

**APPENDIX 1**  
**RAP Consultation**

**From:** [Nicole Davis](#)  
**To:** [Nicola Roche](#)  
**Subject:** RE: Austar Mine Consultation Query  
**Date:** Thursday, 15 December 2016 1:23:32 PM

---

Dear Nic,

I ran your query past Richard Bath and he had no concerns with the approach you have outlined for continued community consultation for the Austar Mine.

Regards  
Nicole

Nicole Y Davis  
**Archaeologist - Planning**  
Hunter Central Coast Region  
Regional Operations Group  
Office of Environment and Heritage  
Locked Bag 1002 Dangar NSW 2309  
(Level 4/26 Honeysuckle Drive Newcastle)  
T: (02) 4927 3156  
M: 0409 394 343  
E: [nicole.davis@environment.nsw.gov.au](mailto:nicole.davis@environment.nsw.gov.au)  
**Please note that I work part-time Monday to Thursday.**

---

**From:** Richard Bath  
**Sent:** Thursday, 15 December 2016 12:06 PM  
**To:** Nicole Davis <[Nicole.Davis@environment.nsw.gov.au](mailto:Nicole.Davis@environment.nsw.gov.au)>  
**Subject:** RE: Austar Mine Consultation Query

Sounds reasonable to me.

Regards

Richard Bath  
**Senior Team Leader Planning**  
Hunter Central Coast Region  
Regional Operations Group  
Office of Environment and Heritage  
Locked Bag 1002 Dangar NSW 2309  
(Level 4/26 Honeysuckle Drive Newcastle)  
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M: 0408 266 986  
W: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

---

**From:** Nicole Davis  
**Sent:** Thursday, 15 December 2016 10:22 AM  
**To:** Richard Bath <[Richard.Bath@environment.nsw.gov.au](mailto:Richard.Bath@environment.nsw.gov.au)>  
**Subject:** Austar Mine Consultation Query

Dear Richard,

Can you please read below and advise if you are happy for me to give them the go ahead to maintain the current consultation process? Their request sounds reasonable to me.

Cheers Nicole

Nicole Y Davis

Archaeologist - Planning  
Hunter Central Coast Region  
Regional Operations Group  
Office of Environment and Heritage  
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E: [nicole.davis@environment.nsw.gov.au](mailto:nicole.davis@environment.nsw.gov.au)  
Please note that I work part-time Monday to Thursday.

Hi Nic

Further to our discussion yesterday, Austar Mine will shortly be commencing the Aboriginal cultural heritage assessment process in relation to a proposed modification to their existing approval.

Consultation with registered Aboriginal parties for the existing approvals has been consistent and ongoing. The most recent consultation has been in relation to a revision of the ACHMP, with consultation ongoing up to Oct/Nov of this year.

Given the above, Austar proposes to continue to consult with the existing group of registered Aboriginal parties for the project rather than redoing the public notification and registration process. Can you please confirm whether this approach is acceptable to OEH.

Happy to discuss at any stage.

Nic

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# **Copy of Letter Sent to all Aboriginal Parties Reference Draft Methodology for ACHAR**



Our Ref: 3900\_RAPs\_20170105a\_ltr

5 January 2017

<<Company Name>>

<<Contacts>>

<<Address>>

<<Email>>

Dear<< Contacts>>

**Re: Proposed Modification to DA 29/95 (MOD 7) – LWB4-B7, Austar Coal Mine Pty Ltd**

Austar Coal Mine Pty Limited (Austar), a subsidiary of Yancoal Australia Limited (Yancoal) operates Austar Coal Mine, an underground coal mine located approximately 10 kilometres south of Cessnock (refer to **Figure 1**).

Austar is seeking to modify its development consent DA29/95. The modification will be sought under Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposed modification is to permit the transfer and processing of coal from four (4) proposed longwall panels (LW) B4 to B7. The location of LWB4 to B7 is shown on **Figure 1** and **Figure 2**. There is no proposed change to any existing approved surface operations or associated infrastructure.

Austar has commissioned Umwelt (Australia) Pty Limited (Umwelt) to prepare an Aboriginal cultural heritage and archaeological assessment (ACHAA) for the proposed modification in consultation with the registered Aboriginal parties, including your organisation. The ACHAA will be undertaken in accordance with the requirements of the *National Parks and Wildlife Act 1974* (NPW Act), the *National Parks and Wildlife Regulation 2009* (NPW Regulation) and the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (the Code of Practice). The ACHAA will form part of an Environmental Assessment for the proposed modification.

As a registered Aboriginal party for Austar Coal Mine we are writing to advise you of the proposed modification and to invite you to participate in the Aboriginal consultation process for the project. In line with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (ACHCRs), this letter provides a draft methodology for the ACHAA of the modification area for your review and comment.

**1.0 Description of the Modification Area**

The LWB4-B7 modification area is shown on **Figure 2** and extends south of the existing Bellbird South mains to cover the proposed longwall panels and the extent of associated subsidence.

As shown by **Figure 1**, there has been significant longwall mining undertaken within the surrounding region over a long period of time. As a result, Austar has a detailed understanding of the potential subsidence impacts associated with its mining activities. Monitoring of previous longwall mining activities in the surrounding area has shown no

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Quality Outcomes.

Newcastle

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Subiaco East WA 6008  
33 Ventnor Avenue  
West Perth WA 6005

Ph. 08 6260 0700

Canberra

PO Box 6135  
56 Bluebell Street  
O'Connor ACT 2602

Ph. 02 6262 9484

[www.umwelt.com.au](http://www.umwelt.com.au)

significant impacts on natural features or surface infrastructure. This is primarily due to the significant depth of mining, the site characteristics and Austar's existing management and mitigation measures. Mining of LWB4-B7 will occur at a similar depth to the adjacent LWB1-B3 and on this basis it is expected that subsidence impacts on natural features will be similarly low. This will be confirmed by a comprehensive assessment of mine subsidence impacts on natural features and surface infrastructure for LWB4-B7.

The LWB4-B7 modification area incorporates a mix of Austar owned land, privately owned rural land, and Crown and Council land including sections of Sandy Creek Road and Quorrobolong Creek. Portions of the modification area are relatively heavily vegetated, in particular along the main drainage line of Quorrobolong Creek and on the Crown landholding. The remainder of the LWB4-B7 modification area has been cleared for agricultural grazing.

## **2.0 Methodology for the Aboriginal Cultural Heritage and Archaeological Assessment**

As discussed in **Section 1.0**, the consultation process will be undertaken in accordance with the DECCW (2010) ACHCRs. The proposed methodology for the ACHAA (pending comments from registered Aboriginal parties) is as follows:

1. Provide information to all registered Aboriginal parties regarding the proposed modification, including a draft methodology for review and comment (this letter)
2. Undertake a survey of the LWB4-B7 modification area in accordance with the draft methodology provided in this assessment (refer to **Section 3.0**)
3. Develop a draft ACHAA report to include:
  - details of the nature of the proposed LWB4-B7 modification
  - a description of the potential impacts from subsidence
  - full details of the registered Aboriginal party consultation process
  - the results of an Office of Environment and Heritage (OEH) Aboriginal Heritage Information Management System (AHIMS) search and Native Title search
  - a review of the cultural context of the LWB4-B7 modification area which will draw heavily on information provided by registered Aboriginal parties and the known archaeological sites in the area
  - a review of background information related to the environmental characteristics of the LWB4-B7 modification area that may have determined how Aboriginal people may have occupied/utilised the area and the likelihood of site survival
  - the preparation of a predictive model drawing on all of the above
  - details of the survey methodology and results
  - details of any sites/objects/potential archaeological deposits located during the survey
  - an assessment of the Aboriginal cultural heritage significance
  - an assessment of the archaeological significance of any sites/objects/potential archaeological deposits located during the survey
  - an assessment of the potential impact by subsidence/subsidence remediation works to any sites/objects/potential archaeological deposits located during the survey
  - a discussion of management options and
  - management recommendations.

Participating registered Aboriginal parties will be encouraged to provide information they feel is appropriate for inclusion in the report. Registered Aboriginal parties will also have the opportunity to provide information that they would like taken into account but not presented in a report that will be made available to the public. Registered Aboriginal parties will be given 28 days to review and provide their response to the draft report.

After completion of the final ACHAA, the current Austar Aboriginal Cultural Heritage Management Plan (Umwelt 2016) will be revised to include the proposed modification upon its approval. The revised Aboriginal Cultural Heritage Management Plan will also be subject to registered Aboriginal party review.

### 3.0 Survey Methodology

A survey of the LWB4-B7 modification area would be undertaken in accordance with the following methodology.

The LWB4-B7 modification area is approximately 300 hectares in size. It includes areas of cleared agricultural land and heavily vegetated areas. The LWB4-B7 modification area is crossed by the main channel of Quorrobolong Creek and a number of first and second order tributaries.

The proposed survey will target indicative landforms within the LWB4-B7 modification area where Aboriginal archaeology is predicted to occur and in areas where landholder permission has been granted. The survey will be designed to ensure there is adequate coverage of landforms and will be undertaken with reference to levels of visibility and exposure. The areas predicted to be likely to contain discernible Aboriginal archaeology are limited to hill crests, spur crests and in proximity to water resources. In addition to these predicted areas, the registered Aboriginal parties will be provided the opportunity to inspect the remainder of the LWB4-B7 modification area that has not been previously assessed, as required, subject to landholder access. It is noted that portions of the LWB4-B7 modification area adjacent to LWB3 were surveyed by the registered Aboriginal parties in 2015 as part of the previous LWB1-B3 modification.

### 4.0 Survey Date

The survey will be undertaken in early February 2017 on a date to be determined pending Aboriginal party responses to this correspondence. It is proposed that the survey will be undertaken over the course of one to two days however this will depend on land access and confirmation of the survey methodology. Further details of the survey date and time will be provided to groups that express an interest in participating.

### 5.0 Schedule of Rates

In order to clarify Austar's payment for the field survey engagement and meetings called by Austar, **Table 1** provides a schedule of rates. GST will be paid in addition on all invoices.

**Table 1 Schedule of Rates**

Item	Rate per Group (ex GST)	Detail
Full day (8:00am to 4:00pm typically)	\$550 / day	Full day rate includes survey works/meetings greater than 4 hours duration.
Half day (less than 4 hours)	\$300 / half day	Half day rate for survey works / meetings less than four hours, or non-notified survey cancellations due to wet weather or other reasons.
Travel allowance	\$50 / day	For groups travelling each day, and for first day of consecutive survey days for those from further afield that requiring accommodation.
Accommodation and subsistence allowance	\$150 / night	Only available to groups from further afield (e.g. Scone, Muswellbrook) where consecutive field survey days are planned. Not applicable where Group travels home each day.
Notified cancellation	Nil	

## 6.0 Documents Required Prior to Survey

If it has been more than 12 months since the last time you undertook any field survey at Austar Coal Mine, we will require you to provide us with information related to your insurance coverage including certificates of currency.

Please fill out the attached field work application form and return with the appropriate attachments to me by mail or email (gary.mulhearn@yancoal.com.au) **prior to 5.00 pm on 23 January 2017**.

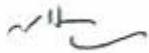
## 7.0 Summary

This letter provides details of the proposed methodology for an Aboriginal Cultural Heritage and Archaeological Assessment associated with a modification of development consent DA29/95 at Austar Coal Mine for your review and comment. In order to participate in the process, we request that your group provides the following:

- completed field work expression of interest form (attached) and **returned by close of business 23 January 2017**
- in accordance with the requirements of the NPW Regulation, we ask that your group provides comments on the draft methodology by no later than **5.00 pm on 6 February 2017**. Comments regarding the draft methodology can be provided verbally or in writing and contact information is provided below.

Should you require any further information or wish to discuss any aspect of this project, please do not hesitate to contact Nicola Roche of Umwelt on (02) 4950 5322 or Gary Mulhearn of Austar on (02) 4993 7334 or 0403 963 081.

Yours sincerely



Nicola Roche  
Manager Cultural Heritage

Enclosures: Archaeological Fieldwork Application Form  
Figure 1: Locality Plan  
Figure 2: Proposed LWB4-B7 Modification

**Archaeological Fieldwork Application Form**  
**Austar Coal Mine – Proposed Modification to DA29/95 (MOD 7) - LWB4-B7**

To: Austar Coal Mine Pty Ltd (Return by 5:00 pm on 23 January 2017)  
 Email: Gary.Mulhearn@yancoal.com.au  
 Phone: 02 4993 7334  
 Attention: Gary Mulhearn

Item	Response (Circle response and provide detail)
Nominated field work representative and representative contact phone number.	Name: _____ Phone: _____
The Awabakal and Guringai People have current appropriate insurance, please attach certificate of currency for insurance.	Y / N Y / N Certificate of currency attached
The Awabakal and Guringai People will provide their representative with appropriate Personal Protective Equipment and Clothing (PPE&C) including boots; long trousers and hat, which must be worn by all participants during fieldwork; and water.	Y / N
The The Awabakal and Guringai People representative is physically fit, capable of walking over steep slopes and has no serious medical conditions which are likely to inhibit fitness during fieldwork. (All pre-existing medical conditions or illnesses must be identified).	Y / N Provide details if NO.
The The Awabakal and Guringai People representative will only represent The Awabakal and Guringai People for the purposes of this fieldwork.	Y / N
The The Awabakal and Guringai People representative has demonstrated appropriate experience, ability and reliability.	Y / N
The Awabakal and Guringai People accepts the terms in Austar letter dated 5/1/17.	Y / N

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

The Awabakal and Guringai People

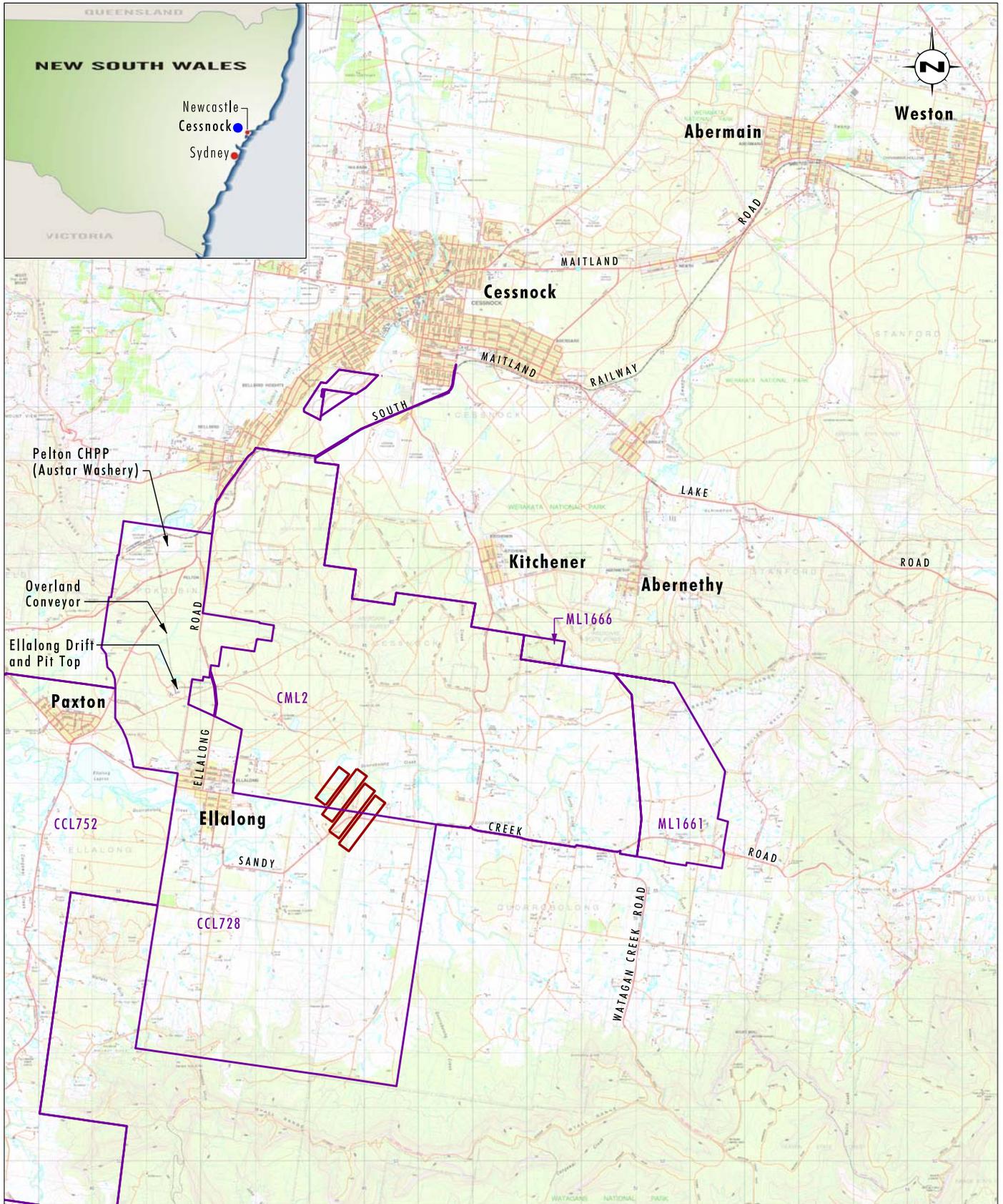


Image Source: LPI NSW (2009)  
 Data Source: Austar Coal Mine (2016)

**Legend**

- Proposed LW B4-B7 Longwall Panels
- Mining Lease Boundary

**FIGURE 1**  
**Locality Plan**

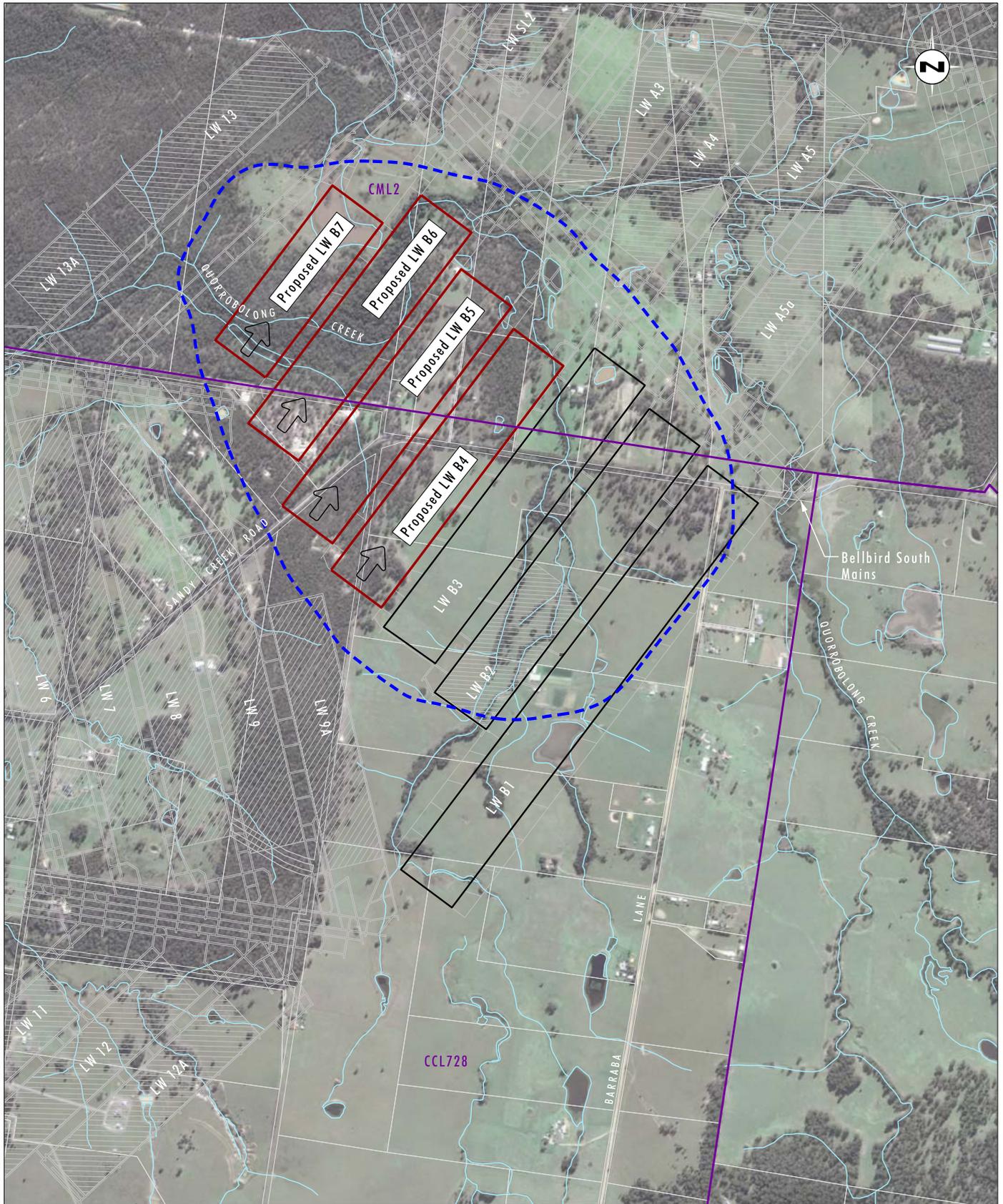


Image Source: Google Earth (2014)  
 Data Source: Austar Coal Mine (2016)

0 0.25 0.5 1.0 km  
 1:20 000

**Legend**

- LW B1-B3 Longwall Panels (DA29/95)
- Proposed LW B4-B7 Longwall Panels
- LW B4-B7 Modification Area
- Mining Lease Boundary
- Completed Underground Workings
- Direction of Mining
- Drainage Line

File Name (A4): 3900\_007.dgn  
 20170104 12.43

FIGURE 2

Proposed LW B4-B7 Modification Area

**From:** [Gary Mulhearn](#)  
**To:** [Nicola Roche](#); [Alison Lamond](#); [Gabrielle Allan](#)  
**Subject:** FW: Message from "RNP00267383D840" - Awabakal comment on methodology and EO1  
**Date:** Tuesday, 17 January 2017 2:59:48 PM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)  
[20170117133821397.pdf](#)  
[Workers\\_Comp.pdf](#)  
[Public\\_liability.pdf](#)

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Hi Ladies,

See attached and below from Awabakal.

Regards,

**Gary Mulhearn** | ENVIRONMENT & COMMUNITY MANAGER

**Austar Coal Mine Pty Ltd**

SITE: Middle Road, Paxton NSW 2325  
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PHONE: +61249937334  
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WEBSITE: [www.austarcoalmine.com.au](http://www.austarcoalmine.com.au)



---

**From:** Awabakal [<mailto:culture@awabakallalc.com.au>]  
**Sent:** Tuesday, 17 January 2017 3:27 PM  
**To:** Gary Mulhearn  
**Cc:** Terry Lawler  
**Subject:** FW: Message from "RNP00267383D840"

Hi Gary,

Please see attached Awabakal LALC's current insurances (certificates of currency) & field work expression of interest.

Further to that, I am satisfied with the proposed methodology.

If you have any queries, please do not hesitate to contact me.

*Regards*

**Pete Townsend**  
**Culture & Heritage Officer**

cid:image002.png@01CF6391.FD38CE80



Awabakal Local Aboriginal Land Council  
Address: 127 Maitland Road Islington NSW 2296  
Postal address: PO Box 101 Islington NSW 2296  
Ph: 49654532  
Fax: 49654531  
Mob: 0401128987  
E-mail: [culture@awabakallalc.com.au](mailto:culture@awabakallalc.com.au)

**Yaama; I am a Wiradjuri & Weilwan man of Western NSW. I pay my respects to the Traditional owners elders, past, present & future. I also extend my acknowledgement to the Traditional Lands, Waterways, Flora & Fauna of this country I work and live on.**

-----Original Message-----

From: [ricohscanner@awabakallalc.com.au](mailto:ricohscanner@awabakallalc.com.au) [<mailto:ricohscanner@awabakallalc.com.au>]  
Sent: Tuesday, 17 January 2017 2:38 PM  
To: Awabakal <[culture@awabakallalc.com.au](mailto:culture@awabakallalc.com.au)>  
Subject: Message from "RNP00267383D840"

This E-mail was sent from "RNP00267383D840" (MP C3003).

Scan Date: 01.17.2017 13:38:21 (+1000)  
Queries to: [ricohscanner@awabakallalc.com.au](mailto:ricohscanner@awabakallalc.com.au)

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**From:** [Tracey Skene](#)  
**To:** [Nicola Roche](#); [gary.mulhearn](#)  
**Cc:** [Alison Lamond](#)  
**Subject:** Austar Methodology and signed papaer work  
**Date:** Monday, 16 January 2017 8:03:03 AM  
**Attachments:** [austar.pdf](#)

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Good Morning all,

Alison I have included you into email so you can forward onto Nic as sometimes Nics email bounces back to me .

Please see attached signed paper work and a list of representatives I have working for me at Culturallly Aware.

I have viewed and read the proposed Methodology for upcoming field work on the Modification to DA 29/95(MOD7)-LW84-87,Austar Coal Mine Pty Ltd.

Culturallly Aware at this stage has no issues or concerns in this proposed Methodology.

Thanks  
Tracey Skene (Culturallly Aware)

Kind Regards,  
Tracey Skene

**Marrung-ta Indigenous Training & Employment**  
**7 Crawford Place, Millfield NSW 2325**  
**Mobile: 0474106537**



**From:** [Gary Mulhearn](#)  
**To:** [Nicola Roche](#); [Alison Lamond](#)  
**Cc:** [Gabrielle Allan](#)  
**Subject:** FW: Austar Coal Mine - Wonn1 comment on methodology  
**Date:** Friday, 20 January 2017 3:58:54 PM

---

Gary Mulhearn | ENVIRONMENT & COMMUNITY MANAGER

Austar Coal Mine Pty Ltd

SITE: Middle Road, Paxton NSW 2325  
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PHONE: +61249937334  
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MOBILE: +61403963081  
EMAIL: [Gary.Mulhearn@yancoal.com.au](mailto:Gary.Mulhearn@yancoal.com.au)  
WEBSITE: [www.austarcoalmine.com.au](http://www.austarcoalmine.com.au)

-----Original Message-----

From: Lynne Fletcher [<mailto:kauwul@gmail.com>]  
Sent: Friday, 20 January 2017 3:53 PM  
To: Gary Mulhearn  
Subject: Austar Coal Mine

Good afternoon Gary

At this time we have don't have any problems with the proposed methodology.

Have a good weekend

Kind Regards

Lynne and Arthur Fletcher

Kauwul Pty Ltd T/A Wonn1

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**From:** [Jakub Czastka](#)  
**To:** [Nicola Roche](#); [Gary.Mulhearn@yancoal.com.au](mailto:Gary.Mulhearn@yancoal.com.au)  
**Cc:** [Scott Franks](#); [Danny Franks](#)  
**Subject:** Re: Registration of Interest/Submission of Archaeological Fieldwork Application Form (AFAF) for Proposed Modification to DA29/95 (MOD 7) - LWB4-B7  
**Date:** Wednesday, 18 January 2017 11:06:38 AM  
**Attachments:** [8AC97A74-9858-49E4-8975-60A5C1A16263f221.png](#)  
[Supply\\_nation\\_logof221.png](#)  
[05012017131402-0001.pdf](#)  
[Tocomwall\\_AFAForm\\_18JAN17.pdf](#)  
[Austar\\_Coal\\_Mine\\_MOD6\\_Consolidated\\_Consent.pdf](#)  
[Tocomwall\\_Workers\\_compensation\\_EXP\\_30SEP17.pdf](#)

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Good morning Nicola and Gary,

Tocomwall are responding to your letter dated 5 January 2017 re: the proposed modification to DA29/95 (MOD 7) - LWB4-B7 as a RAP. Please note that we are currently preparing a response to your draft methodology and ancillary documentation which we will email to you by COB on Monday 6 February 2017, as per your letter.

Please note that your original letter (attached) did not have any figures attached to it: Figures 1 and 2 are mentioned in the text but not supplied with the documentation. We would appreciate you forwarding these to us as soon as possible. Please also note that the letter is not signed by Miss Roche and that the Section numbers do not match up with references in the text: could we please receive an updated letter with these mistakes rectified. Thank you.

I have also attached a copy of your completed AFAF and copies of the insurances requested from Tocomwall.

Please feel free to call me if you have any questions or require additional information.

Regards,

Jakub Czastka (Chaz)  
Senior Archaeologist

Tocomwall Pty Ltd  
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**Tocomwall Pty Ltd**

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ABN: 13 137 694 618

Nicole Roche  
Manager Cultural Heritage  
Umwelt Pty Ltd  
Via Email: [nroache@umwelt.com.au](mailto:nroache@umwelt.com.au)  
Cc: [Gary.Mulhaern@yancoal.com.au](mailto:Gary.Mulhaern@yancoal.com.au)

6 February 2017

Dear Nicole,

**Re: Draft Methodology for ACHAA for Austar Coal Mine – Proposed Modification to DA29/95 (MOD 7) – LWB4-B7**

Tocomwall has reviewed the draft methodology ACHAA dated the 5 January 2017.

Tocomwall would like to reiterate the words of the Plains Clan of the Wonnarua People (the PCWP), the Registered Native Title Claimants for the Hunter Valley, with the statement that: *“We the PCWP have never ceded our sovereign rights to be ruled by another race of people, nor, ceded our sovereign rights to our natural resources within our lands, nor have we ceded our sovereign right to our lands. This is the history of our people, and our lands, one day someone will have to pay the rent plus.”*

**Introduction**

As Tocomwall understand the draft methodology, this is a proposed modification of an existing development consent (which has been modified 6 times already). The modification is occurring under section 75W of the EPAA (part of the old Part 3A provisions that continue to apply to this development because it was approved under that provision). The Director-General (now Secretary) of the Department of Planning would have set out requirements for the environmental assessment. We would like to ask Umwelt whether there are environmental assessment requirements, and if there are, could we have a copy of them?

Tocomwall have reviewed the proposed methodology and have the following comments, suggestions and recommendations to make. Importantly, Tocomwall consider the proposed research design and methodology to be scientifically and culturally inappropriate because of the reasons discussed below and will not sign off on it until considerable changes have been made.

What little there is in terms of actual methodology (see below for more detail), the most obvious comment to make about the document is that it is very heavy on archaeology and very light on any other kind of cultural values which may be affected or impacted upon.

**Consultation Process**

Section 2 on page 3 of the draft methodology states – in relation to consultation – that (pp3):

*‘Participating registered Aboriginal parties will be encouraged to provide information they feel is appropriate for inclusion in the report. Registered Aboriginal parties will also have the opportunity to provide information that they would like taken into account but not represented in a report that will be made available to the public. Registered Aboriginal parties will be given 28 days to review and provide their response to the draft report.’*

Tocomwall would like to raise several points in regards to this statement.

Firstly, consultation in relation to the proposed methodology for information gathering and significance assessment is a separate matter from substantive consultation with cultural knowledge holders using a mutually acceptable process to identify:

1. The Aboriginal objects or Aboriginal places within the assessment area; and
2. The significance of those objects or places, including in light of any identified intangible heritage values (for the reasons explained in Ashton (No.3) at [82]: 'these intangible aspects of Aboriginal culture are of equal or often of more significance than objects themselves and they can add an extra and different layer of significance to these objects').

Secondly, there is no consultation identified with the persons who are required to be consulted under the DECCW (2010; now OEH) *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (the 'Guidelines'). The intent of the OEH Guidelines in terms of who should be consulted and the objective of consultation is clear. The requirements are set out in Part 3.3, under the heading '*Information required for decision-making.*' The decision-maker has, through the guidelines, identified the class of persons who it believes are qualified to provide the information required and it is the proponent's responsibility to ascertain who they are. These primarily are:

- Aboriginal owners;
- Native title holders; and
- Registered native title claimants.

The only registered native title claimants for the study area are Scott Franks and Robert Lester. At this stage there are no Aboriginal owners or determined native title holders. Identifying '*Traditional owners or custodians with appropriate cultural heritage knowledge to inform decision making*' is at the core of the consultation process the proponent is required to follow. It is what the Court recognised in *Ashton (No.3)* when it identified what a proper cultural assessment required and why it said there was a need for balanced cultural assessments for Statutory decision-making. Beyond the people described in Part 3.3 of the guidelines, other cultural knowledge holders should be identified based on standard anthropological techniques (such as genealogical, ethnographic and oral history recording). The statement quoted above from Umwelt does not identify any particular persons or groups of persons as holding traditional or historical knowledge of the cultural heritage significance for the assessment area.

This methodology is not explicit in the methods it will employ to collate cultural information, but a very generic statement. It would seem that the consultation process being proposed relies upon a document- or submission-based process, without any face-to-face consultation or on-site consultation. This way of eliciting cultural heritage information from knowledge holders is not something that in our experience a professional anthropologist would use. This approach:

1. Is removed from the environmental and social context in which cultural knowledge is typically disclosed;
2. Does not proceed from, or indeed appear to place any value in, building a relationship of trust or confidence with informants which characterises a respectful research process;
3. May in fact limit the information provided (both for reasons of cultural sensitivity and because of reasons of literacy and writing proficiency); and

4. Is apt to produce unreliable or incomplete responses, rather than to systematically address the matters required. For example, are respondents obliged to draw maps to accompany their responses? Or commission their own reports?

Finally, the methodology does not consider the need for a cultural survey to precede the archaeological survey in order to both inform and contextualise the archaeological aspect in regards to cultural knowledge and significance, particularly from the perspective of a cultural landscape. This should be rectified in order for the subsequent *archaeological* fieldwork to be culturally guided and/or appropriate.

### Archaeology

On page 3 of the draft methodology a short three-paragraph description is presented purporting to be a 'Survey Methodology.' The 'methodology' falls far short of a methodical approach to an archaeological survey. Again, as for the consultation process discussed above, it is so generic as to be uninformative, subject to manipulation by the consultant should issues arise later and inadequate at explaining and exploring a scientific approach to a systematic archaeological investigation of the assessment area. In the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010:2), under Section 1.2 headed *Objective of Archaeological Investigation* it clearly states that one of the objectives should be to:

*'Present a feasible and appropriate methodology for the archaeological survey and other investigations to ensure that work can be clearly linked to these aims.'*

Of the three paragraphs that make up this methodology, the first two paragraphs are merely introductory and describe the study area. The third paragraph states (page 3):

*'The proposed survey will target indicative landforms within the LWB4-B7 modification area where Aboriginal archaeology is predicted to occur (which are?) and in areas where landholder permission has been granted (what does this mean? How much area can be accessed? Are their landforms that are only represented on inaccessible lands? Can we have a map illustrating all the landforms and accessible verses inaccessible areas as well as a table breaking down landforms and accessible verses inaccessible areas as percentages? In order to test a predictive model there also needs to be a component of pedestrian survey in areas where archaeology is not predicted to occur, otherwise the 'model' becomes little more than a self-fulfilling prophecy!?). The survey will be designed to ensure there is adequate coverage of landforms and will be undertaken with reference to levels of visibility and exposure. The areas predicted to be likely to contain discernible Aboriginal archaeology are limited to hill crests, spurs and in proximity to water sources (this does not consider the fact that the best, most intact and significant archaeological deposits will be retained in areas of soil and sediment aggradation such as foot slope – floodplain boundaries and terrace systems within floodplains; it further fails to consider proximity to former water courses/palaeochannels/oxbow lakes [billabongs]: as such the survey will fail to adequately address the extant potential archaeological resource but simply concentrate on the eroding archaeological resource which are in contextual and geomorphic terms essentially secondary context lag gravels and reflects therefore only a small, undetermined percentage of the archaeological resource). In addition to these predicted areas, the registered Aboriginal parties will be provided the opportunity to inspect the remainder of the LWB4-B7 modification area that has not been previously assessed, as required, subject to landholder access. It is noted that portions of the LBB4-B7 modification area adjacent to LWB3 were surveyed by the registered Aboriginal parties in 2015 as part of the previous LWB1-B3 modification (where are these areas? Maps please?).' (My additions in brackets and no italics)*



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As per the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010) and specifically Requirement 5a - Survey sampling strategy - Tocomwall would like to see a more thorough representation and details of this methodology, namely (*ibid*: 12):

*'The archaeological survey must not begin until a sampling strategy has been developed. Sampling must:*

*· include all landforms that will potentially be impacted. Where there is more than one instance of similar or the same landforms that have the potential to be impacted each individual landform must be sampled.*

*· place a proportional emphasis on those landforms deemed to have archaeological potential, clearly describing and justifying the reasons for their selection (see Requirement 4).*

*The sampling strategy must:*

*· describe how sampling relates to the footprint that is proposed to be impacted by the development*

*· clearly state when a full coverage survey will be undertaken and justify when it is not. The sampling strategy must be documented in the Archaeological Report as set out in Requirement 11.'*

## **Conclusions**

Tocomwall would like to see the issues they have raised in this review addressed by Umwelt as soon as possible and certainly before we sign off on the proposed methodology.

Please feel free to call me if you have any questions.

Regards,

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Our Ref: 3900/NR/Tocomwall/07022017

7 February 2017

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BY EMAIL: [jakub@tocomwall.com.au](mailto:jakub@tocomwall.com.au)

Dear Chaz

**Re: Response to Draft Methodology for Austar Coal Mine – Proposed Modification to DA29/95 (MOD 7) – LWB4-B7**

Thank you very much for your comprehensive response to the draft methodology for the Aboriginal cultural heritage and archaeological assessment for the above project. We appreciate the time and effort that went into drafting your response and your commitment to consulting with us regarding this matter. We acknowledge the reiteration of the statement made by the Plains Clan of the Wonnarua People (PCWP) as registered native title claimants for the area that includes the current project area.

This letter provides responses to queries and issues raised in your letter of 6 February 2017.

**1.0 Approvals Context**

As noted in our previous correspondence, Austar Coal Mine Pty Ltd (Austar) is seeking to modify DA29/95 under Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The original approval was issued under Part 4 of the EP&A Act and approval of the modification will be sought under Section 75W of the EP&A Act.

Given the nature of the proposed modification, the Secretary of the Department of Planning & Environment has not issued environmental assessment requirements for this project, but has accepted a proposed environmental assessment approach and consultation plan provided to the Department by Austar. The accepted environmental assessment approach includes the completion of an Aboriginal cultural heritage and archaeological assessment in accordance with relevant legislation and guidelines, including the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (the Code of Practice – DECCW 2010a) and the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011).

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## 2.0 Consultation Process

Umwelt acknowledges and understands that cultural values, by definition, relate to values outside those associated with specific archaeological sites/objects. As stated in our initial correspondence, we invite comment from Aboriginal parties regarding any cultural values associated with the project area and will ensure that any information provided regarding cultural values (be they associated with a specific site or provided with reference to a landscape feature or within a broader context) are documented and recorded in accordance with the wishes of the relevant Aboriginal party for inclusion in the assessment report. We note that the inclusion of any such information is dependent on its provision by the Aboriginal parties.

In terms of the identification of persons who are required to be consulted in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW 2010b) (the consultation requirements), Austar has been undertaking consultation with Aboriginal parties (including Tocomwall) in this region over many years and the current consultation represents a continuation of this process. We note that Section 3.2 specifies that the objective of consultation is to ensure 'that Aboriginal people have the opportunity to improve assessment outcomes'. Factors specified as assisting in meeting this objective include providing Aboriginal parties with the opportunity to provide information on cultural values (as invited in our letter of notification and in the draft methodology), influence methods regarding assessment of significance for Aboriginal objects/places (which can be undertaken in response to the draft methodology, during fieldwork and in commenting on the draft assessment report) and commenting on the draft assessment report. Our approach is designed to ensure compliance with this objective.

As you rightly point out, Section 3.3.1 provides guidance on who can provide this information. We acknowledge and recognise that the project area is located within the broader area that is the subject of a registered native title claim held by the PCWP. Based on the currently accepted Native Title process, it is our understanding that members of the PCWP have presented sufficient genealogical documentation, ethnohistoric information and oral history to satisfy the requirements of the National Native Title Tribunal for registration of a claim. We therefore do not propose to replicate this process but will consult with PCWP. It is possible that over the course of consultation regarding the project, additional Aboriginal parties may identify particular or cultural knowledge relevant to the project area. If this occurs, we will liaise with appropriate stakeholders to resolve a methodology to appropriately verify such information.

Your correspondence raises issues with the lack of explicit provision of methods for the collation of cultural information. This reflects our very strong belief that consultation is most effective when Aboriginal parties engage on their own terms and with consideration of their own unique requirements. Based on our extensive and lengthy experience in undertaking consultation in this region, some Aboriginal parties wish to operate independently, others wish to be involved in group or family-based decision making process, others wish to work collaboratively with our archaeologists to ensure their comments and feedback are appropriately documented. Our assessment methodology was provided in draft format, with the invitation to provide information as Aboriginal parties feel appropriate. We believe it is inappropriate for us to specify how this must be done and therefore welcome input from Aboriginal parties (both collectively and individually) as to how they wish to be consulted.

Your statement that the proposed consultation approach is 'removed from the environmental and social context in which cultural knowledge is typically disclosed' fails to recognise that the opportunity is provided for in-field consultation during the completion of the survey of the project area. Umwelt archaeologists are trained to seek and document cultural feedback provided by Aboriginal party representatives during fieldwork. This is not limited to cultural values associated with archaeological sites but may encompass any values identified by Aboriginal people (refer to

**Section 3.2.2** for more detail). Based on the scope of the project, the results of previous assessments (including those undertaken in consultation with Tocomwall) and the nature of the proposed project impacts, it is not proposed to undertake a separate 'cultural survey' of the project area but to document both cultural values and archaeological values during the survey process.

We note that the Umwelt cultural heritage team has been undertaking consultation with Aboriginal parties in this region for several decades, with Nicola Roche (who is directing the project) having been involved in Aboriginal cultural heritage assessments in the Hunter Valley for over 12 years. During this time we believe we have built a stable and professional relationship with Aboriginal parties and that we have an understanding of the context within which we undertake consultation.

Off the back of this ongoing relationship, we fully understand that some Aboriginal parties may not have access to the range of professional staff and extensive resources available to organisations like Tocomwall. On this basis, we will always assist Aboriginal parties who may request assistance with matters of literacy, documenting feedback or reviewing documentation. However, we respectfully allow Aboriginal parties to identify when they do or do not require such assistance and consider this to be a matter for discussion between the relevant Aboriginal party and Umwelt.

### **3.0 Archaeology**

The draft survey methodology is designed to ensure compliance with requirements for archaeological survey as established in the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (the Code of Practice). The requirements of the Code of Practice were not duplicated *verbatim* in our original correspondence or below but rather we reiterate our commitment is to ensure compliance.

However, we appreciate your request for further information and include below a more detailed account of the rationale and specifications of our survey methodology. We note that this is information that we would typically include in a draft assessment report but are happy to bring forward its provision to address your concerns.

As is appropriate and expected from an archaeological perspective, the survey methodology has also been developed with reference to the predicted impacts associated with the project, as will be discussed below.

#### **3.1 Predicted impacts associated with the project**

The project does not involve any additional surface activities and therefore will have no direct impact on archaeological sites as a result of land clearing. The potential impacts of the proposed modification on archaeological sites are therefore limited to indirect impacts associated with subsidence, including potential surface cracking, subsidence remediation works and hydrological changes. Specialist input on subsidence impacts is being prepared (MSEC in prep), with additional modelling of changes to hydrology also being undertaken.

Due to the similarities in geology, topography, depth of mining and strata between the current project area and the adjoining approved LWB1-B3 area, it is predicted that subsidence and subsidence related impacts within the current project area will be similar to that documented within the LWB1-B3 area. Subsidence monitoring following mining of LWB2 has identified that the levels of subsidence are very low such that there is no significant or visible surface cracking or surface impacts. No subsidence remediation works have been required for the previously extracted LWB2. This is supported by similar findings following the extraction of LWA1 to A8 in the Stage 1, Stage 2 and Stage 3 mining areas. Based on previous this experience within the Austar Coal Mine, the nature of the proposed mining and site characteristics, it is expected that the project area will be subject to similarly minimal surface impact.

On this basis, there is limited rationale for undertaking extensive or invasive investigation of the potential for sub-surface deposits (such as test excavation), as the impacts of any such investigation on Aboriginal cultural heritage will be more damaging than the impacts of the project itself. In accordance with best practice, the draft methodology does not include provision for any such investigations.

### **3.2 Archaeological Survey**

The aim of the archaeological survey is to identify and appropriately document any material evidence of Aboriginal land use within the project area. It is also noted that Aboriginal party involvement in the survey provides an opportunity to document information Aboriginal party representatives may provide regarding cultural values. Given our current understanding of the potential for limited visibility within the project area, the archaeological survey will also assess the potential that additional material evidence may be present but not detectible within the project area, including evidence that may be present in a sub-surface context (noting the qualificatory statement provided above).

#### **3.2.1 Sampling Strategy**

In accordance with the Code of Practice, a survey sampling strategy was developed for the project area. This strategy is developed with reference to the environmental and archaeological context of the project area.

The survey will be undertaken to ensure that a representative sample of all landforms within the project area is surveyed, as required to ensure compliance with Code of Practice. A map showing the distribution of landforms (mapped using landform elements as defined in Speight 2009) within the project area is provided as **Figure 1**. This landform mapping is provisional only and has been developed with reference to available contour data. We expect that we will modify this landform mapping based on the outcomes of the survey, particularly with reference to more specific categorisation of slope landforms.

In response to the specific landforms raised in your correspondence, we note that the project area does not contain any areas of identifiable terracing, paleochannels or oxbow lakes. The project area is within the Quorrobolong soil landscape which is broadly described as typically containing soil profiles not exceeding 50cm in depth (Kovac and Lawrie 1991) and with no consideration of the formation of deep alluvial soils. It is recognised that soil landscape mapping is undertaken on a broad basis and requires further consideration with reference to localised conditions. However, based on the topography, extent of the catchment areas associated with the project area, and the outcomes of previous archaeological investigations, it is not expected that the landforms referenced above will occur with the project area. In the unlikely circumstance that any such landforms are identified during the survey, the sampling strategy can be adjusted to expend appropriate survey effort within any such landform.

There is potential for the colluvial/alluvial interfaces within the mapped valley flats (flat to gently inclined landforms bordering watercourses), which were broadly referenced in our previous correspondence as 'low elevation slopes in proximity to Quorrobolong Creek and its tributaries'. As identified in our previous correspondence, based on the archaeological pattern in the region, this landform (along with crests) are predicted to have higher archaeological potential and a proportional emphasis will be placed on survey of these landforms. We note that this does not exclude the survey of other portions of the project area and reiterate the intent to obtain a representative sample of all landforms.

Other considerations in developing the survey strategy include:

- Part of the project area has been subject to previous archaeological survey and assessment (completed in August and September 2015) conducted in accordance with the Code of Practice and in consultation with the registered Aboriginal parties (including Tocomwall). As noted in our previous correspondence, the survey strategy does not include provision for re-survey of this area (shown in **Figure 2**).
- Parts of the project area are located on privately owned land for which the landholder has refused access (areas shown in **Figure 2**). These areas therefore cannot be subject to survey.
- As shown in **Figure 2**, the project area is relatively densely vegetated with open forest in some areas, with other areas appearing to also be relatively heavily vegetated with pasture grass and other introduced species. Based on our understanding of the area and the outcomes of previous archaeological investigations, it is likely that visibility across much of the project area will be relatively low. On this basis, it is proposed to target areas of visibility and exposure during the survey in order to obtain maximum benefit from survey effort. Consideration of the potential for additional deposits to be present but not visible will be a key component of the archaeological assessment report, as will be discussed further in this document.

When all of these factors are taken into consideration, it is apparent that the area subject to survey is relatively small. The location of specific transects will therefore be discussed in the field with Aboriginal party representatives and will be decided collectively but with reference to the identified requirements of the Code of Practice. This allows us to also ensure that requirements for survey of areas in relation to cultural values (as opposed to archaeological values) can be taken into account.

### **3.2.2 Recording of information during survey**

Survey units will be defined and named with reference to Requirement 5c of the Code of Practice, including recording start and finish points and/or boundaries for all survey units using a hand-held GPS receiver (set to allow recording of data with datum MGA94) and topographic mapping (where relevant), with track logs to be recorded for all pedestrian transects. Start and finish points/boundaries for survey units will be defined based on landforms, project area boundaries, access area boundaries or other arbitrary terminations (as specified in the Code of Practice). The spacing between individuals will also be recorded for each survey unit.

Photographs will be undertaken for landforms/survey units (where informative). Information recorded for each survey unit will include

- Landform (in units based on those established by McDonald *et al* 2009)
- Gradient (where relevant)
- Vegetation
- Geology and soils (where suitable areas of exposure/visibility are present)
- Identified Aboriginal resources (food and medicine plants, prey animals, stone and water)
- Levels of average ground surface visibility within the survey unit (in accordance with the Requirement 9 of the Code of Practice)
- Extent and type of exposures within the survey unit (with reference to the factors leading to the exposure such as erosion, earth-moving activities, track establishment etc.)

- Any information provided by the registered Aboriginal parties in relation to cultural values, noting that such information will be recorded in accordance with the wishes of the party providing the information.
- Any site, area of Potential Archaeological Deposit (PAD) or landscape feature of Aboriginal cultural value present within the survey unit (see below for further information on site/PAD recording).

Any Aboriginal archaeological sites identified during the survey will be assessed with reference to the site boundaries. Factors that will be taken into consideration in defining and mapping site boundaries may include the distribution of surface artefacts, landforms or physical boundaries and cultural information.

Sufficient information will be recorded for all sites to meet Requirement 7 of the Code of Practice. The archaeological and Aboriginal and cultural significance of any site will be discussed with the registered Aboriginal parties participating in the survey.

As noted in **Section 2.1**, it is likely that levels of visibility and exposure will be limited across much of the project area. It will therefore be necessary to assess the archaeological potential of landforms/specific areas within the project area. This assessment will be undertaken with reference to factors including the archaeological context of the local area, the evaluation of the soil profile (based on soil landscape mapping, exposed soil profiles identified during the survey and geomorphic understandings of the area) and the identification of landforms that may have greater archaeological sensitivity (such as alluvial fans, terraces, colluvial/alluvial interfaces etc.). The extent of any area of identified archaeological potential will be defined and documented for inclusion in subsequent reporting. The archaeological and Aboriginal and cultural significance of any area of identified archaeological potential will be discussed with the registered Aboriginal parties participating in the survey.

#### **4.0 General Comments**

We note that in your letter you raise a concern with the focus on archaeology in our initial correspondence. As expressed throughout this letter, we believe that it is culturally inappropriate for us as non-Aboriginal people to comment on Aboriginal cultural values unless utilising information expressly provided by Aboriginal people with interests in the area being discussed. Our previous letter included the provision of opportunity to registered Aboriginal parties to provide any cultural information they feel is appropriate regarding the project area. This opportunity extends throughout the assessment process, with input from Aboriginal parties welcomed, particularly (but not exclusively) in response to the draft methodology, during survey and following review of the draft assessment report. We thank you again for your commitment to taking up this opportunity and look forward to ongoing consultation with you and other Tocomwall representatives throughout this project.

Should you wish to discuss any aspect of this letter, we ask that you contact either myself or Gary Mulhearn by close of business Wednesday 8 February 2017.

Yours sincerely



Nicola Roche  
Manager Cultural Heritage

## 5.0 References

Department of Environment, Climate Change and Water (DECCW) 2010a. Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW. Department of Environment, Climate Change and Water: Sydney.

Department of Environment, Climate Change and Water (DECCW) 2010b. Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010. Department of Environment, Climate Change and Water: Sydney.

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Office of Environment and Heritage, Department of Premier and Cabinet (OEH) 2011 Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW. Office of Environment and Heritage, Department of Premier and Cabinet: Sydney.

Speight, J.G. 2009. Landforms. In The National Committee on Soil and Terrain (eds). Australian Soil and Land Survey Field Handbook. CSIRO: Collingwood.



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9 February 2017

Dear Nicole,

**Re: Response to Draft Methodology for Austar Coal Mine – Proposed Modification to DA29/95 (MOD 7) – LWB4-B7**

The following comments relate specifically to your letter dated 7 February 2017. A more general discussion follows these comments. Overall, the response by Umwelt whilst being lengthy, does not actually answer the questions or concerns of Tocomwall's letter dated 6 February 2017 in regards to assessing cultural significance. From a review of your letter, it is very heavy on justifications for your previous procedures and current approach, rather than genuinely reflecting on a more appropriate method(s) for investigating cultural significance.

**Response to Section 2: Consultation Process**

On page two of your letter, you state that:

*'As stated in our initial correspondence, we invite comment from Aboriginal parties regarding any cultural values associated with the project area and will ensure that any information provided regarding cultural values (be they associated with a specific site or provided with reference to a landscape feature or within a broader context) are documented and recorded in accordance with the wishes of the relevant Aboriginal party for inclusion in the assessment report. We note that the inclusion of any such information is dependent on its provision by the Aboriginal parties.'*

This statement follows on from what Umwelt had previously identified (page 3: paragraph 1: letter dated 5 January 2017) and does not provide any form of structure or method to your enquiry into cultural significance, i.e. how you will specifically go about collating this information. Furthermore you go on to state on page 2, in the second paragraph (7 February 2017):

*'We note that Section 3.2 specifies that the objective of consultation is to ensure 'that Aboriginal people have the opportunity to improve assessment outcomes'. Factors specified as assisting in meeting this objective include providing Aboriginal parties with the opportunity to provide information on cultural values (as invited*



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*in our letter of notification and in the draft methodology), influence methods regarding assessment of significance for Aboriginal objects/places (which can be undertaken in response to the draft methodology, during fieldwork and in commenting on the draft assessment report) and commenting on the draft assessment report. Our approach is designed to ensure compliance with this objective (my emphasis).'*

Whilst you rely on RAPs to 'lead' you on how and what they want to say, you inexplicably shy away from undertaking culturally appropriate and specific studies that are, essentially, ethnography. Furthermore, you continue to believe that cultural significance can be collated during the course of archaeological fieldwork, limited as it is in time, resources, with large areas to be covered for the purpose of archaeological investigations (see also discussion below). I am, as an archaeologist, familiar with the challenges of understanding anthropological and archaeological consultation. The fact is - if one is genuine, honest and ethical with oneself - it is clear that anthropological consultation requires a different skill-set and a stand-alone, rather than 'bolted on,' investigation.

In Tocomwall's letter of the 6 February 2017, we stated:

*'This methodology is not explicit in the methods it will employ to collate cultural information, but a very generic statement. It would seem that the consultation process being proposed relies upon a document- or submission- based process, without any face-to-face consultation or on-site consultation. This way of eliciting cultural heritage information from knowledge holders is not something that in our experience a professional anthropologist would use (pp2).'*

Furthermore, we added that:

*'Finally, the methodology does not consider the need for a cultural survey to precede the archaeological survey in order to both inform and contextualise the archaeological aspect in regards to cultural knowledge and significance, particularly from the perspective of a cultural landscape. This should be rectified in order for the subsequent archaeological fieldwork to be culturally guided and/or appropriate (pp3).'*

I believe that Tocomwall needs to be more specific and explicit in how we 'influence methods regarding assessment of significance (Umwelt 7 February 2017: 2)', as Umwelt have asked in their letter. Tocomwall is stating, categorically, that based on the organisation's experience with the Native Title process – its expectations legally and relying on professional anthropological approaches – Umwelt should engage a professional anthropologist to design and implement an anthropological research design and methodology to investigate the cultural significance of the

region and how the particular study area of Umwelt's proponent fits into that larger cultural landscape. This study should precede, support and inform any subsequent archaeological investigations.

In regards to Umwelt's position on identifying appropriate knowledge holders, we acknowledge your position on the PCWP's position as a registered Native Title Claimant. However, it is still unclear how Umwelt identifies the other RAPs that can or should be consulted on matters of *'Traditional owners or custodians with appropriate cultural heritage knowledge to inform decision making (Tocomwall 6 February: 2)?'* This is largely a question related to your statement (Umwelt 7 February 2017: 2):

*'It is possible that over the course of consultation regarding the project, additional Aboriginal parties may identify particular or cultural knowledge relevant to the project area. If this occurs, we will liaise with appropriate stakeholders to resolve a methodology to appropriately verify such information.'*

Umwelt goes on to state that (*ibid*):

*'Your correspondence raises issues with the lack of explicit provision of methods for the collation of cultural information. This reflects our very strong belief that consultation is most effective when Aboriginal parties engage on their own terms and with consideration of their own unique requirements. Based on our extensive and lengthy experience in undertaking consultation in this region, some Aboriginal parties wish to operate independently, others wish to be involved in group or family-based decision making process, others wish to work collaboratively with our archaeologists to ensure their comments and feedback are appropriately documented. Our assessment methodology was provided in draft format, with the invitation to provide information as Aboriginal parties feel appropriate. We believe it is inappropriate for us to specify how this must be done and therefore welcome input from Aboriginal parties (both collectively and individually) as to how they wish to be consulted.'*

And:

*'Based on the scope of the project, the results of previous assessments (including those undertaken in consultation with Tocomwall) and the nature of the proposed project impacts, it is not proposed to undertake a separate 'cultural survey' of the project area but to document both cultural values and archaeological values during the survey process (ibid: 3).'*



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To Tocomwall this is another way of stating that not only do you not have an explicit and appropriate research design and methodology for investigating cultural significance, but that your reasoning for this is that the RAP should be leading the way with this! It is Umwelt's contractual (and ethical) obligation to present a research design and methodology for both the archaeological and cultural components for the proposed works. Tocomwall's perspective on this work is presented in our reviews: it is not our job to write or re-write your research designs and methodologies. Tocomwall has pointed out that for the cultural significance assessment, there is no method in your approach and an over reliance on archaeologists -rather than trained anthropologists - to undertake this work during archaeological, rather than ethnographically-specific, orientated work.

Your subsequent comment therefore that:

*'Your statement that the proposed consultation approach is 'removed from the environmental and social context in which cultural knowledge is typically disclosed' fails to recognise that the opportunity is provided for in-field consultation during the completion of the survey of the project area. Umwelt archaeologists are trained to seek and document cultural feedback provided by Aboriginal party representatives during fieldwork (ibid)...'*

continues to compound the fact that Umwelt does not or is not willing to grasp the fact an ethnographic approach is needed here. Furthermore, we welcome your statement that *'Umwelt archaeologists are trained to seek and document cultural feedback provided by Aboriginal party representatives during fieldwork (ibid),'* but Tocomwall would like to see evidence of either the professional anthropological qualifications of your staff or, failing that, a series of excerpts from previous Umwelt cultural significance assessments on the Hunter Valley that demonstrate that you have the relevant knowledge or experience. You go on to state that:

*'We note that the Umwelt cultural heritage team has been undertaking consultation with Aboriginal parties in this region for several decades, with Nicola Roche (who is directing the project) having being involved in Aboriginal cultural heritage assessments in the Hunter Valley for over 12 years. During this time we believe we have built a stable and professional relationship with Aboriginal parties and that we have an understanding of the context within which we undertake consultation (ibid: 3).'*

To avoid misunderstanding therefore, Tocomwall would like to see evidence of:

- Professional anthropological qualifications of Umwelt staff involved in this project;

- A specific set of excerpts from previous cultural significance assessments by Umwelt that demonstrate that experience and qualifications; and
- Letters of reference from other RAP in the Hunter Valley that explicitly support your approaches to the assessment of cultural significance.

### **Discussion on Consultation Process and the Investigation of Cultural Significance**

In regards to the consultation process, with all due respect, most archaeologists in NSW who undertake this work are exactly that: archaeologists. They – in common with the vast majority of Australian based archaeologists – are not trained in ethnographic or indeed ethnoarchaeological techniques. For example, if the terms ‘etic’ or ‘emic’ were to be used in relation to ethnography, how many archaeologists without training in ethnographic techniques, would honestly know what these terms meant or how they applied to social anthropology?

In undertaking cultural assessments, the process of assessing cultural significance is moving away from ethnoarchaeological approaches and moving firmly into the context of ethnographic observations. This is because we are not investigating material culture, but entering the realm of social/cultural anthropology. Whilst we can and indeed do use this knowledge to help us – as archaeologists – understand the material archaeological record, this should not be our primary goal in undertaking cultural assessments. Rather, we should be trying to participate and understand cultural knowledge through an ‘emic’ lens, instead of the usual approach by archaeologists to understand culture through the often inappropriate archaeological (material) ‘etic’ perspective. Obviously, this requires a considerable shift in our paradigm and at the same time trying to learn Indigenous culture “*..through the following processes of observations, asking questions, interpretation, and participant observation, the primary methods used in Basic Classical ethnographic field methods (Whitehead 2005).*” The judicial system – at least in NSW – has made several landmark decisions (*cf. Ashton Coal; Calga Quarry*) in relation to woefully inadequate assessments of cultural significance by archaeologists.

It is not appropriate to undertake archaeological fieldwork with the expectation that cultural knowledge will somehow ‘naturally’ flow on from the Indigenous participants as this work is conducted. Archaeological fieldwork is confined by study area boundaries defined by proponents and although we use predictive modelling from adjacent areas to fine-tune our survey methods, our findings are usually confined to a distinct spatial area. Anthropological fieldwork – and by extension, our investigations of traditional cultural knowledge – is not confined by historic, modern or ‘study area’ boundaries. Cultural landscapes and the associated cultural knowledge flow across landscapes that have boundaries that are not ‘beholden’ to a proponents study area or to any modern boundary for



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that matter. Therefore, it is not only unreasonable but also shows a distinct lack of understanding or empathy for ethnography (cultural knowledge), to have the expectation that an archaeologist can wander across their confined study area and that somehow, that will also allow them to soak up the cultural significance of the area in doing so. Ethnographic fieldwork, as one of its precepts, relies on the fact that the people being observed should direct *where* and *how* the access to cultural knowledge should take place in order to see the world through Aboriginal eyes. In other words, we are saying that the collation of cultural significance should not only precede archaeological fieldwork, but should follow ethnographic procedures and be led by the Aboriginal participants, who inevitably will be looking at a wider landscape context than the archaeologist's study area.

If as archaeologists we continue to look down from an 'etic' perspective on our inappropriate or misinformed attempts to collate cultural significance, we will continue to not only fail in the task that we are supposed to be undertaking, but also find ourselves in a position that increasingly leaves us open to legal challenges.

### **Response to Section 3: Archaeology**

Thank you for a more detailed response to Tocomwall's request for further information on the archaeological survey methodology. The additional information on sampling strategies and how information will be recorded in the field is appreciated in order for us to be able to fully understand and comment on the methodology.

The purpose of a research design and methodology is not to reiterate the Code of Practice '*verbatim*', but rather to present an approach to the archaeological fieldwork that considers the experience and knowledge of the consultants – as well as sound archaeological practice – in formulating a framework of enquiry. In other words, a research design and methodology should be specific to a study area *and* explicit in terms of what, how and why is being investigated, with a view to making the results comparable to previous work *and* building upon that earlier work. Tocomwall notes that Umwelt have responded and answered the questions posed in our earlier letter dated 6 February 2017.

There are two comments that Tocomwall would like to raise. Firstly, as thorough as the methodology is, it does not explicitly explore the questions that a research design should be formulating to direct the fieldwork. However, as long as the draft report provides these questions and answers them adequately, Tocomwall is willing to wait for this information. We would respectfully ask that in future, questions that drive the research design and methodology are provided in the initial documentation. Secondly, the question of whether anthropological and archaeological fieldwork has already been covered in the previous section to this letter. Tocomwall would like to pose some

questions: if Umwelt intend to discuss cultural significance during archaeological fieldwork '*with the registered Aboriginal parties participating in the survey* (Umwelt 7 February: 6)':

- On what basis does Umwelt justify the inclusion of other RAPs in fieldwork when the PCWP are the only recognised group with Traditional Connections to the study area? And
- If your fieldwork goes ahead tomorrow (Thursday 9 February 2017) as planned, how will Tocomwall be afforded the opportunity to participate in the *archaeological* fieldwork?

## Conclusions

In conclusion, Tocomwall would like to thank Umwelt in responding promptly to our letter dated 6 February 2017. As is reflected in our response, Tocomwall would like to see a more deliberated approach to evaluating the assessment of cultural significance.

We note based on a phone call with Nicola Roche (*pers.comm. 8 February 2017*) and confirmed today ( (*pers.comm. Nicola Roche. 8 February 2017*) that the archaeological fieldwork for this project is planned to start today. Tocomwall has grave concerns with this because it would seem that consideration of our views is being superseded by commercial decisions by both the proponent and Umwelt. This seems to negate the consultation process that we have been engaging in to date and certainly provides - from Tocomwall's perspective – a view that our concerns are not being adequately addressed or considered in a timely manner that allows us to '*influence methods regarding assessment of significance* (Umwelt 7 February 2017: 2).'

Tocomwall would like to see the concerns raised in this review addressed by Umwelt as soon as possible and certainly before any subsequent fieldwork is proposed.

Please feel free to call me if you have any questions.

## Recommendations

1. Tocomwall have a long-standing relationship with a professional anthropologist – Dr. Neale Draper – who has been working on the PCWP's connection to country, as our preferred anthropologist, particularly if it would help Umwelt design an appropriate ethnographic approach to the assessment of cultural significance.



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2. At the very least, Umwelt should prepare a specific and appropriate (ethnographic) research design and methodology to investigate cultural significance before undertaking any archaeological or anthropological fieldwork.

## References

Whitehead, T.L. 2005. Basic Classical Ethnographic Research Methods. In *Ethnographically Informed Community and Cultural Assessment Research Systems (EICCARS) Working Paper Series*.

Regards,

Jakub Czastka (Chaz)  
Senior Archaeologist  
Tocomwall Pty Ltd  
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Our Ref: 3900/NR/Tocomwall/080317

8 March 2017

Jakub Czastka  
Senior Archaeologist  
Tocomwall Pty Ltd  
PO Box 76  
CARRINGBAH NSW 1495

BY EMAIL: [jakub@tocomwall.com.au](mailto:jakub@tocomwall.com.au)

Dear Chaz

**Re: Response to Draft Methodology for Austar Coal Mine – Proposed Modification to DA29/95 (MOD 7) – LWB4-B7 – 9 February 2017**

We refer to your correspondence dated 9 February concerning the methodology for consulting with Aboriginal parties to assess the Aboriginal cultural significance of the proposed Austar modification.

**1.0 Consultation as a self-determined process**

As previously communicated, Umwelt acknowledges that Aboriginal parties may differ significantly in how they wish to be consulted and how they wish to undertake the assessment of cultural significance. We therefore typically invite Aboriginal parties to identify any aspects/methods of consultation that they feel will assist them in the assessment process. This approach is adopted with reference to the consultation guiding principles established in Section 1.3 of the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW 2010) and the objectives of consultation provided in Section 3.2, which includes *'ensuring Aboriginal people have the opportunity to improve assessment outcomes by...influencing the design of the method to assess cultural and scientific significance of Aboriginal object(s) and places.'*

Our role is to assist Aboriginal parties by facilitating the provision of information and site access to inform the assessment of cultural values, but we do not undertake this assessment on their behalf. Rather, we assist in documenting this assessment of cultural values as requested by the Aboriginal parties.

Given your advice that that Tocomwall is currently working with an anthropologist to document aspects of connection to country, should Tocomwall wish to provide ethnographic information to which it has access then this will be documented and addressed in the Aboriginal Cultural Heritage Assessment report on the project.

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## **2.0 Relevant experience to undertake consultation with Aboriginal parties and document feedback from Aboriginal parties**

Umwelt has a proven and demonstrated ability to consult on and conduct Aboriginal cultural heritage assessments in accordance with relevant guidelines and requirements and to the satisfaction of OEH and other relevant regulatory authorities. Further, Umwelt has extensive experience in conducting Aboriginal cultural heritage assessments to the satisfaction of the OEH. This includes numerous assessments where Tocomwall has been consulted as a registered Aboriginal party and has participated in the assessment and has been provided with copies of the relevant assessments.

At no time has OEH questioned or raised any issues concerning the appropriateness of Umwelt's qualifications or level of experience in consulting on or conducting Aboriginal cultural heritage assessments.

In addition, we note that Section 3 of *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW 2010b) provides a list of skills and competencies required to deliver effective consultation, none of which specify the requirement for the completion of formal anthropological training. Nevertheless, we note that our team is managed by Nicola Roche, who has a Bachelor of Arts (Honours) with a double major in Anthropology.

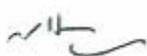
## **3.0 Detailed assessment requirements**

As is our standard practice, the Aboriginal cultural heritage assessment report will be completed in accordance with the requirements of the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (OEH 2011). As specified in this document, the Aboriginal cultural heritage assessment report will include a review of available ethnohistoric (or ethnographic) literature pertinent to the project area and its surrounds.

Austar has previously committed to Tocomwall participating in a survey of the area. Austar has advised that this offer remains open to Tocomwall to participate in a field survey at any time prior to **22 March 2017**. Regardless of whether Tocomwall takes up the opportunity for further participation, a copy of the Draft Aboriginal Cultural Heritage Assessment will be provided to Tocomwall as part of the consultation process with Registered Aboriginal Parties.

We trust this clarifies our position on the consultation requirements for an Aboriginal cultural heritage assessment of the proposed Austar modification. Please contact Nicola Roche or Gary Mulhearn if you wish to take up the opportunity to participate in a survey process.

Yours sincerely



Nicola Roche  
Manager Cultural Heritage

# **Copy of Letter Sent to all Aboriginal Parties Reference Draft ACHAR**



Our Ref: 3900/R04/GA/NR/27042017

27 April 2017

«Company\_Name»

«Contacts»

«Address»

«Email»

Dear «Contacts»

**Re: Draft LWB4-B7 Modification Aboriginal Cultural Heritage Assessment Report,  
Austar Coal Mine**

Please find attached the draft LWB4-B7 Modification Aboriginal Cultural Heritage Assessment Report, Austar Coal Mine. This report is provided for your review and comment in accordance with the requirements of Part 8A, Clause 80C of the *National Parks and Wildlife Regulation 2009* and Stage 4 of the *Aboriginal cultural heritage consultation requirements for proponents* (DECCW 2010).

The Aboriginal Cultural Heritage Assessment Report has been prepared in accordance with the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011).

An Archaeological Technical Report is provided as Appendix 2 to the Aboriginal Cultural Heritage Assessment Report. Appendix 2 has been written to address the requirements of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010) and contains all relevant archaeological information.

Please note that this report is provided in draft format only and has been developed to incorporate feedback and comments provided by registered Aboriginal parties. As acknowledged throughout the report, there are some sections of the report that are to be completed based on the information provided by registered Aboriginal parties. We ask that you please review the report and respond carefully. All comments received will be addressed in the finalised report (noting that registered Aboriginal parties may identify that they wish their comments/feedback to be confidential and not publically available)

In accordance with Office of Environment and Heritage consultation requirements, please provide feedback within 28 days, that is, by no later than close of business on **Thursday 25 May 2017**. Comment can be provided (preferably in writing) to Nicola Roche (Manager Cultural Heritage) via email ([nroche@umwelt.com.au](mailto:nroche@umwelt.com.au)), telephone (02 4950 5322) or post (75 York St, Teralba, NSW 2284).

Should you wish to discuss any aspect of the draft report or the LWB4-B7 Modification, please do not hesitate to contact me.

Yours sincerely

Nicola Roche  
Manager Cultural Heritage

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**From:** Tracey Skene [<mailto:tracey@marrung-pa.com.au>]  
**Sent:** Friday, 26 May 2017 10:29 PM  
**To:** Nicola Roche  
**Subject:** LWB4-B7 Draft Report

Good Evening Nicola,

Sorry for the delay in getting my comment to you in regards to the Austar LWB4-B7 Modification Aboriginal Cultural Heritage Assessment Report-Austar Coal, I have viewed and read the report and made myself aware of the Aboriginal Communities comments and concerns.

I have lived in the surround area of Austar mine for many years and I have been involved since the first stages of Aboriginal Community consultation of this mine site.

As shown on figure 3.2 the Aboriginal Land Council Boundary areas associated with this location, and like it noted that these boundaries are completely different to the Aboriginal Tribal Boundaries of this area.

The Cultural landscape of this location is regarded to have a high cultural significance, each site that have been recorded and unrecorded over the years in this area (as there is several Sites in the surrounding landscape that have not been recorded due to being on private properties and of local knowledge) and that they all poses its own unique spiritual and cultural values and connections.

The Catch a boy swamp-Ella long lagoon has been recorded and known as a mythological story of the area and has been spoken about by locals for many years, and was recorded by non-aboriginal person, this swamp would have been a highly significant area for our ancestors for resources and food and also would have been utilized along their travels to many of the surrounding ceremony and significant sites and have connection and association to the sites within this same landscape some being recorded and unrecorded that shows the cultural connectivity to the sites of the area and it stories.

The Assessment area has a known creek called Quorrobolong creek, this area may have a low scientific values but holds a high importance and cultural significance to the Aboriginal Community.

Aboriginal community establishes the significance of the site from an Aboriginal community perspective rather than a scientific perspective.

As stated on page 37- 7.2.4 Summary that the LWB4-B7 is unlikely to result in direct or indirect impact that will impact the Aboriginal cultural values associated within this area that

no mitigation strategies will be implemented due to having no impact in this area, I feel that it being monitored along with any other recorded sites on Austar Coal mine site is adequate and should have community out on site once the modifications of this area have taken place with the Long wall being constructed and that Its importance that by Keeping the natural surrounds as they are (e.g. water flows, creek lines) that are within this area and kept monitored for any damage by the mine and any natural impacts that may lose or impact any recorded sites.

Tracey skene

Culturally Aware

Kind Regards,  
Tracey Skene

**Marrung-ta Indigenous Training & Employment**  
**7 Crawford Place, Millfield NSW 2325**  
**Mobile: 0474106537**



## Nicola Roche

---

**From:** Frances Davies  
**Sent:** Monday, 22 May 2017 4:10 PM  
**To:** Nicola Roche  
**Cc:** Gabrielle Allan  
**Subject:** FW: 3542 - Draft Astar Aboriginal Cultural Heritage Management Plan

Forwarded for your attention - I received this email today in response to the draft Astar ACHMP.

Regards

Frances Davies  
Directors Assistant

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**From:** Awabakal [<mailto:culture@awabakallalc.com.au>]  
**Sent:** Monday, 22 May 2017 2:31 PM  
**To:** Frances Davies  
**Cc:** CEO  
**Subject:** RE: 3542 - Draft Astar Aboriginal Cultural Heritage Management Plan

Hi Frances,

On behalf of Awabakal LALC and its members, I am comfortable with the content in the Draft Astar Cultural Heritage Management Plan and do not wish to add anything further.

*Regards*

Pete Townsend  
Culture & Heritage Officer

24<sup>th</sup> May 2017

Ms Nicola Roche  
Manager Cultural Heritage,  
Umwelt (Australia) Pty Limited  
75 York Street  
Teralba NSW 2284

Dear Ms Nicola Roche

**RE: Austar Coal Mine: Aboriginal Cultural Heritage Assessment Report for LWB4-B7 Modification to DA 29/95 under Section 75W**

**Mindaribba Local Aboriginal Land Council: Review of the DRAFT Aboriginal Cultural Heritage Assessment Report, April 2017**

Mindaribba Local Aboriginal Land Council, (MLALC), would like to firstly identify its dismay at the lack of face to face engagement and consultation in regards to the content of the DRAFT Aboriginal Cultural Heritage Assessment Report (DRAFT report) with the Registered Aboriginal Parties (RAPs). Within paragraph two of the draft reports' acknowledgement section; it seeks to acknowledge "the post-contact experiences of Aboriginal people who have an attachment to the Quorrobolong Valley". However, it fails to acknowledge the possible insufficiency of literacy and writing competences of these same peoples, by undertaking this final part of the consultation process with a requirement to review a lengthy and highly technical document.

In the time available to us, MLALC has conducted a brief review of the DRAFT report and make the following comments.

**Social or Cultural Values**

MLALC has reviewed the social or cultural values section of the report which describes values identified by the Aboriginal stakeholder representatives who have participated within the surveys and has no further information to be included at this point in time.

**Historical Values**

MLALC has reviewed the historic values section of the DRAFT report and has no further information to be included at this point in time.

**Impacts to Farm Dam**

Figure 5.2 of the DRAFT report shows the dam located at the end of LWB7. There is no discussion in relation to the potential impacts of the Modification on this dam structure. MLALC request that this be addressed within the final report.

## **Management Strategies**

Section 6.3 of the DRAFT report identifies two sites assessed to comprise low to moderate archaeological significance and the research potential of these areas. This section suggests a provisional assessment to be undertaken on these areas. However, no detail is provided on what this provisional assessment will entail. MLALC requests that the details of this provisional assessment be included within the final Aboriginal Cultural Heritage Assessment Report.

Whilst Section 8 of the DRAFT report identifies that the management strategies as described within the existing Austar Aboriginal Cultural Heritage Management Plan (ACHMP) should be implemented to manage the impacts resulting from the Modification, the DRAFT report does not currently identify the management strategies from the ACHMP relevant to the Modification which will need to be implemented.

MLALC requests that these details be included within the final report.

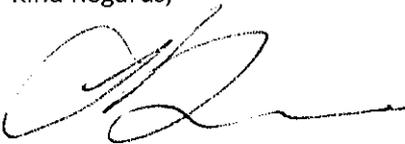
## **Concluding Recommendations**

The report states that the potential for impacts on archaeological sites are limited due to those impacts considered to be *"indirect impacts associated with subsidence, including potential landscape impacts, surface cracking, subsidence remediation works or hydrological changes"*. In the case of these potential impacts, MLALC request that (consistent with contemporary conditions for mining approvals) regular meetings be arranged with all RAPs to provide an update of the operations, including performance against the predicted impacts from the mining activities at Austar.

Due to the vegetation cover over the areas surveyed for the Modification, there is the potential for further unrecorded items of Aboriginal heritage sites to be exposed following subsidence or during the completion of any remediation works that will required during mining operations. MLALC requests that in these instances, further inspections of these areas should be undertaken by an archaeologist and RAPs.

For further information in relation to this response, please contact myself on the phone number above.

Kind Regards,



Tara Dever  
Chief Executive Officer  
Mindaribba Local Aboriginal Land Council

From: Arthur Fletcher [<mailto:arthur.c.fletcher@gmail.com>]  
Sent: Thursday, 25 May 2017 4:13 PM  
To: Kirwan Williams  
Subject: Draft LWB4/B7 Modification Austar

Hi Kirwan, Thanks for the opportunity to respond to this. I first apologise for the late response, As you may not be aware of my health of late. Anyway at this stage with my limited understanding of it I will be supporting this one. Ps All the best to everyone.

Regards Kauwul-Arthur

Sent from my iPad

Lower Wonnarua Tribal Consultancy  
156 The Inlet Road  
Bulga NSW 2330

25/05/2017

To

Umwelt  
75 York Street  
Teralba NSW  
2284

**Re: Draft LWB4-B7 Modification Aboriginal Cultural Heritage Assessment Report  
Austar Coal Mine**

Dear Nicola

I have read the draft report dated April 2017. There are few mistakes in section 3.3 Aboriginal party participation in survey. Table 3.2 has my name under the Lower Wonnarua Tribal Council dated 9/02/17 and 10/02/17 could you please amend this.

As to the report itself

**1.2 Proposed Modification to DA29/95.**

I agree with the proposed method of using the existing infrastructure by Austar Coal Mine.

I agree with the **Recommendations 8.0** and the two dote points that Austar Coal Mine Have put forward to work within the Aboriginal Cultural Heritage Management Plan (ACHMP), for the LWB4-B7 long wall extension.

Yours sincerely  
Barry Anderson  
Lower Wonnarua Tribal Consultancy



Our Ref: 3900/NR/BC/20170526

26 May 2017

Tara Dever  
Chief Executive Officer  
Mindaribba Local Aboriginal Land Council  
PO Box 401  
EAST MAITLAND NSW 2323

Dear Tara

**Re: Response to submission re Austar Coal Mine LWB4-B7 Modification Draft  
Aboriginal Cultural Heritage Assessment Report**

Thank you for your correspondence in relation to the above draft report. This letter provides a response to matters raised in your letter dated 25 May 2017.

Your response raises concerns regarding the extent of face to face engagement and consultation with registered Aboriginal parties in regards to the content of the draft Aboriginal cultural heritage assessment report. We appreciate that review of the draft Aboriginal cultural heritage assessment report requires literacy competency. However, we note that in all our interactions with Aboriginal parties (including the letter provided to you accompanying the draft report) we emphasise our availability at any stage to discuss the contents of draft report and documents. In future, should you have any concerns of this nature, please let me know and we will make a time to meet with you or your nominated representative to go through the draft report.

You have asked that the report provide further information regarding impacts to the farm dam at the northern end of LWB7. Section 7 of the draft report describes and assesses the potential impacts associated with the proposed modification, including potential impacts on the farm dam. As described in Section 7.2 of the draft report, the potential for surface cracking is low and subsidence remediation works are unlikely to be required. Potential hydrological changes have also been assessed, with Section 7.2.3 including the following statement:

*The assessment predicts minor changes to remnant ponding around some existing flow paths and farm dams. These minor changes to the extent of remnant ponding occur within low lying areas that are already subject to periodic inundation during periods of high rainfall. Therefore additional periods of inundation in these locations are highly unlikely to result in any additional impact to Aboriginal cultural values that may be present.*

To summarise, the farm dam at the northern end of LWB7 is unlikely to experience cracking or require subsidence remediation works. Minor change in the extent of ponding may occur in low lying areas around the dam within areas that are already subject to periodic inundation.

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Your response requests details of significance assessment for two sites assessed in Section 6.3 as having low to moderate significance. To clarify, sites ACM38 and ACM40 are assessed as having low to moderate significance, as stated in Section 6.3. Section 6.3 provides a provisional assessment of significance for areas of low-moderate archaeological potential (that is, areas where Aboriginal objects weren't visible but where we predict there is low-moderate likelihood that sub-surface artefacts will be present in detectable quantities). Given that we don't know what these sub-surface deposits might comprise, we can only assess provisional significance. The level of significance would only be able to be refined if impacts were required in these landforms and sub-surface investigations were undertaken to provide us with more information on the nature and extent of deposits.

You have requested further information about the management measures included in the Austar ACHMP. For clarity, Section 8 will be amended to include specific reference to existing management measures outlined in the ACHMP, as follows:

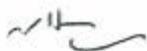
*The Austar Coal Mine should continue to implement the management strategies currently in place at the Austar Coal Mine, including those in the Austar Aboriginal Cultural Heritage Management Plan (ACHMP). Consistent with existing management strategies, in the unlikely event that subsidence remediation works are required that will impact on the identified sites or areas of low-moderate or higher archaeological potential, an Aboriginal Heritage Impact Permit (AHIP) will be sought for the portion of the site or area of potential to be impacted prior to the commencement of any remediation works in proximity to the recorded site or area of potential (noting that, in some instances, it may be necessary to undertake test excavation to inform the requirement for an AHIP). Appropriate mitigation measures for the site or area of potential to be impacted by the remediation works will be developed as part of the AHIP application process in consultation with the registered Aboriginal parties and in accordance with OEH requirements. The ACHMP includes provision for pre and post subsidence monitoring of recorded sites to provide comparative data on site condition and to allow for the identification of any unexpected subsidence impacts.*

Site monitoring will be undertaken in consultation with registered Aboriginal parties. We hope that this also addresses your request for regular consultation with Aboriginal parties to review subsidence impacts.

We recognise that visibility with the survey area was low. We note that this is common within the context of the Hunter Valley and that this is why we give consideration to archaeological potential (including the potential for artefacts to be present but not visible). This assessment of potential has been undertaken in accordance with OEH requirements and is addressed in the report. At this stage, we will not be recommending any further archaeological inspections of the area, other than the pre and post subsidence inspections discussed above.

Again, thank you for your time in compiling the response and we hope that this letter has addressed your concerns. Should you wish to discuss any aspect of the above, please do not hesitate to contact me.

Yours sincerely



Nicola Roche  
Manager Cultural Heritage