

18 December 2019

Steven Herald  
Chief Executive Officer  
Australian Foundation for Disability (AFFORD)  
3-7 Marieanne Place  
Minchinbury NSW 2770

Dear Mr Herald,

**RE: 61-79 Henry Street, Penrith  
Due Diligence Aboriginal Heritage Assessment**

This Due Diligence Aboriginal Heritage Assessment report has been prepared by Coast History & Heritage [Coast] to inform a Planning Proposal to amend the Penrith Local Environmental Plan (LEP) 2010 to allow residential use of the property known as 61-79 Henry Street, Penrith, for subsequent redevelopment with a multi-storey mixed-use building. Its purpose is to determine whether any further Aboriginal heritage investigations may be needed in relation to the proposal.

The Planning Proposal will be submitted to Penrith City Council, the planning proposal authority. Council has advised that they require a Heritage Impact Statement that considers the potential for impact on heritage items in the vicinity of the study area, and potential European and non-European archaeology within the study area. This report addresses the potential for impact on Aboriginal heritage and meets the reporting requirements of the Office of Environment and Heritage (OEH) 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*.<sup>1</sup> It was written by Fenella Atkinson (Senior Heritage Consultant) and Rebecca Bryant (Archaeologist) and was reviewed by Dr Paul Irish (Director).

## **1 What we are assessing**

### *The property and proposal*

The study area is the property known as 61-79 Henry Street, Penrith, and shown as Lot 1 in Deposited Plan 771927 (**Figure 1** and **Figure 2**). It is within the Penrith Local Government Area, in the Parish of Castlereagh County of Cumberland, and lies within the Metropolitan Sydney Region of the Department of Planning, Industry and Environment (formerly OEH), and within the boundaries of Deerubbin Local Aboriginal Land Council. It is approximately 1.6 hectares in size, and presently contains one single-storey retail building, two two-storey commercial buildings, and a street-level carpark.

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<sup>1</sup> The functions of the Office of Environment and Heritage were assumed by the Department of Planning, Industry and Environment on 1 July 2019, but details of the new arrangements are not yet known.

The potential for impact on historical (European) heritage is addressed in a separate report; Coast (in prep.) 'Preliminary historical heritage assessment: 61-79 Henry Street, Penrith'.

The proposals we assessed were:

- Amending Schedule 1 (Additional Permitted Uses) of the Penrith LEP 2010 to allow residential use of the study area.
- Redevelopment of the study area, involving demolition of the current structures, bulk excavation for underground carparking, and construction of a multi-storey building (**Figure 3** and **Figure 4**).

Although the proposed amendment would not have any physical impact, the excavation required for the subsequent redevelopment could be expected to significantly disturb or destroy any items of Aboriginal heritage that may currently be present within the study area.

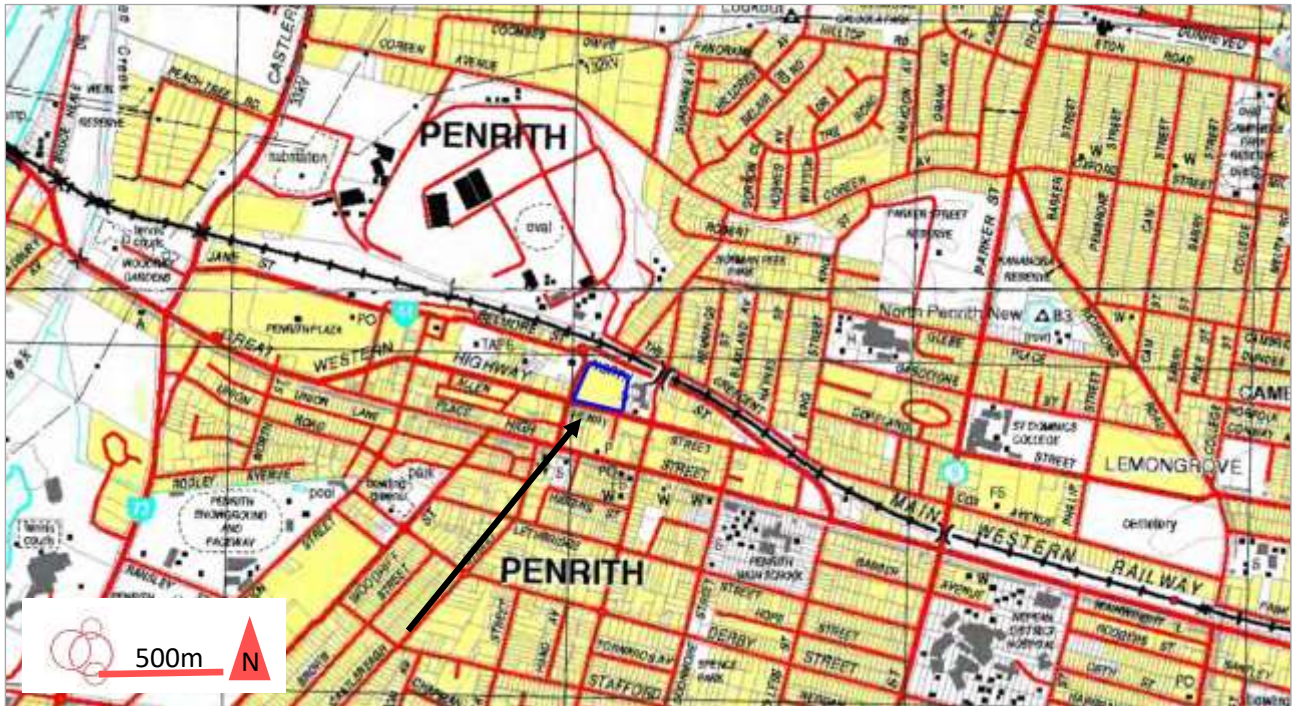


Figure 1. The study area (blue outline) and local topography.



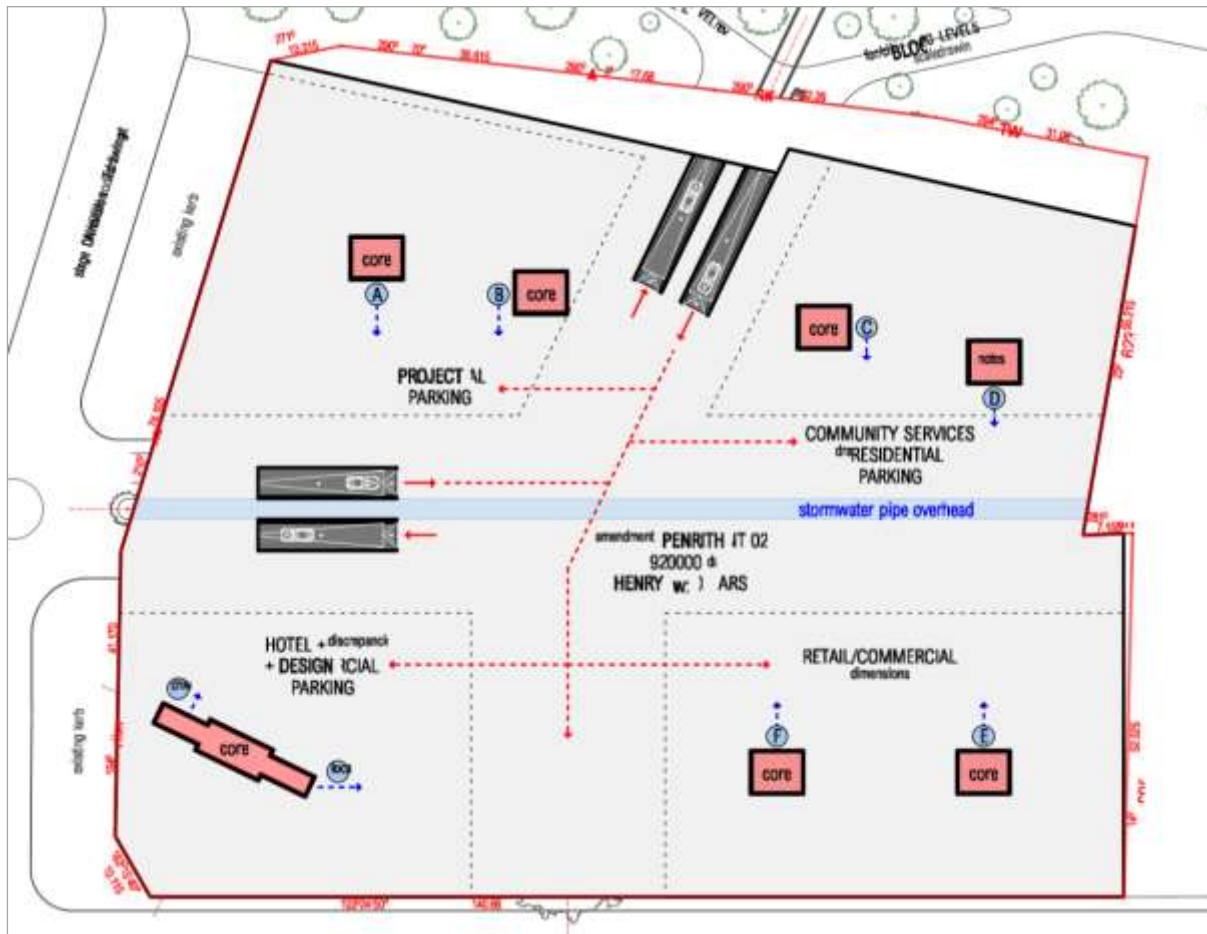
Figure 2. The local context of the study area (blue outline).





**Figure 3. Concept plan showing level 1 of the proposed development.**

[Enviro Studio, 16/12/2019, 61-79 Henry Street, Penrith: Preferred Scheme – Level 1]



**Figure 4. Concept plan of the proposed basement level.**

[Environa Studio, 13/11/2019, 61-79 Henry Street, Penrith: Basement]

## 2 Who we have spoken with

### *Aboriginal community consultation*

As part of this Due Diligence Aboriginal Heritage Assessment we spoke with the Deerubbin Local Aboriginal Land Council (DLALC) to provide an Aboriginal community perspective on the assessment, and to identify any particular Aboriginal cultural or historical associations that might need to be considered in relation to the proposal. Under the *Aboriginal Land Rights Act 1983* the DLALC has a responsibility “to promote the protection of Aboriginal culture and the heritage of Aboriginal persons”<sup>2</sup> within its boundaries, which includes the study area.

The project was discussed with the DLALC, and Site Officer Steve Randall participated in the site inspection on Thursday 14 November 2019. During and after the inspection, we discussed what we had seen and the possible implications of the proposed development for Aboriginal heritage. We then provided the DLALC with a draft copy of this report and asked them to let us know of any

<sup>2</sup> *Aboriginal Land Rights Act 1983*, s52(1)(m).

Aboriginal cultural or historical connections or information that they thought should be considered in this assessment. We also asked them to consider the recommendations of the draft report. The report provided by DLALC is included in **Appendix 1**. They have not identified any objection to the proposed works on Aboriginal heritage grounds.

### 3 Information we have considered

#### *Environmental, archaeological and historical context*

#### **3.1 Environmental context**

If we want to understand how Aboriginal people may have used the local area in the past, and what traces of that use might still physically remain on and below the ground surface, we need to understand the local environment and how it has changed over time.

Mapping indicates that the study area is within an area of Bringelly Shale geology, and the associated Luddenham Soil Landscape (**Figure 5**).<sup>3</sup> The topography of this landscape is characterised by low rolling to steep low hills. On slopes and drainage lines, the intact soil profiles can consist of up to 50cm of loam A1 (topsoil) horizon and clay loam A2 horizon, overlying clay subsoil. This is important because we know from similar contexts around Sydney that archaeological remains of past Aboriginal use are likely to be restricted to the original A1 topsoil horizon (and A2 horizon by downward movement). These soils are also vulnerable to erosion and historical impact.

The mapping indicates that the geology changes to the Cranebrook Formation, with the associated Richmond Soil Landscape, immediately to the west of the study area. The Cranebrook Formation is composed of two stratigraphic units, the older Penrith Unit and the more recent Richmond Unit. In places, the Richmond Unit has been found to contain very old archaeology of up to 40,000 years old, along the Nepean River and tributaries.<sup>4</sup>

The potential that the Cranebrook Formation extends into the study area should be considered, as geological mapping is broad in scale, and the extent and nature of the sand bodies is still being investigated. The study area is located on the western edge of an area of rolling hills, which is consistent with the known topography of the Luddenham Soil Landscape, rather than the flat terrain of the Richmond Soil Landscape. The geotechnical investigation undertaken for the project has provided information about the subsurface soil profile in five locations, where boreholes were drilled.<sup>5</sup> The results appear to be generally consistent with the soil profile of the Luddenham Soil Landscape, although the upper levels have been disturbed. In most cases, under a layer that was interpreted as fill, silty and sandy clays were found to overlie shale bedrock. Deep sand was encountered in the north-west corner, but this was considered to be bedding sand for a nearby stormwater service. The available information therefore suggests that the geological mapping is

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<sup>3</sup> Clark, N.R. & Jones, D.C. (eds). 1991. *Penrith 1:100,000 Geological Sheet 9030* (New South Wales Geological Survey, Sydney); Bannerman, S. and P. Hazelton 1990. *Soil Landscapes of the Penrith 1:100 000 Sheet* (Soil Conservation Society of NSW, Sydney).

<sup>4</sup> Williams, A., & A. Hobbs 2017. Hawkesbury Region Sand Bodies Study. Report to Roads and Maritime Services.

<sup>5</sup> Geotechnique. 2019. 'Proposed Multi Storey Mixed Development 61-79 Henry Street, Penrith'. Report to J Wyndham Prince.

correct in placing the boundary of the Cranebrook Formation to the west of the study area, and that deep alluvial units are unlikely to be present.

Historical images show that a watercourse passed through the study area; by the 1880s it had already been modified, and by the 1940s it had been made into an open stormwater channel (**Figure 7**). However, this is likely to have been a natural creek that ran west to join Peach Tree Creek, which feeds into the Nepean River a further 500 metres to the west.

The presence of the creek suggests that the natural resources of the local area would have been rich and diverse, and that the area may have been suited to past Aboriginal occupation.<sup>6</sup> However, any associated archaeological remains will have been affected by the development and occupation of the study area since colonisation. We reviewed historical plans and aerial photographs and found that the study area has been highly impacted by a range of activities. By the 1880s, at least part of the creek had been modified, and the study area had been subdivided for development (**Figure 6**). By the 1940s, the creek had been realigned, and most of the study area had been developed for residential occupation (**Figure 7**). The study area was redeveloped in the 1990s, for the present shopping centre (**Figure 8**).

These activities have affected the whole of the study area. None of the original vegetation remains, so there is no potential for the presence of culturally modified trees. Earthworks for channelization of the creek and construction of the houses and shopping centre have impacted the upper part of the soil profile, and are likely to have significantly disturbed, if not entirely destroyed, any archaeological remains which may once have been present within the study area.

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<sup>6</sup> The *Due Diligence Code of Practice* specifies a number of landforms that indicate the likely presence of Aboriginal objects. Proximity to water is the only one of these that is relevant to the present study area.





Figure 5. The study area (red outline) in relation to the Luddenham Soil Landscape (blue shading), the Richmond Soil Landscape (yellow shading), and the boundary of the Cranebrook Formation (green line).

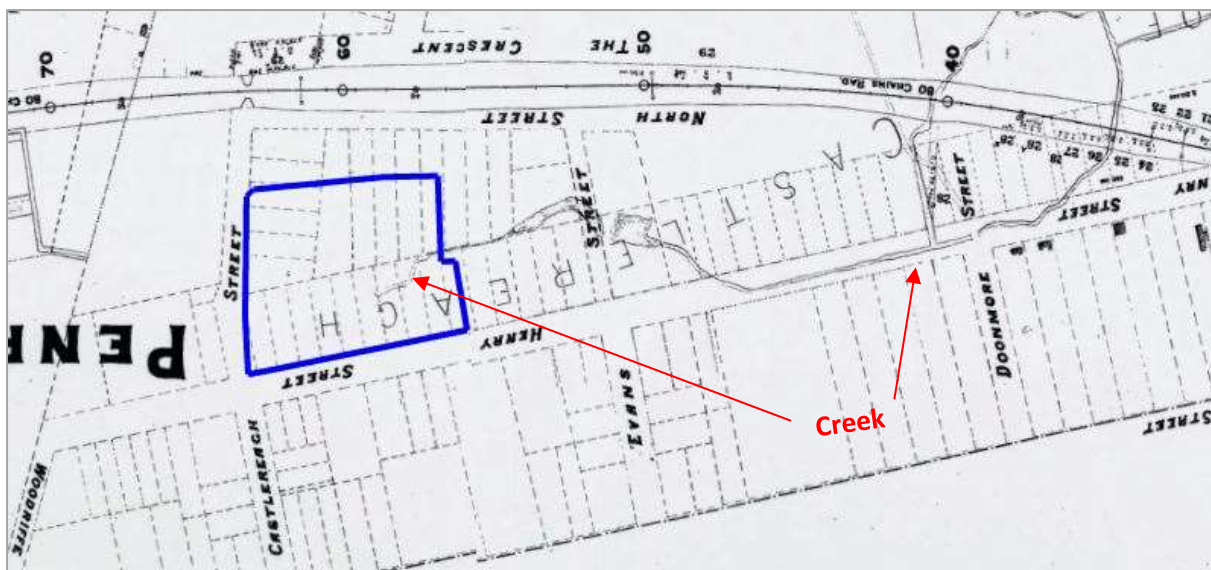


Figure 6. Detail of a c.1880s plan, showing the creek running through the study area.

[Source: NSW Spatial Services, Crown Plan 1539.3000]





**Figure 7. Detail of the 1943 aerial photograph showing the study area.**

[Source: NSW Spatial Services, SIXMaps]



**Figure 8. Aerial photograph from 2002 showing the existing shopping complex.**

[Source: GoogleEarth]

### 3.2 Archaeological recordings and research

For this assessment we checked the main Aboriginal heritage database for New South Wales, the Office of Environment and Heritage ('OEH') Aboriginal Heritage Information Management System ('the AHIMS Register'). We searched the AHIMS Register over a 7km x 7km area centred on the study area. There are no recorded sites in or within 200m of the study area, but there are 81 locations in the search area where sites have been identified (see **Appendix 2**), and these provide some information about the known archaeology of the region.<sup>7</sup> Sites can be recorded with one or more of a set list of 22 site features. Seventy-six of the sites in the search area were listed as 'artefact' (one or more stone artefacts), two were recorded as 'artefact' and 'potential archaeological deposit' (PAD), two were recorded as 'PAD' only, and one was recorded as a rock engraving.<sup>8</sup>

The closest recorded sites to the study area are shown in **Figure 9**:

- AHIMS #45-5-2491 (Correen Ave 1); Artefact. The original recording of this site listed 14 stone artefacts, found on the ground surface around 650m north of the study area. The details included in the site card indicate that a total of 25 artefacts was recorded when the site was later revisited, but the site was considered to be heavily disturbed as a result of the construction of the nearby dam.
- AHIMS #45-5-5019 (Union Street Penrith); PAD. This site was originally recorded as a Potential Archaeological Deposit (PAD) – which is an area with the potential to contain archaeological remains below the surface. It was located about 1,150m to the west of the study area. Subsequent test excavation confirmed the presence of subsurface archaeological deposit in part of the PAD, although the number and material of artefacts is not detailed in the site card.
- AHIMS #45-5-5191 (Museum Drive Penrith); Artefact. This site was located about 1,200m to the north-west of the study area, and was identified as a result of archaeological test excavation, which recovered 45 artefacts from four test pits. There appeared to be two distinct assemblages: (1) a lower density of silcrete artefacts within a disturbed fill layer that encompassed the upper 50cm of the soil profile, (2) a higher density of artefacts predominantly made from tuff and indurated mudstone, at a depth of between 80 and 100cm. This site is located within the deeper soils associated with the Cranebrook Formation.

As well as the AHIMS Register, we also searched some other heritage registers to see if any sites or places of Aboriginal cultural or historical significance had been recorded. The Australian Heritage Database (incorporating the Register of the National Estate) and the NSW State Heritage Inventory (incorporating the NSW State Heritage Register) were both searched on 25/11/2019 for the Penrith Local Government Area. Neither register lists any items with Aboriginal heritage values within or close to the study area.

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<sup>7</sup> AHIMS Search ID 460427 on 30/10/2019 of GDA94 / MGA Zone 56 283500-290500E, 6259400-6266400N.



Although no sites have been recorded within the study area, this does not necessarily mean that there are no sites there. The AHIMS Register records only where things have been found, usually because of Aboriginal heritage assessments undertaken for previous development proposals. So, if nothing has been proposed over the last 30-40 years in or near the study area, it is likely that this area has never been inspected. Based on what we know from the surrounding area, the most likely traces of past Aboriginal life which might survive within the property are stone artefacts representing former campsites. But as we have already reviewed, these are unlikely to be intact given the high degree of historical impact to the study area.



**Figure 9. Registered Aboriginal sites within the general vicinity of the current study area outlined in blue.**

## 4 What we have observed

### *Site inspection*

On Thursday 14 November 2019 in fine weather Fenella Atkinson and Rebecca Bryant (Coast) and Steve Randall (DLALC Site Officer) inspected the study area. Areas running parallel to the western and northern boundaries but outside the study area were also investigated to determine the original topography of the landscape and impacts of surrounding construction work. Although little of the original ground surface was visible due to previous construction, the observations we made, together with the other information about the property reviewed above, were enough to determine the likelihood for Aboriginal archaeological remains to be present within the property.

The study area is presently occupied by a commercial and retail centre known as the Henry Lawson Centre, and is bounded by Henry Street to the south, Lawson Street to the west, North Street to the north, and another property to the east (**Figure 8**). The Centre comprises two two-storey buildings,



on the east and west boundaries, and one one-storey building, on the north boundary, with a ground level carpark in the centre. The subsurface service that represents the former creek runs east-west through the centre of the study area, and in general the ground slopes down from the north and south boundaries towards this alignment (**Figure 10** and **Figure 11**). There is also a slight slope from the east down to the west.

Almost the whole of the study area is covered with buildings and hard surfaces. There are some small areas of ground surface visibility on the northern boundary, and also outside the study area to the north and west. These locations were inspected, but no Aboriginal objects were found (**Figure 12** and **Figure 13**). In the verge to the north of the study area, disturbance was indicated by irregularities in the ground surface, which are likely due to subsurface services (**Figure 15**); and exposed sandstone, which may be bedrock (**Figure 14**). No surviving natural topsoil was found in these locations.

The surrounding topography indicates that the study area originally included the lower slopes of hills to the north-east and south-east, on either side of the drainage line (**Figure 15**). Levelling for construction of the present buildings has involved excavation into these slopes. This is evident in the change in levels along the eastern and northern boundaries of the study area (**Figure 16** and **Figure 17**). The exposed soil profile in the north-east corner includes clay and shale, and the upper section appears to be redeposited subsoil, possibly from excavation within the study area. Construction is also likely to have included deposition of fill along the line of the former creek, now contained within a subsurface pipe (**Figure 19**).

No Aboriginal objects were found during the site inspection. The results indicated that the entire study area has been impacted by the construction of the present commercial buildings and carpark, and that this is likely to have affected the whole of the upper soil profile.



**Figure 10. View north, from Henry Street to the front of the Henry Lawson Centre showing the slope from east to west.**



**Figure 11. View west across the carpark showing the slope from north to south.**



**Figure 12. View north of the exposed ground in the verge along the western boundary of study area. Note the slope from east to west and north to south.**



**Figure 13. Exposed area in the verge to the west of the study area, showing the ground surface.**



**Figure 14.** Exposed sandstone in the verge to the north-west of the study area.



**Figure 15.** View east along North Street, to the north of the study area, showing the higher ground to the north (left side of photo).



**Figure 16.** View south along the eastern boundary of the study area. Note the higher elevation of the neighbouring property (left side of photo).





**Figure 17. Exposed soil in the north-east corner of the study area.**



**Figure 18. View south along the eastern boundary of the study area.**



**Figure 19. One of the access covers to the stormwater channel containing the former creek.**

## 5 Our conclusions

In this assessment we have considered the environmental setting and historical context of the study area, what is currently known about past Aboriginal use of the surrounding area and have conducted a field inspection. Based on all these things, we have been able to determine whether the current activities proposed within the study area are likely to impact any items of Aboriginal heritage, and whether they may have other impacts to Aboriginal heritage values.

There are no previously recorded Aboriginal sites within the study area or close by and none were located during the site inspection. The results of the background research and the site inspection suggest that the potential for the presence of Aboriginal objects within the study area is low. The whole of the study area has been subject to earthworks for construction of buildings and associated services, and for modifications to the original creek. This will have impacted the whole of the upper soil profile, within which any Aboriginal objects may have been present. No matter how Aboriginal people may have used this area in the past, there is very little likelihood that there are any intact or extensive surviving traces of that use.

The proposed amendment to Penrith LEP 2010 will not have any physical effect and will not impact Aboriginal heritage. For the reasons outlined above, we do not believe that the proposed redevelopment, following the rezoning, will have any impact to Aboriginal heritage within the area investigated. We also do not think that there are any requirements for further Aboriginal heritage investigations in relation to the proposals. However, as all Aboriginal sites ('objects') are protected under the *National Parks and Wildlife Act 1974*, we have listed procedures to be followed if something is unearthed during demolition or construction.

## 6 Our recommendations

We have based our recommendations on:

- the research and conclusions of our assessment as outlined in this report;
- the views expressed during our consultation with the Deerubbin Local Aboriginal Land Council, including during the field inspection and as outlined in their report attached in **Appendix 1**;
- the legal protections provided to Aboriginal 'objects' and 'places' under s.86 of the *National Parks and Wildlife Act 1974*;
- current policy and regulatory requirements relating to the assessment of Aboriginal heritage, and in particular the OEH (2010) *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*.

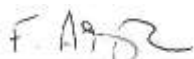
We recommend that:

1. No further Aboriginal heritage investigations are required in relation to the current proposals within the study area.
2. If any Aboriginal objects or bones suspected of being human are identified during construction, site workers must:
  - a. Not further disturb or move these remains.
  - b. Immediately cease all work at the location.
  - c. In the case of suspected human remains only, notify NSW Police. In the case of Aboriginal objects, notify the Office of Environment and Heritage Environment Line on 131 555 as soon as practicable and provide available details of the objects or remains and their location.
  - d. Notify the Deerubbin Local Aboriginal Land Council to assist in the determination of appropriate management for the objects or remains.
  - e. Not recommence any work at the location unless authorised in writing by the Office of Environment and Heritage.
3. A copy of this report should be forwarded to the Deerubbin Local Aboriginal Land Council.
4. A copy of this report should be forwarded to:

The Registrar  
Aboriginal Heritage Information Management System  
NSW Office of Environment and Heritage  
Locked Bag 5020  
Parramatta NSW 2220

If you require any further information, please do not hesitate to contact us.

Yours sincerely,



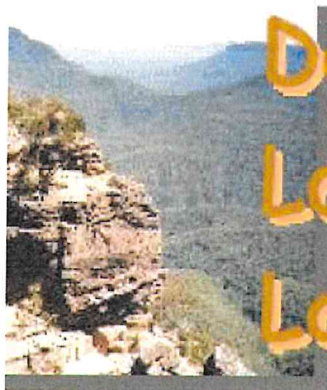
Fenella Atkinson

Senior Heritage Advisor  
E: [fenella@coasthistory.com.au](mailto:fenella@coasthistory.com.au)  
W: [www.coasthistory.com.au](http://www.coasthistory.com.au)



## **Appendix 1**

### **Correspondence with the Deerubbin LALC**



# Deerubbin Local Aboriginal Land Council

Level 1, Suite 3  
291-295 High Street  
PENRITH NSW 2750  
PO Box 40  
Penrith BC  
NSW 2751 AUSTRALIA

ABN: 41 303 129 586  
T: (02) 4724 5600  
F: (02) 4722 9713  
E: [Staff@deerubbin.org.au](mailto:Staff@deerubbin.org.au)  
W: <http://www.deerubbin.org.au>

Australian Foundation for Disability  
BCM Property  
111 Railway Terrace  
**SCHOFIELD NSW 2762**

Our Ref: 3116

16 December 2019

## **SUBJECT: PROTECTION OF ABORIGINAL CULTURAL HERITAGE**

61 – 79 Henry Street  
Penrith NSW

Attention: Matthew Bennett, Managing Director

A representative of the Deerubbin Local Aboriginal Land Council inspected the 61 -79 Henry Street, Penrith on Thursday, 14<sup>th</sup> November 2019. An Aboriginal cultural heritage assessment was undertaken to evaluate the likely impact that development has on the cultural heritage of the land.

High disturbance of the landscape by the past and present land use like buildings and carpark. No Aboriginal cultural materials (in the form of stone artefacts, for example) were found during the cultural heritage assessment.

Deerubbin Local Aboriginal Land Council therefore, has no objections for the future development of the 61 79 Henry Street, Penrith.

Yours Faithfully,

(Steven Randall

Senior Aboriginal Cultural Heritage Officer)

C.c. Barry Gunther – Department of Planning Industry & Environment

## **Appendix 2**

### **AHIMS Register Search**

[The search is of an 7km x 7km area centred on the study area. To help protect the listed Aboriginal sites we have provided only the basic search results without site coordinates. If the extensive search results showing site names and coordinates are required, please contact Coast History & Heritage].



Coast History & Heritage

Date: 30 October 2019

PO BOX A74 7 Mitchell Street  
Arncliffe New South Wales 2205

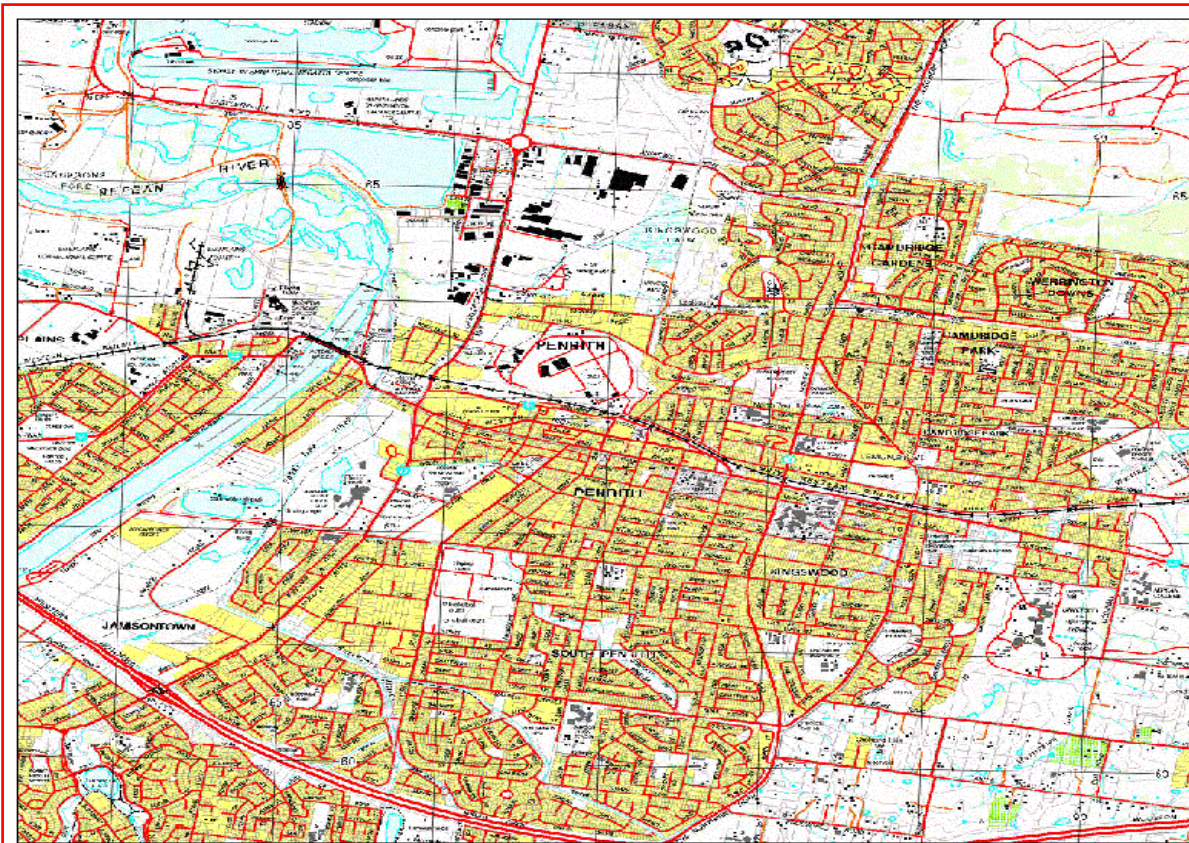
Attention: Rebecca Bryant

Email: rebecca@coasthistory.com.au

Dear Sir or Madam:

**AHIMS Web Service search for the following area at Datum :GDA, Zone : 56, Eastings : 283500 - 290500, Northings : 6259400 - 6266400 with a Buffer of 0 meters. Additional Info : Due Diligence, conducted by Rebecca Bryant on 30 October 2019.**

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 the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

81	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 \(http://www.nsw.gov.au/gazette\)](http://www.nsw.gov.au/gazette) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit 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 Office of Environment and Heritage 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.