

Appendix M

Roads and Maritime Procedure for Aboriginal Cultural
Heritage Consultation and Investigation, Stage 1
Clearance Letter



06.05.2015

Bradley Spalding
Senior Project Development Officer
Project Development | Infrastructure Development
T 02 4924 0687 M 0419 610 260
www.rms.nsw.gov.au
Every journey matters

Roads and Maritime Services
Level 1 59 Darby St Newcastle NSW 2300

Dear Bradley

Preliminary assessment results for based on Stage 1 of the *Procedure for Aboriginal cultural heritage consultation and investigation* (the procedure). Newcastle Inner City Bypass, Rankin Park to Jesmond

The project, as described in the Stage 1 assessment checklist (see attached) [attach Resource 3], was assessed as being unlikely to have an impact on Aboriginal cultural heritage.

The assessment is based on the following due diligence considerations:

- The project is unlikely to harm known Aboriginal objects or places.
- The AHIMS search did not indicate moderate to high concentrations of Aboriginal objects or places in the study area.
- The study area does not contain landscape features that indicate the presence of Aboriginal objects, based on the Office of Environment and Heritage's *Due diligence Code of Practice for the Protection of Aboriginal objects in NSW* and the Roads and Maritime Services' procedure.
- The cultural heritage potential of the study area appears to be reduced due to past disturbance.
- There is an absence of sandstone rock outcrops likely to contain Aboriginal art.

Your project may proceed in accordance with the environmental impact assessment process, as relevant, and all other relevant approvals.

If the scope of your project changes, you must contact me and your regional environmental staff Assiah Issa Snr Environment Officer Environment Branch | Strategy and Engagement T 02 8588 5728 www.rms.nsw.gov.au *Every journey matters* Roads and Maritime Services

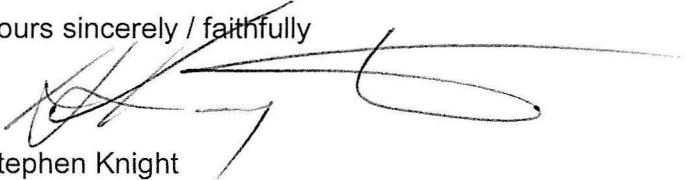
Roads and Maritime Services

Level 17 101 Miller Street North Sydney NSW 2060 to reassess any potential impacts on Aboriginal cultural heritage.

If any potential Aboriginal objects (including skeletal remains) are discovered during the course of the project, all works in the vicinity of the find must cease. Follow the steps outlined in the Roads and Maritime Services' *Unexpected Archaeological Finds Procedure*.

For further assistance in this matter and do not hesitate to contact me.

Yours sincerely / faithfully

A handwritten signature in black ink, appearing to read 'Stephen Knight', with a long horizontal flourish extending to the right.

Stephen Knight
Aboriginal Cultural Heritage Advisor – Hunter Region

Activity checklist

Procedure for Aboriginal cultural heritage consultation and investigation - Resource 1

1. Project details

Project name: Newcastle Inner City Bypass, Rankin Park to Jesmond

Name of project manager: Bradley Spalding

Name of Aboriginal cultural heritage officer: Stephen Knight – Hunter Region

Project WBS#: D/00063/CD/TE/CH/E

2. Purpose of this assessment

This resource provides a checklist of actions associated with the four stages of the *Procedure for Aboriginal cultural heritage consultation and investigation*. It can be used to:

- Assist Roads and Maritime Services staff to ensure that the appropriate actions have been completed for a particular project.
- Demonstrate that the Roads and Maritime Services has been duly diligent in considering potential harm to Aboriginal cultural heritage prior to project implementation.




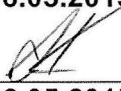

A copy of this checklist must be kept on the project file.

Glossary

The following terms are used in this resource:

ACHA – Aboriginal cultural heritage advisor
AFG – Aboriginal focus group meeting
AHIMS – OEH's Aboriginal heritage information management system
CHAR – Cultural heritage assessment report
OEH – Office of Environment and Heritage
PM – Project manager
RES – Regional environmental staff
SES(H) – Senior Environmental Specialist (Heritage)

3. Action checklist

Stage	Action	Completed <input checked="" type="checkbox"/>	Date completed and signature
Stage 1	Action 1: Is the activity exempt development in accordance with the <i>Environmental assessment procedure for routine and minor works</i> ? If yes , the project may proceed in accordance with all other relevant approvals. If no , proceed to Action 2.	<input checked="" type="checkbox"/>	06.05.2015 
	Action 2: Undertake a Basic Search of AHIMS. Are sites located in the study area? If yes , undertake an Extensive Search.	<input checked="" type="checkbox"/>	06.05.2015 
	Action 3: Provide project details and AHIMS results to ACHA and RES.	<input checked="" type="checkbox"/>	06.05.2015 
	Action 4: ACHA and RES to advise PM whether the project is likely to harm Aboriginal objects or places.	<input checked="" type="checkbox"/>	06.05.2015 
	Outcomes: Are known or potential impacts to objects or places likely? If no , proceed in accordance with all other relevant approvals and environmental impact assessment processes. If yes , proceed to Stage 2. <u>Note:</u> For large or complex projects, it may not be feasible to do a Stage 2 survey. Has a cultural heritage constraints mapping been suggested instead? If yes , engage an archaeologist and Aboriginal stakeholders to prepare this.	<input checked="" type="checkbox"/> NO	06.05.2015 

Stage 1 Roads and Maritime Services assessment

Procedure for Aboriginal cultural heritage consultation and investigation: Resource 3

Aim

The project manager (or their representative) must provide the information requested in this checklist to the regional Aboriginal cultural heritage adviser. This information will assist them in determining whether the project may affect Aboriginal cultural heritage in accordance with Stage 1 of the procedure.

Please **provide** this completed cover sheet, along with the required information, to your regional Aboriginal cultural heritage adviser.

Contact details for this project

Name of project:

Newcastle Inner City Bypass, Rankin Park to Jesmond

Project manager

Bradley Spalding
Senior Project Development Officer
Project Development | Infrastructure Development
T 02 4924 0687 M 0419 610 260
www.rms.nsw.gov.au
Every journey matters

Roads and Maritime Services
Level 1 59 Darby St Newcastle NSW 2300

WBS: D/00063/CD/TE/CH/E

Environmental officer undertaking/managing the environmental impact assessment

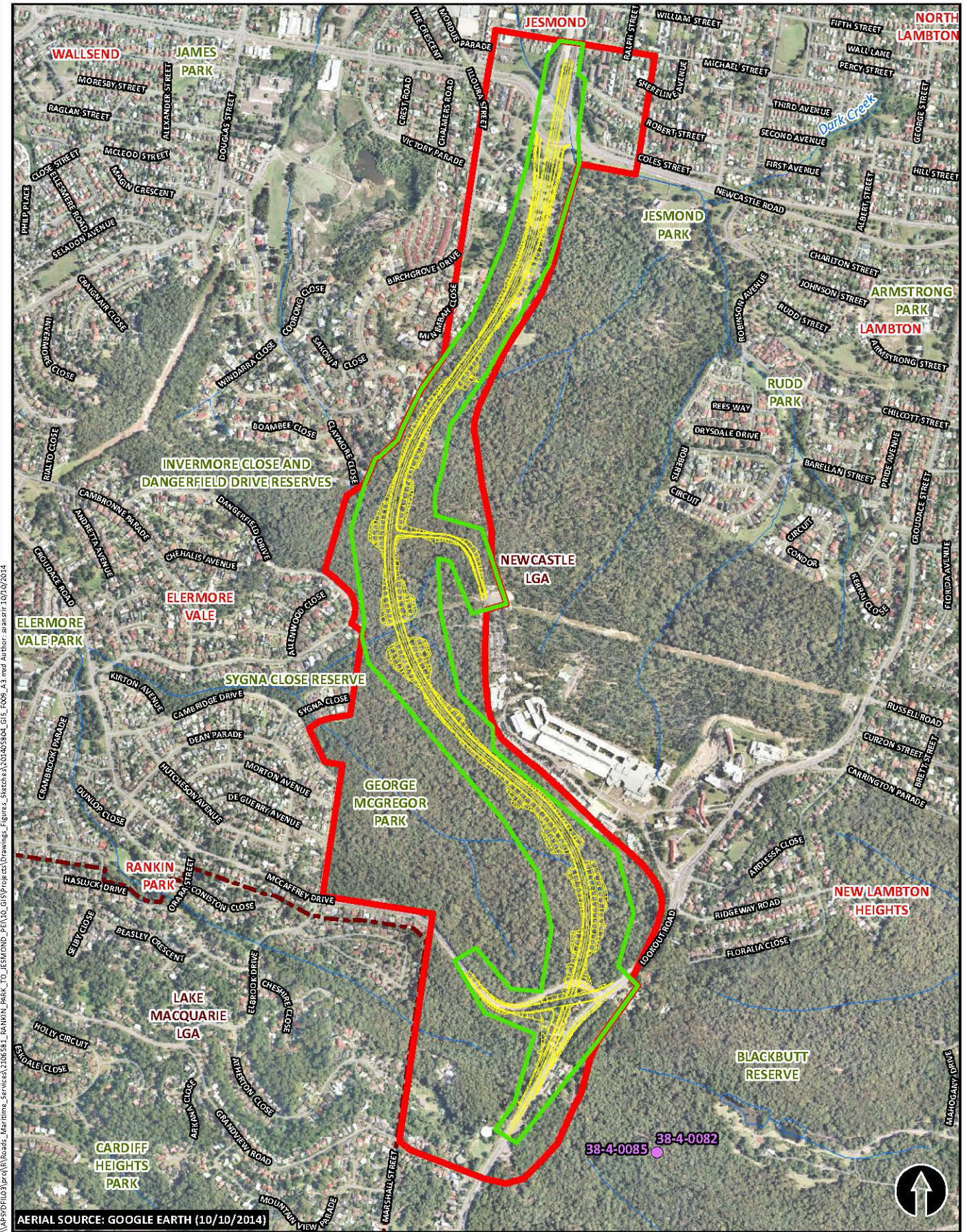
Assiah Issa Snr Environment Officer Environment Branch | Strategy and Engagement T 02 8588 5728 www.rms.nsw.gov.au *Every journey matters* Roads and Maritime Services

Corporate communications officer, if any

Nil

Date: 06.05.2015

Action	Status <input checked="" type="checkbox"/>
<p>Item 1 Attach an overview of the project. The overview must include the known scope and extent of the proposed works; compound site requirements; access and movement of plant; re-location and/or provision of utilities; the location of noise walls, sedimentation basins, shared pathways, cycle ways, etc...</p>	<input checked="" type="checkbox"/>
<p>Item 2 Attach a map/plan of the study area that clearly outlines the extent and scope of the project. The map/plan should also include topographical information where available.</p>	<input checked="" type="checkbox"/>
<p>Item 3 If land acquisition is required, provide details about this.</p>	<input checked="" type="checkbox"/>
<p>Item 4 Attach a brief description of current and past land use, where known. For example, the study area land is currently used as a car park/road reserve/farming/etc. and was formally used for a car park/road reserve/farming/etc...</p>	<input checked="" type="checkbox"/>
<p>Item 5 Describe the timeframe for the project along with key milestones and deliverables.</p>	<input checked="" type="checkbox"/>
<p>Item 6 Please attach the results of the Office of Environment and Heritage's Aboriginal Heritage Information Management System (AHIMS) Basic Search - http://www.environment.nsw.gov.au/licences/WhatInformationCanYouObtainFromAHIMS.htm</p> <p>If required, please include the results of an AHIMS Extensive Search. These results should be plotted on a map/plan covering the study area.</p>	<input checked="" type="checkbox"/>
<p>Item 7 Attach the results of the following heritage searches relevant to the study area:</p> <ul style="list-style-type: none"> • Native Title Register search • State Heritage Inventory search • Australian Heritage Database search 	<input checked="" type="checkbox"/>
<p>Item 8 Attach a copy of any heritage assessment (Aboriginal or non-Aboriginal) previously prepared for the study area/project?</p>	<input checked="" type="checkbox"/>
<p>Item 9 Attach a copy of any environmental impact assessment previously prepared for the study area/project?</p>	<input checked="" type="checkbox"/>



- Local roads
- Road design
- Creek lines
- Proposal area
- Study area
- Local government area
- AHIMS Register site



Figure 4.9
Aboriginal heritage sites

Appendix E1 - AHIMS Extensive Search Report



<u>SiteID</u>	<u>SiteName</u>	<u>Datum</u>	<u>Zone</u>	<u>Easting</u>	<u>Northing</u>	<u>Context</u>	<u>Site Status</u>	<u>SiteFeatures</u>	<u>SiteTypes</u>	<u>Reports</u>
38-4-0082	Lambton	AGD	56	377918	6355201	Open site	Valid	Grinding Groove :-	Axe Grinding Groove	98458,98459
	<u>Contact</u>			<u>Recorders</u>	Len Dyall			<u>Permits</u>		
38-4-0085	Lambton:	AGD	56	377918	6355201	Open site	Valid	Grinding Groove :-	Axe Grinding Groove	98458,98459
	<u>Contact</u>			<u>Recorders</u>	Len Dyall			<u>Permits</u>		

Report generated by AHIMS Web Service on 09/07/2014 for Natalie Elvers for the following area at Datum :GDA, Zone : 56, Eastings : 376928 - 378111, Northings : 6355347 - 6358661 with a Buffer of 0 meters. Additional Info : Due diligence. Number of Aboriginal sites and Aboriginal objects found is 2

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



National
Native Title
Tribunal



30 July 2014

Natalie Elvers
Environmental Scientist
Parsons Brinckerhoff
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Newcastle NSW 2300

Operations East, Sydney Office

Level 16, Law Courts Building,
Queens Square
Sydney NSW 2000
GPO Box 9973
Sydney NSW 2000
Telephone (02) 9227 4000
Facsimile (02) 9227 4030

Our Reference: 0065/14MO

Your Reference: 2106581A

Dear Ms Elvers

**Native Title Search Results for Rankin Park and New Lambton Heights within Newcastle
Local Government Area**

Thank you for your search request of 29 July 2014 in relation to the above area.

Search Results

The results provided are based on the information you supplied and are derived from a search of the following Tribunal databases:

Register Type	NNTT Reference Numbers
Schedule of Applications (unregistered claimant applications)	Nil.
Register of Native Title Claims	NC2013/002
National Native Title Register	Nil.
Register of Indigenous Land Use Agreements	Nil.
Notified Indigenous Land Use Agreements	Nil.

I have included a register extract, a map attachment and a NNTT Registers fact sheet to help guide your understanding of the search result.

Please note that there may be a delay between a native title determination application being lodged in the Federal Court and its transfer to the Tribunal. As a result, some native title determination applications recently filed in the Federal Court may not appear on the Tribunal's databases.

The search results are based on analysis against external boundaries of applications only. Native title applications commonly contain exclusions clauses which remove areas from within the external boundary. To determine whether the areas described are in fact subject to claim, you need to refer to "Area covered by claim" section of the relevant Register Extract or Application Summary and any maps attached.

Search results and the existence of native title

Please note that the enclosed information from the Register of Native Title Claims and/or the Schedule of Applications is **not** confirmation of the existence of native title in this area. This cannot be confirmed until the Federal Court makes a determination that native title does or does not exist in relation to the area. Such determinations are registered on the National Native Title Register.

Tribunal accepts no liability for reliance placed on enclosed information

The enclosed information has been provided in good faith. Use of this information is at your sole risk. The National Native Title Tribunal makes no representative, either express or implied, as to the accuracy or suitability of the information enclosed for any particular purpose and accepts no liability for use of the information or reliance placed on it.

If you have any further queries, please contact me on 1800 640 501.

Yours sincerely



Melissa O'Malley | RECEPTIONIST/CLIENT SERVICES OFFICER

National Native Title Tribunal | Sydney Office

Level 16, Federal Law Courts Building, Queens Square, Sydney, New South Wales 2000

Telephone (02) 9227 4000 | Facsimile (02) 9227 4030 | Email melissa.o'malley@nntt.gov.au

Freecall 1800 640 501 | www.nntt.gov.au

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Searching the NNTT Registers in New South Wales

Search service

On request the National Native Title Tribunal may search its public registers for you. A search may assist you in finding out whether any native title applications (claims), determinations or agreements exist over a particular area of land or water.

In New South Wales native title cannot exist on privately owned land including family homes or farms.

What information can a search provide?

A search can confirm whether any applications, agreements or determinations are registered in a local government area. Relevant information, including register extracts and application summaries, will be provided.

In NSW because we cannot search the registers in relation to individual parcels of land we search by local government area.

Most native title applications do not identify each parcel of land claimed. They have an external boundary and then identify the areas not claimed within the boundary by reference to types of land tenure e.g. freehold, agricultural leasehold, public works.

What if the search shows no current applications?

If there is no application covering the local government area this only indicates that at the time of the search either the Federal Court had not received any claims in relation to the local government area or the Tribunal had not yet been notified of any new native title claims.

It does not mean that native title does not exist in the area.

Native title may exist over an area of land or waters whether or not a claim for native title has been made.

Where the information is found

The information you are seeking is held in three registers and on an applications database.

National Native Title Register

The National Native Title Register contains determinations of native title by the High Court, Federal Court and other courts.

Register of Native Title Claims

The Register of Native Title Claims contains applications for native title that have passed a registration test.

Registered claims attract rights, including the right to negotiate about some types of proposed developments.

Register of Indigenous Land Use Agreements

The Register of Indigenous Land Use Agreements contains agreements made with people who hold or assert native title in an area.

The register identifies development activities that have been agreed by the parties.

Schedule of Native Title Applications

The Schedule of Native Title Applications contains a description of the location, content and status of a native title claim.

This information may be different to the information on the Register of Native Title Claims, e.g., because an amendment has not yet been tested.

How do I request a native title search?

Download the Search Request Form from the Tribunal's website at -

<http://www.nntt.gov.au/assistance/Pages/Searches-and-providing-Register-information.aspx>

Email to: NSWEnquiries@nntt.gov.au

Post to: GPO Box 9973 Sydney NSW 2001

For additional enquiries: 02 9227 4000



Extract from the Register of Native Title Claims

Application Information

Application Reference: Federal Court number: NSD780/2013
NNTT number: NC2013/002

Application name: Kerrie Brauer & Ors on behalf of the Awabakal and Guringai People

Registration History: Registered from 13/06/2013

Register Extract (pursuant to s. 186 of the *Native Title Act 1993*)

Application filed with: Federal Court of Australia

Date application filed: 13/05/2013

Date claim entered on Register: 13/06/2013

Applicants: Kerrie Brauer, Trevor Powell, Wayne Hawken, Shane Frost, Peter Leven, Wayne Saxby, Tracey-Lee Howie, Trudy Smith, Laurie Bimson

Address for service: Michael Owens
Michael Owens
Lawyer and Consultant
15 Cahill Street
Aitkenvale QLD 4814
Phone: 0418 181 004

Additional Information:

Not Applicable

DESCRIPTION OF THE AREA COVERED BY THE CLAIM:

Information identifying the boundaries of:

- (a) the area covered by the application; and
- (b) any areas within those boundaries that are not covered by the application.

In relation to (a) above a description of the area of land and waters covered by the application is provided at Attachment "B".

Areas within the boundary identified in Attachment "B" that are not covered by the application are set out below:

- 1. The area covered by the application excludes any land or waters that is or has been covered by:
 - (a) Scheduled interest;

- (b) a freehold estate;
- (c) commercial lease that is neither an agricultural lease nor a pastoral lease;
- (d) an exclusive agricultural lease or an exclusive pastoral lease;
- (e) a residential lease;
- (f) a community purpose lease;
- (g) a lease dissected from a mining lease and referred to in s. 23B(2)(c)(vii) of the Native Title Act 1993 (Cth);
- (h) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters.

2. Subject to paragraphs 4 and 5, the area covered by the application excludes any land or waters covered by the valid construction or establishment of any public work, where the construction or establishment of the public work commences on or before 23 December 1996.

3. Subject to paragraphs 4 and 5, exclusive possession is not claimed over areas which are subject to valid previous non-exclusive possession acts done by the Commonwealth or State of New South Wales.

4. Subject to paragraph 6, where the act specified in paragraphs 1, 2 and 3 falls within the provisions of:

- s. 23B(9) - Exclusion of acts benefiting Aboriginal Peoples or Torres Strait Islanders;
- s. 23B(9A) - Establishment of a national park or state park;
- s. 23B(9B) - Acts where legislation provides of non-extinguishment;
- s. 23B(9C) - Exclusion of Crown to Crown grants; and
- s. 23B(10) - Exclusion by regulation

the area covered by the act is not excluded from the application.

5. Where an act specified in paragraphs 1, 2 and 3 affects or affected land or waters referred to in:

- s. 47 - Pastoral leases etc covered by claimant application
- s. 47A - Reserves etc covered by claimant application
- s. 47B - Vacant Crown land covered by claimant application

the area covered by the act is not excluded from the application.

6. The area covered by the application excludes land or waters where the native title rights and interests have been otherwise extinguished.

The Applicant relies on section 2 and elsewhere in the Report of Mr. Nathan Woolford of 10 May 2013 in Annexure "F".

PERSONS CLAIMING TO HOLD NATIVE TITLE:

The claim group are persons:

1. who are recognised by other members of the claim group as being descended (which may include by adoption) from a deceased person who they recognise as having been a member of the aboriginal landholding group for the application area depicted in Attachment "C" ("an apical ancestor"); and
2. who identifies himself or herself as being a descendant of an apical ancestor.

It is accepted that adoption may take place and where adoption has occurred it confers upon the adoptee the right to identify as a member of the claim group.

The following deceased persons are recognised as having been apical ancestors from whom claim group members are descended:

The Awabakal People:

- Margaret (known as Queen Margaret/Old Margaret)
- Ned (known as King Ned/King Molly/Black Ned/Old Ned)
- Flathead (Father of King Ned/Black Ned/Old Ned)
- Mahrahkah (Known as Molly/Molly Morgan/Maria Morgan)
- Charlotte Preston (Daughter of Molly/Molly Morgan/Maria Morgan)

The Guringai Peoples:

- Bungaree (Known as King Bungaree)
- Bowen Bungaree
- Matora
- Gooseberry (Known as Cora)
- Charlotte Ashby
- Biddy Salamander

The Applicant relies on section 3 and elsewhere in the Report of Mr. Nathan Woolford dated 10 May 2013 in Attachment "F".

REGISTERED NATIVE TITLE RIGHTS AND INTERESTS:

The following Native Title Rights & Interests were entered on the Register on 13/06/2013

1. Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s. 238, ss. 47, 47A or 47B apply), the claim group claims the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world, pursuant to the traditional laws and customs of the claim group.

2. Over areas where a claim to exclusive possession cannot be recognised, the claim group claims the non-exclusive right to:

- (a) live and be present on the application area;
- (b) take, use, share and exchange Traditional Natural Resources for personal, domestic and non-commercial, communal purposes;
- (c) conduct burial rites;
- (e) teach on the area about the physical and spiritual attributes of the area;
- (f) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
- (g) light fires for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation.

3. For the purposes of 2. above,

"Live" means to reside and for that purpose erect shelters and temporary structures but does not include a right to construct permanent structures;

"Traditional Natural Resource" means:

"animals" as defined in the National Parks and Wildlife Act 1974 (NSW), but also including fish.

"plants" as defined in the National Parks and Wildlife Act 1974 (NSW)

charcoal, shells and resin; and

clay, soil, sand; ochre; gravel or rock on or below the surface.

"fish" and "fishing".

"Water" means water source as defined by the Water Management Act 2000 (NSW).

REGISTER ATTACHMENTS:

1. Attachment B boundary description, 4 pages - A4, 07/06/2013
2. Attachment C Map, 2 pages - A4, 13/05/2013

Note: The Register of Native Title Claims may, in accordance with s. 188 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.

ATTACHMENT "C"
A MAP SHOWING THE EXTERNAL BOUNDARIES OF THE CLAIM AREA.

See attached Map of Awabakal and Guringai Native Title Determination Application as Attachment C as prepared by Geospatial Services, National Native Title Tribunal 10 May 2013



Awabakal and Guringai People



Claim Area

NOTE: To determine areas subject to claim within the external boundary, reference to the application description is necessary.
Application and Determination boundary data compiled by the NNTT from data sourced from DOL (NSW),
Mining Lease Application data sourced from Department of Primary Industries, NSW.

Topographic image data is © Commonwealth of Australia and is used under licence from Geoscience Australia 2008

NOTE: Topographic images should be used as a guide only.

Map created by: Geospatial Services, National Native Title Tribunal (03/05/2013)

Map Ref: 20130509_Proposed_Awabakal_and_Guringai_People_Topo_A3P.pdf

0 10

KILOMETRES
Latitude and Longitude based on Geocentric Datum of Australia 1994
Non Projection

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