed the report and supported the proposal, with the recommendation for an additional condition for site remediation and validation to be included in the modified consent. **Attachment 2** contains the RAP and the Detailed Site Investigation for the development.



Figure 10: Area of Potential Concern (Source: GeoEnviro Consultancy, June 2024)

6.3 Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instrument

There are no draft Environmental Planning Instruments that are relevant to the proposed modification.

6.4 Provisions of any Development Control Plan

The Liverpool Growth Centre Precinct Development Control Plan (Liverpool Growth Centre DCP) provides the general controls for developments within the growth centre, with Schedule 1 containing the requirements and maps specific to Austral and Leppington North Precincts.

As this proposal relates to the modification of the stormwater management system for a previously approved residential subdivision, the scope of consideration is limited to the works associated with the proposed drainage works on Lot 9 DP776297.

An assessment of the proposal against relevant sections in Liverpool Growth Centre DCP 2021 is provided in the table in **Attachment 3**.

Overall, the proposal is considered to be consistent with the key controls outlined in the Liverpool Growth Centre DCP 2021 as demonstrated in the table in **Attachment 3**.

6.5 Section 4.15(1)(a)(iv) - The Regulations

There are no additional matters for consideration in the *Environmental Planning and Assessment Regulations 2021* that apply to the development.

6.6 Section 4.15(1)(b) - The Likely Impacts of the Development

Natural and Built Environment

The works associated with the proposed stormwater infrastructure are of a modest scale and hence no significant impacts are anticipated on the natural and built environment. The trunk main on Eleventh Avenue will be appropriately sized to cater for events up to the 1% AEP, with energy dissipators at the outlets to control erosion. Water quality control devices are included in the proposal to prevent the discharge of pollutants into the water. Removal of nine trees from the designated drainage zone on adjoining land is not considered to have an adverse impact on the visual environment or the biodiversity values of the area.

It is anticipated that the sediment and erosion control conditions imposed by this consent, along with any additional environmental safeguards required by DPE-Water as part of the Controlled Activity Approval, will ensure the protection of the riparian areas during construction. The proposal, as modified, is not considered to have an unacceptable level of impact on the natural and built environment.

Aboriginal Heritage

The Liverpool Growth Centre DCP identifies Lot 9 DP 776297 as a high Archaeological Sensitivity Area. As such, an Archaeological Due Diligence Assessment has been undertaken by McCardle Cultural Heritage for the proposed works (**Attachment 4**).

An analysis of historic aerial imagery revealed that the project area and the surrounding watercourse have been cleared and disturbed several times in the past, resulting in the widening of the creek into its current form as a 3rd-order watercourse.

A search of the Aboriginal Heritage Information Management Systems (AHIMS) revealed no registered sites or places within the project area, although 26 known sites were identified within 2 kilometers of the project area. Based on these findings and other local and regional archaeological investigations, it was determined that the creek near the project area was a minor watercourse lacking a reliable supply of freshwater to serve as a campsite.

The site survey undertaken by McCardle on 24 May 2024 confirmed that the project area had been subject to significant disturbance, including creek widening, clearing, track creation, powerline easements, and grazing. No sites or areas of potential archaeological

sensitivity were identified during the survey, mainly due to the past disturbances. Further, as the project area is more than 1 kilometre away from freshwater sources and resources, it may have been utilised for more transitory activities rather than camping. Evidence of such past uses is reflected in the archaeological record as a scatter of discarded artifacts, which may have been disturbed or destroyed by the clearing activities in the past.

The assessment concluded that the likelihood of insitu cultural materials is low to have any adverse impacts and recommends the following precautionary measures to be implemented during works:

- All contractors and persons involved are to be made aware of the responsibilities to protect sites and places of significance under the *National Parks and Wildlife Act 1974* and the *National Parks and Wildlife Regulation 2019*.
- An unexpected finds protocol is to be implemented during works as per Appendix B of the Due Diligence Assessment by McCardle.
- Should any Aboriginal objects be uncovered, all works are to cease immediately. The unexpected finds protocol should be followed and the Environmental Line contacted.

Despite the above findings, Council's Heritage officer has advised that due to the location of works within 200m of the creek, An Aboriginal Cultural Heritage Assessment and an Aboriginal Heritage Impact Permit will be required as per the DCP. These requirements will be imposed as conditions of consent.

Ecology and Amenity

The construction of the tail-out drain, and energy dissipater will require the removal of nine trees from Lot 9 DP 776297. The impact of this clearing has been investigated in a Threatened Species Assessment undertaken by ACS Environmental, a copy of which is provided as **Attachment 5**.

An impact zone of 15m x 5m was identified at each outlet, and an assessment of vegetation within these areas was undertaken. The site inspection and survey undertaken by ACS confirmed that the Plant Community Type (PCT) on the site resembled Coastal Valleys Riparian Forest (PCT 4023), which is a component of the Swamp Oak Floodplain Forest – an Endangered Ecological Community listed under the Biodiversity Conservation Act 2016 (BC Act).

The vegetation near the proposed works was dominated by *Casuarina glauca* along with some *Eucalyptus teretifolia* and *Eucalyptus moluccana*. The ground mostly consisted of dense grass with some weeds. The clearing required within a total area of 150sqm will impact nine trees, including semi-mature and mature individuals of *Casuarina Glauca* and one *Acacia decurrens*. Despite this clearing, a healthy canopy density will be maintained by 21 other trees located around the area of works.

No threatened flora or fauna species were observed on the site or in its vicinity. The dense canopy cover does not typically support foraging, roosting, or breeding activities for Swift Parrots or Regent Honeyeaters. Notwithstanding, it was observed that the reduction of 150 sqm of this habitat will have minimal impact.

The assessment includes a 5-part test of significance for potential impacts to Coastal Valleys Riparian Forest as per Section 7.3 of the BC Act. Given the very small area of impact, and the satisfactory level of vegetation regeneration of Swamp Oak currently occurring at the site, the removal of nine trees and mostly weed species from the ground cover was not considered to place the local flora and fauna communities at risk of extinction, further fragmentation, or significant modification.

Since no significant impact was identified on threatened ecological communities, a Species Impact Statement was not required for the development. The assessment recommends monitoring and management of weed species, and the following measures to minimise impacts during works:

- Stockpile and equipment laydown areas are to be located such that no disturbance will occur to the native vegetation.
- Appropriate sediment and erosion control measures are to be implemented.
- A spill kit should be on site at all times.
- Any spill or leakage should be immediately contained, and the Incident Management Plan implemented.
- Access to the site should be restricted, with appropriate signage installed at the entry points to inform users of the works.

The impact of the tree removal on the amenity and character of the area was investigated in an Arboricultural Impact Appraisal and Method Statement prepared by Naturally Trees. A copy of this report is provided in **Attachment 6**.

Apart from one high category (Category A) tree, the vegetation proposed for removal were assessed as having low to very low retention value. However, the assessment identified that tree protection measures are required to protect other trees near the proposed works which included three high-category trees and 25 low-category trees. Below is a summary of the tree protection measures recommended in the report to ensure no adverse impacts on the trees to be retained:

- Works are to be supervised by a suitably qualified project arborist.
- Tree protection fencing and ground protection are to be in accordance with AS4970.
- Specific precautions when working within Tree Protection Zones of Trees 65, 88, and 89.
- Use of existing services and avoiding new services within TPZs where possible.
- Trenchless installations preferred; however, if unfeasible, hand excavation should be used.
- Site storage, cement mixing, and washing points must be outside TPZs unless approved by the project arborist or Council.

- Any pruning must comply with AS4375-1996 and be carried out by a qualified arborist.

The assessment concluded that the proposed tree removal is anticipated to have low to moderate impact on the local amenity and character, subject to the implementation of tree protection measures recommended in the report. Replanting will be imposed as condition of consent to offset the loss of amenity value from the removal of the high category tree (Tree 98).

Social Impacts and Economic Impacts

No adverse socio-economic impacts are anticipated from the proposed modification works. The proposal will facilitate efficient use of the land for the delivery of an essential infrastructure for the residential subdivision.

6.7 Section 4.15(1)(c) - The Suitability of the Site for the Development

The proposed works will largely occur on land zoned for the purposes of drainage infrastructure. The development is permissible on the site and consistent with the site's zoning objectives. All environmental constraints and the impacts associated with the proposed works have been adequately addressed and the site is considered suitable for the proposed use.

6.8 Section 4.15(1)(d) - Any submissions made in accordance with the Act or the Regulations

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

DEPARTMENT		COMMENTS
Floodplain Engineer	Management	The applicant's response to additional information request and the documents submitted with the application was considered satisfactory in support of the proposed stormwater works. A condition requiring the following has been recommended: - The proposed works are to comply with the documents and additional response submitted with the application. - Two GPTs are to be installed at the stormwater outlets. The GPT design and sizing should consider capturing pollutants from a fully developed upstream catchment area - A sediment control basin should be installed during subdivision works

	Design and sizing of the trunk main must account for all flows up to 1% AEP event and comply with the road flood depth and velocity* depth criteria.
Land Development Engineer	Council's Floodplain Management Engineer and the developer have had extensive discussions, and it was agreed that the detention basin can be removed if it is demonstrated that direct connections to the creek are achievable through the use of CDS GPTs. Given the support from Council's Floodplain Management Engineer and owner's consent from the Property Department, no objections were raised by Council's Land Development Engineer.
Heritage Officer	As the proposed works involves direct impacts within 200m of the creek, an Aboriginal Cultural Heritage Assessment has been imposed as a condition of consent. Additional standard conditions for an Aboriginal Heritage Impact Permit, and procedures for any unexpected discoveries during works were also recommended.
Natural Environment – Flora and Fauna	The conclusion in the Threatened Species Assessment that no significant impact will occur from the vegetation removal was supported. Conditions were recommended for the following: - soft engineering measures to control flows and erosion - revegetation at specific densities - water quality control - sediment control - tree removal to be supervised by a qualified ecologist, and fauna management - measures to prevent the spread of phytophthora pathogens - tree protection fencing
Environmental Health	The application was reviewed and supported, subject to a new condition requiring the site to be remediated in accordance with the RAP submitted with this application.
Property Services	In addition to the owner's consent that has already been issued for the works in the road reserve, the applicant will be required obtain S138 approval to undertake the works.

(b) External Referrals

AGENCY	COMMENTS
DPE-Water	GTAs requiring a Controlled Activity Approval to be obtained prior to commencement of works on waterfront land, were issued on 16 January 2025. Refer to Attachment 7 .
NSW RFS	Amended GTAs referencing the rectified lot numbers were issued on 13 March 2025. Refer to Attachment 8 .

(c) Community Consultation

The application was notified in accordance with Council's Community Engagement Strategy and Community Participation Plan 2022, from 7 February 2025 to 10 March 2025, and no submissions were received.

6.9 Section 4.15(1)(e) - The Public Interest

The development is considered to be in public interest as it is in accordance with Council's adopted planning instruments and other State level policies which have been subject to public review and consultation.

7. DEVELOPMENT CONTRIBUTIONS

This application does not involve any cost of works to trigger development contributions, as the application seeks to delete the staging of the development.

8. CONCLUSION

Assessment of the proposed modification has been undertaken in accordance with the provisions of Sections 4.15(1), 4.55(2), and 4.55(3) of the Act, relevant environmental planning instruments, including applicable State policies, the Liverpool Growth Centres DCP, and relevant codes and policies of Council.

The proposal has demonstrated that it is substantially the same as the originally approved development, with no adverse environmental impacts. It demonstrates compliance with relevant planning instruments and includes appropriate mitigation measures to minimise impacts. It is therefore considered to have merit for approval, subject to modified conditions of consent.

9. RECOMMENDATION

The Liverpool Local Planning Panel, as the consent authority, grants consent to DA-793/2019/A for the proposed modification application involving additional stormwater infrastructure within Lot 9 DP 776297 and Eleventh Avenue to replace the approved temporary basin, removal of eleven trees and rectification of the error in the lot numbering and associated inconsistencies, and deletion of staging, subject to the modified conditions as outlined within **Attachment 9**.

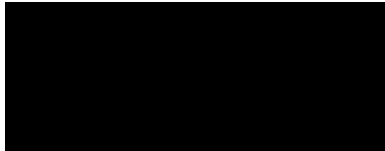
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ATTACHMENTS

1. Plan of Subdivision (Under separate cover)
2. RAP and Detailed Site investigation (Under separate cover)
3. Liverpool Growth Centre DCP 2021 Assessment Table (Under separate cover)
4. Aboriginal Due Diligence Assessment (Under separate cover)
5. Threatened Species Assessment (Under separate cover)
6. Arboricultural Impact Appraisal and Method Statement (Under separate cover)
7. NSW DPE—Water Response (Under separate cover)
8. NSW RFS Response (Under separate cover)
9. Draft Modified Conditions of Consent (Under separate cover)
10. Notice of Determination - DA-793/2019 (Under separate cover)



4 June 2025



Dear Chris,

RE: 231-245 Eleventh Avenue, Austral DD – response to Council

This letter has been prepared in response to the LLPP determination to defer the consent for the modification at 231-245 Eleventh Avenue, Austral (Project area). The letter outlines the applications compliance with relevant Council and planning regulations and addresses the items raised by the LLPP determination dated 26th May 2025. Although the ADDA undertaken confirmed no requirement for further investigations – the applicant has decided to undertake consultation and prepare an Aboriginal Cultural Heritage Assessment (ACHA).

An Aboriginal Due Diligence Assessment is a process to assist individuals and organisations to exercise due diligence when carrying out activities that may harm Aboriginal objects and to determine whether they should apply for consent in the form of an Aboriginal Heritage Impact Permit (AHIP). The assessment provides a defence against prosecution under the National Parks and Wildlife Act 1974 if someone later harms an Aboriginal object, provided they used due diligence to determine that their actions would not harm Aboriginal objects.

The process begins by determining whether the proposed activity will disturb the ground surface, including excavation, trenching, removal of vegetation or any other activity which disturbs the ground. The assessment includes a search of the Aboriginal Heritage Information Management System (AHIMS) to determine whether any Aboriginal sites have previously been recorded in or within the vicinity of the area of proposed activity. A report must be produced that details the outcomes of the due diligence process for submission to Council. If no Aboriginal objects are found and the assessment determines that Aboriginal objects are unlikely to be present or harmed, the proposed activity can typically proceed without further heritage requirements. However, if the assessment determines that Aboriginal objects are, or are likely to be, present in the area of proposed works, then further investigation and impact assessment is required, which may necessitate an AHIP application before works can commence.

MCH undertook an archaeological due diligence assessment following the Heritage NSW's The Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales DECCW 2010). No Aboriginal objects or potential archaeological deposits (PADs), also known as potential sensitive area, were identified in the project area and as such an Aboriginal Cultural Heritage Assessment (ACHA) or AHIP is not required.



Council's requirement to obtain an AHIP in this instance is incorrect. Following direct consultation with Heritage NSW, the following has been confirmed in writing by Heritage NSW (Attached):

AHIP Requirements: An Aboriginal Heritage Impact Permit is only required when proposed activities will impact registered Aboriginal sites or declared Aboriginal places. Specifically:

- AHIPs can only be issued where there are confirmed Aboriginal objects or Aboriginal places that will be impacted
- Heritage NSW cannot and does not issue AHIPs for areas where no Aboriginal sites are present
- AHIPs are not required for areas assessed as having no Aboriginal heritage significance or where no sites/objects have been identified
- Where archaeological assessments conclude no sites or PADs are present, no AHIP application is necessary or possible

It is important to note that Council's internal heritage officer's statement in their referral that:

'due to the location of works within 200m of the creek, An Aboriginal Cultural Heritage Assessment and an Aboriginal Heritage Impact Permit will be required as per the DCP'

is factually incorrect. The Liverpool Development Control Plan (LDGP) 2008 contains no such requirement. Furthermore, no equivalent provision exists in the Liverpool Growth Centre Precincts Development Control Plan (LGCP DCP 2021).

The proposed works are situated within an area previously mapped as having potential high Aboriginal heritage sensitivity on the DCP Heritage Map. It is important to note that this designation does not indicate the presence of confirmed Aboriginal Objects or Aboriginal Places, but rather represents an area of potential sensitivity based on predictive modelling. The original mapping was derived primarily from desktop assessment methodologies with limited field investigation, and did not incorporate detailed analysis of land use patterns and disturbance history across all areas within the assessment boundary.

The foundational study underpinning the current Aboriginal heritage sensitivity mapping is now over a decade old, rendering the information and predictive modelling outdated. Since the completion of this original assessment, numerous site-specific Aboriginal heritage investigations have been undertaken across the region, generating substantial additional data that would significantly improve the accuracy of any updated predictive model.

This highlights the critical importance of conducting targeted assessments on individual parcels of land, as broad-scale sensitivity mapping cannot account for site-specific factors such as historical disturbance, local geomorphological conditions, and detailed land use history that may affect the actual likelihood of Aboriginal heritage preservation. Contemporary assessment methodologies, informed by the expanded knowledge base developed over the past decade, provide a more accurate understanding of Aboriginal heritage potential than reliance on outdated regional mapping alone.

The due diligence considers Council's various environmental plans. The SEPP (Precincts – Western Parkland City 2021 – Appendix 4) contains standard Aboriginal heritage definitions and protection mechanisms, the most significant formally recognised Aboriginal heritage site is the Collingwood



Precinct Aboriginal Place. The heritage controls in relation to Aboriginal heritage (Section 5.10) and how the current due diligence assessment addresses these are provided in Table 1.

Table 1. Summary of LLEP Heritage Controls (LLEP 2008, Section 5.10)

Heritage Controls	Due diligence
To conserve archaeological sites (Section 5.10; 1a)	No sites are located in the project area
To conserve Aboriginal objects and Aboriginal places of heritage significance (Section 5.10; 1d)	No Aboriginal objects or an Aboriginal Place are located in the project area

The key planning policies affecting Liverpool have Aboriginal heritage protection mechanisms, particularly for areas of cultural significance, vegetation management, and major growth precincts (e.g. SEPPS). However, as no sites have been identified in the project area, there are no impacts to any Aboriginal objects.

Although ACHA nor an AHIP is not required as no sites or PADS were identified in the project area, in light of Councils concerns an ACHA will be undertaken.

An ACHA is an investigation undertaken to explore the harm of a proposed activity on any identified Aboriginal objects and declared Aboriginal places and to clearly set out which impacts are avoidable and which are not. These assessments are conducted under Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act), which provides specific protection for Aboriginal objects and declared Aboriginal places by establishing offences of harm. The primary purpose of these assessments is to ensure that proposed development will not impact upon any evidence of Aboriginal occupation, such as Aboriginal objects, archaeological deposits, potential archaeological deposits, Aboriginal places or any areas of significance to the Aboriginal community.

When impacts cannot be avoided, an AHIP for an Aboriginal Object must be supported by an ACHA, including evidence of consultation with Aboriginal people, conducted according to the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010. This consultation process follows established requirements that have been adopted into the National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Amendment Regulation 2010, ensuring meaningful engagement with Aboriginal communities throughout the assessment process.

The ACHA process, which incorporates the full consultation requirements, typically takes a minimum of 90 days to complete, though complicated projects may require several additional months. The consultation requirements include several key stages that must be completed sequentially: public notice of the assessment, identifying and contacting Aboriginal stakeholders, formation of a group of Registered Aboriginal Parties (RAPs) who will be consulted throughout the preparation, development of a proposed methodology, undertaking site meetings and excavations where required, production of a draft report that is distributed to the RAPs for review, and finally the production of a final report incorporating community feedback.

This comprehensive consultation process is mandatory prior to applying for an AHIP when a project is likely to impact on cultural heritage. The 90-day minimum timeline reflects the structured consultation stages required to engage meaningfully with Aboriginal communities and complete the necessary documentation to ensure cultural heritage protection and compliance with legislative requirements.



The ACHA has commenced.

Council have also expressed concerns at the implications for this project of the decision of the Land and Environment Court in *Dahua Group Sydney Project 6 Pty Ltd vs Shellharbour City Council* [2024] NSW LEC 1814. After reviewing the case, Table 2 provides the differences when examining the mail issues raised by the court to the current project area:

Table 2. Summary of LEC 1814 compared to the current assessment

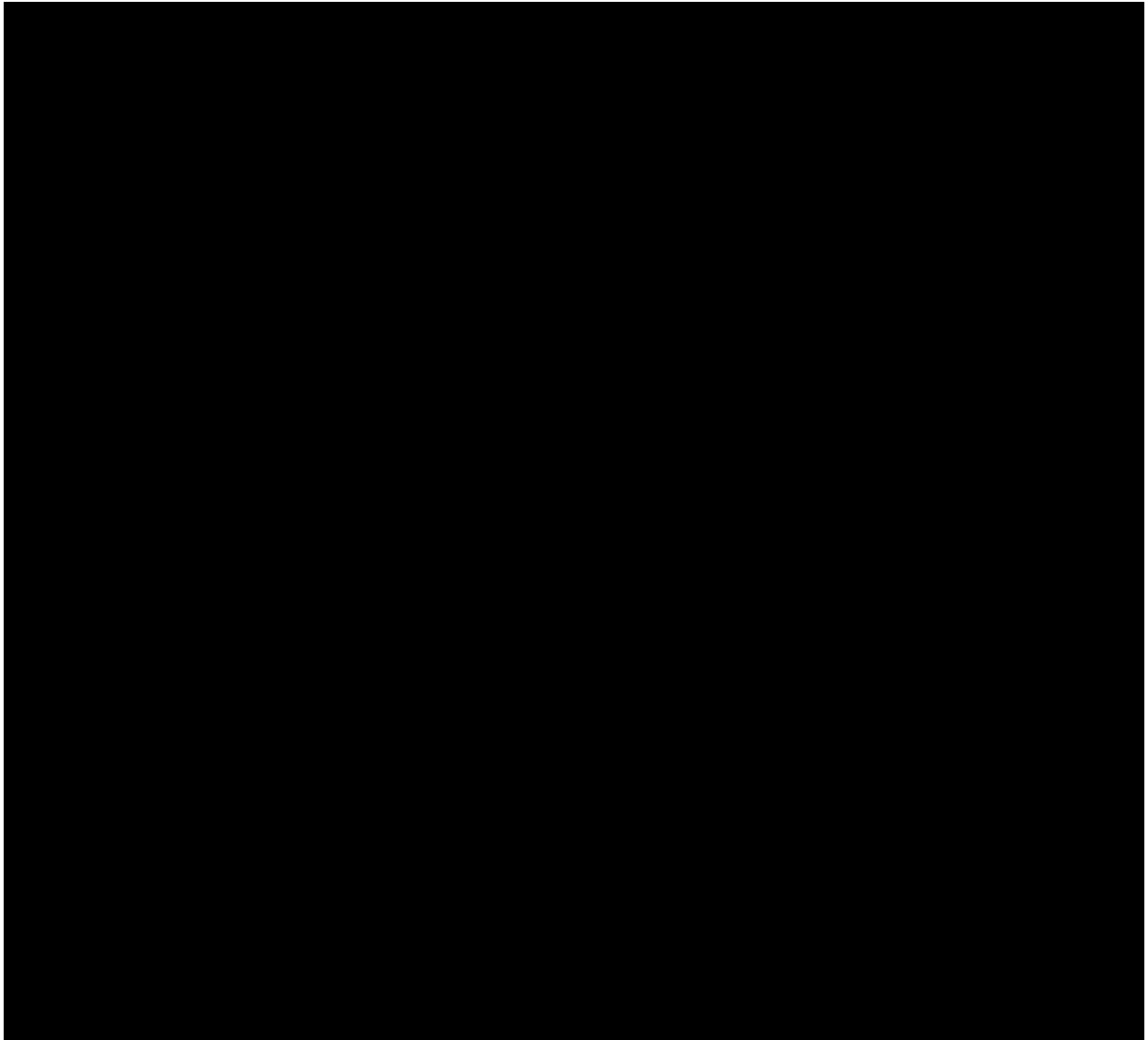
Issue	<i>Dahua Group Sydney Project 6 Pty Ltd vs Shellharbour City Council</i> [2024] NSW LEC 1814 (LEC1814)	231-245 Eleventh Avenue (Modification)
Incomplete Survey Coverage	The Aboriginal Cultural Heritage Assessment Report (ACHAR) did not assess the entire site proposed for development. Portions of the site, including areas where significant works like the internal bridge (Road 10 – Firetail 02) were proposed, were not included in the survey units or assessed for potential impacts on Aboriginal artefacts.	The archaeological due diligence assessment (ADDA) addresses the entire scope of works proposed and included the entire project area during the survey.
Lack of Test Excavations	Heritage NSW requested archaeological test excavations to address the low ground surface visibility and potential for subsurface archaeological deposits, particularly in the southern portion of the site near Hazelton Creek. The Applicant declined to undertake these excavations, arguing that the area was disturbed and had low archaeological potential, but this reasoning was not supported by sufficient evidence.	As the ADDA did not identify any Aboriginal objects or PADs, archaeological test excavations are not required or justified archaeologically.
Unassessed Areas	The ACHAR did not include Stage 9 of the development application, as noted by Heritage NSW. The Applicant acknowledged this omission but deferred updating the ACHAR to a future Aboriginal Heritage Impact Permit (AHIP) application, leaving the assessment incomplete.	The ADDA encompasses the complete scope of proposed works and included the entire project area within the survey coverage.
Insufficient Mapping	Heritage NSW requested additional mapping to overlay the site boundaries with previous assessments, test excavations, and existing AHIPs. While some figures were provided, they did not adequately address the gaps in the assessment.	The ADDA provides the required clear maps.
Uncertainty of Impacts	The development application did not provide sufficient information to determine the likelihood of disturbing relics or the potential impacts of the proposed works on Aboriginal cultural heritage. This lack of clarity made it impossible to assess the impacts comprehensively.	The ADDA has comprehensively evaluated the potential for encountering unknown Aboriginal artefacts, thereby minimising uncertainty regarding cultural heritage risks. Additionally, an unexpected finds protocol was included and will be followed during works.
Inadequate Mitigation Measures	The development application did not detail how the impact (destruction) of known artefacts at site 52-5-0936 would be minimized or mitigated, nor did it provide measures to address potential impacts on unidentified artefacts.	As no Aboriginal heritage sites have been identified within the project area, no direct impacts are anticipated. Mitigation measures incorporate an unexpected finds procedure to be implemented during construction activities.



We trust this additional information satisfies Councils concerns.

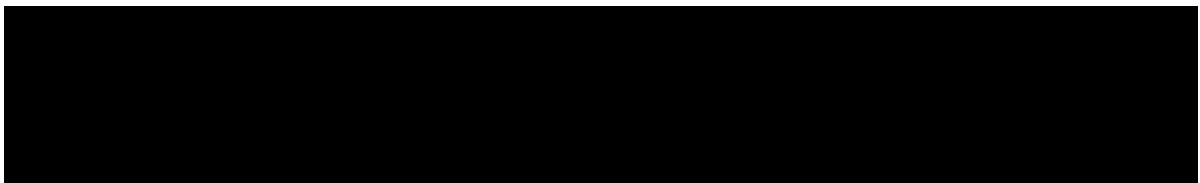
Yours sincerely,
for McCardle Cultural Heritage Pty Ltd

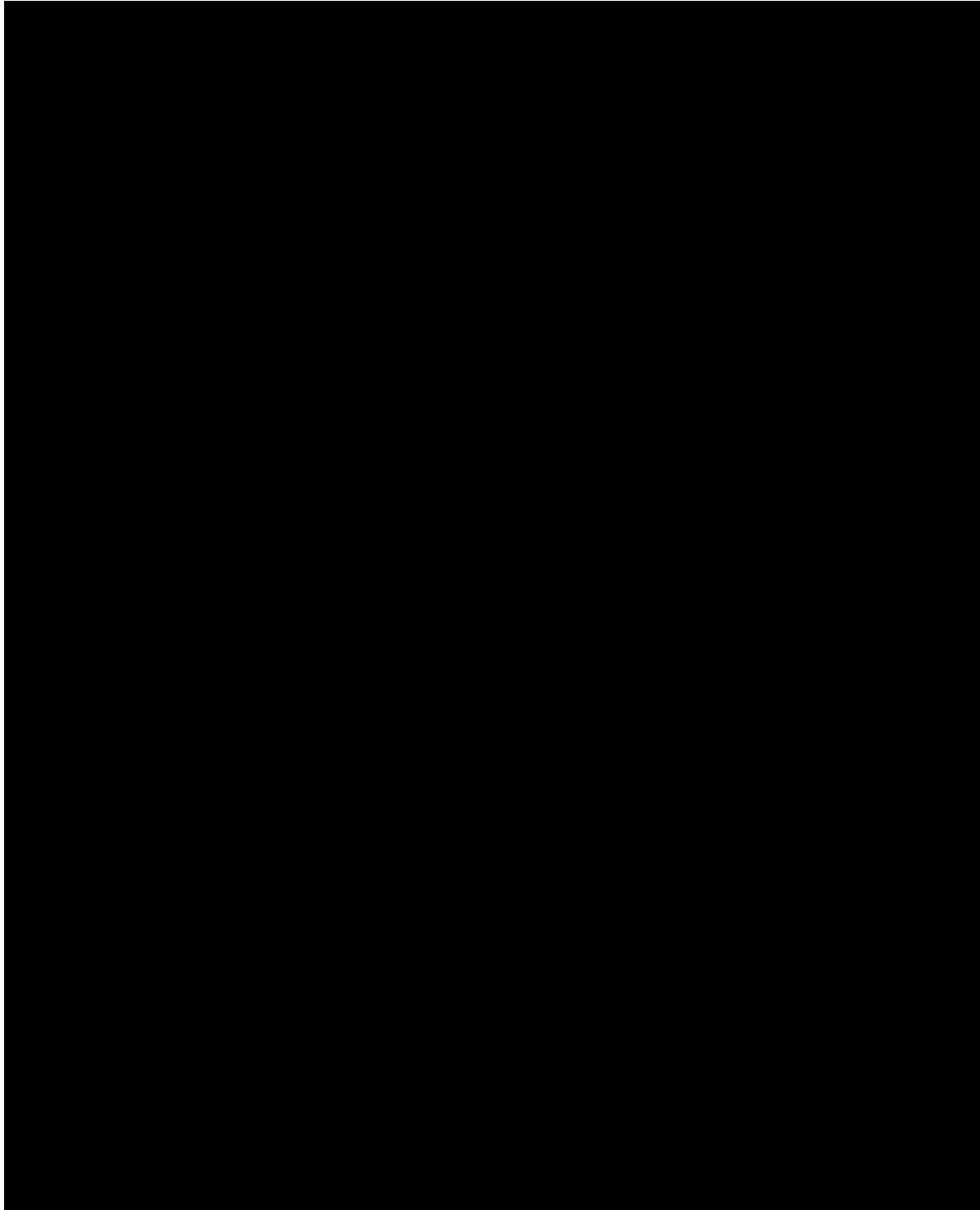
Principal Archaeologist
Forensic Anthropologist



I acknowledge the Traditional Owners of Country and recognise their continuing connection to lands, waters and communities. I pay respect to Aboriginal and Torres Strait Islander cultures, and to Elders past, present and emerging. I also acknowledge Aboriginal and Torres Strait Islander staff currently working with NSW Government.

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12 June 2025

Our Ref: 638-23

General Manager
Liverpool City Council
Locked Bag 7064
Liverpool NSW 1871

Attention: William Attard – Manager, Development Assessment

Dear William,

**Re: Response to the Liverpool Local Planning Panel deferral of DA-793/2019/A –
233 Eleventh Avenue, Austral (Lot 11 DP 1304045)**

Following the Liverpool Local Planning Panel (LLPP) meeting held on 26 May 2025, Colliers Engineering and Design on behalf of Crownland provide this letter in response to the LLPP's Determination Notice which has deferred the determination of DA-793/2019/A (the Modification) at 233 Eleventh Avenue, Austral (the Site) for 3 months pending the receipt of an "Aboriginal Archaeological Assessment".

To comply with the Determination Notice issued by the LLPP, we are in the process of preparing an ACHAR for the proposed development. We expect the draft ACHAR to be submitted to Council in approximately 2 months.

Once the draft ACHAR is submitted to Council, we request Council provide amended consent conditions to allow the LLPP to determine the Modification. The amended conditions would require an ACHAR prior to construction, and only require an AHIP if an Aboriginal place or artefact is found (see **Section 3** for details).

This response letter:

1. Outlines the background on the Modification and the LLPP Determination Notice;
2. Summarises the findings from the accompanying letter prepared by McCardle Cultural Heritage that outlines in detail why an ACHAR and AHIP are not required for the Modification;
3. Details the amendments proposed to the draft conditions so it aligns with the assessment prepared by McCardle Cultural Heritage; and
4. Concludes with the actions required by Council and the LLPP in response to this submission.



DA-793/2019/A | 233 Eleventh Avenue, Austral

1 BACKGROUND

1.1 The Modification

Colliers Engineering and Design NSW lodged a modification application to DA-793/2019 (the DA) on behalf of Crownland on 29 November 2025 for:

"Additional stormwater infrastructure within Lot 9 DP 776297 and Eleventh Avenue to replace the approved temporary basin, deletion of the stages, removal of eleven trees and rectification of the error in the lot numbering and associated inconsistencies"

It should be noted that the original DA was supported by an Aboriginal Due Diligence Assessment (ADDA). Another ADDA was prepared for the Modification that covers the Site and the adjoining property owned by Council (Lot 9 DP 776297) that is to contain two proposed stormwater outlets.

Based on the findings of this letter and the accompanying letter provided by McCardle Cultural Heritage dated 4 June 2025, no further Aboriginal archaeological investigation under an Aboriginal Cultural Heritage Assessment Report (ACHAR) nor approval for an Aboriginal Heritage Impact Permit (AHIP) is warranted for the Modification.

The consultation process with Council for the Modification has lasted more than 6 months, and has been briefly summarised below:

- 28 January 2025 – Council advised that the Modification will be determined by the LLPP as the Modification proposes civil works on Council-owned land.
- 19 February 2025 – Council issued an RFI relating to amendments to the Arborist Report and clarification regarding how stormwater is treated before entering the creek.
- 28 February 2025 – Colliers Engineering and Design issued an RFI response, which Council ultimately assessed as acceptable. Note that no RFIs or concerns were raised regarding the ADDA, nor was any request made for an ACHAR or AHIP.
- 20 May 2025 – Council issued the following documentation for our review:
 - LLPP Meeting Agenda, which raised no significant concerns with the Modification, and recommended that the LLPP grant consent.
 - Draft Conditions for the Modification.

1.2 LLPP Meeting Agenda and Draft Consent Conditions

Despite Council and the external planner having endorsed the Modification for approval:

- Council Heritage Officer's comments in the LLPP meeting agenda stated that:

"Council's Heritage officer has advised that due to the location of works within 200m of the creek, An Aboriginal Cultural Heritage Assessment and an Aboriginal Heritage Impact Permit will be required as per the DCP."
- The Draft conditions required:
 - Condition 44.1 - An ACHAR (including GIS mapping of the PAD / permit area) and AHIP is required prior to the issue of a Construction Certificate; and
 - Condition 87.1 –
 - Site supervision and training for the staff and contractors on-site so they are "informed of what the potential heritage on the site will be and its significance".
 - Standard protocols relating to unanticipated finds.



DA-793/2019/A | 233 Eleventh Avenue, Austral

- Condition 129.1 – A “final” ACHAR is to be submitted to Council prior to the issue of a Subdivision Certificate (SC).

1.3 LLPP Meeting

On 26 May 2025, the LLPP met to determine the Modification. Crownland made a verbal statement to the Panel outlining concerns with the draft consent conditions relating to Aboriginal Heritage, and why they need to be amended and/or repealed. The Panel took Crownland’s comments on notice, and subsequently issued the Meeting Minutes and Determination Notice on 27 May 2025.

The Notice issued by Council stated:

- “[**The Modification**] is deferred for 3 months to allow the applicant to complete an **Aboriginal Archaeological Assessment**. Upon receipt of a supplementary report from Council the Panel will reconvene to reconsider the matter via Electronic Determination.”
- “The Panel endorses the Council Officers’ report but remains concerned at the implications for this project of the decision of the Land and Environment Court in *Dahua Group Sydney Project 6 Pty Ltd vs Shellharbour City Council* [2024] NSW LEC 1814.”

2 SUMMARY OF ABORIGINAL HERITAGE FINDINGS

McCardle Cultural Heritage have been engaged to prepare a letter in response to the LLPP Determination Notice that accompanies this letter. A brief summary of the findings from this letter is outlined below.

2.1 Trigger for an ACHAR based on proximity to Kemps Creek

Contention: “Council’s Heritage officer has advised that due to the location of works within 200m of the creek, An Aboriginal Cultural Heritage Assessment and an Aboriginal Heritage Impact Permit will be required as per the DCP.”

Response:

McCardle Cultural Heritage found that this statement is factually incorrect. Neither the applicable Liverpool Growth Centre Precincts DCP, nor the Liverpool DCP 2008, contains such a provision.

2.2 LEC Case Law

Contention: “The Panel... remains concerned at the implications for this project of the decision of the Land and Environment Court in *Dahua Group Sydney Project 6 Pty Ltd vs Shellharbour City Council* [2024] NSW LEC 1814”

Response:

The relevance of LEC 1814 to the subject modification is considered in McCardle’s letter. In short, it LEC 1814 has no relevance to this modification as:



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- The concerns with Aboriginal Heritage under LEC 1814 related to incomplete site investigations under an ACHAR and a lack of detail regarding a known Aboriginal place (site 52-5-0936) that was intended to be demolished.
- The ADDA prepared in support of the Modification provides a comprehensive desktop assessment of the entire Site and does not identify any Aboriginal objects or Potential Archaeological Deposit (PADs) in or near the extent of works.

2.3 Requirement for an AHIP

Contention: Council have requested an AHIP be obtained for the Modification prior to the issue of a CC.

Response:

- An AHIP is only required when proposed activities will impact registered Aboriginal sites or declared Aboriginal places. The letter prepared by McCardle Cultural Heritage included written advice from Heritage NSW (dated 26 May 2025) that confirmed this conclusion.
- The ADDA prepared for the Modification found no Aboriginal objects or potential archaeological deposits (PADs) within the project area.
- Therefore, it is not possible to obtain an AHIP, as no Aboriginal objects or places have been identified.

An AHIP is therefore not required for the Modification. If the ACHAR finds an artefact or establishes a place of significance, then an AHIP would be required prior to commencement of construction.

2.4 Requirements for an ACHAR

Contention: The LLPP Determination Notice have requested an ACHAR prior to the approval of the Modification.

Response:

- An ADDA is the first level of Aboriginal Archaeological investigation that identifies whether the carrying out of activities will or may harm Aboriginal objects.
- If the ADDA finds no Aboriginal objects and the assessment determines that Aboriginal objects are unlikely to be present or harmed, the proposed activity can typically proceed without further heritage investigation under an ACHAR.
- The ADDA prepared for the Modification found no Aboriginal objects or potential archaeological deposits (PADs) within the project area and as such an ACHAR is not warranted.

Notwithstanding, the concerns of Council and the LLPP are understood. Accordingly, an ACHAR is now being prepared.

3 PROPOSED AMENDMENTS TO THE DRAFT CONSENT

3.1 Summary

In light of the findings by McCardle Cultural Heritage in **Section 2**, this letter is requesting the following amendments to the Draft Conditions for the DA:



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1. Delete all reference to the proposed development requiring an AHIP and staff training / on-site supervision by a Heritage Consultant.
2. Amend the sections that request an ACHAR, so it is a requirement prior to the issue of a Subdivision Works Certificate (SWC).

Note: conditions relate to unexpected finds should remain, which is appropriate for any development involving earthworks.

3.2 Modifications to the Draft Conditions

This letter submission proposes to amend the draft conditions within the Draft Notice of Determination Letter dated 26 May 2025.

The proposed amendments are detailed below. Words proposed to be removed are shown as ~~strikethrough~~ and additional words are shown in **red**.

Condition (44.1) – Delete:

~~“Aboriginal Heritage Impact Permit~~

~~44.1. Prior to issue of Construction Certificate, the following requirements shall be met:~~

- ~~a) An Aboriginal Heritage Impact Permit is to be applied for and received from Heritage NSW in accordance with the National Parks and Wildlife Act 1974.~~
- ~~b) The permit application is to be accompanied by an Aboriginal Cultural Heritage Assessment prepared by an experienced Archaeologist in accordance with the relevant guidelines published by Heritage NSW.~~
- ~~c) A copy of the Aboriginal Heritage Impact Permit and supporting information including the Aboriginal Cultural Heritage Assessment, GIS file of PAD and/or permit area, Register of Aboriginal Parties and a register of artefacts recovered, are to be provided to Council's Heritage Officer.”~~

Condition (87.1) – Amend as follows:

~~“Aboriginal Cultural Heritage • Staff and Contractors~~

~~87.1 All relevant on-site staff and contractors should be made aware of their statutory obligations for heritage under NSW National Parks and Wildlife Act 1974 and the NSW Heritage Act 1977. They are to be informed of what the potential heritage on the site will be and its significance. The site supervisor is to maintain a record of who has completed the heritage induction and this is to be provided to Council prior to Issue of Occupation Certificate.~~

~~The National Parks and Wildlife Act 1974 protects all Aboriginal Cultural Heritage in New South Wales. Where a proposal has the potential to impact on Aboriginal Cultural Heritage objects and places, whether the presence is known or not, a permit is to be sought from Heritage NSW.~~

~~In the event that Aboriginal Cultural Heritage objects or places are encountered/discovered, works must cease immediately and Council and Heritage NSW notified.~~

~~The finds are to be investigated by an experienced archaeologist and no works are to recommence onsite until approved by Heritage NSW and Liverpool City Council.~~

If an Aboriginal object or place is identified in the extent of works and is found to be impacted by the works, an Aboriginal Heritage Impact Permit is to be applied for and received from Heritage NSW in accordance with the National Parks and Wildlife Act 1974.

In the event that skeletal remains are uncovered, work must cease immediately in that area and the area secured. NSW Police must be contacted and no further action taken until written advice has been provided by the NSW Police. If the remains are determined to be

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of Aboriginal origin, the Office of Environment and Heritage must be notified by ringing the Enviroline 131 555 and a management plan prior to works re-commencing must be developed in consultation with relevant Aboriginal stakeholders."

Condition (129.1) – Amend as follows:

"Aboriginal Cultural Heritage

129.2 A final Aboriginal Cultural Heritage Assessment is to be submitted to Liverpool City Council prior to issue of a Subdivision Works Certificate. The report is to include the sensitivity and significance findings of the original assessment and a comparison with the site conditions, i.e. additional potential objects identified that were not anticipated. The report is to include an analysis of all any potential objects identified on the site and where necessary a GIS file indicating the location of the objects re-interred on site.

4 CONCLUSION

This letter determines that the Modification adequately addresses the likelihood of Aboriginal artefacts within study area, and concludes that an ACHAR and AHIP is not required. This is supported by advice from McCardle Cultural Heritage, Heritage NSW and the requirements in Council's DCP/s as outlined in **Section 2**.

Notwithstanding the above, an ACHAR is currently being prepared in good faith for the benefit of Council and the LLPP. The draft ACHAR should be provided to Council within 2 months.

Approval of the Modification is sought prior to the finalisation of the ACHAR as originally conditioned by Council, and the risks of potential Aboriginal heritage discoveries can be appropriately managed by the amended conditions of consent outlined in **Section 3**.

To conclude, Colliers Engineering and Design and Crownland are seeking the following actions from Council:

1. Referral of this letter to the relevant Council heritage officer for review;
2. Council's heritage officer, given we have now commenced the ACHAR process, hopefully endorses this Modification for approval subject to the amended consent conditions;
3. The external planner should then update their assessment report and draft conditions to reflect the comments / endorsed consent conditions issued by the heritage officer;
4. The draft conditions and amended assessment report are passed onto to the Council planner. Note by this time we will have also prepared the draft ACHAR; and
5. Finally, the amended assessment report, draft conditions and ACHAR are provided to the LLPP for review and approval within 2 weeks of receiving the information.

Ultimately, we are seeking the urgent approval of this Modification that incorporates the amended consent conditions outlined in **Section 3** of this letter.

The approval of this modification is critical for Crownland, as the water quality devices and stormwater outlets to the creek proposed under this Modification are required to convey stormwater from the adjoining five subdivision developments bounded by Eleventh Avenue, Twelfth Avenue and Fourth Avenue. The delay of this approval is holding back the construction and registration of the subject development and adjoining subdivisions. This will have a negative impact on housing supply in the area unless this matter is resolved swiftly.



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We would greatly appreciate Council's written confirmation that they can escalate this Modification with the heritage officer and external planner as advised above and agree to the amendments to the draft consent conditions referenced in **Section 3**.

Please contact the undersigned if you have any questions or require any further information.

Yours faithfully,



Principal Planner
Colliers International Engineering and Design NSW

List of Attachments

1. LLPP Determination Minutes (dated 27 May 2025)
2. Letter from McCardle Cultural Heritage in response to the LLPP Determination Notice (dated 4 June 2025)

Crownland Australia Pty Ltd

M

231-245 Eleventh Avenue, Austral Stormwater Infrastructure

LGA: Liverpool

Aboriginal Archaeological Assessment
And Impact Assessment

14 July 2025

McCARDLE CULTURAL HERITAGE PTY LTD

ACN 104 590 141 • ABN 89 104 590 141





Report No: J202463 DD	
Approved by:	
Position:	Director
Signed:	
Date:	14 July 2025

This report has been prepared in accordance with the scope of services described in the contract or agreement between McCardle Cultural Heritage Pty Ltd (MCH), ACN: 104 590 141, ABN: 89 104 590 141, and the proponent. The report relies upon data, surveys, measurements and specific times and conditions specified herein. Any findings, conclusions or recommendations only apply to the aforementioned circumstances and no greater reliance should be assumed or drawn by the proponent. Furthermore, the report has been prepared solely for use by the proponent and MCH accepts no responsibility for its use by other parties.

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APPLICATION OF THE DUE DILIGENCE CODE OF PRACTICE TO THE PROPOSAL

The Code of Practice includes a set of questions that help a proponent assess if the proposed activities might damage Aboriginal objects, necessitating an AHIP application under Section 90 of the NPWS Act. The following relevant questions from the Code of Practice are applied to the proposal.

Code of Practice questions

Code of Practice Questions	Responses
1. Is the activity a low impact activity for which there is a defence in the NPWS Regulation?	No The NPWS Regulation removes the need to follow the due diligence process if the proponent is carrying out a specifically defined low impact activity. A review of Section 58 indicates that the proposal does not comprise low impact activities as defined by the NPWS Regulation. Accordingly, the due diligence process has been adhered to herein
2. Will the activity disturb the ground surface or any culturally modified trees?	Yes Elements of the proposed activities which would require disturbance to the ground surface include stormwater drainage improvements. However, these works are proposed to be carried out on ground that is already disturbed, as indicated by the site's landuses history described in Section 2. Thus, works would be restricted to disturbed terrain with negligible Aboriginal archaeological potential.
3. Are there any relevant confirmed sites or other associated landscape feature information in AHIMS?	No A search of the AHIMS database (Appendix A) returned no relevant site records in the immediate vicinity of the proposal. Refer to Section 2 for further details.
4. Are there any landscape features that are likely to indicate a presence of Aboriginal objects?	Yes Under the definitions given in the Code of Practice, the proposal is within an area that exhibits one landscape features that is considered likely to indicate a presence of Aboriginal objects. The following criteria used in the code of practice to define a landscape which is likely to indicate a presence of Aboriginal objects, relevant to the proposal: located within 200m of waters Although the proposal meets the abovementioned criteria, the Code of Practice states that this must occur in conjunction with the proposal occurring on land that is not disturbed land. As the proposal is within areas of disturbed and, the likelihood of the presence of Aboriginal objects within the proposal area is considered to be low.
5. Can you avoid harm to the object or disturbance of the landscape feature?	Yes All proposed works are confined to disturbed areas.
6. Does a desktop assessment and visual inspection confirm that there are Aboriginal objects or that they are likely?	No The desktop assessment and visual inspection, which has informed this assessment, indicates that due to the high levels of disturbances across the project area, it is highly unlikely that Aboriginal objects are in the project area.
7. Further investigations and impact assessment	No

EXECUTIVE SUMMARY

McCardle Cultural Heritage Pty Ltd (MCH) has been engaged by Colliers on behalf of Crownland Australia Pty Ltd, to undertake an Aboriginal Archaeological Assessment and Impact Assessment for the proposed stormwater infrastructure for the residential development at 231-245 Eleventh Avenue, Austral. The project area includes part of Lot 9 DP776297 (Council owned) and within the road reserve of Eleventh Avenue, Austral (adjoining Kemps Creek).

The project is located in the Cumberland Plain, which is a flat region in the centre of the Sydney Basin. The eastern section of the project area consists of shale, claystone, laminate, lithic sandstone, and coal belonging to the Waiiamatta Group Bringelly Shales. The western part of the project area is characterized by alluvial floodplain deposits consisting of silt, fine-grained lithic to quartz-rich sand, and clays. The eastern part situated on the Bringelly shales consists of the Blacktown residual soil landscape, while the western part consists of alluvium and South Creek soil landscape. The geomorphology of the area, excluding alluvial soil landscapes, includes texture contrast soils with an upper soil Horizon A and underlying B. In this region, sites are typically found on or near the interface of the A and B horizons within the A horizon.

The fresh water availability in the project area is influenced by a 3rd order creek located along the western boundary. This creek flows north and converges with Kemps creek, forming a 4th order approximately one kilometre away from the project area. However, due to previous excavation and widening works carried out on the creek since the 1960s, it is likely that the creek was originally a 2nd or 1st order. As an original 2nd or 1st order creek, it would have provided fresh water following heavy rain, supporting small hunting and gathering parties rather than long-term, large-scale camping.

The project area has been cleared a number of times, subject to excavation works for creek widening twice and maintenance activities. These land uses not only impact on the landscape and any evidence of past Aboriginal land uses, but notably, the excavation and widening of the creek has resulted in the creek being mapped as a 3rd order today, which has significant implications for archaeological predictive modelling.

A search of the AHIMS register identified 26 Aboriginal sites within two kilometres of the project area and include 21 artefact sites, 3 PADs 1 artefact with PAD site and 1 restricted access site. Based on AHIMS results, local and regional archaeological investigations, and the environmental context, it appears that the project area, originally situated along a small creek, lacked a reliable source of fresh water. This suggests that the area and its immediate surroundings were likely used primarily for hunting and gathering, rather than long-term camping. However, past land uses have likely resulted in the removal or redistribution of any cultural materials that may be present in the project area.

The survey confirmed that the project area had been subject to high levels of past disturbance, including creek widening, drainage line excavation, vegetation clearance, track creation/use, dam/embankment creation, the establishment of a power line easement and animal grazing. This is a highly disturbed landscape with topsoils being previously removed or redistributed during these works. No sites or PADs were identified in the project area and this is due to:

- No Aboriginal occupation, or
- Ground disturbances are significant throughout the project area and are likely to have disturbed or removed any evidence of past Aboriginal land uses (hunting and gathering activities)

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As no sites or PADs were identified in the project area, there are no impacts on the archaeological record and the following recommendations are provided:

- 1) The persons responsible for the management of onsite works will ensure that all staff, contractors and others involved in construction and maintenance related activities are made aware of the statutory legislation protecting sites and places of significance. Of particular importance is the National Parks and Wildlife Regulation 2019, under the National Parks and Wildlife Act 1974;
- 2) An Unexpected Finds Procedure (Appendix B) will be implemented during all works; and
- 3) Should any Aboriginal objects be uncovered during works, all work will cease in that location immediately, the Unexpected Finds Procedure followed and the Environmental Line contacted.

GLOSSARY

Aboriginal Place: are locations that have been recognised by the Minister (and gazetted under the *National Parks and Wildlife Act 1974*) as having special cultural significance to the Aboriginal community. An Aboriginal Place may or may not include archaeological materials.

Aboriginal Site: an Aboriginal site is the location of one or more Aboriginal archaeological objects, including flaked stone artefacts, midden shell, grinding grooves, archaeological deposits, scarred trees etc.

Artefact: any object that is physically modified by humans.

Artefact scatter: a collection of artefacts scattered across the surface of the ground (also referred to as open camp sites).

Assemblage: a collection of artefacts associated by a particular place or time, assumed generated by a single group of people, and can comprise different artefact types.

Backed artefact: a stone tool where the margin of a flake is retouched at a steep angle and that margin is opposite a sharp edge.

Background scatter: a term used to describe low density scatter of isolated finds that are distributed across the landscape without any obvious focal point.

Core: a chunk of stone from which flakes are removed and will have one or more negative flake scars but no positive flake scars. The core itself can be shaped into a tool or used as a source of flakes to be formed into tools.

Debitage: small pieces of stone debris that break off during the manufacturing of stone tools. These are usually considered waste and are the by-product of production (also referred to as flake piece).

Flake: any piece of stone struck off a core and has a number of characteristics including ring cracks showing where the hammer hit the core and a bulb of percussion. May be used as a tool with no further working, may be retouched or serve as a platform for further reduction.

Flaked piece/waste flake: an unmodified and unused flake, usually the by-product of tool manufacture or core preparation (also referred to asdebitage).

Harm: is defined as an act that may destroy, deface or damage an Aboriginal object or place. In relation to an object, this means the movement or removal of an object from the land in which it has been situated

In situ: archaeological items are said to be "in situ" when they are found in the location where they were last deposited.

Retouched flake: a flake that has been flaked again in a manner that modified the edge for the purpose of sharpening that edge.

Typology: the systematic organization of artefacts into types on the basis of shared attributes.

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ACRONYMS

ACHA	Aboriginal Cultural Heritage Assessment
ACHMP	Aboriginal Cultural Heritage Management Plan
AHIMS	Aboriginal Heritage Information Management System
AHIP	Aboriginal Heritage Impact Permit

AHIMS SITE ACRONYMS

ACD	Aboriginal ceremonial and dreaming
AFT	Artefact (stone, bone, shell, glass, ceramic and metal)
ARG	Aboriginal resource and gathering
ART	Art (pigment or engraving)
BOM	Non-human bone and organic material
BUR	Burial
CFT	Conflict site
CMR	Ceremonial ring (stone or earth)
ETM	Earth mound
FSH	Fish trap
GDG	Grinding groove
HAB	Habitation structure
HTH	Hearth
OCQ	Ochre quarry
PAD	Potential archaeological deposit.
SHL	Shell
STA	Stone arrangement
STQ	Stone quarry
TRE	Modified tree (carved or scarred)
WTR	Water hole

1 INTRODUCTION

1.1 INTRODUCTION

McCardle Cultural Heritage Pty Ltd (MCH) has been engaged by Colliers on behalf of Crownland Australia Pty Ltd, to undertake an Aboriginal Archaeological Assessment and Impact Assessment for the proposed stormwater infrastructure for the residential development at 231-245 Eleventh Avenue, Austral.

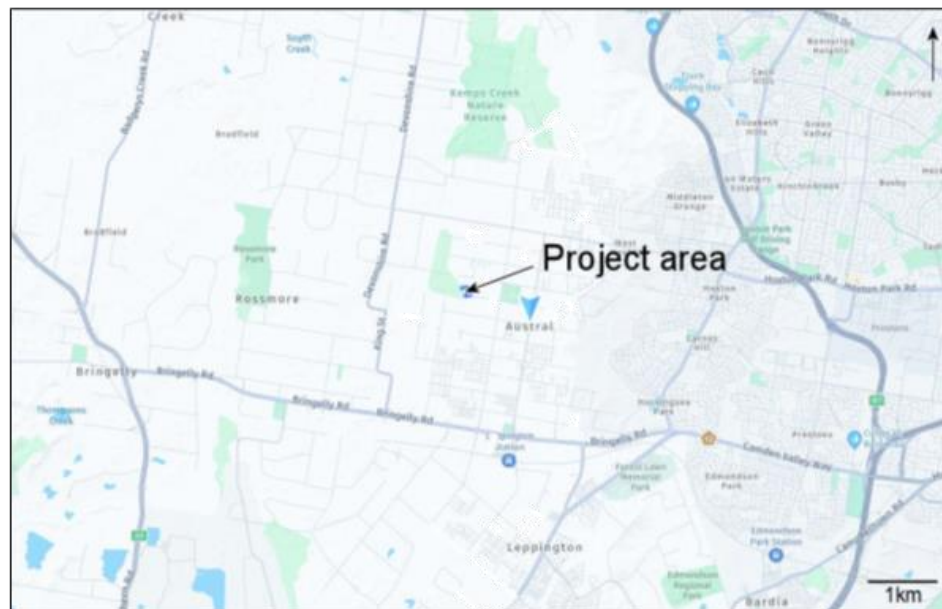
The assessment has been undertaken to meet the Heritage NSW Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW and the brief. The purpose of a due diligence assessment is to assist proponents to exercise due diligence when carrying out activities that may harm Aboriginal objects or Aboriginal places and to determine whether that should apply for a consent to harm Aboriginal objects or Places through an Aboriginal Heritage Impact Assessment (AHIP).

Heritage NSW do not review or assess archaeological due diligence assessments as the archaeological due diligence assessment is a proponent's legal defence from potential prosecution if an Aboriginal object is unknowingly harmed. The defence applies when a person or organization has taken reasonable steps to avoid harming Aboriginal objects. As the due diligence assessment may be used as a legal defence, the assessment should not be sent to Heritage NSW for review or comment.

1.2 THE PROJECT AREA

The project area includes part of Lot 9 DP776297 (Council owned) and within the road reserve of Eleventh Avenue, Austral (adjoining Kemps Creek). The location of the project area is shown in Figures 1.1 and 1.2.

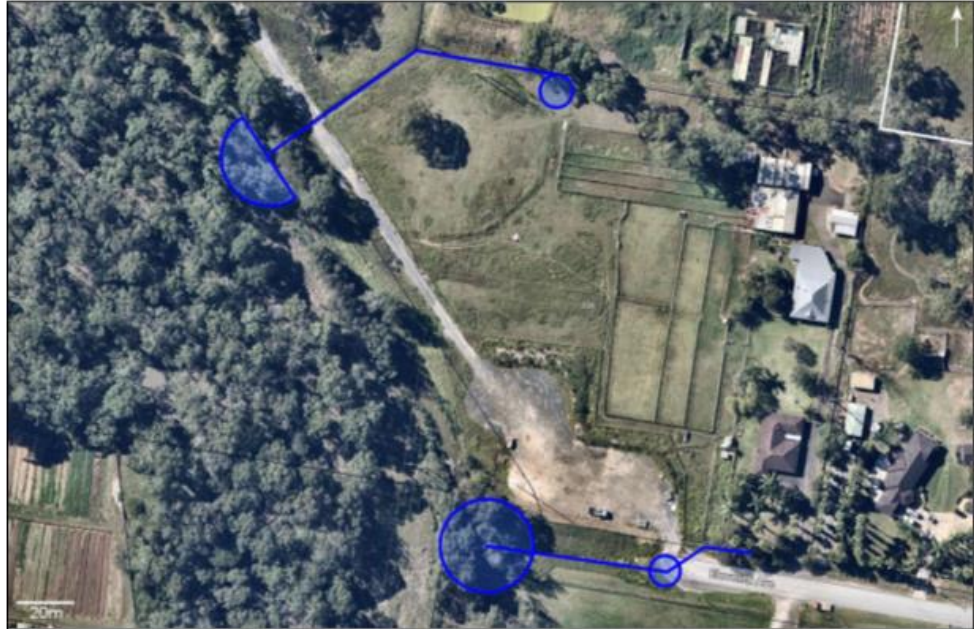
Figure 1.1 Location of the project area



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Figure 1.2 Aerial photograph of the project area (Nearmap 2023)



1.3 PROPOSED DEVELOPMENT

The project is for stormwater infrastructure for the residential development at 231-245 Eleventh Avenue, Austral. Works will include the construction of the following (Refer to Figures 1.3 to 1.5):

- Outlet 1: Proposed extension of the trunk stormwater drainage along Eleventh Avenue with the addition of a new Gross Pollutant Trap (GPT); and
- Outlet 2: Utilisation of the outlet approved running through the subject site with the addition of a new GPT

Figure 1.3 Location of Outlets 1 and 2



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Figure 1.4 Proposed Stormwater outlet 1 and GPT along Eleventh Avenue (Colliers 2023)

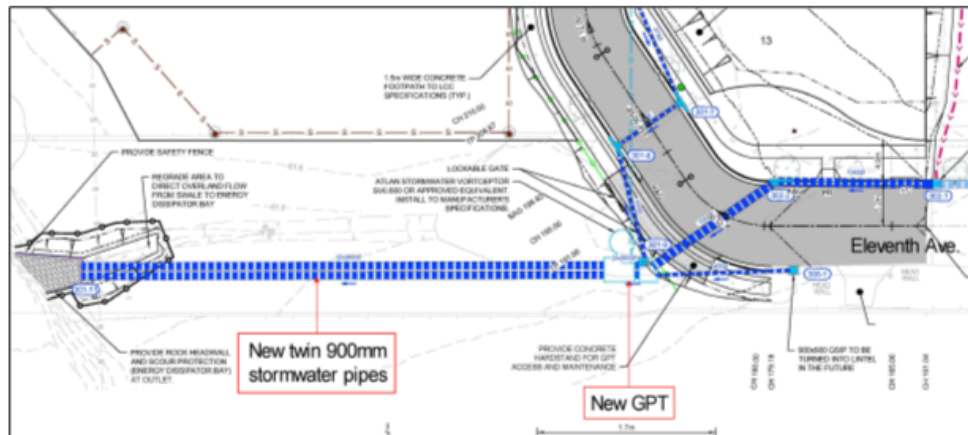
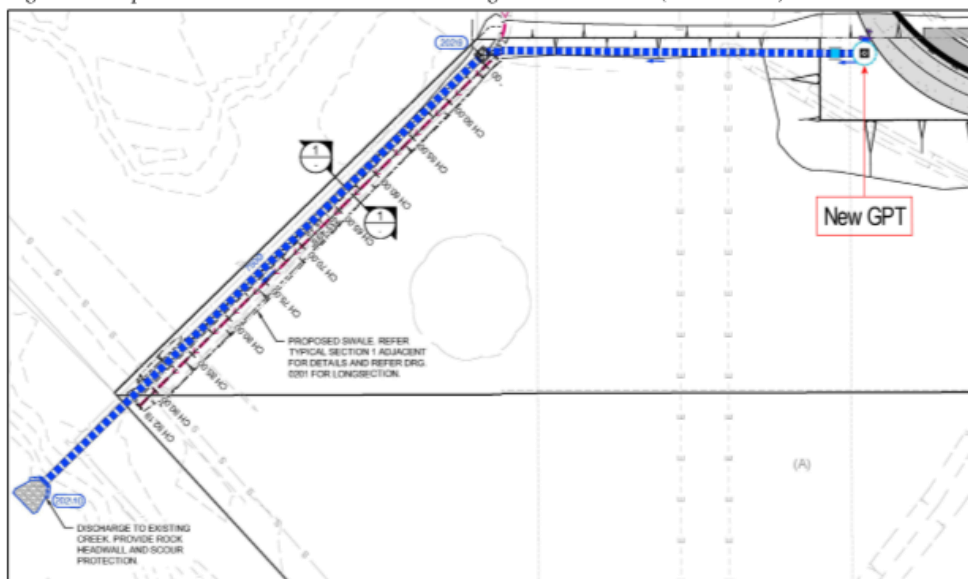


Figure 1.5 Proposed Stormwater outlet 2 and GPT along Eleventh Avenue (Colliers 2023)



1.4 OBJECTIVES OF THE DUE DILIGENCE ASSESSMENT

The objectives and primary tasks of this due diligence assessment were to:

- undertake a search of the Aboriginal Heritage Management System (AHIMS) and other relative registers;
- undertake research into the environmental and archaeological contexts of the project area;
- develop a predictive model of site location for the project area;
- undertake a field survey of the project area;

- assess the potential impacts of the proposed development on any identified Aboriginal sites or potential archaeological deposits (PADs) identified within the project area;
- assess the significance of any identified Aboriginal objects or sites identified within the project area;
- complete and submit site cards to AHIMS for any Aboriginal sites identified; and
- provide appropriate recommendations.

1.5 LEGISLATIVE CONTEXT

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

Land managers are required to consider the effects of their activities or proposed development on the environment under several pieces of legislation. Although there are a number of Acts and regulations protecting Aboriginal heritage, including places, sites and objects, within NSW, the three main ones include:

- National Parks and Wildlife Act (1974, as amended)
- National Parks and Wildlife Regulation (2019)
- Environmental Planning and Assessment Act (1979)

1.5.1 NATIONAL PARKS AND WILDLIFE ACT (1974, AS AMENDED)

The National Parks and Wildlife Act (1974), Amended 2019, is the primary legislation for the protection of Aboriginal cultural heritage in New South Wales. The NPW Act protects Aboriginal heritage (places, sites and objects) within NSW and the protection of Aboriginal heritage is outlined in s86 of the Act, as follows:

- “A person must not harm or desecrate an object that the person knows is an Aboriginal object” s86(1)
- “A person must not harm an Aboriginal object” s86(2)
- “A person must not harm or desecrate an Aboriginal place” s86(4)

Penalties apply for harming an Aboriginal object, site or place. The penalty for knowingly harming an Aboriginal object (s86[1]) and/or an Aboriginal place (s86[4]) is up to \$550,000 for an individual and/or imprisonment for 2 years; and in the case of a corporation the penalty is up to \$1.1 million. The penalty for a strict liability offence (s86[2]) is up to \$110,000 for an individual and \$220,000 for a corporation.

Harm under the National Parks and Wildlife Act (1974, as amended) is defined as any act that destroys defaces or damages the object, moves the object from the land on which it has been situated, causes or permits the object to be harmed. However, it is a defence from prosecution if the proponent can demonstrate that;

- 1) harm was authorised under an Aboriginal Heritage Impact Permit (AHIP) (and the permit was properly followed), or

2) the proponent exercised due diligence in respect to Aboriginal heritage.

The 'due diligence' defence (s87[2]), states that if a person or company has applied due diligence to determine that no Aboriginal object, site or place was likely to be harmed as a result of the activities proposed for the Project Area, then liability from prosecution under the NPW Act 1974 will be removed or mitigated if it later transpires that an Aboriginal object, site or place was harmed. If any Aboriginal objects are identified during the activity, then works should cease in that area and Heritage NSW, Department of Premier & Cabinet notified (DECCW 2010:13). The due diligence defence does not allow for continuing harm or as defence to s.86(1) or (4).

The archaeological due diligence assessment and report has been carried out in compliance with the Heritage NSW (DECCW 2010) Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW.

1.5.2 NATIONAL PARKS AND WILDLIFE REGULATION (2019)

The National Parks and Wildlife Regulation 2019 provides a framework for undertaking activities and exercising due diligence in respect to Aboriginal heritage. The Regulation (201909) recognises various due diligence codes of practice, including the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW, but it also outlines procedures for Aboriginal Heritage Impact Permit (AHIP) applications and Aboriginal Cultural Heritage Consultation Requirements (ACHCRs); amongst other regulatory processes.

1.5.3 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 (EP&A ACT)

The *Environmental Planning and Assessment Act 1979* (EP&A Act) establishes the statutory framework for planning and environmental assessment in NSW and the implementation of the EP&A Act is the responsibility of the Minister for Planning, statutory authorities and local councils. The EP&A Act sets up a planning structure that requires developers (individuals or companies) to consider the environmental impacts of new projects. Under this Act, cultural heritage is considered to be a part of the environment. It provides for the identification, protection and management of heritage items through inclusion of these items into schedules of planning instruments, such as Local Environmental Plans (LEPs) or Regional Environmental Plans (REPs). This Act requires that Aboriginal cultural heritage and the possible impacts to Aboriginal heritage that development may have, are formally considered in land-use planning and development approval processes.

This Act has three main parts of direct relevance to Aboriginal cultural heritage. Namely, Part 3 which governs the preparation of planning instruments, Part 4 which relates to development assessment provisions for local government (consent) authorities and Part 5 which relates to activity approvals by governing (determining) authorities. Planning decisions within Local Government Areas (LGAs) are guided by Local Environmental Plans (LEPs). Each LGA is required to develop and maintain an LEP that includes Aboriginal and historical heritage items which are protected under the EP&A Act and the NPW Act. The Project Area is located within the Liverpool City Council LGA and falls under the 2008 LEP.

1.5.4 LOCAL ENVIRONMENTAL PLAN

The project area is located within the Liverpool City LGA and is subject to the South West Growth Centre SEPP and is located within the Austral Precinct of the SEPP.

As indicated in Figure 1.6, the Liverpool City Council Schedule One – Austral and Leppington North Precincts DCP (2021) shows that the project area falls within an area identified as having high and

'consultation with the Aboriginal community is not a formal requirement of the due diligence process' (2010:8).

1.7 QUALIFICATIONS OF THE INVESTIGATOR

Dr. Penny McCardle: Principal Archaeologist & Forensic Anthropologist has 23 years experience in Indigenous archaeological assessments, excavation, research, reporting, analysis and consultation and 20 years in skeletal identification, biological profiling and skeletal trauma identification for NPWS, NSW Police and the NSW Department of Forensic Medicine.

- BA (Archaeology and Palaeoanthropology): Indigenous archaeology, University of New England 1999
- Hons (Archaeology and Palaeoanthropology): Physical Anthropology, University of New England 2001
- Forensic Anthropology Course, University of New England 2003
- Armed Forces Institute of Pathology Forensic Anthropology Course, Ashburn, VA 2008
- Analysis of Bone trauma and Pseudo-Trauma in Suspected Violent Death Course, Erie College, Pennsylvania, 2009
- Documenting Scenes of War and Human Rights Violations. Institute for International Criminal Investigations, 2018
- PhD, University of Newcastle, 2019

1.8 REPORT STRUCTURE

The report includes Section 1 which outlines the project, Section 2 presents the environmental and archaeological context, Section 3 provides the results and discussion and Section 4 presents the Impact Assessment, Section 5 discusses the mitigation measures and Section 6 provides the management recommendations.

2 ENVIRONMENTAL AND ARCHAEOLOGICAL CONTEXT

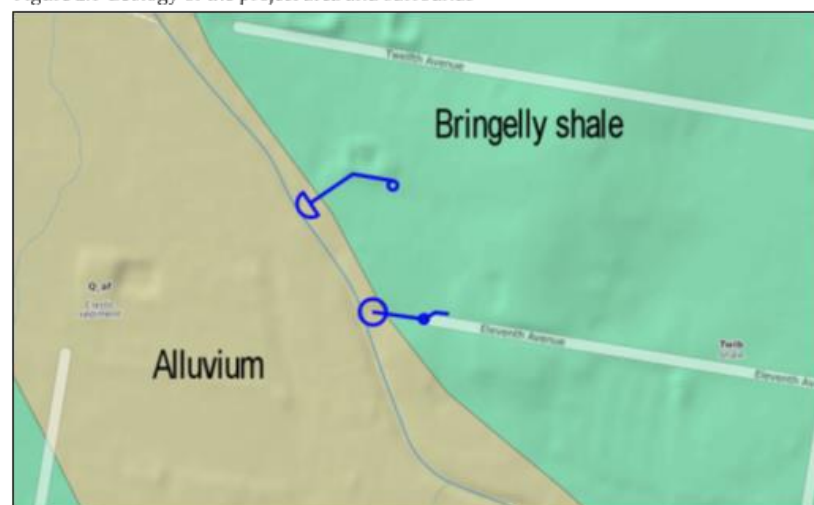
The archaeological due diligence process and assessment requires that the available knowledge and information in relation to the environmental and archaeological contexts are considered. The purpose of this is to assist in identifying whether Aboriginal objects, sites or places are likely to be present within the project area based on archaeological predictive modelling and in what condition they may be found in given the environmental impacts, both natural and anthropogenic.

2.1 LOCAL ENVIRONMENT

Past site location and land use are closely linked to the environment including the landform, geology, geomorphology, soils, waterways and associated resources. The environmental context is important to identify potential factors relating to past Aboriginal land use patterns.

The project area is situated in the Cumberland Plain, an expanse of flat land in the centre of the Sydney Basin and the eastern portion of the project area is on the Waiiamatta Group Bringelly Shales consisting of shale, claystone, laminate, lithic sandstone, and coal. The western part of the project area is on Alluvial floodplain deposits of silt, fine grained lithic to quartz rich sand and clays (NSW Seamless Geology), (Figure 2.1). Materials most dominant in stone tool manufacture in the local area include a dominance of silcrete followed by indurated mudstone/tuff and in lesser quantities, quartz, basalt and petrified wood (McDonald 2002, Oakley 2007, Austral Archaeology 1984, AHMS 2012), all of which are absent from the local area.

Figure 2.1 Geology of the project area and surrounds



The eastern part of the project area that consists of the Bringelly shales, consists of the Blacktown residual soil landscape and the western part (alluvium) consists of the South Creek soil landscape. The Blacktown soil landscape typically consists gently undulating rises and include broad rounded crests and ridges with gently inclined slopes. This soil landscape consists of an A₁ horizon (up to 30 cm in depth) of friable brownish-black loam to clay loam, but can range from dark reddish-brown to dark yellowish-brown. This overlies the A₂ horizon (10-20 cm in depth) of hard setting dark brown clay loam to silty clay loam, but can range from dark reddish-brown to dark brown. This the overlies the B horizon (Hazelton, Bannerman, and Tille. P. 1989: 35-38). The South Creek soil landscape occurs

on flood plains, valley flats and drainage depressions of the channels of the Cumberland Plain, is usually flat with incised channels and is mainly cleared land. The A horizon (up to 50 cm in depth) consists of a brown sandy loam to sandy clay loam or a hard setting dull brown clay loam to fine sandy clay loam. This the overlies the B horizon that is a bright brown light to medium clay (Hazelton, Bannerman and Tille, 1989: 92-95).

The geomorphology of the local area (excluding alluvial soil landscapes), includes texture contrast soils that consist of an upper soil Horizon A and underlying B (referred to as duplex soils). Within the region, sites tend to occur on or within soil Horizon A or are often present at the interface of the A and B horizons. Within the A horizon the lowermost (in terms of vertical positioning) artefact assemblages tend to contain artefacts that are typically attributed to the mid-Holocene, as characterised by an increase in the number of backed artefacts.

In terms of fresh water availability, a 3rd order creek is located along the western boundary. This flows north to meet Kemps creek where it forms a 4th order approximately one kilometre from the project area (Figure 2.2). However, prior to works along the creek that have included excavation and widening twice since the 1960s, the creek was likely originally a 2nd or 1st order. Being an original 2nd or 1st order creek, fresh would have been available following heavy rain which would have enabled small hunting and gathering parties rather than long-term, large-scale camping.

Figure 2.2 Stream orders of the local area



In relation to land uses and associated impacts, Heritage NSW (DECCW 2010) defines disturbed lands as land that has been the subject of human activity that has changed the lands' surface and, or subsurface, these changes being changes that remain clear and observable. This definition is based on the types of disturbances classified in The Australian Soil and Land Survey Field Handbook (CSIRO 2010) and Table 2.1 provides a scale formulated by the CSIRO of the levels of disturbances and their classification, which will assist in determining the level of disturbance across the project area and its impact on potential cultural material that may be present.

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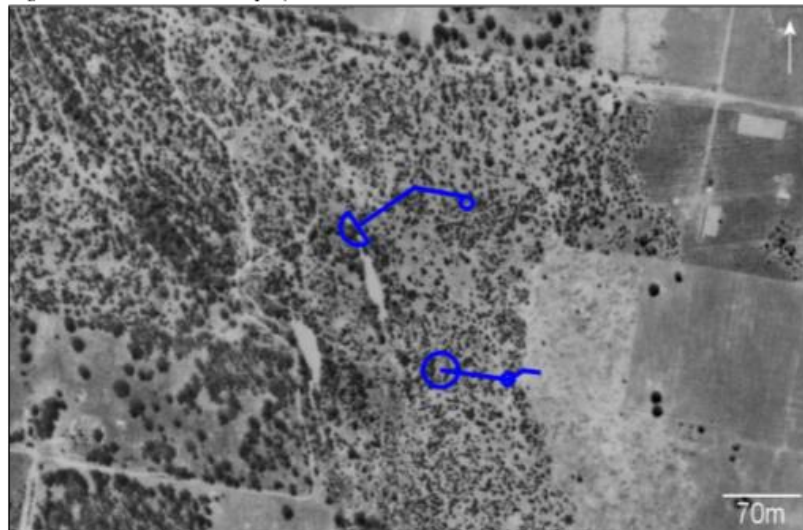
Table 2.1 Land use scale (CSIRO 2010)

Minor disturbance		Moderate disturbance		Major disturbance	
Cleared and/or grazed at some time, but apparently never ploughed		Cleared and/or grazed at some time, with ploughing also attested		Severe disturbance to natural soil profiles; complete-to-near complete topsoil loss/disturbance	
0	No effective disturbance; natural	3	Extensive clearing (e.g., poisoning and ringbarking)	6	Cultivation: grain fed
1	No effective disturbance other than grazed by hoofed animals	4	Complete clearing: pasture native or improved, but never cultivated	7	Cultivation: irrigated, past and present
2	Limited clearing (e.g., selected logging)	5	Complete clearing: pasture native or improved, cultivated at some stage	8	Highly disturbed: e.g., quarry, road works, mining, landfill, urban

Regionally, following European settlement of the area in the 1820s, the regional landscape has been subjected to a range of different modifactory activities including extensive logging and clearing, agricultural cultivation (ploughing), pastoral grazing, residential developments and other construction works. The associated high degree of landscape disturbance has resulted in the alteration of large tracts of land and the cultural materials contained within these areas.

Based on NSW Government historic aerial photography (NSW Historic Imagery) and Nearmap, the project area has been subject to a range of both moderate and high landuses disturbances and impacts. As shown in Figure 2.3. The project area appears to have been subject to selective logging by 1947 only. Interestingly, the creek along the western boundary of the project area appears to be of a smaller order than mapped today.

Figure 2.3 1947 aerial of the project area

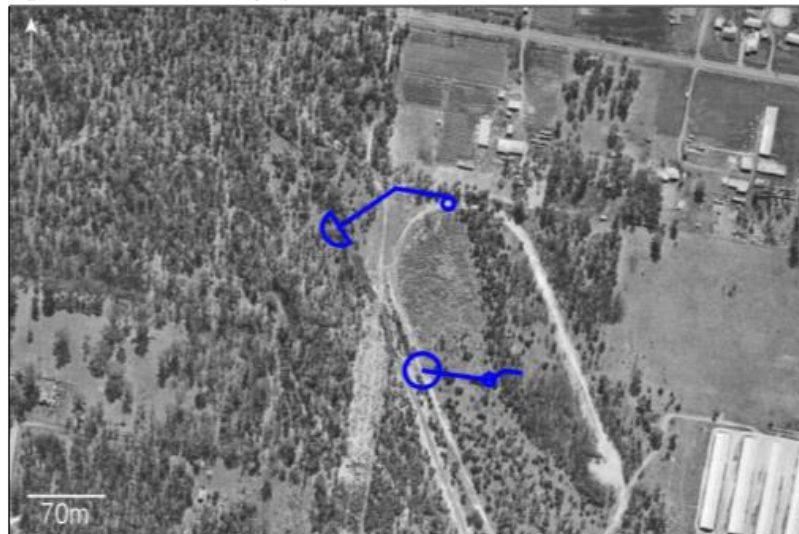


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By 1965 (Figure 2.4), the southern component of the project area has been cleared and a large track goes through it and through the eastern part of the northern component of the project area. The majority of the northern component has also been cleared with a smaller track through it. Additionally, and very significantly is the creek has been excavated and widened resulting in the original creek banks and along the creek having being removed, along with any cultural materials that may have been present.

Figure 2.4 1965 aerial of the project area



The next obvious visible change appears to be excavation and agricultural activities along the northern border of the project area in 1978 (Figure 2.5) along with vegetation re-growth and continued of the tracks.

Figure 2.5 1978 aerial of the project area



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By 1986 (Figure 2.6), the entire northern component of the project area has been cleared and subject to some form of excavation/levelling works. The western half of the southern component has also been cleared again and subject to similar works as the northern end. The creek along the eastern boundary has again been subject to excavation and widening works resulting in the removal and/or redistribution of soils as well as any cultural materials that may have been present.

Figure 2.6 1986 aerial of the project area



The next time disturbances appear in aerial photography is the 2004 aerial photograph (Figure 2.7) whereby the northern component of the project area is again subject to clearing and excavation works; the western side of the southern component also subject to clearing and some form of excavation works as well as road construction works along the eastern end. The creek appears to have been subject to maintenance (vegetation control).

Figure 2.7 2004 aerial of the project area



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The 2023 aerial photograph (Figure 2.8) shows an established track through the northern part of the project area and no other obvious visible disturbances to the project area.

Figure 2.8 2023 aerial of the project area



In summary, the project area has been cleared a number of times, subject to excavation works a number of times, has tracks through it and the creek along the western boundary has been excavated and expanded in width twice. These land uses not only impact on the landscape and any evidence of past Aboriginal land uses, but notably, the excavation and widening of the creek has resulted in the creek being mapped as a 3rd order today, which has significant implications for archaeological predictive modelling. These landuses and how they impact on the landscape and deposits are discussed below and the impacts to archaeological predictive modelling is discussed in Sections 2.3 and 2.7.

Land clearing in New South Wales has undergone significant changes since European settlement, with each method creating distinct archaeological impacts. Early colonial clearing from the 1790s to 1850s involved manual methods using axes, crosscut saws, and hand tools, where individual trees were selectively felled and removed (Rolls, 1981). This selective approach resulted in minimal ground disturbance beyond the immediate vicinity of individual trees, often leaving root systems and shallow archaeological deposits relatively intact. However, the subsequent burning of felled timber and brush created localized heating that could affect organic archaeological materials and alter soil chemistry in discrete areas.

The introduction of mechanical clearing methods from the 1850s onwards marked a significant escalation in landscape disturbance. The development of steam-powered equipment enabled more extensive clearing operations, with steam tractors and winches used to extract larger trees and clear broader areas more efficiently (Powell, 1976). Chain clearing became widespread from the 1920s, involving heavy chains dragged between two tractors or bulldozers to uproot trees and scrub vegetation. This method created extensive ground disturbance as the chains gouged furrows 200-

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300mm deep across cleared areas, displacing topsoils and any archaeological materials within the upper soil profile (Noble, 1997).

The post-World War II period saw the introduction of increasingly powerful mechanical equipment that revolutionised land clearing practices. Large bulldozers equipped with root rakes and blade attachments enabled comprehensive vegetation removal and soil manipulation on an unprecedented scale (Young, 2000). Bulldozer clearing typically involved pushing over trees, scraping away surface vegetation and topsoils, and creating windrows of debris for burning. This process commonly disturbed soil profiles to depths of 300-600mm, effectively destroying most Aboriginal archaeological deposits which are typically concentrated within the upper 300mm of soil, or the A horizon, in NSW contexts (Hughes and Sullivan, 1984). As indicated in the aerial photographs, the project area had been cleared by 1965 and whichever methods were employed for land clearing in the project area, it is clear that trees and shrubs have been removed and uprooted/ripped throughout the project area, including along the creek. Additionally, with numerous creek widening and maintenance activities, which have removed the topsoils (and any cultural materials) during the first widening and either removed more soils or redistributed the soils for subsequent widening (including any cultural materials).

Excavation works required for developments, including but not limited to business, residential, industrial, works depots and associated infrastructure and utilities, require excavation, cut and fill methods. These direct impacts to the land and associated cultural materials that may be present are easy to see and understand. Any form of construction or resource exploitation that involves the removal of, relocation of or compaction of soils sediments or minerals, requires the modification of the topography, thus displacing and/or destroying any cultural materials that may have been present (Wood 1982). These significant disturbances have results in none of the original topsoils remaining in situ.

Additional disturbances would have derived from natural processes. The patterns of deposition and erosion within a locality can influence the formation and/or destruction of archaeological sites. Within an environment where the rate of erosion is generally high, artefacts deposited in such an environment will be eroded downslope after being abandoned (Waters 2000; Waters and Kuehn 1996). If erosion occurs after cultural material is deposited, it will disturb or destroy sections, or all of, archaeological sites even if they were initially in a good state of preservation. The more frequent and severe the episodes of erosional events the more likely it is that the archaeological record in that area will be disturbed or destroyed.

Additionally, bioturbation processes such as the redistribution and mixing of cultural deposits occurs as a result of burrowing and mounding by earthworms, ants and other species of burrowing animals. Artefacts can move downwards through root holes as well as through sorting and settling due to gravity, and translocation can also occur as a result of tree falls (Balek 2002; Peacock and Fant 2002; Canti 2003; Stein 2003:). Experiments to assess the degree that bioturbation can affect material have been undertaken. In abandoned cultivated fields in South Carolina, Michie (summarised in Balek 2002:42-43) found that over a 100-year period 35% of shell fragments that had been previously used to fertilise the fields were found between 15 and 60 centimetres below the surface, inferred to be as a result of bioturbation and gravity. The ways in which earthworms can affect cultural deposits includes: creating false artefact concentrations and stratigraphy (for example biomantles) by moving artefacts downwards through the soil; indirectly displacing larger artefacts as they burrow through the soil; burying artefacts through the deposition of faecal material on the surface; and blurring natural and cultural boundaries. They can also destroy remains of seeds and organic materials as they eat them (Fowler et al. 2004:462; Stein 1983:280-281).

2.1.1 ENVIRONMENTAL CONTEXT SUMMARY

The project area is located within an environment that provided limited resources for sustained Aboriginal occupation. As shown through historical aerial imagery, the creek located along the western side of the project area was not a 3rd order, but rather a 2nd or 1st order. Without a reliable freshwater supply to support camping activities, the project area would likely have been utilised for transitory activities such as travel corridors and hunting and gathering expeditions following rain on the way to reliable water and associated subsistence resources. Such transient Aboriginal land uses typically manifest in the archaeological record as a background scatter of discarded artefacts, including isolated finds and very low-density artefacts randomly distributed across the landscape.

Regarding modern landscape modifications, the documented previous large-scale clearing, a number of excavations, creek widening and tracks involving complete topsoil removal, would have caused substantial impacts to any archaeological deposits that may have been present in the project area. These extensive ground disturbances have fundamentally altered the original soil profiles and displaced or destroyed cultural materials, significantly compromising the integrity and preservation potential of archaeological deposits within the affected areas.

2.2 ARCHAEOLOGICAL CONTEXT

A review of the archaeological literature of the region, and more specifically the local area and the results of an AHIMS search provide essential contextual information for the current assessment. There are many types of evidence past Aboriginal occupation across the landscape which form the archaeological record of a region. Places which show evidence of Aboriginal occupation of an area are archaeological sites. These sites contain numerous site features, and some contain more than one features.

2.3 LIVERPOOL GROWTH CENTRE PRECINCTS DEVELOPMENT CONTROL PLAN (SCHEDULE 1)

As indicated in Figure 1.6, the project area falls within areas previously identified as being of moderate and high potential on heritage control plan within the Austral and Leppington North Precincts (Liverpool DCP – Schedule 1).

It is important to note that this designation does not indicate the presence of confirmed Aboriginal Objects or Aboriginal Places, but rather represents an area of potential sensitivity based on predictive modelling. The original mapping was derived primarily from desktop assessment methodologies with limited field investigation, and did not incorporate detailed analysis of land use patterns and disturbance history across all areas within the assessment boundary. The current project area was not included in the field investigations for the assessment.

The foundational study supporting the existing Aboriginal heritage sensitivity mapping is now over a decade old, making both the information and predictive modelling outdated. Since this original assessment, extensive site-specific Aboriginal heritage investigations have been conducted throughout the region, producing substantial additional data that would dramatically enhance the accuracy of any revised predictive model.

This underscores the essential need for targeted assessments of individual land parcels, as broad-scale sensitivity mapping cannot accommodate site-specific variables including historical disturbance, local geomorphological conditions, and detailed land use history that influence the actual probability of Aboriginal heritage preservation. Notably, the current project area was not directly surveyed, and previous land uses in this location were not evaluated.

Contemporary assessments, informed by the expanded knowledge base developed over the past decade, provide a more accurate understanding of Aboriginal heritage potential than reliance on outdated regional mapping alone and these are discussed below.

2.3.1 ABORIGINAL HERITAGE INFORMATION MANAGEMENT SYSTEM (AHIMS)

It must be noted that there are many limitations with an AHIMS search including incorrect site coordinates due to errors and changing of computer systems at AHIMS over the years that failed to correctly translate old coordinate systems to new systems. Secondly, AHIMS will only provide up to 110 sites per search, thus limiting the search area surrounding the project area and limiting a more comprehensive analysis and finally, few sites have been updated on the AHIMS register to notify if they have been subject to a s87 or s90 and as such what sites remain in the local area and what sites have been destroyed, to assist in determining the cumulative impacts, is unknown.

A search of the AHIMS register (Appendix A) has identified 26 known Aboriginal sites currently recorded within two kilometres of the project area and include 21 artefact sites, 3 PADs 1 artefact with PAD site and 1 restricted access site (Figure 2.9). There are no registered sites or Aboriginal Places within the project area.

Figure 2.9 Location of AHIMS sites



2.3.2 HERITAGE REGISTER LISTINGS

The National Heritage List, the Commonwealth Heritage List, the Australian Heritage Database, Australia's National Heritage List and The National Trust Heritage Register State Heritage Inventory have no Aboriginal objects, sites or places listed.

2.3.3 SUMMARY OF THE ARCHAEOLOGICAL CONTEXT

Most archaeological surveys and excavations throughout the region have been conducted as part of environmental assessments for diverse developments, including residential and industrial projects, infrastructure, utilities, mining and quarrying operations. A comprehensive review of the most relevant investigations (Smith 1990, McDonald 1993a, b, McDonald 2002, Veth and McDonald 2003,

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Craib, McDonald and White 2006, Oakley 2007, Austral 2009, AMBS 2012; AHMS 2012, AECOM 2015; McDonald 2005; Comber 2016), particularly those in the immediate vicinity (Biosis 2017, MCH 2017a, b, 2018a, b, 2019a, b, 2000a, b, 2021a, b 2022a-c, 2023a-d, 2024a – c, Stenning 2016, 2017), enabled spatial and distribution analysis of Aboriginal objects representing evidence of past Aboriginal land use in relation to freshwater sources and landform types.

The findings reveal clear patterns demonstrating a strong relationship between proximity to freshwater, landform characteristics, and site location preferences in past Aboriginal land use practices. Furthermore, previous archaeological field surveys and excavations conducted across the region have generated valuable data regarding artefact distribution, site typologies, and lithic raw material utilisation patterns. This information has been instrumental in developing archaeological expectations for the current project area.

Aboriginal occupation of the broader Sydney region likely extended at least 20,000 years, though artefacts discovered in the gravels of the Cranebrook Terrace on the Nepean River have provided evidence suggesting occupation dates potentially exceeding 40,000 years. Additionally, Late Pleistocene occupation sites have been documented along the peripheries of the Sydney Basin, while rock shelter sites in adjacent areas have also provided significant findings. These include Shaws Creek in the Blue Mountain foothills with an estimated date of 13,000 years Before Present (BP), Mangrove Creek and Loggers Shelter with approximate dates of 11,000 BP, and Burrill Lake on the South Coast with an estimated date of approximately 20,000 BP, as documented by Attenbrow in 2002.

Previous studies have demonstrated the relationship between artefact densities and landform utilisation as well as proximity to fresh water. As fresh water is necessary for survival, the highest density of sites tend to occur in close proximity to these sources. These assessments identified that artefacts are most likely within 50-100 metres of higher order streams (4th order and higher), within 50 metres of 2nd and 3rd order streams, and that artefact densities significantly decrease with a reduction in stream order.

Notably, the highest artefact densities were most likely to be greatest on terraces and lower slopes within 50 metres of reliable freshwater resources. Relatively elevated landforms along the margins of creeks, especially those offering permanent water, and wetlands, would have been favourable for occupation by Aboriginal people. This is evidenced in the archaeological record by higher artefact densities observed at these sites, indicating repeated or more intensive use of such locations.

Conversely, lower stream orders providing unreliable and reduced freshwater could not have supported large groups. Locations along lower order creeks were found to contain archaeological evidence representative of background scatter and may be indicative of travel pathways through the environment.

Since 2012, numerous additional assessments and test excavations have provided enhanced insights and better understanding of historical Aboriginal land use and site distribution as recorded in archaeological findings. Recent evaluations indicate that the highest density of archaeological sites occurs within a 50-meter radius of reliable and consistent fresh water sources, with both the quantity of sites and their density diminishing as distance from water increases and the reliability of the water source decreases. These findings provide compelling evidence that:

- a wide variety of site types are represented in the project area with open campsites and isolated artefacts by far the most common
- lithic artefacts are primarily manufactured from silcrete and mudstone with a variety of other raw materials also utilised but in smaller proportions

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- sites in proximity to ephemeral water sources or located in the vicinity of headwaters of upper tributaries (1st order streams) have a sparse distribution and density and contain little more than a background scatter
- sites located in the vicinity of the upper reaches of minor tributaries (2nd order streams) also have a relatively sparse distribution and density and may represent evidence of localised one-off behaviour
- sites located in the vicinity of the lower reaches of tributaries (3rd order creeks) have an increased distribution and density and contain evidence that may represent repeated occupation or concentration of activity
- sites located in the vicinity of major tributaries (4th and 5th order streams/rivers) have the highest distribution and densities. These sites tend to be extensive and complex in landscapes with permanent and reliable water and contain evidence representative of concentrated activity
- sites located within close vicinity at the confluence of any order stream may be a focus of activity and may contain a relatively higher artefact distribution and density

Previous assessments also consistently documented that all recorded sites had been subject to various degrees of disturbance from historical land uses including clearing activities, agricultural and pastoral practices, residential developments, utility installations, infrastructure construction, and natural erosional processes. Excavation programs conducted throughout the region similarly identified extensively disturbed subsurface deposits resulting from these intensive and long-term land use activities, with original soil horizons and archaeological contexts significantly compromised by post-depositional impacts from both human activities and natural processes.

2.3.4 PREVIOUS ASSESSMENT IN THE ADJOINING PROPERTY

Eco Logical Australia undertook an archaeological due diligence assessment of 231-245 Eleventh Avenue, Austral, adjoining the eastern side of the project area. A summary of the report was available in the SEE assessment (GDS 2019).

The AHIMS search found that no sites were located within the study area. The field investigations identified moderate to heavy disturbance across the study area, with the eastern half of the site being the most disturbed. However, based on the adjacent creek line and less disturbed nature of the western half of the study area, it was determined that the western portion of the site possesses moderate archaeological potential. Further investigation, including test excavation, was recommended to identify any Aboriginal subsurface archaeological deposit that may exist within the study area.

Due to the constraints pertaining to the site, including vegetation retention areas, electrical easement and flood prone land within the western portion of the site, the development area available was restricted and therefore, the development was proposed in a way that no works were to be undertaken within the western half of the study area. No impacts on potential aboriginal artefacts were anticipated.

As the full DD assessment is unavailable, it is unknown if the DD assessment took into consideration the extensive previous archaeological work in the local area and, more importantly, the fact that the creek was of a lower order prior to the 1960s, both of which significantly affects archaeological predictive modelling and understanding of the local environment.

2.4 SYNTHESIS OF ENVIRONMENTAL AND ARCHAEOLOGICAL CONTEXTS

When assessing sites in terms of distance to water, in the region there is a clear pattern of past land uses whereby the majority of high-density sites are situated within 50 metres of reliable fresh water (high order) and reduce in both numbers and densities with a decrease in stream order. Thus, it is apparent that open campsites/isolated finds are most concentrated in number and size within 50 metres of reliable fresh water.

As is to be expected, the majority of sites within 50 metres of water are present on elevated landforms in association with creek lines whilst slopes and crest/ridge formations are also common site locations, although with an absence of reliable fresh water, were used for more transitory activities. The frequent presence of sites on crest/ridges and slopes is also noticeable for sites located over 50 metres from water. Due to the importance of water in the grinding process, it is not surprising that sites of this type are situated close to water. Based on information gained from previous studies, both regionally and locally, and the environmental context, within a two-kilometre radius of our project area, it can be expected that:

- main site types are artefact scatters and isolated finds
- the likelihood of locating sites increases with proximity to available water;
- the likelihood of finding large sites of high densities increases markedly with proximity to reliable water and decreases with a reduction in stream order;
- silcrete is by far the most common raw material types represented at sites in the region. Mudstone/tuff/chert are the next most frequently in artefact assemblages followed by quartz, volcanic materials, porphyry and petrified wood
- a variety of stone artefact types will be located though the majority will be flakes, flaked pieces and debitage;
- grinding grooves may be located along or near water sources within sandstone formations;
- the likelihood of finding scarred trees is dependent on the level of clearing in an area;
- the vast majority of artefactual material in the region was observed on exposures with good to excellent ground surface visibility; and
- the majority of sites will be subject to disturbances including human and natural.

2.5 MODELS OF PAST ABORIGINAL LAND USE

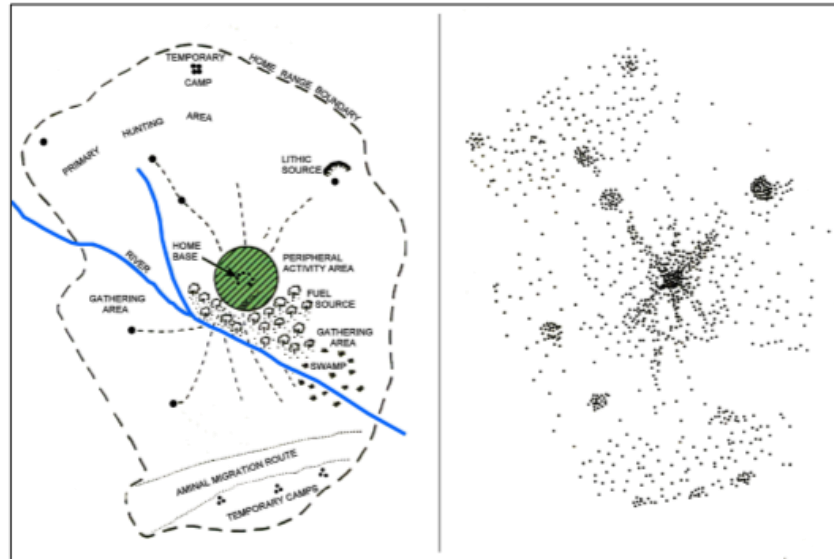
The main aim of this project is to attempt to define both the nature and extent of occupation across the area. As a result, the nature of the analysis will focus on both the landform units and sites. The purpose of this strategy is to highlight any variations between sites and associated assemblages, landforms and resources across the area treating assemblages as a continuous scatter of cultural material across the landscape. In doing this, it is possible to identify variation across the landscape, landforms and assemblages that correspond with variation in the general patterns of landscape use and occupation. Thus, the nature of activities and occupation can be identified through the analysis of stone artefact distributions across a landscape. A general model of forager settlement patterning in the archaeological record has been established by Foley (1981). This model distinguishes the residential 'home base' site with peripheral "activity locations".

Basically, the home base is the focus of attention and many activities and the activity locations are situated away from the home base and are the focus of specific activities (such as tool manufacturing). This pattern is illustrated in Figure 2.10 Home base sites generally occur in areas

with good access to a wide range of resources (reliable water, raw materials etc). The degree of environmental reliability, such as reliable water and subsistence resources, may influence the rate of return to sites and hence the complexity of evidence. Home base sites generally show a greater diversity of artefacts and raw material types (which represent a greater array of activities performed at the site and immediate area). Activity locations occur within the foraging radius of a home base camp (approximately 10 km); (Renfrew and Bahn 1991).

Based on the premise that these sites served as a focus of a specific activity, they will show a low diversity in artefacts and are not likely to contain features reflecting a base camp (such as hearths). However, it is also possible that the location of certain activities cannot be predicted or identified, adding to the increased dispersal of cultural material across the landscape. If people were opting to carry stone tools during hunting and gathering journeys throughout the area rather than manufacturing tools at task locations, an increased number of used tools should be recovered from low density and dispersed assemblages.

Figure 2.10 Foley's model (L) and its manifestation in the archaeological record (R), (Foley 1981).



2.6 MODEL OF OCCUPATION FOR THE LOCAL AREA

Work throughout NSW has aimed to understand the nature of Aboriginal occupation and to identify the nature of past Aboriginal land uses. This theme often aims to identify and explain archaeological patterning in site type, content and distribution. General theories have been developed outlining the relationship between land use patterns and the resulting archaeological evidence. A number of models developed for the region have been reviewed (McBryde 1976; Koettig 1994; Dean-Jones and Mitchell 1993; Rich 1995; Kuskie and Kamminga 2000; McDonald and White 2010). All models state that the primary requirements for repeated, concentrated or permanent occupation is access to reliable fresh water. Brief and possible repeated occupation may be represented in areas that have unreliable access to ephemeral water sources; however, these areas will not contain high archaeological evidence or potential (Goodwin 1999).

Kuskie and Kamminga (2000) established a general model of occupation strategies based primarily upon ethnographic research. Used as a starting point, it makes a general set of factors that are

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consistent with other studies (e.g., McDonald and White 2010, Nelson 1991). The model distinguishes between short-term or extended long-term occupation and makes some predictions about the likely location of different foraging and settlement activities. Combining this information with a review of assemblage contents from a sample of excavated sites within the region, a baseline of settlement activities may be determined (Barton 2001).

The model provides a number of archaeological expectations that may be tested. For example, the presence of features requiring a considerable labour investment (e.g., stone-lined ovens or heat-treatment pits) are likely to occur at places where occupation occurred for extended periods of time. The presence of grindstones is also a reliable indicator of low mobility and extended occupation as seed grinding requires a large investment of time and effort (Cane 1989). In most ethnographic examples, seed grinding is an activity that takes place over an entire day to provide adequate energetic returns (Cane 1989; Edwards and O'Connell 1995).

Where group mobility was high and campsites frequently shifted throughout the landscape, artefact assemblages are not expected to contain elements such as grindstones, heat-treatment pits, ovens and the diversity of implements frequently discarded at places of extended residential occupation. It may also have been the case that the location of particular activities could not be predicted by tool users, adding to the increased low-density scattering of artefacts over the landscape. Also, if individuals were opting to carry a number of stone tools during hunting and gathering activities and maintaining these tools rather than manufacturing new tools at each task location, the ratio of used tools to unworn flakes in these assemblages should be high. Table 2.2 has been adapted from Kuskie and Kamminga (2000).

Table 2.2 Site descriptions (Kuskie & Kamminga 2000).

Occupation Pattern	Activity Location	Proximity to water	Proximity to food	Archaeological expectations
Transitory movement	all landscape zones	not important	not important	- assemblages of low density & diversity - evidence of tool maintenance & repair - evidence for stone knapping
Hunting &/or gathering without camping	all landscape zones	not important	near food resources	- assemblages of low density & diversity - evidence of tool maintenance & repair - evidence for stone knapping - high frequency of used tools
Camping by small groups	associated with permanent & temporary water	near (within 100m)	near food resources	- assemblages of moderate density & diversity - evidence of tool maintenance & repair - evidence for stone knapping & hearths
Nuclear family base camp	level or gently undulating ground	near reliable source (within 50m)	near food resources	- assemblages of high density & diversity - evidence of tool maintenance, repair, casual knapping - evidence for stone knapping - heat treatment pits, stone lined ovens - grindstones
Community base camp	level or gently undulating ground	near reliable source (within 50m)	near food resources	- assemblages of high density & diversity - evidence of tool maintenance, repair, casual knapping - evidence for stone knapping - heat treatment pits, stone lined ovens - grindstones & ochre - large area >100sqm with isolated camp sites

2.7 PREDICTIVE MODEL FOR THE PROJECT AREA

An archaeological predictive model is established to identify areas of archaeological sensitivity so it can be used as a basis for the planning and management of Aboriginal heritage. It involves reviewing existing literature to identify basic site distribution patterns. These patterns are then modified according to the specific environment of the project area to form a predictive model for site location within the current project area. A sampling strategy is then used to test the model and the results of the survey used to confirm, refute or modify the model.

Land-systems and environmental factors are commonly used factors in predictive modelling based on the assumption that they provide distinctive sets of constraints and opportunities that influenced past Aboriginal land use patterns. As land use patterns may differ between zones (due to different environmental conditions), this may result in the physical manifestation of different spatial distributions and forms of archaeological evidence. The predictive model presented here is based on landform units, previous archaeological assessments conducted within the region, distribution of known sites and site densities and traditional Aboriginal land use patterns. Also taken into consideration are land use impacts (both natural and anthropomorphic) that may have resulted in a disturbed landscape and associated archaeological record.

Considering the AHIMS results, local and regional archaeological investigations as well as the environmental context, given that fresh water was necessary for survival and the project area is located along what was originally a 1st or 2nd order creek, the absence of reliable fresh water indicates the project area and immediate surrounds may have been used no more than hunting and gathering opportunities rather than large-scale long-term camping. Evidence of such past Aboriginal land uses manifest in the archaeological record as low-density artefact scatters and isolated artefacts.

Non-indigenous settlement and land uses have substantially impacted the investigation area, particularly through clearing activities conducted on two occasions, excavation works, and soil removal and widening along the original creek, which has been widened twice since the 1960s. Such destructive land use activities would have directly impacted the archaeological record through removal, displacement, or destruction of any cultural materials that may have been present. The site types that may be present within the project area include artefact scatters and isolated artefacts, both of which are described below.

- **Artefact scatters**

Also described as open campsites, artefact scatters and open sites, these deposits have been defined at two or more stone artefacts within 50 metres of each other and will include archaeological remains such as stone artefacts and may be found in association with camping where other evidence may be present such as shell, hearths, stone lined fire places and/or heat treatment pits. These sites are usually identified as surface scatters of artefacts in areas where ground surface visibility is increased due to lack of vegetation. Erosion, agricultural activities (such as ploughing, grazing) and access ways can also expose surface campsites. Artefact scatters may represent evidence of;

- Large camp sites, where everyday activities such as habitation, maintenance of stone or wooden tools, manufacturing of such tools, management of raw materials, preparation and consumption of food and storage of tools has occurred;
- Medium/small camp sites, where activities such as minimal tool manufacturing occurred;
- Hunting and/or gathering events;
- Other events spatially separated from a camp site, or
- Transitory movement through the landscape.

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Artefact scatters are a common site type in the locality and the broader region. There is potential for low-density artefact scatters to occur within the project area in area and be representative of hunting and gathering activities. However, there is also the potential for such sites to be impacted on through past land uses.

- **Isolated finds**

Isolated artefacts are usually identified in areas where ground surface visibility is increased due to lack of vegetation. Erosion, agricultural activities (such as ploughing) and access ways can also expose surface artefacts. Isolated finds may represent evidence of;

- Hunting and/or gathering events; or
- Transitory movement through the landscape.

Isolated finds are a common site type in the locality and the broader region. There is potential for isolated artefacts to occur across the project area and across all landforms. There is also the potential for such sites to be impacted on through past land uses.

3 RESULTS AND DISCUSSION

To comply with the due diligence requirement that a visual inspection of the project area be undertaken, an archaeological survey across the project area was undertaken by MCH archaeologist on 24th May 2024. The survey focused on areas of high ground surface visibility and exposures (erosional features, tracks, cleared areas) and was undertaken in transects across the entire project area and spaced approximately one metre apart.

3.1 SURVEY UNITS

A project area consisting of two parcels (a southern portion and a northern portion) accessed via 231-245 Eleventh Avenue, Austral. The inspection confirmed that the project area had been subject to high levels of past disturbance, including creek widening, drainage line excavation, vegetation clearance, track creation/use, dam/embankment creation, the establishment of a power line easement and animal grazing.

The southern portion of the project area was located to the immediate west of Eleventh Avenue. The western end of this portion of the project area was predominantly within the channel of an unnamed tributary of Kemps Creek, unable to be accessed due to both fencing and high levels of water within the channel at the time of inspection. The highly channelised nature of the tributary and artificially straight edges were assessed as being evidence of past modification.

The northern portion of the project area also had its western-most section inaccessible due to fencing and high levels of water in the tributary channel, but visual assessment across this area verified it as being highly disturbed. Similarly, the middle section was fenced off at the time of inspection, but it was possible to walk immediately adjacent to it along the fence line and visually inspect it, again confirming it as highly disturbed. The eastern portion was immediately adjacent to a large embankment that formed a dam wall. It was being used for animal grazing and had a power line easement and excavated drainage channel running through it. No sites or PADs were identified. Based on the high levels of past disturbance, no intact in situ subsurface archaeological deposits were considered likely to occur within this project area. Examples of the project area are provided in Figures 3.1 to 3.4.

Figure 3.1 View east across the southern section of the project area towards Eleventh Avenue



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Figure 3.2 View west across the unnamed Kemps Creek tributary at the western end of the southern section of the project area



Figure 3.3 View west across the unnamed Kemps Creek tributary at the western end of the northern section of the project area



Figure 3.4 View northeast across the northern section of the project area showing an excavated drainage channel



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As shown in Table 3.1 the total effective coverage for the project area was 15m², or 1% reflecting the low surface visibility due to vegetation cover.

Table 3.1 Effective coverage for the investigation area

SU	Landform	Area (m2)	Vis. %	Exp. %	Exposure type	Previous disturbances	Present disturbances	Limiting visibility factors	Effective coverage (m2)
1	north	700	10%	10%	erosion, tracks, quarry	clearing, creek widening, fencing	erosion	vegetation	7
2	south	800	10%	10%	erosion	clearing, creek widening, fencing, dam wall	erosion	vegetation	8
Totals		1,500							15
Effective coverage %									1.00%

The level and nature of the effective survey coverage is considered satisfactory to provide an effective assessment of the project area. The coverage was comprehensive for obtrusive site types (e.g., grinding grooves and scarred trees) but somewhat limited for the less obtrusive surface stone artefact sites by surface visibility constraints that included vegetation cover and minimal exposures.

The project area has a history of clearing, creek widening and maintenance, additional clearing and additional creek widening and maintenance works. This is a highly disturbed landscape with little to none of the original soils remaining in situ, the clearing and creek widening would have impacted the top soils through removal and/or redistribution. The presence of a highly uneven ground surface observed during the survey coupled with creek bank erosion further demonstrates significant landscape disturbance.

In relation to land uses and the associated impacts on the landscape and any cultural materials that may have been present, the project area has been subject to high levels of past disturbance, including creek widening, drainage line excavation, vegetation clearance, track creation/use, dam/embankment creation, the establishment of a power line easement and animal grazing, and as indicated in Table 3.2, these disturbances range from moderate to high.

Table 3.2 Land use scale (CSIRO 2010) and land uses in the project area

Minor disturbance		Project area	Moderate disturbance		Project area	Major disturbance		Project area
0	No effective disturbance; natural		3	Extensive clearing (e.g., poisoning and ringbarking)		6	Cultivation: grain fed	

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1	No effective disturbance other than grazed by hoofed animals		4	Complete clearing: pasture native or improved, but never cultivated	all	7	Cultivation: irrigated, past and present	
2	Limited clearing (e.g., selected logging)		5	Complete clearing: pasture native or improved, cultivated at some stage		8	Highly disturbed: e.g., quarry, road works, mining, landfill, urban	yes, complete

3.2 ARCHAEOLOGICAL SITES AND ARCHAEOLOGICAL SENSITIVITY

No sites or areas of potential archaeological sensitivity were identified in the project areas during the survey and this is due to the significantly high impacts from previous land uses across the project area (clearing, multiple creek widening and maintenance). Additionally, being located at a distance from reliable fresh water and resources, indicates the project area may have been utilised for more transitory activities rather than camping. Evidence of such past Aboriginal land uses manifests in the archaeological record as a background scatter of discarded artefacts, which would have been disturbed/destroyed through past land uses.

The predictive modelling and effective coverage results demonstrate that the survey provides a valid basis for determining probable impacts of the proposal to the archaeological record and formulating appropriate project recommendations. The survey results confirm the absence of Aboriginal objects within the project area and are consistent with findings from other studies conducted in the local area under similar environmental conditions. The results indicate two possibilities for past Aboriginal land use within the project area: very low intensity of Aboriginal occupation and extensive ground disturbances that have disturbed or removed archaeological evidence.

3.3 CONCLUSION

Archaeological research has consistently demonstrated that proximity to reliable water sources was a critical factor in past Aboriginal occupation patterns, with site frequency and density decreasing markedly with distance from water resources. Most documented sites are situated within 50 metres of permanent or semi-permanent tributaries, reflecting the fundamental importance of fresh water access for sustained habitation and survival. The project area's location over one kilometre from the nearest fourth-order creek and associated subsistence resources suggests it was unsuitable for camping activities, though it may have been utilised for transitory movement and hunting and gathering activities, leaving limited evidence in the form of very low-density artefact scatters or isolated finds.

Concerning landscape modifications, the documented large-scale clearing activities, construction works associated with creek widening (conducted twice) and maintenance activities represent high-impact disturbances to any archaeological deposits that may have been present. Natural post-depositional processes including erosional activities have further compromised archaeological integrity, with the cumulative effect of these human and natural impacts resulting in significant displacement or removal of cultural materials. The combination of these disturbance factors indicates that the likelihood of encountering intact, in situ cultural materials within the project area is very low.

4 IMPACT ASSESSMENT

The archaeological record is a non-renewable resource that is affected by many processes and activities. As outlined in Section 2 and Section 3, the various natural processes and human activities have impacted on archaeological deposits through both site formation and taphonomic processes.

4.1 IMPACTS

The Heritage NSW Code of Practice for the Archaeological Investigation of Aboriginal Objects in New South Wales (2010:21) describes impacts to be rated as follows:

- 1) Type of harm: is either direct, indirect or none
- 2) Degree of harm is defined as either total, partial or none
- 3) Consequence of harm is defined as either total loss, partial loss, or no loss of value

No Archaeological Impact - as no sites or PADs were identified, there are no impacts on the archaeological record.

The archaeological survey conducted across the project area identified no Aboriginal sites or areas of potential archaeological sensitivity. This finding is attributed to:

- **High levels of previous disturbance** from complete vegetation clearing, repeated creek widening activities resulting the loss and/or redistribution of topsoils throughout the project area resulting in lost surface and subsurface integrity
- **Distance from reliable water sources** (fourth order creek over one kilometre away), making the area unsuitable for long-term camping

The comprehensive due diligence assessment has established that the area has been disturbed and modified by large scale clearing activities, at two creek widening events and maintenance works. The proposed project presents no impacts to the archaeological record due to the absence of identified archaeological sites and the disturbed nature of the project area.

5 MITIGATION AND MANAGEMENT STRATEGIES

Specific strategies, as outlined through the Heritage NSW Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010b), the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (OEH 2011), and the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (DECCW 2010c), are considered below for the management of the identified site(s) within the project area.

5.1 CONSERVATION/PROTECTION

Conservation is the first avenue and is suitable for all sites, especially those considered high archaeological significance and/or cultural significance. Conservation includes the processes of looking after an indigenous site or place so as to retain its significance and managed in a way that is consistent with the nature of peoples' attachment to them.

As no sites or PADs were identified conservation/protection is not required.

5.2 FURTHER INVESTIGATION

An Aboriginal Heritage Impact Permit (AHIP) is no longer required to undertake test excavations (providing the excavations are in accordance with the Code of Practice for Archaeological Investigations in NSW). Subsurface testing is appropriate when a PAD has been identified, and it can be demonstrated that sub-surface Aboriginal objects with potential conservation value have a high probability of being present, and that the area cannot be substantially avoided by the proposed activity.

As no sites or PADs were identified further investigations are not justified.

5.3 AHIP

If harm will occur to an Aboriginal object or Place, then an AHIP should be sought from Heritage NSW, Department of Premier & Cabinet as a defence to that harm. If a systematic excavation of the known site could provide benefits and information for the Aboriginal community and/or archaeological study of past Aboriginal occupation, a salvage program, and, or community collection, may be an appropriate strategy to enable the salvage of cultural objects.

As no sites or PADs were identified an AHIP is not required.

The project can proceed with standard heritage protection protocols in place, including unexpected finds procedures and staff awareness requirements (Refer to Section 6). No further archaeological investigation or specialist heritage approvals are required, providing a clear pathway for project implementation while maintaining appropriate cultural heritage protections.

6 RECOMMENDATIONS

6.1 GENERAL

- 1) The persons responsible for the management of onsite works will ensure that all staff, contractors and others involved in construction and maintenance related activities are made aware of the statutory legislation protecting sites and places of significance. Of particular importance is the National Parks and Wildlife Regulation 2019, under the National Parks and Wildlife Act 1974;
- 2) An Unexpected Finds Procedure (Appendix B) will be implemented during all works; and
- 3) Should any Aboriginal objects be uncovered during works, all work will cease in that location immediately, the Unexpected Finds Procedure followed and the Environmental Line contacted.

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APPENDIX A

AHIMS Search Results



AHIMS Web Services (AWS) Search Result

Your Ref/PO Number : Austral

Client Service ID : 1009302

Date: 29 May 2025

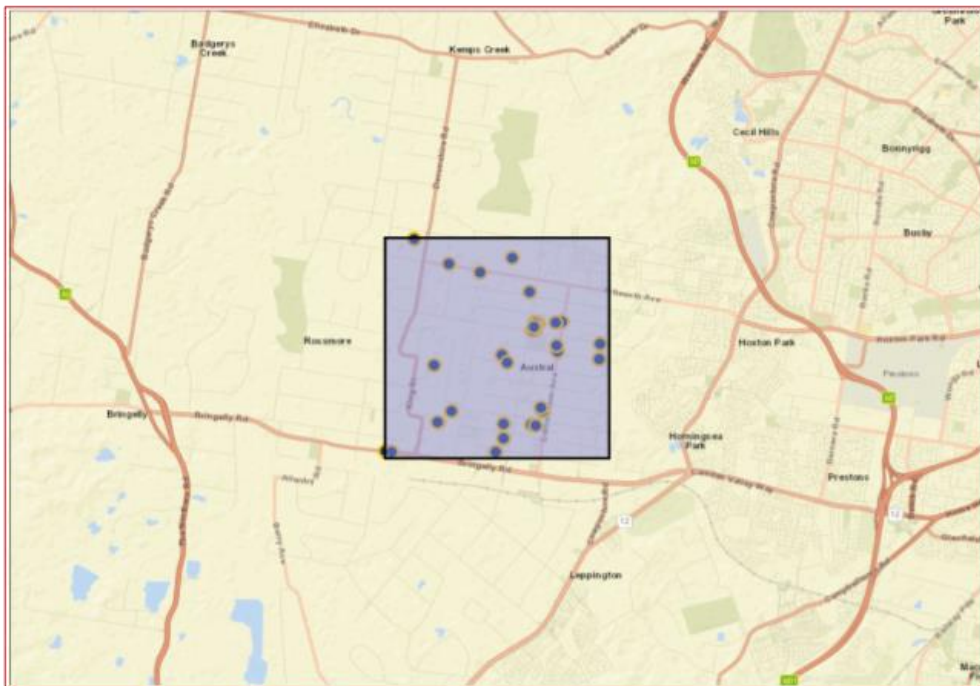
Adamstown New South Wales 2289

Attention:

Dear Sir or Madam:

AHIMS Web Service search for the following area at Datum :GDA, Zone : 56, Eastings : 294700.0 - 298700.0, Northings : 6241500.0 - 6245500.0 with a Buffer of 0 meters, conducted by Penny Mccardle on 29 May 2025.

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



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

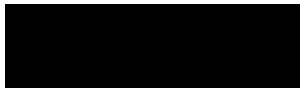
41	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette](https://www.legislation.nsw.gov.au/gazette) (<https://www.legislation.nsw.gov.au/gazette>) website. Gazettal notices published prior to 2001 can be obtained from Heritage NSW upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Heritage NSW and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.





AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref/PO Number : Austral

Client Service ID : 1009302

SiteID	SiteName	Datum	Zone	Eastings	Northings	Context	Site Status **	SiteFeatures	SiteTypes	Reports
45-5-4018	PAD 2019-6	GDA	56	297367	6242079	Open site	Valid	Potential Archaeological Deposit (PAD) : -		103783
	Contact	Recorders	Extent Heritage Pty Ltd - Pyrmont - Individual users, Doctor. Alan Williams							Permits
45-5-5017	Kelly Street AD 1	GDA	56	295666	6242099	Open site	Destroyed	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Sydney, Biosis Pty Ltd - Wollongong, Mr. James Cole, Mrs. Samantha K							Permits 4701
45-5-5831	Thirteenth Ave IF02	GDA	56	297451	6243969	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats							Permits
45-5-5949	350ED-AD-02	GDA	56	297883	6244009	Open site	Valid	Artefact : -		
	Contact	Recorders	Apex Archaeology, Ms. Jenni Bate							Permits 5390
45-5-5894	Thirteenth Ave AS07	GDA	56	297343	6243835	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats							Permits
41-5-0019	Thirteenth Ave AS05	GDA	56	297403	6243951	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats, Mrs. S							Permits
45-5-5896	Thirteenth Ave IF03	GDA	56	297384	6243977	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats							Permits
45-5-5242	Eight Ave Austral Scatter 2	GDA	56	297572	6242348	Open site	Valid	Artefact : 1		
	Contact	Recorders	Eco - Connections, Mr. Daniel Claggett							Permits 4616
45-5-3873	BRP-S-18	GDA	56	294710	6241532	Open site	Destroyed	Artefact : 1		
	Contact	Recorders	Kelleher Nightingale Consulting Pty Ltd, Mr. Leigh Bate, Miss. Kristen Taylor							Permits 3742
45-5-5291	FOURTH AVENUE	GDA	56	297277	6244546	Open site	Valid	Artefact : 1		
	Contact	Recorders	Mr. Miles Robson							Permits 4836
45-5-5889	Thirteenth Ave AS02	GDA	56	297405	6243979	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats							Permits
45-5-4020	Isolated Object 2021-5	GDA	56	296796	6243361	Open site	Valid	Artefact : -		103783
	Contact	Recorders	Extent Heritage Pty Ltd - Pyrmont - Individual users, Doctor. Alan Williams							Permits
45-5-5658	Boyd Street AS 1	GDA	56	295565	6243151	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats, Mrs. S							Permits
45-5-5832	Thirteenth Ave IF01	GDA	56	297381	6243882	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats							Permits
45-5-5888	Thirteenth Ave IF05	GDA	56	297379	6243889	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats							Permits
45-5-5890	Thirteenth Ave IF07	GDA	56	297384	6243831	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong, Mrs. Samantha Keats							Permits
45-5-4019	PAD 2020-6	GDA	56	297450	6242075	Open site	Destroyed	Artefact : -, Potential Archaeological Deposit (PAD) : -		103783

Report generated by AHIMS Web Service on 29/05/2025 for Penny Mccardle for the following area at Datum : GDA, Zone : 56, Eastings : 294700.0 - 298700.0, Northings : 6241500.0 - 6245500.0 with a Buffer of 0 meters. Number of Aboriginal sites and Aboriginal objects found is 41

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AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref/PO Number : Austral

Client Service ID : 1009302

SiteID	SiteName	Datum	Zone	Easting	Northing	Context	Site Status **	SiteFeatures	SiteTypes	Reports
	Contact	Recorders								
45-5-5318	Tenth Avenue Austral AFT 1	GDA	56	296903	6243221	Open site	Valid	Artefact : -	4245	
	Contact	Recorders								
45-5-5043	UC IA 13	GDA	56	298584	6243604	Open site	Valid	Artefact : 1		
	Contact	Recorders								
45-5-5950	350ED-AD-01	GDA	56	297772	6243992	Open site	Valid	Artefact : -	4303	
	Contact	Recorders								
45-5-4005	PAD 2006-6	GDA	56	295790	6245041	Open site	Valid	Potential Archaeological Deposit (PAD) : -	5390	
	Contact	Recorders								
45-5-4964	Eight Ave Austral Scatter	GDA	56	297530	6242401	Open site	Valid	Artefact : 1		
	Contact	Recorders								
45-5-5892	Thirteenth Ave IF04	GDA	56	297383	6243924	Open site	Valid	Artefact : -	4616	
	Contact	Recorders								
45-5-2689	B62	AGD	56	295050	6245290	Open site	Valid	Artefact : -		
	Contact	Recorders								
45-5-5317	EDM IF1	GDA	56	297809	6243447	Open site	Valid	Artefact : -		
	Contact	Recorders								
45-5-3860	BRP-IF-11	GDA	56	294826	6241522	Open site	Destroyed	Artefact : 1		
	Contact	Recorders								
45-5-5347	Restriction applied. Please contact ahims@environment.nsw.gov.au.					Open site	Valid			
	Contact	Recorders								
45-5-5830	Thirteenth Ave AS01	GDA	56	297388	6243917	Open site	Valid	Artefact : -		
	Contact	Recorders								
45-5-6000	Kelly Road AD 1 Reburial	GDA	56	295646	6242091	Open site	Valid	Artefact : -		
	Contact	Recorders								
45-5-5891	Thirteenth Ave IF06	GDA	56	297364	6243834	Open site	Valid	Artefact : -		
	Contact	Recorders								
45-5-5897	Thirteenth Ave AS06	GDA	56	297394	6243910	Open site	Valid	Artefact : -, Potential Archaeological Deposit (PAD) : -		
	Contact	Recorders								
45-5-4017	PAD 2018-6	GDA	56	296372	6244899	Open site	Valid	Potential Archaeological Deposit (PAD) : -		103783,10378 6
	Contact	Recorders								

Report generated by AHIMS Web Service on 29/05/2025 for Penny Mccardle for the following area at Datum :GDA, Zone : 56, Eastings : 294700.0 - 298700.0, Northings : 6241500.0 - 6245500.0 with a Buffer of 0 meters. Number of Aboriginal sites and Aboriginal objects found is 41

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AHIMS Web Services (AWS)

Extensive search - Site list report

Your Ref/PO Number : Austral

Client Service ID : 1009302

SiteID	SiteName	Datum	Zone	Eastings	Northings	Context	Site Status **	SiteFeatures	SiteTypes	Reports
45-5-4962	SA-AS1-17	GDA	56	296870	6241825	Open site	Valid	Artefact : -		
	Contact	Recorders	Mr.Geordie Oakes,AECOM Australia Pty Ltd - Sydney							
45-5-3968	ALN-IF-60	GDA	56	298577	6243329	Open site	Destroyed	Artefact : 1		
	Contact	Recorders	Australian Museum Consulting (AM Consulting),Niche Environment and Heritage,S							
45-5-3887	BRP-S-10	GDA	56	296851	6242085	Open site	Destroyed	Artefact : 1		103783
	Contact	Recorders	Kelleher Nightingale Consulting Pty Ltd,Mr.Leigh Bate,Miss.Kristen Taylor							
45-5-5546	Edmondson Avenue West AFT 1	GDA	56	297792	6243566	Open site	Valid	Artefact : -		
	Contact	Recorders	Mr.Matthew Kelleher,Kelleher Nightingale Consulting Pty Ltd (Generic users)							
45-5-5893	Thirteenth Ave AS03	GDA	56	297387	6243965	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong,Mrs.Samantha Keats							
45-5-5401	Lot 21 AS 1 & PAD 1	GDA	56	295902	6242313	Open site	Valid	Artefact : -		
	Contact	Recorders	Archaeological Risk Assessment Services (ARAS),Mr.Giles (dup ID#12832) Hamm							
45-5-4912	Fifth Avenue 1	GDA	56	296727	6241565	Open site	Valid	Artefact : -		104137
	Contact	Recorders	Biosis Pty Ltd - Sydney,Mr.James Cole							
45-5-5920	150 Gurner Avenue	GDA	56	296955	6245178	Open site	Valid	Artefact : -		4167
	Contact	Recorders	Ms.Vanessa Hardy,Cultural Heritage Connections Pty Ltd							
45-5-5895	Thirteenth Ave AS04	GDA	56	297381	6243906	Open site	Valid	Artefact : -		
	Contact	Recorders	Biosis Pty Ltd - Wollongong,Mrs.Samantha Keats							

**** 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 29/05/2025 for Penny Mccardle for the following area at Datum :GDA, Zone : 56, Eastings : 294700.0 - 298700.0, Northings : 6241500.0 - 6245500.0 with a Buffer of 0 meters.. Number of Aboriginal sites and Aboriginal objects found is 41

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APPENDIX B

Unexpected finds procedure

Unexpected finds procedures

Unexpected find protocols have been developed to provide procedures for unexpected finds including Aboriginal objects and the discovery of human remains. These protocols must be followed throughout all stages of the development.

Unexpected Aboriginal objects

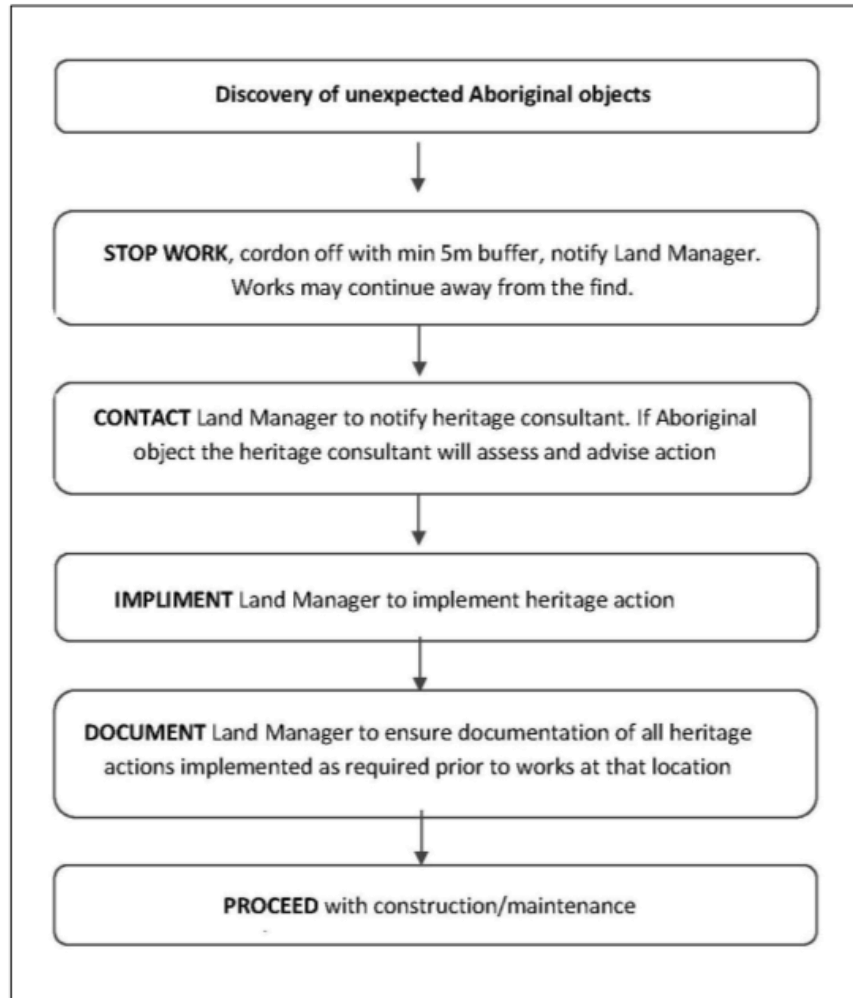
Should unexpected Aboriginal objects be uncovered during any stage of the development, Figure 1 illustrates the protocols. Unexpected Aboriginal objects may include, but not limited to, isolated artefacts, artefact scatters, scarred trees, hearths and shell middens (descriptions of such objects are provided).

Work must stop immediately in that location, the objects cordoned off with at least a 5m perimeter surrounding the object(s) with high visibility fencing/barrier and the Land Manager notified immediately. The Land Manager will then contact the heritage consultant who will assess the object(s) and recommend appropriate mitigation measures, including contacting the Environmental Line if required. The Land Manager is to implement all reasonable mitigation measures recommended by the heritage consultant and in accordance with Heritage NSW regulations and the NSW NPW Act.

If additional works are required, such as an Aboriginal Cultural Heritage Assessment (ACHA) with or without test excavations or an Aboriginal Heritage Impact Permit (AHIP) (with collection or salvage excavations), the Land Manager is to arrange for the heritage consultant to undertake those works in accordance with all Heritage NSW requirements, procedures and Code of Practice. The methodology for undertaking additional works will be dependant on a number of factors including, but not limited to, site/object type and disturbances. Due to the unknown nature of unexpected objects, methodologies for further investigation (if required) of unexpected Aboriginal objects will be determined during consultation with Heritage NSW.

Provided these heritage unexpected finds protocols have been followed, construction/maintenance works in that location may proceed.

Figure 1. Unexpected finds protocol flow chart



Discovery of human remains

Human skeletal remains are of the highest significance and importance to Aboriginal people, and all care, respect and dignity will be extended by all parties should human remains be uncovered.

If human remains or unidentified bone are uncovered during any stage of the development and maintenance activities, the appropriate State legislation will be followed. All human remains fall under the *Coroners Act 2009* in the first instance. If they are identified as Aboriginal and older than 100 years old, they will fall under the *NSW NPWS Act 1974* (as amended). If they are identified as Aboriginal and 100 years or less, they will remain under Police derestriction under the *Coroners Act 2009*. Figure 2 outlines the required protocols should human remains be uncovered.

Should any human remains or unidentifiable bone be found, work is to stop in that area immediately and an area of 15m cordoned off surrounding the remains/bone in high visibility fencing. The Land Manager is to be notified immediately.

The Land Manager will contact the heritage consultant and local NSW Police immediately, who will then contact the NSW Forensic Services who will determine if they are:

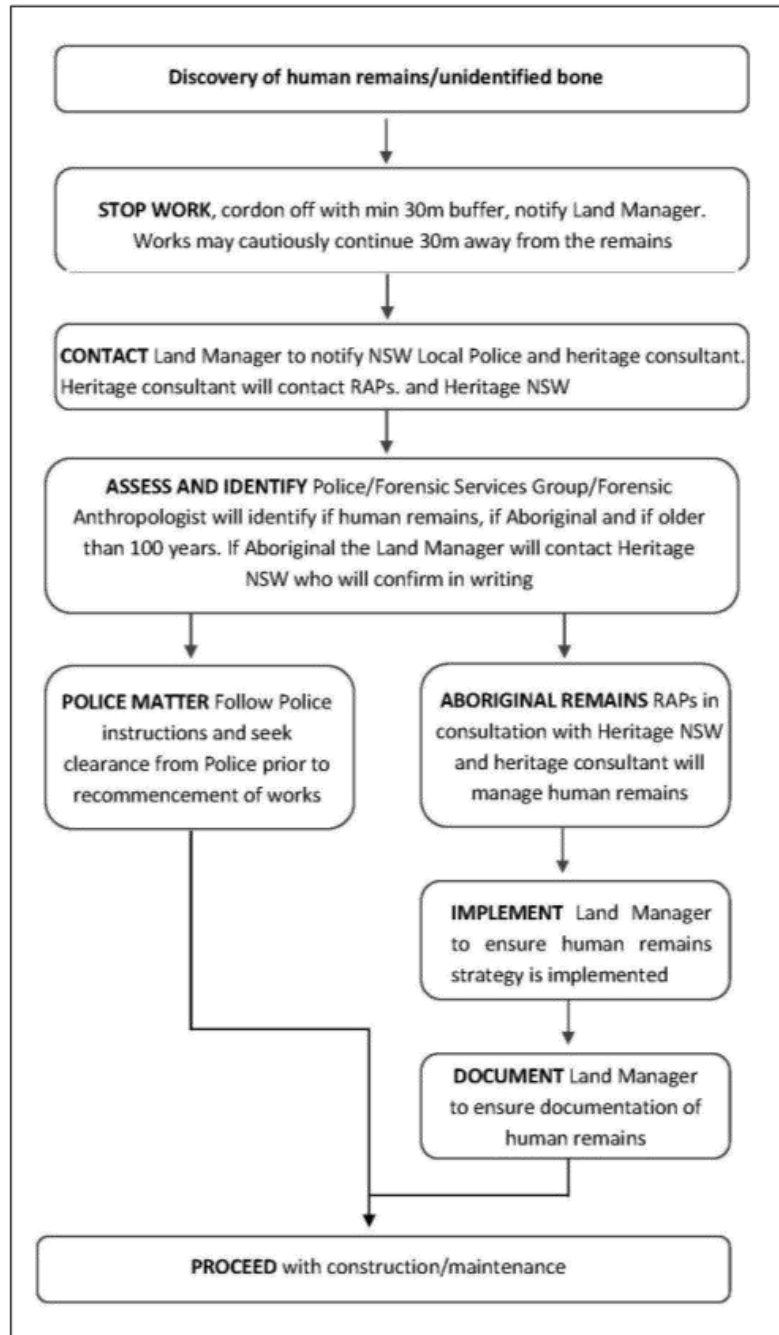
- 1) Human;
- 2) Aboriginal or non-Aboriginal;
- 3) If Aboriginal, determine antiquity (older or younger than 100 years)

If it is determined the remains are Aboriginal and older than 100 years old, the Police will notify the Land Manager who must contact the Environmental Line and Heritage NSW immediately. Heritage NSW, in consultation with the relevant Aboriginal community and the heritage consultant will develop a human remains management strategy and the Land Manager is to ensure this strategy is implemented. The Land Manager must also document the human remains management strategy and the heritage consultant will provide a letter of clearance prior to any works recommencing at that location.

If the remains are determined to be a Police matter, Police instructions will be followed and clearance to recommence works should be sought from the Police.

Provided the human skeletal protocols have been followed and documented, and a clearance letter from the heritage consultant has been obtained, construction/maintenance works may proceed in that location.

Figure 2 Human remains protocol flow chart



Verification of all Aboriginal objects (sites)

All potential Aboriginal sites will be verified by the heritage consultant in the first instance, and Heritage NSW if required.

The purpose of the verification process is to determine whether or not the objects in question are in fact Aboriginal objects to ensure appropriate management measures be implemented.

The verification process will include the following provisions:

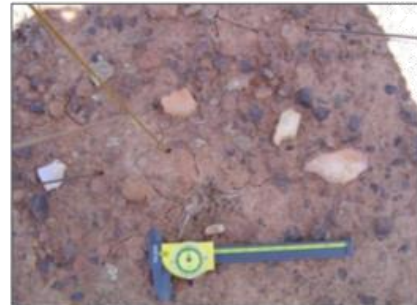
1. A heritage consultant may assess the scientific status of the Aboriginal object (site) and provide evidence and justification for significance;
2. If it is an Aboriginal object the Environmental Line will be contacted and the site reported;
3. An AHIMS site card will be completed for each Aboriginal object (site); and
4. Management recommendations specific to each Aboriginal object (site), will be determined by Heritage NSW.

Surface Artefact scatters

Also described as open campsites, artefact scatters and open sites, these deposits have been defined at two or more stone artefacts within 50 or 200 metres of each other and may include archaeological remains such as stone artefacts, shell, and sometimes hearths, stone lined fire places and heat treatment pits. These sites are usually identified as surface scatters of artefacts in areas where ground surface visibility is increased due to lack of vegetation. Erosion, agricultural activities (such as ploughing) and access ways can also expose surface campsites. Artefact scatters may represent evidence of;

- Camp sites, where everyday activities such as habitation, maintenance of stone or wooden tools, manufacturing of such tools, management of raw materials, preparation and consumption of food and storage of tools has occurred;
- Hunting and/or gathering events;
- Other events spatially separated from a camp site, or
- Transitory movement through the landscape.

If a potential artefact scatter has been identified, the Unexpected Finds Protocol must be followed immediately.

Examples of artefact scatters (MCH)

Surface Isolated finds

Isolated artefacts are usually identified in areas where ground surface visibility is increased due to lack of vegetation. Erosion, agricultural activities (such as ploughing) and access ways can also expose surface artefacts. Isolated finds may represent evidence of;

- Hunting and/or gathering events; or
- Transitory movement through the landscape.

If a potential isolated find has been identified, the Unexpected Finds Protocol must be followed immediately.

Examples of isolated artefacts (MCH)

Our Ref: DA-793/2019/A
Contact: Assessing Officer
Ph: 02 8711 7975
Date: 10 April 2025

THE TRUSTEE FOR CROWN TRUST 28
7.01 7/3 RIDER BLVDE
RHODES NSW 2138

SECTION 4.55 MODIFICATION OF DEVELOPMENT CONSENT

(In accordance with the provisions under Section 4.55 of the EP&A Act 1979)

ADDRESS: LOT 11 DP 1304045, LOT 9 DP 776297
231-245 ELEVENTH AVENUE, AUSTRAL NSW 2179,
STARR PARK, 350 THIRTEENTH AVENUE, AUSTRAL NSW
2179

DESCRIPTION: Modification to Development Consent DA-793/2019. Under Section 4.55 of the Environmental Planning and Assessment Act 1979, to the approved DA plans and conditions of consent to facilitate:

1. Additional stormwater infrastructure within the subject site, Lot 9 DP776297, and along Eleventh Avenue that will replace the need for the approved temporary basin;
2. Removal of eleven trees to facilitate the proposed stormwater infrastructure; and
3. Amendments to the lot numbering to account for errors on the approved DA plans.
4. Deletion of the stages to allow the development to be delivered in a single stage

Reference is made to Modification Application DA-793/2019/A which seeks amendment to Development Consent DA-793/2019 issued for *the demolition of existing structures and subdivision of one (1) lot into fourteen (14) low density residential lots, three (3) environment living residential lots and (1) RE1 lot for public open space over three stages.*

Modification Application DA-793/2019/A seeks consent for:

1. Additional stormwater infrastructure within the subject site, Lot 9 DP776297, and along Eleventh Avenue that will replace the need for the approved temporary basin;
2. Removal of eleven trees to facilitate the proposed stormwater infrastructure; and
3. Amendments to the lot numbering to account for errors on the approved DA plans.
4. Deletion of the stages to allow the development to be delivered in a single stage
5. Rectify the proposal description to reflect these changes.

Pursuant to Section 4.55 (2) of the *Environmental Planning and Assessment Act 1979*, the Local Planning Panel has granted approval for the modifications sought. Accordingly, Development Consent DA-793/2019 has been amended as follows:

1. The description of development has been amended to read as follows:

The application is seeking consent for the demolition of existing structures and subdivision of one (1) lot into fourteen (13) low density residential lots, three (3) environment living residential lots and (1) RE1 lot for public open space.

The proposal is identified as Integrated Development under the Rural Fires Act, requiring an approval from the NSW Rural Fire Service.

The proposed works on Lot DP 776297 is identified as integrated development under Water Management Act 2000 requiring a Controlled Activity Approval from Department of Planning and Environment - Water

2. The following condition/s of Development Consent DA-793/2019/A have been amended to read as follows:

Condition 2 has been amended to read as follows:

2. Development the subject of this determination notice must be carried out strictly in accordance with the following approved plans/reports marked as follows, except where modified by the undermentioned conditions.

Plan name	Sheet	Date	Revision	Prepared by
Plan of Subdivision Plan—Stage 1	1	2/03/2021	G	Group Development Services
Proposed Subdivision Plan—Stage 2	2	7/12/2022	D	Group Development Services
Proposed Subdivision Plan – Stage 3	3	7/12/2022	D	Group Development Services
Plan of Subdivision of Lot 11 DP 776297	-	8/03/2024	-	Stephen Craig Bishop
Public Domain Plan	500	7/12/2022	E	Group Development Services
Tree Removal	600	7/12/2022	E	Group Development

Plan				Services
Tree Management Plan	-	28/02/2025	A	Naturally Trees
Demolition Plan	601	7/12/2022	E	Group Development Services

Report name	Date	Reference	Prepared by
Bushfire Protection Hazard Assessment	7/11/2018	18HNG_11282	Eco-Logical Australia
Flora and Fauna Assessment	30/11/2018	18SYD - 11356	Eco Logical Australia
Concept Stormwater Management Plan Report	January 2019		Group Development Services Pty Ltd
Demolition Statement	-	-	Group Development Services Pty Ltd
Odour Assessment	27 February 2020	20.10270DR1V1	NorthStar Air Quality
Flood Assessment	September 2020	-	GRC Hydro
Remedial Action Plan	September 2019	1009-RAP-01-190919.v1f	Sydney Environmental Group
Stage 2 Detailed Site Investigation Report	September 2019	1009-DSI-01-170919.v1f	Sydney Environmental Group
Public Utility Infrastructure Report	December 2018	-	Group Development Services Pty Ltd
Arboricultural Impact Appraisal and Method Statement	28 February 2025	S.4.55(2) Modification of consent to DA-793/2019 (Revision A)	Naturally Trees
Remediation Action Plan	August 2024	JE24472A-r2	GeoEnviro Consultancy Pty Ltd
Detailed Site Investigation Report	June 2024	JE24752A-r1(rev)	GeoEnviro Consultancy Pty Ltd
Aboriginal Archaeological Assessment and Impact Assessment	14 July 2025	J202463 DD	McCardle Heritage Pty Ltd
Threatened	19 July 2024	-	ACS Environmental Pty

Species Assessment			Ltd
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Condition 5 has been amended to read as follows:

NSW RFS Requirements

5. General Terms of Approval provided by the NSW RFS dated **13 March 2025** and included in Appendix 3 of this report must be adhered to at all times.

Condition 8 has been amended to read as follows:

Department of Planning and Environment - Water requirements

8. General Terms of Approval provided by the **Department of Planning and Environment-Water (DPE-Water) dated 16 January 2025** must be adhered to at all times.

Works on waterfront land shall not commence until a controlled activity approval has been obtained from DPE-Water.

Condition 13 has been amended to read as follows:

Construction Certificate for Subdivision Works

13. Prior to the issue of a Construction Certificate for subdivision works the Certifying Authority shall ensure that engineering plans are consistent with the ***plans prepared by Colliers International Engineering and Design reference number 638-23, revision C, dated 15/11/2024 submitted with the development application*** and that all subdivision works have been designed in accordance with conditions of this consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works, any Roads Act approval issued, Austroad Guidelines and best engineering practice. The subdivision works may include but are not limited to the following:
 - Public and private roads
 - Stormwater drainage including water quantity and quality treatment measures • Interallotment drainage
 - Private access driveways
 - Sediment and erosion control measures 219 220 221 223 224 226 (b) 228 230 239 242 243 248 Apply only for subdivision works where a Construction Certificate will be issued by Land Development Engineering Section. Do not apply B450, B454 or B456 Special condition required where works are not provided on the concept plans. Page 5 of 30 Revision 9/2018
 - Overland flow paths
 - Flood control measures

- Traffic facilities including roundabouts, intersection treatments, car parks, bus stops, cycleways, pathways etc.
- Earthworks
- Bridges, culverts, retaining walls and other structures • Landscaping and embellishment works
- All works required for conversion of the proposed sediment basin to a bio retention function
- ~~All works required for the decommissioning temporary OSD systems including pipe removal, basin filling and works to existing pit structures if required The Construction Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.~~

The Construction Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.

Condition 16 has been amended to read as follows:

Stormwater Management

16. ~~On-Site Detention shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Group Development Services, reference number P00302, revision F, dated 7/12/2022. The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties. Engineering plans and supporting calculations for the on-site detention system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the on-site detention system has been designed in accordance with Liverpool City Council's Design Guidelines and Liverpool City Council's On-Site Stormwater Detention policy and Technical Specification.~~

Stormwater management for the development shall be provided generally in accordance with the with the plans prepared by Colliers International Engineering and Design, reference number 638-23, revision C, dated 15/11/2024 submitted with the development application.

The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties. Engineering plans and supporting calculations as required, are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that stormwater management system has been designed in accordance with Liverpool City Council's guidelines.

Condition 25 has been amended to read as follows:

Flooding

25. The proposal shall be consistent with the submitted flood assessment report (Sept. 2020 by GRC Hydro) and ***civil plans prepared by Colliers International Engineering and Design.***

Condition 27 has been amended to read as follows:

27. Existing overland flows from upstream catchment through the site shall be accommodated into proposed stormwater system ***for the development, consistent with the plans prepared by Colliers International Engineering and Design, reference number 638-23, revision C, dated 15/11/2024 submitted with the development application.*** Design & sizing of stormwater system shall consider full developed upstream catchment flows through the site up to the 1% AEP event.

Two Gross Pollutant Traps (GPTs) shall be installed at proposed stormwater outlets to capture stormwater pollutants before discharging into the creek.

The design and sizing of the GPTs shall be adequate to capture pollutants from fully developed upstream catchment area.

The development, including construction works, shall not result in any increase in sediment deposition into any natural water body, wetland, bushland or environmentally significant land. A sediment control basin must be incorporated into the design to manage sediment, and pollutant discharges downstream and into the watercourse during the subdivision work stage.

Condition 28 has been amended to read as follows:

28. ~~Major system (roads) shall consider overland flows through the site up to the 1%AEP storm event with flood depth not exceeding 0.2m & comply velocity x depth safety criteria.~~

The design and sizing of the trunk line on Eleventh Avenue shall consider overland flows from the upstream catchment up to the 1%AEP storm event with flood depth not exceeding 0.2m & comply velocity x depth safety criteria of 0.4m²/s.

Condition 41 has been amended to read as follows:

On-site water quality

41. ~~Interim on-site water quality treatment system shall be provided and maintained. Water quality treatment system shall be designed using MUSIC modelling software and the water quality treatment system performance shall be verified using Council's MUSIC link. Temporary basin shall not be removed without Council's written consent.~~

Permanent on-site water quality treatment system shall be provided and maintained. Water quality treatment system shall be designed using MUSIC modelling software and the water quality treatment system performance shall be verified using Council's MUSIC link.

Any runoff entering the areas of vegetation to be retained on Lot 9 DP 776297 shall be of an equivalent or better quality, and of a similar rate of flow to present levels.

Existing hydrological regimes shall be maintained so as not to negatively impact vegetation to be retained on site and downslope/downstream of the site.

Condition 111 has been amended to read as follows:

Stormwater Compliance

111. Prior to the issue of a Subdivision Certificate the Principal Certifying Authority shall ensure that the:

- i) ~~On-Site Detention System/s~~
- ii) Stormwater pre-treatment System/s
- iii) Overland flow path works

- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Have met the design intent with regard to any construction variations to the approved design.
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works-As-Executed drawings.

Condition 112 has been amended to read as follows:

112. Prior to the issue of a Subdivision Certificate a restriction as to user and positive covenant relating to the:

- i) ~~On-Site Detention Systems~~
- ii) ~~Stormwater pre-treatment systems~~
- iii) Overland Flow Paths

Shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

Condition 120 has been amended to read as follows:

120. Where common drainage lines or other drainage lines are required, a drainage easement shall be created in accordance with Council's minimum widths as scheduled in councils design specification for subdivisions (as amended). ***This may include, but not limited to, an easement or a separate deed of agreement for an easement, for drainage over Lot 9 DP 776297 if required.***

Condition 125 has been amended to read as follows:

125. Prior to the issue of Subdivision Certificate for Stage-2 ***the development***, all existing buildings and structures must be demolished to the satisfaction of the Council.

Condition 128 has been amended to read as follows:

128. Prior to the issue of a subdivision Certificate for Stage 2 ***the development***, evidence that full width construction and dedication of Road No 2 (Gunvada Street) must be provided and the temporary turning head removed to the satisfaction of the Council.

Condition 129 has been amended to read as follows:

SECTION 7.11 PAYMENT
Liverpool Contributions Plan 2014 Austral & Leppington North

129. As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payment is imposed in accordance with above Liverpool Contributions Plan 2014 Austral & Leppington North as amended.

The total contribution is **\$480,000** and will be adjusted at the time of payment in accordance with the contributions plan. ~~This will be paid over two stages:~~

~~Stage 2 – \$390,000~~

~~Stage 3 – \$90,000~~

A breakdown of the contribution's payable is provided in the attached payment form.

The Contributions Plan may be inspected online at www.liverpool.nsw.gov.au. Payment must be accompanied by the attached form.

3. **The following conditions have been inserted to form part of Development Consent DA-793/2019/A, and read as follows:**

New condition 68.1 has been added to read as follows:

Vegetation Management Plan

68.1. Prior to the commencement of works on Lot 9 DP 776297, a Vegetation Management Plan containing the following details shall be submitted to, and approved, by Council.

- a) At least one coir log structure (square shaped 300mm x 3m) shall be provided between each proposed outlet structure and the creek to mitigate the high energy stormwater flow entering the creek. Additionally, three lines of coir logs shall be provided along the sides of the outlet structures to further stabilise the area. These requirements are demonstrated by the brown lines in Figure 1.***
- b) Revegetation plantings shall consist of:***
 - i. native ground cover species between the coir logs***

- ii. *semi-aquatic and water-tolerant species (sedges and rushes) near the lower coir logs crossing the stormwater outlet structures*
- iii. *compensatory plantings to replace the high amenity value tree approved for removal under this consent*
- iv. *ground cover species in the area indicated by the light green polygon around stormwater outlet 301-11 in Figure 1, and native riparian species in the area indicated by the dark green polygon*
- v. *thick slitted jute matting secured with steel fastening pins shall be used as part of the regeneration works*

c) **The Vegetation Management Plan shall specify a minimum maintenance period of two years. Council reserves the rights to extend this timeframe if the specified performance targets have not been met. The Vegetation Management Plan shall include the following requirements:**

- i. **Monitoring reports to be submitted to Council at 6 monthly intervals following primary planting.**
- ii. **A final report to be submitted to Council upon completion of the maintenance period to demonstrate that all Vegetation Management Plan actions have been completed and that performance targets specified within the Vegetation Management Plan have been met.**

Note: The final appearance of the stormwater outlet structures may vary slightly with the detailed design plans and final construction. The number of coir logs may be adjusted (i.e., moved, reduced, or increased) to suit site conditions and ensure optimal performance. Any additional revegetation requirements as part of the controlled activity approval should be included in the Vegetation Management Plan.

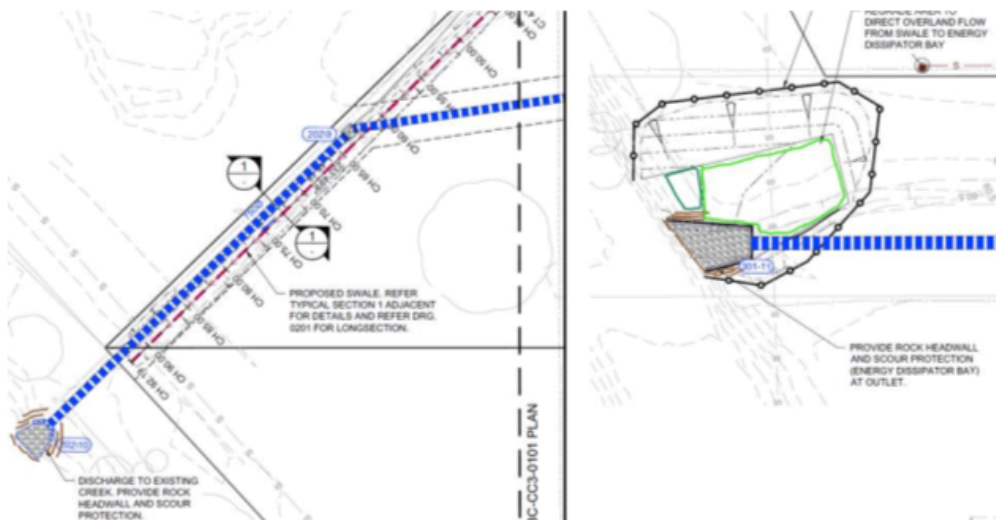


Figure 1- Vegetation management and erosion control works required at the stormwater outlets

New condition 87.1 has been added to read as follows:

Aboriginal Cultural Heritage ☐ **Staff and Contractors**

87.1 All relevant on-site staff and contractors should be made aware of their statutory obligations for heritage under NSW National Parks and Wildlife Act 1974 and the NSW Heritage Act 1977. They are to be informed of what the potential heritage on the site will be and its significance. The site supervisor is to maintain a record of who has completed the heritage induction and this is to be provided to Council prior to Issue of a Subdivision Certificate.

The National Parks and Wildlife Act 1974 protects all Aboriginal Cultural Heritage in New South Wales. Where a proposal has the potential to impact on Aboriginal Cultural Heritage objects and places, whether the presence is known or not, a permit is to be sought from Heritage NSW.

In the event that skeletal remains are uncovered, work must cease immediately in that area and the area secured. NSW Police must be contacted and no further action taken until written advice has been provided by the NSW Police. If the remains are determined to be of Aboriginal origin, the Office of Environment and Heritage must be notified by ringing the Enviroline 131 555 and a management plan prior to works recommencing must be developed in consultation with relevant Aboriginal stakeholders.

New condition 69.1 has been added to read as follows:

Supervision of works within the creek

All excavation within the creek alignment is to be supervised by an experienced Aboriginal Cultural Heritage Archaeologist. No excavation is to be undertaken within the creek alignment without the Archaeologist on site and monitoring the material being excavated.

New condition 69.2 has been added to read as follows:

Unexpected Finds Protocol

An Unexpected Finds Protocol is to be implemented for the project. Should any objects which may potentially be Aboriginal Object or human skeletal remains be uncovered, all works are to cease, the area is to be secured with temporary fencing and an Archaeologist is to be engaged to inspect and analyse the objects. Heritage NSW and Liverpool City Council are to be notified and provided copies of any assessments prepared by the Archaeologist. No works are to be resumed without authorisation from Heritage NSW and Liverpool City Council.

New condition 101.1 has been added to read as follows:

Tree Protection Measures and Revegetation

101.1. Consent is granted for the removal of trees identified in the approved Arboricultural Impact Appraisal and Method Statement by Naturally Trees. All other trees shall be protected in accordance with recommendations in the aforementioned report. This protection shall consist of 1800mm high protective fencing, securely installed beneath the outer canopy of any tree to be retained. Trees may be fenced off in clusters where it is not practical to fence off

individual trees. There shall be no storing materials, washing machinery or changes to existing soil levels within the fenced areas.

All works identified within the approved Vegetation Management Plan shall be implemented by person or persons with appropriate knowledge, qualifications and experience in current best practices of indigenous vegetation rehabilitation and management. The timeframes, actions and works specified within the Vegetation Management Plan shall be adhered to.

Where there is inconsistency between the requirements in this condition and the recommendations in the approved documents, the latter prevails to the extent of inconsistency.

New condition 101.2 has been added to read as follows:

Fauna Management

101.2 The works shall comply with the recommendations in the approved Flora and Fauna Assessment and Threatened Species Assessment.

Prior to the removal of each tree, they shall be examined by a qualified ecologist for the presence of hollows, active nests of birds or fauna. The removal of trees with hollows or active nests shall be undertaken under the supervision of a qualified and appropriately licenced ecologist, in a manner recommended by the ecologist. Any native fauna encountered shall be relocated by a qualified ecologist, or member of a wildlife rescue organisation, with necessary permits.

The appropriate hygiene measures will be undertaken every morning and afternoon to prevent the spread of phytophthora pathogens. Before works commence all earth working tools and the sole of work boots will be sprayed with a seven (7) parts methylated spirits to three (3) parts water ratio. At the end of the day all earth works equipment, vehicle tyres and work boots will be thoroughly cleaned of all excess mud, sludge, and dirt then a final spray of work equipment will be conducted with the pathogen spray to ensure diseases are unable to spread.

Imported mulch and soils will be certified and free of any disease and pathogens and tested to ensure they meet the standards of drainage, particle size, purity, and consistency.

To minimise the risk of fauna entrapment, digging and trenching shall be undertaken and completed on the same day where possible. If holes, pits, trenches, or other cavities must be left overnight, they will all be covered with secure boards to ensure that fauna does not get trapped. Before commencing work each day, all excavated areas will be inspected and if fauna is encountered a licenced ecologist or wildlife handler will be utilised to safely remove the trapped fauna and relocate it to a suitable location. Works can continue when the fauna has been safely removed.

Where there is inconsistency between the requirements in this condition and the recommendations in the approved documents, the latter prevails to the extent of inconsistency. In the event of inconsistency between the approved documents, written advice should be sought from Council.

New condition 101.3 has been added to read as follows:

Site Remediation Works

101.3 The site must be remediated in accordance with:

- a) **Remediation Action Plan titled "Remediation Action Plan (RAP) Proposed Stormwater Works for No 231-245 Eleventh Avenue Lot 9 DP 776297 and Eleventh Avenue Austral NSW" (Ref: JE24472A-r2) prepared by Adrian Tejada and reviewed by Solern Liew for Geo Enviro Consultancy Pty Ltd dated 9th August 2024;**
- b) **State Environmental Planning Policy (Resilience and Hazards) 2021;**
- c) **National Environment Protection (Assessment of Site Contamination) Measure (ASC NEPM, 1999 as amended 2013); and**
- d) **The guidelines in force under the Contaminated Land Management Act 1997**

A suitably qualified environmental consultant must be engaged to supervise all aspects of site remediation and validation works in accordance with the approved Remediation Action Plan.

Liverpool City Council must be informed in writing of any proposed variation to the remediation works. Liverpool City Council must approve these variations in writing prior to commencement/ recommencement of works.

Note: The 'suitably qualified environmental consultant' must be certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) Scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) Scheme.

New condition 129.1 has been added to read as follows:

Vegetation Management Plan ☐ Monitoring Report

- 129.1 All works identified within the approved Vegetation Management Plan shall be implemented by person or persons with appropriate knowledge, qualifications and experience in current best practices of indigenous vegetation rehabilitation and management. The timeframes, actions and works specified within the Vegetation Management Plan shall be adhered to.**

A compliance report shall be submitted to Council following completion of the primary planting the subject of the Vegetation Management Plan prior to the issue of a Subdivision Certificate.

- 130 The following condition/s have been deleted from Development Consent DA-793/2019/A:**

- **Part 2, Condition A – Staged Approval**
- **Conditions 16,31, 32 and 39 relating to On-site Detention**
- **Condition 127 relating to half road construction of Gunvada Street**

All other conditions of Development Consent DA-793/2019 remain unchanged.

Note: *This determination notice is strictly for changes sought under Modification Application DA-793/2019/A. No approval is granted or implied for any other works / changes proposed to the submitted development.*

ADVISORY NOTES:

- (a) *Section 8.2 of the EP&A Act provides that an applicant may request that Council review the determination of the Modification Application (this does not relate to designated development or Crown development).*

Section 244 of the EP&A Regulations provides that an application for review must be submitted within 28 days of the date of the determination, and Section 8.2 of the EP&A Act provides that an application cannot be reviewed/determined after 6 months of the date of determination.

- (a) *Section 8.9 of the EP&A Act provides that an applicant who is dissatisfied with the determination of a Modification Application, may appeal to the Land and Environment Court within six (6) months of the date of determination, or as otherwise prescribed by the EP&A Act.*
- (b) *The Section 4.55 (2) Modification Application does not extend the timeframe of the Development Consent initially granted by Council.*
- (c) *Modification of the Development Consent does not remove the need to obtain any other statutory consent necessary under the EP&A Act.*

If you have any further enquiries, please contact Sarah Ilma on the abovementioned contact details.

Yours faithfully

<REVIEW OFFICER>

<POSITION>

DEVELOPMENT ASSESSMENT