



artefact

15 April 2021

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Dear Linda,

**RE: Kemps Creek Data Centre Aboriginal Heritage Advice Memo**

This memo has been prepared by Artefact Heritage at your request in relation to the proposed development at the Kemps Creek Data Centre (the proposal). The proposal involves the construction and operation of a data centre at 706-709 Mamre Road, Kemps Creek. A request for Planning Secretary's Environmental Assessment Requirements (SEARs) for the proposal was submitted in October 2020 (State Significant Development (SSD) 10101987). The SEARs for SSD 10101987 were issued on 12 November 2020. This report has been prepared to issue advice regarding the impact on Aboriginal heritage of the current project (SSD 10101987).

The study area is located within the land portion subject to bulk earthworks and infrastructure works under SSD 9522 for the Kemps Creek Warehouse, Logistics and Infrastructure Facilities Hub (KCWLIFH). The heritage advice and conditions of approval for this project have been accounted for in the advice where they are active within the current study area. It is assumed all conditions of approval in regard to Aboriginal heritage have been actioned and that the study area for SSD 10101987 is therefore cleared of Aboriginal heritage values with management undertaken under approval for SSD 9522.

This report was written by Gareth Holes (Heritage Consultant, Artefact Heritage) with management input and review provided by Sandra Wallace (Managing Director, Artefact Heritage).

**Project background**

In 2018, Frasers Property Australia and Altis Property Partners prepared an SSD application and EIS under Section 4.41 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for the proposed construction of a warehouse, logistics and industrial facilities hub as part of the KCWLIFH development (SSD 9522). The proposed works for SSD 9522 included bulk earthworks and infrastructure works.

Biosis prepared an Aboriginal Cultural Heritage Assessment Report (ACHAR) to inform the EIS for SSD 9522 in 2019. The ACHAR recommended salvage of identified Aboriginal sites be undertaken and the Aboriginal Heritage Information Management System (AHIMS) database be updated to reflect the destruction of the site (Biosis 2019).

The SSD application for SSD 9522 was approved on 21 December 2020.

## 1.1 Addressing the conditions

This memo has been prepared in accordance with the SEARs issued for SSD 10101987 in November 2020. The SEARs addressed in this document are outlined in Table 1.

**Table 1. Addressing relevant SEARs for SSD 10101987**

SEARs	Comments
<p><i>The EIS must include an assessment of the potential impacts of the proposal (including cumulative impacts) and develop appropriate measures to avoid, mitigate, manage and/or offset these impacts.</i></p> <p><i>The EIS must address the following specific matters:</i></p>	
<p><b>Cultural Heritage and Aboriginal Cultural Heritage</b> An assessment of non-Aboriginal cultural heritage items and values of the site and surrounding area.</p>	<p>This requirement will be addressed in a separate report, the Statement of Heritage Impact for the Kemps Creek Data Centre.</p>
<p><b>Cultural Heritage and Aboriginal Cultural Heritage</b> Evidence that Aboriginal cultural heritage values that exist across the development site have been identified and documented in an ACHAR.</p>	<p>This requirement has been addressed through this memo in conjunction with the overarching ACHAR for the Mamre South Precinct prepared by Biosis in 2018.</p>
<p><b>Cultural Heritage and Aboriginal Cultural Heritage</b> A description of the impacts on Aboriginal cultural heritage values.</p>	<p>This requirement has been addressed through this memo in conjunction with the overarching ACHAR for the Mamre South Precinct prepared by Biosis in 2018.</p>

## Study area

The study area for this report comprises approximately 17.38 hectares (ha) of the properties at 707-769 Mamre Road, Kemps Creek. Currently, the study area consists of undeveloped land in close proximity to Mamre Road. The study area is located within three allotments, comprising Lot X DP 421633, Lot Y DP 642633 and Lot 22 DP 258414.

The study area falls within the Penrith Local Government Area (LGA) and zoned as an IN1 General Industrial zone under the State Environmental Planning Policy (Western Sydney Employment Area) (SEPP WSEA) 2009. The study area is within the boundary of Deerubbin Local Aboriginal Land Council (DLALC).

The location of the study area is shown in Figure 1.




 **Study area**  
Kemps Creek Data Centre  
LGA: Penrith

Figure 1. Location of the study area

## Bulk Earthworks ACHAR for SSD 9522

In 2019 Biosis prepared an ACHAR for the Mamre South Precinct SSD (SSD 9522) undertaken in support of approvals for bulk earthworks. The ACHAR identified seven Aboriginal sites from the AHIMS database within the study area, of these three were found to have been incorrectly mapped and are located outside of the SSD 9522 study area.

A field survey and test excavation program undertaken by Biosis identified a total of nine Aboriginal sites within the SSD 9522 study area. The potential archaeological significance and impacts identified during the ACHAR are presented in Table 2.

**Table 2: Summary of potential archaeological impacts**

AHIMS Site No.	Site Name	Significance	Type of Harm	Degree of Harm	Consequence of Harm	Site Specific Recommendations
45-5-5187	MSP-01	Low	Direct	Total	Total loss of value	Surface salvage
45-5-5188	MSP-02	High	Direct	Total	Total loss of value	Sub-surface salvage excavations
Pending	MSP-05	Low	Direct	Total	Total loss of value	Destruction of site
Pending	MSP-06	Low	Direct	Total	Total loss of value	Destruction of site
Pending	MSP-07	Low	Direct	Total	Total loss of value	Surface salvage
Pending	MSP-08	Low	Direct	Total	Total loss of value	Surface salvage
Pending	MSP-09	Low	Direct	Total	Total loss of value	Destruction of site
Pending	MSP-10	Low	Direct	Total	Total loss of value	Destruction of site
Pending	MSP-11	Low	Direct	Total	Total loss of value	Destruction of site

The ACHAR presented five recommendations for the management of Aboriginal heritage:

- Recommendation 1: Further archaeological work in the form of surface salvage and salvage excavation at AHIMS site 45-5-5188/MSP-02 as a part of SSD approval

- Recommendation 2: Further archaeological work in the form of surface salvage AHIMS sites 45-5- 5187/MSP-01, MSP-07 and MSP-08 as a part of SSD approval
- Recommendation 3: No further archaeological work is required for sites MSP-05, MSP-06, MSP-09, MSP-10 and MSP-11
- Recommendation 4: Update AHIMS site cards for AHIMS sites 45-5-5187/MSP-01, 45-5-5188/MSP02, and 45-5-5189/MSP-03 and lodge AHIMS site cards for newly identified sites MSP-05, MSP-06 and MSP-07, MSP-08, MSP-09, MSP-10, and MSP-11
- Recommendation 5: Preparation and lodgement of AHIMS site impact recording forms for 45-5- 5187/MSP-01, 45-5-5188/MSP-02, 45-5-5189/MSP-03, MSP-05, MSP-06, MSP-07 and MSP-08, MSP-09, MSP-10 and MSP 11.

## SSD 9522 Assessment Report

The assessment report for SSD 9522 was prepared by the NSW Department of Planning, Industry and Environment (DPIE) in December 2020. The assessment identified that the site-wide bulk earthworks would have the potential to impact aboriginal cultural heritage and summarised the findings as follows

- Site-wide bulk earthworks have the potential to impact on Aboriginal cultural heritage
- The Applicant submitted an Aboriginal Archaeological Report (AAR) and an ACHAR for the development as part of the Response to Submissions (RtS). The ACHAR was prepared in consultation with Registered Aboriginal Parties
- The site survey identified 12 Aboriginal cultural sites including 5 registered and 7 non-registered sites. However, 3 of the 5 registered sites were incorrectly recorded and confirmed to be located off-site
- The ACHAR concluded the site MSP-2 contained artefacts with high scientific significance and the site MSP-11 adjacent to South Creek had high Aboriginal cultural value. All other sites had low scientific significance
- Due to thick vegetation and low accessibility, a detailed site survey of Lot X, DP 421633 was not undertaken. The ACHAR recommended survey of this lot following vegetation removal to identify any Aboriginal objects
- The ACHAR noted construction works would disturb all identified sites except for MSP-11. The ACHAR recommended further surface salvage work at MSP-1, MSP-7 and MSP-8, and further salvage excavation work at MSP-2. The ACHAR also recommended measures to protect MSP-11, and the implementation of an Unexpected Finds Protocol
- Heritage NSW reviewed the ACHAR and recommended conditions including the preparation and implementation of an Aboriginal Cultural Heritage Management Plan (ACHMP). The ACHMP would incorporate the management measures recommended in the ACHAR, as well as a care agreement for Aboriginal objects including details of a temporary storage location endorsed by Registered Aboriginal Parties



- The Department recognises the development would impact on identified Aboriginal sites, but these impacts would be managed through implementation of the ACHMP and in consultation with Aboriginal stakeholders
- The Department has recommended conditions requiring the Applicant to avoid undertaking works in MSP-11, carry out a survey of Lot X DP 421633 prior to the commencement of construction and prepare and implement an ACHMP and an unexpected finds protocol.

This resulted in the recommendation that the applicant prepare and implement an ACHMP and CEMP including the ACHAR recommended mitigation measures, a resurvey of Lot X DP 421633, and implement an unexpected finds protocol.

## SSD 9522 Consent

The consent for SSD 9522 was granted on 21 December 2020. The consent conditions related to Aboriginal heritage were covered by Schedule 2 Part B and are provided in Table 2.

**Table 3: SSD 9522 consent conditions**

Condition No.	Description
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### Statutory Requirements

B56	Before the commencement of any clearing, ground disturbing works or construction works, Aboriginal Site Impact Recording Forms for MSP-01, MSP-02 and MSP-03 must be submitted for inclusion on the Aboriginal Heritage Information Management System database. The Aboriginal Site Impact Recording Forms must be completed by a suitably qualified archaeologist and show the total count of the artefacts identified at each site.
B57	Before the commencement of any clearing, ground disturbing works or construction works, Aboriginal Heritage Information Management System site cards must be prepared for MSP-05, MSP-06, MSP-07, MSP-08, MSP-09, MSP-10 and MSP-11 and submitted for registration in the Aboriginal Heritage Information Management System database.
B59	Should any Aboriginal objects be salvaged, the Applicant must complete and submit an Aboriginal Site Impact Recording Form for inclusion on the Aboriginal Heritage Information Management System database.

### Aboriginal Cultural Heritage Management Plan

B59	<p>Before the commencement of any clearing, ground disturbing works or construction works, the Applicant must prepare an ACHMP for the development to protect and manage aboriginal heritage within the site. The plan must form part of the CEMP required by condition C2 and must:</p> <p>a) be prepared by a suitably qualified and experienced expert in consultation with the Registered Aboriginal Parties and Heritage NSW</p>
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**Condition No. Description**

- b) be submitted to the satisfaction of the Planning Secretary prior to construction of any part of the development
- c) address the recommendations within the ACHAR prepared by Biosis dated 31 July 2020
- d) include a salvage program for Aboriginal objects, including long-term care and control  
include detailed procedures for the long-term management of Aboriginal site MSP-11; and

include a care agreement for Aboriginal objects, including details of a temporary storage location endorsed by Registered Aboriginal Parties.

The Applicant must:

- B60
- a) not commence construction until the Aboriginal Cultural Heritage Management Plan is approved by the Planning Secretary; and
  - b) implement the most recent version of the Aboriginal Cultural Heritage Management Plan approved by the Planning Secretary for the duration of the development.

- B61
- Following the removal of vegetation on Lot X DP 421633, the Applicant must conduct an archaeological re-survey with Registered Aboriginal Parties of Lot X DP 421633 to confirm the findings of the Aboriginal Cultural Heritage Assessment Report prepared by Biosis dated 31 July 2020. Any Aboriginal objects or sites identified during the resurvey will need to be managed in accordance with the protocols for newly identified sites in the ACHMP required under condition B59.

**Unexpected Finds Protocol**

If any item or object of Aboriginal heritage significance is identified on site:

- B62
- a) all work in the immediate vicinity of the suspected Aboriginal item or object must cease immediately
  - b) a 10 m wide buffer area around the suspected item or object must be cordoned off; and
  - c) Heritage NSW must be contacted immediately.

- B63
- Work in the immediate vicinity of the Aboriginal item or object may only recommence in accordance with the provisions of Part 6 of the National Parks and Wildlife Act 1974.

**Conclusions and recommendations**

The following recommendations regarding Aboriginal heritage are based on consideration of:

- The results of the ACHAR for the bulk earthworks (SSD 9522)

- The likely impacts of the proposed development.

It is assumed that all requirements laid out above have been followed as part of the bulk excavation works (SSD 9522), it is further assumed that all Aboriginal sites within the current study area have been subject to total direct impact, leading to total loss of value, as described in the ACHAR for the bulk earthworks.

The following recommendations are therefore made:

- Based on the ACHAR for the bulk earthworks (SSD 9522), this assessment has identified that Aboriginal objects are not likely to occur beneath the ground surface. As such further archaeological assessment of the study area is not required
- Unexpected Aboriginal objects remain protected by the *National Parks and Wildlife Act 1974*. If any such objects, or potential objects, are uncovered in the course of the activity that are not covered by an AHIP, all work in the vicinity should cease immediately. A qualified archaeologist should be contacted to assess the find and Heritage NSW and DLALC must be notified
- If human remains, or suspected human remains, are found in the course of the activity, all work in the vicinity should cease, the site should be secured and the NSW Police and the Office of Environment and Heritage NSW should be notified.

Kind regards,



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## REFERENCES

- Attenbrow, V. 2010. *Sydney's Aboriginal Past: Investigating the Archaeological and Historical Records*. 2nd ed. Sydney, UNSW Press.
- Biosis, 2018. Mamre South State Significant Development Application Statement of Heritage Impact.
- Biosis, 2019. Mamre South Precinct State Significant Development: Aboriginal Cultural Heritage Assessment Report.
- Brayshaw, H. 1987 *Aborigines of the Hunter Valley: A study of Colonial Records*.
- Curby, P., editor 2020 *East Coast Encounters 1770: Reflections on a Cultural Clash*. Sutherland, Sutherland Shire Historical Society.
- Department of Environment, climate Change and Water (former) 2010. *Code of Practice for Archaeological Investigations of Aboriginal Objects in New south Wales*. Sydney, Department of Environment, Climate Change and Water NSW.
- Department of Environment, Climate Change and Water (former) 2010. *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*. Sydney South, Department of Environment, Climate Change and Water.
- Geoscience Australia Interactive Maps (n.d.). Accessed at: <http://maps.ga.gov.au/interactive-maps/#/theme/minerals/map/geology> (12 February 2021).
- Hiscock, P. and V. Attenbrow 2005. Australia's Eastern Regional Sequence Revisited: Technology and Change at Capertee 3. *Archaeopress*.
- Irish, P. 2017. *Hidden in Plain View: the Aboriginal People of Coastal Sydney*. Sydney, NewSouth Publishing.
- Kamay Botany Bay National Park (North and South) and Towra Point Nature Reserve | Heritage NSW (n.d.). . Accessed at: <https://apps.environment.nsw.gov.au/dpcheritageapp/ViewHeritageItemDetails.aspx?ID=5061543> (12 February 2021).
- Larkin, M. 1998. *Sutherland Shire: A History to 1939*. Sutherland History Press.
- Mary Dallas Consulting Archaeologists, 2004. Sutherland Shire Council Aboriginal Cultural Heritage Study – Georges and Woranora Rivers.
- Mary Dallas Consulting Archaeologists, 2018. Aboriginal Cultural Heritage Assessment Report, 238-259 Captain Cook Drive, Kurnell, NSW.
- McCarthy, F.D. 1948. The Lapstone Creek excavation: two culture periods revealed in eastern New South Wales. *Records of the Australian Museum* 22(1):1–34.
- Miller, R. 1886 No. 188 The Hunter River. The Wonnarua Tribe and Language *The Australian Race: Its Origin, Languages, Customs, Place of Landing in Australia, and the Routes by which it spread itself over that continent*.
- Office of Environment and Heritage (former) 2012. Guide to completing the AHIMS Site Recording Form.

Office of Environment and Heritage (former), 2014 eSpade: Soil Landscapes. Accessed at:  
[www.environment.nsw.gov.au/eSpadeWebapp/](http://www.environment.nsw.gov.au/eSpadeWebapp/) (12 February 2021).

Royal Commission into Noxious and Offensive Trades 1882 | The Dictionary of Sydney (n.d.). .  
Accessed at:  
[https://dictionaryofsydney.org/entry/royal\\_commission\\_into\\_noxious\\_and\\_offensive\\_trades\\_1882#ref-uuid=756b7e38-1866-fa63-1221-00dd87543d6c](https://dictionaryofsydney.org/entry/royal_commission_into_noxious_and_offensive_trades_1882#ref-uuid=756b7e38-1866-fa63-1221-00dd87543d6c) (21 February 2021).

Shire Maps 2009. Accessed at:  
<https://maps.ssc.nsw.gov.au/ShireMaps/?layerTheme=Planning/Zoning> (February 2021).

Young, Mike. Executive Director Energy, Industry and Compliance. Development Consent SSD 9522. 21 December 2020.