

Aboriginal Cultural Heritage and Archaeological Advice

(Due Diligence)

10 Linkmead Avenue, Clontarf

December 2017



ASSOCIATES

Archaeology and Heritage

Aboriginal Cultural Heritage Management

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1 BACKGROUND INFORMATION

1.1 INTRODUCTION

Utz Sanby Architects is coordinating renovation work at 10 Linkmead Avenue, Clontarf NSW. The property backs onto the foreshore reserve between Sandy Bay and Fishers Bay (in the lower stretch of Sydney's Middle Harbour, east of the Spit) **Figure 1**. This advice applies to only the upper part of the property as shown in **Figure 1** due to some unresolved issues of Aboriginal cultural heritage sensitivity in lower parts (see **Section 3**).



Figure 1: Study area aerial image with overlay of proposed construction and extent of advice

The proposed work involves demolition of the existing house and construction of a new house, including a swimming pool (**Figures 1 and 2**). No work is currently proposed below this construction area.

In response to the submission of planning documents to Northern Beaches Council, the Aboriginal Heritage Office noted that:

"There are known Aboriginal sites in the area. No sites are recorded in the current development area, however, the area of the proposed development is identified as having high potential for unrecorded sites."

The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage

professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.”

The advice issued here following the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW, 2010a) meets that requirement. In finding that ‘harm’ is unlikely to ‘Aboriginal objects’ (both as defined in the National Parks and Wildlife Act 1974) for the upper area only, this advice can also be used to support a defence against prosecution in the event of unanticipated harm – again, only in the upper area.

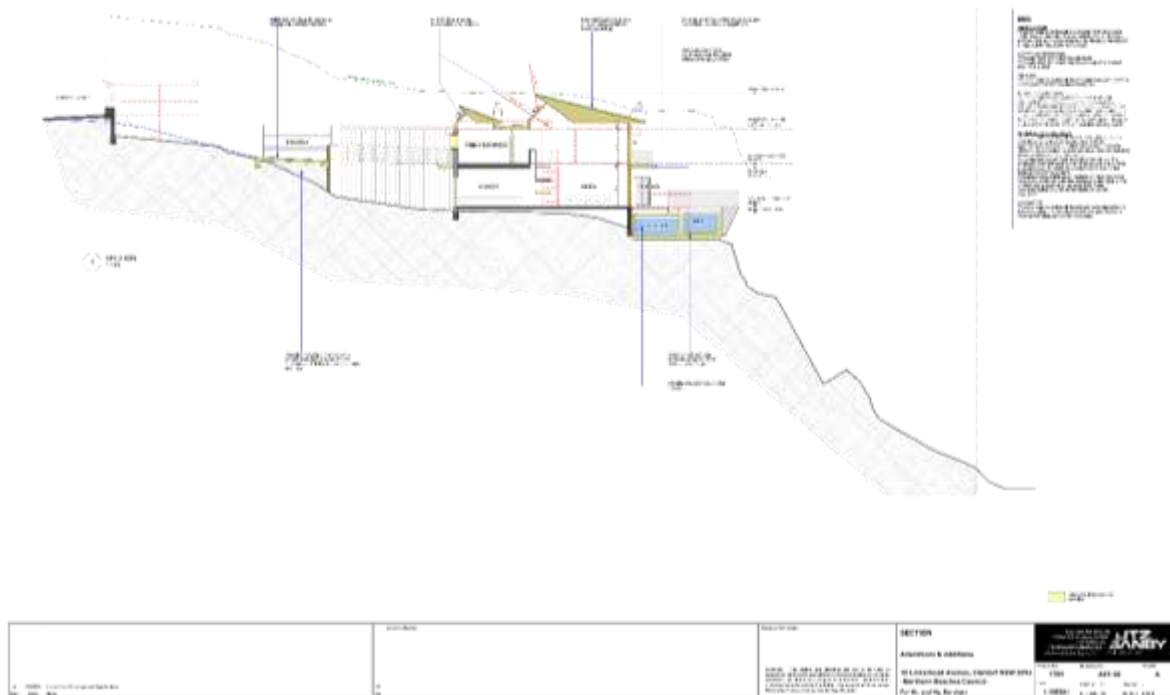


Figure 2: Proposed construction – section

1.2 ABORIGINAL COMMUNITY CONSULTATION

Formal consultation with the Aboriginal community following the *Aboriginal cultural heritage consultation requirements for proponents* (DECCW, 2010c) is not a requirement for due diligence advice. Consultation is typically undertaken to assist in identifying locations of cultural importance and in determining cultural values of identified sites that may be harmed.

Information will however be forwarded to Metropolitan Local Aboriginal Land Council (MLALC) for their records and a recommendation is made here that for any survey addressing the area excluded from this advice in which there are some unresolved issues of Aboriginal cultural heritage sensitivity, an attempt should be made for this to be done inclusive of a sites officer from MLALC if possible.

2 DUE DILIGENCE SYSTEM

The *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (DECCW, 2010a) sets out a step-wise process (**Figure 3**) to help determine whether further archaeological investigation is required or if proposed work that will disturb the ground surface can proceed without requiring an Aboriginal Heritage Impact Permit (AHIP). If it is determined that an AHIP is not required, the documentation of the process can be used to support a defence against prosecution in the event of unanticipated harm.

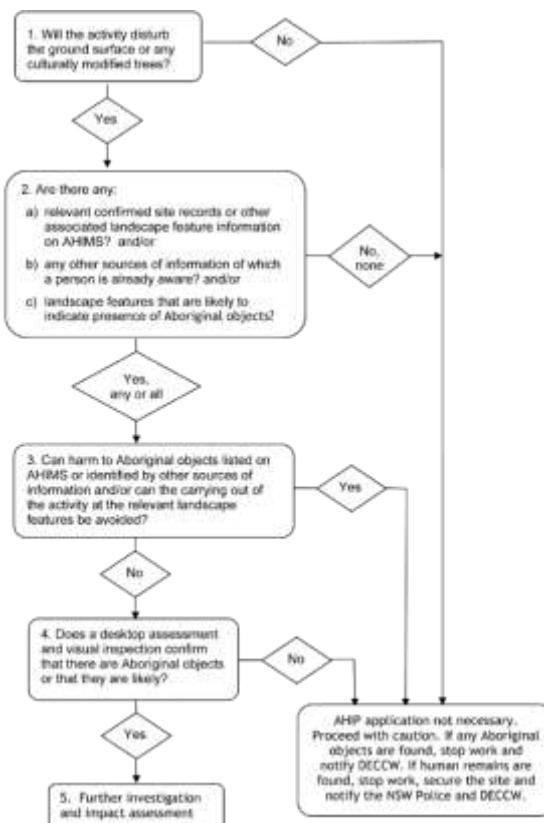


Figure 3: Generic Due Diligence process

2.1 AHIMS DATA

A search of the Office of Environment and Heritage's Aboriginal Heritage Information Management System database (AHIMS) was conducted on the 19th November 2018 (Client Service ID: 383712). This returned a list of 57 registered sites in a 3x3km area surrounding the property of which six are within a few hundred metres (mapped in **Figure 4**). There are no listed sites within the study area.

Sites in the general area are dominated by shell deposits either in open contexts near water or in rockshelters – they generally also include artefacts and bone but are primarily identifiable by the presence of shell and charcoal-stained soil and sand. Other sites include engraved rock art sites and hatchet grinding grooves that are associated with areas of exposed sandstone. With this patterning, archaeological survey is usually a fairly reliable determinant of site presence or absence following the corresponding presence or absence of:

- Large, flat exposures of sandstone on which engraved art may occur;
- Flat and usually even-grained exposures of sandstone alongside a water source (stream or pothole) in which hatchet grinding grooves may occur;
- Overhanging rock providing some shelter in which pigment rock art may occur or on the base of which cultural material may have accumulated.
- Open areas that are relatively level and provide obvious amenity for occupation due to immediate proximity to the harbour and/or a freshwater source.

All of the nearby sites discussed below conform to these patterns.

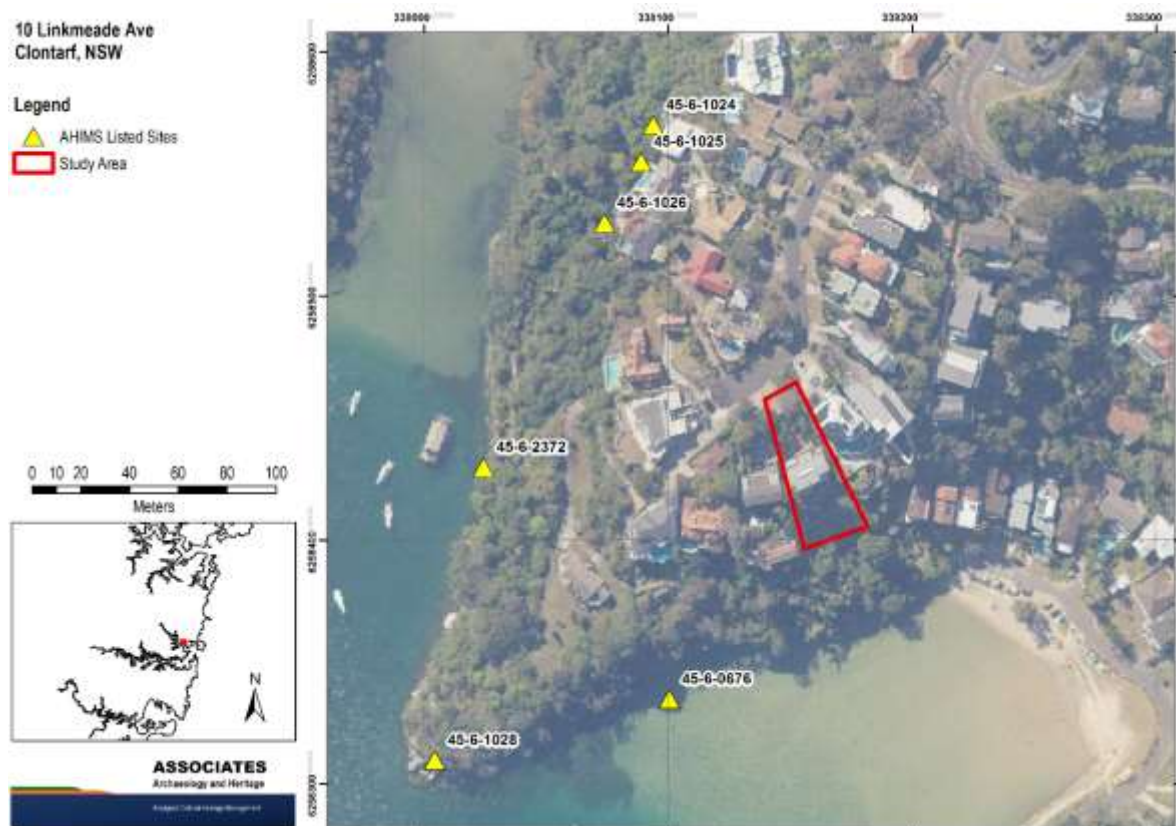


Figure 4: AHIMS listed site locations

2.2 NEARBY SITES AND PREVIOUS STUDIES (OTHER SOURCES OF INFORMATION)

There are six sites around Bradys Point (between Fisher Bay and Sandy Bay) that have been reviewed to check whether data recorded with their listings describes or infers the likely presence of Aboriginal cultural heritage material within the study area (**Figure 4**). These are:

- **45-6-1024** “Two South End Cave (Taplin) / Fisher Bay 3”
- **45-6-1025** “Nearly joined Cave (Taplin) / Fisher Bay 4”
- **45-6-1026** “Bed and Bottles Cave (Taplin) / Fisher Bay 5”

Recorded by Taplin in 1979, by Jim Stockton in 1983, by Val Attenbrow in 1989 and again by the Aboriginal Heritage Office in 2012 to correct listed locations, the three sites above comprise a group of almost adjoining rockshelters along the base of the same rock face with midden material recorded inside (oyster, cockle and hairy mussel). The rock face associated with the sites can be seen from the coastal walk (although not visited as they are on private property) and the location has been confirmed as being distant enough from the study area to not be directly associated with it, but also close enough to have possibly presented an 'amenity draw' to it. An 'amenity draw' can be proposed when there is a site with superior qualities for occupation in one place meaning that areas nearby can be less likely to have occupation evidence – following a hypothetical scenario of “should we stop here?”, “no, there is a better place just around the corner”.

- **45-6-2372** “Remnants in Shelter”

Described as a “possible” occupation shelter by Stockton in 1983, this was confirmed as a site with midden material in 1989 by Attenbrow and Munro. This occurs on Council land adjacent to the coastal walking track and is confirmed as being around the other side of Bradys Point from the study area. The site was visited and while the shelter has no real deposit, there remain some midden shells and charcoal stained deposit around it.

- **45-6-1028** “Fisher Bay 2”

This is an open site midden recorded in 1979 by Taplin and in 1983 by Stockton. It is described as occurring on the tip of Bradys Point and as being heavily disturbed. It remains clearly visible in some areas following the coastal walk and while certainly very disturbed in parts, it may be extensive enough to retain some relatively intact deposits.

- **45-6-0676**

This is a rock art site recorded by Whitley in 1943 comprising depictions of a large fish, a shield and two boomerangs or ‘sword-clubs’. The location is difficult to ascertain from the site card, being described as “on a large rock at the base of the hill beside the eastern side of the up-traffic road leading from the Spit to Seaforth. Beside 3 large new houses overlooking the water”. What can be confidently determined however is that: a) the AHIMS listed location is incorrect; and b) that it is not within the study area.

The site listings for these six sites nearest to the current study comprise the most relevant ‘other sources of information’ as specified in the Due Diligence Code.

2.3 LANDSCAPE FEATURES

The *Due Diligence Code* defines a number of landscape features associated with high potential for the occurrence of Aboriginal objects. These landscape features essentially trigger a requirement for either avoiding impact or undertaking further archaeological investigation (see Step 2C in **Figure 3**). Those that apply to the study area, clearly justifying the requirement for assessment, are:

- Within 200m of waters;
- Located within 200m below or above a cliff face;
- Within 20m of or in a cave, rock shelter, or a cave mouth.

3 SITE INSPECTION

The property was fully surveyed on Friday 23rd November 2018, inclusive of relocating five of the six nearby sites accessible or visible from the coastal walk (excluding the rock art site 45-6-0676). The study area is divided up into two areas, being:

- The upper area from the street frontage to the edge of the levelled area of current and planned house construction. This was found to have no Aboriginal objects nor significant potential for unanticipated / subsurface material. There are no rockshelters nor notable sandstone exposures which create the potential for rock art or occupation deposits. Being distant from water but also proximate to other high amenity sites, it is considered unlikely that open site midden accumulation would have occurred.
- The lower area below this, partly accessed by a stairway and partly from the coastal walkway below. This includes one small rockshelter with some shells consistent with those used by Aboriginal people and which are common in nearby sites – rock oyster (*Saccostrea glomerata*), hairy mussel (*Trichomya hirsuta*) and cockle (*Anadara trapezia*). The shells are few in number but convincingly derived from midden deposits due to the species profile, the size of the shells within the edible range and some deposit darkness that may be attributed to campfire charcoal. The shell seen is often in disturbed contexts that are very possibly not the original depositional location. Because the rockshelter is small and offers quite limited protection from the elements, it is unlikely that it contains an extensive deposit.

The consequence of this finding in the context of the due diligence requirements of the planned construction is for very different treatments of these areas as detailed in the recommendations below.



Plate 1: View from lowest part of property looking up at current house.



Plate 2: View under the house with no cultural deposit visible even with complete soil exposure.

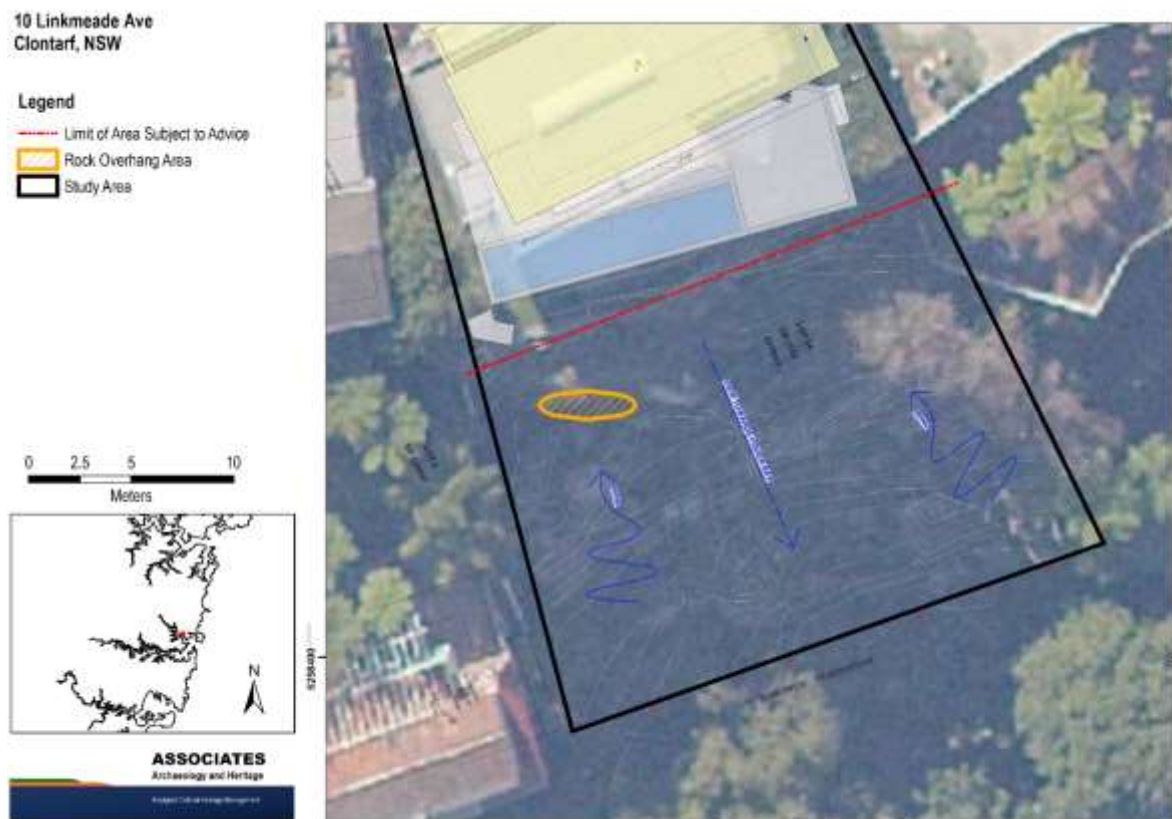


Figure 5: Results



Plate 3: View towards small rockshelter with some shell visible and possible charcoal stained deposit



Plate 4: View inside rockshelter



Plate 5: View up to rockshelter from bottom of stairs



Plate 6: Fragment of rock oyster (*Saccostrea glomerata*) in rockshelter



Plate 7: Small fragment of hairy mussel (*Trichomya hirsuta*) in rockshelter



Plate 8: Cockle shell (*Anadara trapezia*) near rockshelter



Plate 9: Fragments of oyster shell visible near rockshelter



Plate 10: Same as Plate 9

4 CONCLUSIONS AND RECOMMENDATIONS

4.1 UPPER AREA

The upper area is both where it is considered that there is no risk of harm to Aboriginal objects and where the proposed construction will occur. With reference to step 3 in the generic due diligence process shown in **Figure 3**, harm can be avoided and neither further investigation nor an AHIP is required – **but only for the upper area**. Stop work measures should still be in place in the event of unanticipated finds. Notably:

- If any shell deposits become visible during demolition of the existing structure, particularly rock oyster (*Saccostrea glomerata*), hairy mussel (*Trichomya hirsuta*) and cockle (*Anadara trapezia*);
- If any flat sandstone panels are exposed with any possibly engraved lines in it. These may be engraved art or stone hatchet sharpening grinding grooves. They might not form a clear depiction due to weathering or if other parts remain buried, but if they are pre-1788 / Aboriginal they are very much protected by law.

It is also noted that:

- The construction work should not impact the lower area at all unless the specific impacts are subject to further due diligence advice. For example moving any spoil from the upper area to the lower area might potentially impact cultural deposits in a way that constitutes harm (an offence).
- It seems that there is an imminent need to replace the current stairway down to the lower part of the property and with foundations in it (it is very high, currently quite rickety and has potentially dire consequences in the event of failure). It is considered that this needs to either be done with no disturbance of the ground surface or be subject to further advice to ensure avoidance of harm. It is suggested that bare rock may be used to build on to avoid disturbance of any potential cultural deposit and that work should be planned as far from the rock overhang as possible. It is noted that an alternative involving planned impact to any midden material might be cost- and time-prohibitive in terms heritage management fees and the minimum six months that it takes to get an Aboriginal Heritage Impact Permit (AHIP).

4.2 LOWER AREA

The lower area contains some shells indicative of midden deposits that are 'Aboriginal objects' under the *National Parks and Wildlife Act* (NPW Act) and therefore must not be harmed (inclusive of just moving or burying them). While it is likely that the material is focused within the small rockshelter, it could not be determined whether any extends down the slope outside of it. Some material also appears to have been moved into other areas, possibly during garden work.

This area has been excluded from the current advice specifically with the view that if an undertaking can be made to avoid any activity there, the issues present should not be an obstacle to the Planning process (DA) for the house construction.

It should however also be noted that this advice does include clear notification of the location of the cultural material. This means that any harm to it would now be 'knowing harm', which comes with double the penalties of strict liability ('not knowing') harm as well as a clear diminution of the potential defence of an 'honest and reasonable mistake of fact'. In other words, although the issue may be set aside with the proponent's current aim being the DA for the house, the recommendation to avoid disturbance at any time in the future should be taken seriously.

5 REFERENCES

- DECCW. (2010a). *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*. Sydney: Department of Environment, Climate Change and Water.
- DECCW. (2010b). *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*. Sydney: Department of Environment, Climate Change and Water NSW.
- DECCW. (2010c). Aboriginal cultural heritage consultation requirements for proponents.