

## **Independent Expert Review**

### **Aboriginal Cultural Heritage Assessment**

#### **Draft Master Plan for the Iron Gates Residential Release, Evans Head**

Inge Riebe, Anthropologist

March 2016

I have been engaged by EDO NSW to conduct an independent review of the Aboriginal cultural heritage assessment dated September 2015 by Everick Heritage Consultants Pty Ltd regarding the proposed Iron Gates development. I have read the Expert Witness Code of Conduct and I agree to be bound by it.

**I have serious concerns with the quality of the Aboriginal cultural heritage assessment undertaken in relation to the Iron Gates Residential Subdivision as set out in the 'Aboriginal Cultural Heritage Assessment Iron Gates Residential Subdivision' report (referred to subsequently as the Assessment Report). The two major concerns are:**

- **the failure to have suitably qualified individuals engaged in relation to assessing what is acknowledged to be a site with asserted intangible landscape based cultural heritage values, and**
  - **the failure of the literature review, which is central to the report's conclusions in relation to intangible cultural heritage values, to include a wide range of material that is of direct relevance to the question of the intangible cultural heritage values of the site.**
1. The experts consulted were all experienced archaeologists working in the heritage area. Despite the acknowledgment within the report of the importance of intangible heritage of the site, no attempt was made to consult an expert with the relevant qualifications for the evaluation of

intangible landscape based cultural heritage.<sup>1</sup> This is clearly a site that requires a specialist cultural heritage assessment.

2. The literature review that the Assessment Report refers to as a key component of the assessment process, failed to access a wide range of material of direct relevance to the site and/or of direct relevance to an understanding of the regional cultural landscape within which the site's values requires assessment.

### **The literature considered**

3. The Assessment Report states on page 64,

*Despite an extensive literature review, there are no ethnographic accounts on the public record that relate to the Project Area as being a place of particular cultural significance.*

4. This statement is factually incorrect and reflects the failure of the assessment process to undertake a reasonable review of the existing literature that is of relevance to an assessment of the cultural heritage values of the Iron Gates site.

5. Items not accessed during the literature review include:

- a. Works of specific relevance to the Bandjalang and matters relating to them and their country that could reasonably have been expected to be included in the assessment process:
- b. Collaborative Solutions, *Assessment of Significance for Aboriginal Place Declaration Goanna Headland to Black Rocks* report to NSW NPWS May, 2001 (this is available through OEH and extensively deals with this area including detailed information from the key knowledge holders).
- c. Dr John Morton *Bandjalang<sup>2</sup> People* [1 NC96/16 (NG6034/98)] *Anthropologist's Report*. Filed for the Applicant Wroth Wall, Solicitor, August 2002 (As this matter

---

<sup>1</sup> For example Tim Robin, Adrian Piper, T. Hill are all archaeologists with no anthropological qualifications. Mary Dallas whose 1990 report is also relied on is also an archeologist.

has now been determined in favour of the claimants, it is possible to access these documents with permission of the Native Title owners who are listed amongst the stakeholders for this project).

- d. Lee Sackett *Bandjalang Native Title Claim: Anthropological Report for the State of New South Wales* (As this matter has now been determined in favour of the claimants, it is possible to access these documents with permission of the Native Title owners who are listed amongst the stakeholders for this project).
  - e. There are also extensive reports of action undertaken by knowledge holders to try to preserve this area in newspaper and other sources that are easy to access and I would think well known to the researchers and others.
  - f. There are also various items in the Casino District Historical Society and the Richmond River Historical society that have not been accessed such as Buckland, A.J. *Letter re Evans Head to N. C. Hewitt*, 30<sup>th</sup> Sept., 1928, Richmond River Historical Society; Henderson, Cunningham, *Memoirs: North Coast Stations and Pioneers*, typescript in the Casino District Historical Society (which deals extensively with the key deceased knowledge holder Lawrence Wilson's ancestors and country)
  - g. NSW Department of Lands, *Plan of Management Goanna Headland, Evans Head*, 1987. There was a draft and a final plan of management – the final does not differ from the draft except for the removal of the word 'draft' (while there is other material of NSW Dept Lands included in the assessment, this report is not considered).
6. Works of specific relevance to the Bundjalung region and culture of which this area and people are part, that could reasonably have been expected to be included in the assessment process, include:

---

<sup>2</sup> I note that the spelling Bandjalang is reserved for the sub-tribe that spoke the particular Bandjalang dialect, and which has retained native title rights of an area bounded by the Richmond and Clarence Rivers and the Richmond Range. The spelling Bundjalung is reserved for the association of all the tribes of the different dialects within the wider region and known as the Bundjalung Nation and is the name given to the overall language having the different dialects.

- a. Calley, M. *Bandjalang Social Organisation*, Phd Thesis, University of Sydney, 1959.
- b. Calley, M. 'Three Bandjalang Legend', *Mankind*, Vol.5, No.5, 1958, pp.208-213.
- c. R.G. Hausfeld *Aborigines in New South Wales*, *The Australian Quarterly* Vol 37, No 3. Sep., 1965.
- d. Hausfeld, R. G. *Aspects of Aboriginal Station Management*, M.A. Thesis, University of Sydney, 1960.
- e. Prentis, Malcolm, *Aborigines and Europeans in the Northern Rivers Region of New South Wales, 1823-1881*, MA Honours thesis, Macquarie University, 1972.
- f. Mathews, R. 'The Wandarral of the Richmond and Clarence River Tribes', *Proceedings of the Royal Society of Victoria*, Vol.X (new series), Part 1, 1897.
- g. Keats, N.C., "*Wollumbin*": *the creation and early habitation of the Tweed Brunswick and Richmond Rivers of NSW*, self published, 1988.
- h. Sullivan, S. *The Material Culture of the Aborigines of the Richmond and Tweed Rivers of Northern NSW at the time of the first white settlement*, BA Honours Thesis, University of New England, 1965 (a much shorter and less detailed article of Sullivan's was accessed).
- i. Bryne, D., *Aboriginal Heritage of the North Coast - A Discussion Paper*, Department of Planning & National Parks and Wildlife Service, 1989 (a very short and less relevant article by Dennis Byrne was included).
- j. McBryde, Isabel, *Investigation of Archaeological Sites at Schnapper Point, Evans Head, New South Wales*, Australian Institute of Aboriginal Studies, Canberra, 1982 (while the New England based papers of McBryde were looked at this paper was not considered).
- k. Bowdler, Sandra, *Aboriginal Sites on the Crown-timber lands of New South Wales*, Report to the Forestry Commission of New South Wales, 1983.
- l. Smyth, Dermot, *A Voice in All Places: A & TSI Interests in Australia's Coastal Zone*, Consultancy Report for Coastal Zone Inquiry, Resource Assessment Commission, 1993.
- m. Bellshaw, J., 'Population distribution and the pattern of seasonal movement in northern New South Wales', In I. McBryde (ed.) *Records of Times Past*, Canberra,

AIAS, 1978, pp 65-81 (while the edited volume that this appears in is listed, there is no indication that this article has been accessed in the comments).

n. Starling, J.A., *Survey of the Aboriginal Sites on the North Coast of New South Wales, 1970-1971*, Australian Institute for Aboriginal Studies.

o. Mitchell, A. *Traditional Economy of the Aborigines of the Richmond River, N.S.W.*, BA Honours Thesis, University of Queensland, 1978.

7. This list could be extensively added to but this is just to indicate the more obvious of the relevant literature that was not considered and that a researcher with expertise in specialist Aboriginal cultural heritage assessments would have reasonably be expected to have accessed.
8. In respect to cultural background the section on ethno-historical evidence (6.5) which deals with relevant general cultural points refers only to Crowley, Tindale, Craemer, Ainsworth, Bray, and Flick. The comments on linguistics taken from these sources do not clearly define language, language group and dialect, nor are the factors in Tindale's naming properly referred to. Craemer does not claim any expertise in discussing social structure. The others referred to are local residents without professional qualifications. There are extensive works on the culture of this area and the wider region, and works relevant to understanding the nature of intangible heritage that could reasonably have been expected to be included in the assessment process.
9. More wide ranging works that would have been useful in understanding the significance of mythological sites and the underpinning social organisation could include for example:
  - a. Radcliffe-Brown, A.R. 'Notes on Totemism in Eastern Australia' *Journal of the Royal Anthropological Institute of Great Britain and Ireland* 1959 (originally published 1929) (there are also field notes available of his visit to the area).
  - b. Elkin, A. P. (1977). *Aboriginal men of high degree*, Brisbane, University of Queensland Press (which deals in part with Bundjalung clever men).

- c. Swain, Tony *A Place for Strangers: Towards a history of Australian Aboriginal being*, Cambridge University Press, 1993.

10. There is also some issue with the accessing of OEH<sup>3</sup> records. The report states (page 26/7):

*Access to Aboriginal site information within the Bandjalang #2 Native Title Claim areas has been restricted. These restrictions affect the following sites; being #13- 1- 0130; #13- 1- 0131; #13- 1- 0167; #13- 1- 0168; #13- 1- 147; #13- 1-0148; #13- 1- 0132; #13- 1- 0133; #13- 1- 0134; #13- 1- 0135; 13- 1- 0138; and #13- 1- 0162. The sites were all recorded by Claude McDermot and identify Mr. Laurie Wlison (sic) as the Primary Contact. It is understood that the informant has passed away. These sites may or may not be located within the Project Area.*

11. This is an acknowledgement that they are not able to access data that could seriously impact the heritage value of the area. It is my clear understanding that Native Title has no impact on access to AHIMS site information. Further Collaborative Solutions 2001 (which details and identifies sites 13-1-1/2, 13-1-3, 13-1-4, 13.1.6, 13.1.7, 13-1-32/6, 13-1-33, 13-1-40 to 13-1-54, 13-1-55, 13-1-59, 13-1-61, 13-1-82, 13-1-84) and John Morton's 2002 report both dealt at length with Lawrence Wilson's site information. It would also have been possible to get such information from descendents of the family and from other still living elders who accompanied Lawrence Wilson on field trips if appropriate consultation protocols were in place. The rest of this section of the Assessment Report only mentions items on the Heritage Registers, and does not adequately consider the range of materials available on sites that would need to be part of an adequate assessment process.
12. The Assessment Report is also deficient through a lack of accessing recent historical data demonstrating key knowledge holder opinion on the Iron Gates site and the proper care of it. This data is available in the reports indicated above and also in newspaper articles and other documents.

13. The lack of expertise in cultural matters and intangible heritage matters also shows itself in the language used, in the indicated consultation process, and in the assessments made. Some of this will be dealt with in detail below.

Here I note that in respect to burials the Assessment Report states that there is 'anecdotal and field evidence of burials' (point 6.3.4 page 35). The lack of distinguishing between what is here termed 'anecdotal evidence' and 'oral traditions by authentic knowledge holders' undermines proper consultation with Indigenous Knowledge Holders. There are guidelines that inform considering the authenticity of oral traditions that relate to rules of transmission, community validation, etc. In the case of Bundjalung criteria for assessing oral traditions in relation to place, they include:

- Having being taught by the previous generation custodians of owners.
- Having been taken to the vantage points from which the key djurbi:l<sup>4</sup> aspect of the site can best be seen.
- Having the power to introduce someone to the spiritual guardians of that area thereby safeguarding them.
- Having been told by relevant members of the previous generation, 'This is where you belong'
- Having been taught the relevant boundaries and the centre of the territory and places to avoid and knowing the established pathways.

14. The lack of obtaining, assessing and utilising authentic oral tradition in the Assessment Report is a failure to follow proper assessment processes for Indigenous cultural heritage as indicated in the The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 1999<sup>5</sup> and

---

<sup>3</sup> Previously Department of Environment, Climate Change and Water, Department of Environment and Conservation and prior to that New South Wales National Parks and Wildlife Service.

<sup>4</sup> A key area containing a totemic increase site, see below for more.

<sup>5</sup> Point 26.1. Process page 15, 5.4 page 22. Henceforth referred to as the Burra Charter.

DECCW (Now OEH) 'Aboriginal cultural heritage consultation requirements for proponents 2010, which emphasises those who hold knowledge relevant to establishing significance.<sup>6</sup>

15. On page 65 the Assessment Report states:

*The closest places to the Project Area are:*

*a) Casino Bora Ground: One of the largest Bora Grounds in the region and extensively documented. Unfortunately now destroyed.*

*b) Cubawee: the historic self-managed Aboriginal settlement of Cubawee, with considerable material remains.*

*c) Parrots Nest: a sacred place including: Sacred hoop pine trees, rock engravings, stone arrangements, rock paintings, axe grooves and fallen carved trees.*

*d) Capeen Mountain: a natural mythological site and dominant physical feature of the area, with no Aboriginal Objects associated on the site record.*

*e) Yabbra Spring: a natural mythological site with no Aboriginal Objects associated.*

*f) Tooloom Falls: a natural mythological site relating to the story of the creation of the Clarence River.*

*g) Ti Tree Lake: a sacred women's site and mythological place.*

*h) Cocked Hat Rocks: a natural mythological site.*

*A common feature of all of these places is that their significance has been well documented in the ethnographic record.*

16. This statement proposes that the specific area under consideration, Iron Gates, has not been well documented in the ethnographic record. This can only be suggested because of the failure to access the many other reports and publications listed above which provide considerable documentation of the cultural values associated with the Iron Gates site.

### **The actual assessment**

---

<sup>6</sup> pages 1,2,6, 7, 8. Page 8 indicates their characteristics.



17. DECCW's Fact Sheet 2, 'What is an Aboriginal cultural landscape', a supplement to the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 under the National Parks and Wildlife Act 1974 states:

*The landscape scale of cultural heritage is similar to the concept of 'whole-of-landscape' in ecosystem conservation – just as there is connectivity between all parts of natural ecosystems (e.g. plants, animals, soils and water) there is connectivity between cultural objects and places through past human behaviour patterns. The cultural landscape concept emphasises the landscape-scale of history and the connectivity between people, places and heritage items. It recognises that the present landscape is the product of long term and complex relationships between people and the environment.*

18. There are a variety of ways in which the Assessment Report is deficient in the valuation of the Aboriginal cultural landscape because of the failure to undertake a specialized cultural heritage assessment. It is noted that in the definitions given in the Assessment Report on page 10 there are definitions for 'Aboriginal Object' and 'Ministerially declared Aboriginal Place' but not for 'cultural landscape', 'intangible heritage' or 'Aboriginal Cultural knowledge'.
19. There are a number of references to significance including 'intangible significance' in the Assessment report, but these are then not included in the evaluation of the site or are immediately linked to a lack of archaeological value. For example page 3 of the Assessment Report states:

*The Iron Gates Project **Area is situated within a greater, significant cultural landscape of the Bandjalang and the Aboriginal people of the Bundjalung region.** The region was intensively occupied, and contained important mythological, ceremonial and spiritual places. In addition, there may be what Dallas (1990) and other cultural heritage consultants call secular sites such as middens, scarred trees, quarry sites, and artefact scatters. Historic sites of the Evans Head massacre of Bandjalang people are close by, as is the Iron Gates crossing point, proposed to be a traditional route to either bank of the Evans River. The **three archaeological sites are in highly disturbed contexts with little potential** to add to the archaeological or scientific aspects of cultural heritage information. However,*

*the midden IG01 has been identified as being of high cultural significance  
**due to its connection to the Gumigurah [sic] campsite.***

20. The great significance of the wider cultural landscape is noted but these key aspects of the site and its landscape and ecological area are presented in the Assessment Report as diminished by the consideration of disturbed archaeological value. This reflects the general failure of the Assessment Report to consider the whole of the cultural environment. Also only the connection between the winter camp and the midden are thought to be the source of any cultural significance. It is this failure to reasonably and thoroughly evaluate the intangible heritage that can lead to conclusions such as the following on page 4 of the Assessment Report:

*Based on the research undertaken to date and the preliminary results of the consultation with the Aboriginal community, it is the Consultants opinion that there are **no places of particular intangible heritage significance that will be impacted by the Project.***

21. There are a numerous passages that indicate the emphasis on archeological scientific value such as (pages 28 & 29):

*Those potential archaeological deposits with Aboriginal archaeological deposits were then confirmed as being a site. Others were reassessed as not having archaeological potential.*

*It was concluded that these sites were of Aboriginal origin that had been reworked by storm waves thus significantly diminishing their potential for research (Sullivan 1980: 6).*

22. There is no associated acknowledgement of the cultural heritage value to the descendents of the people who are responsible for these remains. The remainder of pages in this section while at times mentioning cultural sites, at all times only list and consider material remains as assessed from an archaeological viewpoint. The Assessment Report does not assess the cultural heritage value of material sites to the relevant Indigenous community let alone intangible sites. While the material object may have considerable archeological scientific value, the additional value for Aboriginal

people, and perhaps the key cultural value is the meaning of those objects as indicators of their history and cultural identity. For example the discussion between 'base camp' and 'single meal deposits' is discussed without any reference to the differential in type of cultural meaning attributed by Aboriginal stake holders to such remains.

23. Similarly page 57 of the Assessment Report states that it will consider:

*Landscape features with Cultural Heritage Potential having regard to:*

*a) the nature of Aboriginal occupation in the region;*

*b) the Project Area's proximity to resources; and*

*c) the Project Area's original vegetation, soils and topography,*

24. The three factors listed are entirely related to material remains and do not cover concerns of cultural landscape features with the potential to hold cultural heritage significance and value.

25. Page 33 of the Assessment Report states:

*The Project Area in its original setting contained low areas of swamp forest, higher areas of eucalypt woodland, level to undulating sand rises and estuarine foreshores and river channels. **Prior to the destruction of a natural stone 'causeway' across the Evans River this natural feature would have provided a crossing point to campsites and ceremonial sites south of the river and a traditional fishing 'spot'. The Project Area is understood to be the route of a traditional pathway for Aboriginal groups between Evans Head, the Coraki area and beyond.***

26. However, despite this recognition of the existence of a traditional pathway in the area there is no assessment of the cultural heritage values of such a pathway. Furthermore in this case the importance is of traditional pathways that link the passage of mythical beings such as the Goanna and the Snake to the pathways that Bandjalang themselves and other Bundjalung visitors to the area have continued to follow. The pathway as described in the mythology was known widely to past and is known to current knowledge holders. It currently orients people when moving through that country. The

deceased key knowledge holder Lawrence Wilson discussed at length being taken via certain routes as part of the teachings he received and passed on<sup>7</sup>. However, in the Assessment Report the conclusion following this statement is that there is therefore a “moderate to high potential in the project area for isolated, artefacts, artefact scatters, middens, burial sites, scarred trees, quarry sites and low potential for ceremonial grounds.” This is a key example of the failure of the Assessment Report to recognise and reasonably assess the intangible cultural heritage values of the site even in those instances where the report itself refers to the existence of features that would reasonably trigger a specialised intangible cultural heritage assessment.

27. The intangible cultural value of these types of material sites is also not taken into account in the assessment of the impact of the project. For example while the Assessment Report notes that in relation to ceremonial sites: (page 36)

*The Aboriginal community may retain traditions of ceremonial sites. Even though physical remains are lost, they will still retain cultural links to those locations and surrounding areas.*

28. In relation to Iron Gates, the Assessment Report fails to explore such cultural links and their value and significance in relation to this site. The Assessment Report’s section on ‘intangible heritage values’ states,

*Evans Head is a mythological/spiritual focal point for the Bandjalang and Bundjalung in distant Aboriginal communities.*

29. And goes on to mention the Goanna and Snake story. The report mistakenly says that:

*The goanna is partly embodied in Goanna Headland and the snake in the Evans River and Snake Island.*

---

<sup>7</sup>Riebe, notes on Bandjalang; Lawrence Wilson ‘Note for Book’ provided to I. Riebe by Lawrence Wilson.

30. In fact, the Goanna is fully embodied in the whole area as described in the 2001 Aboriginal Place assessment (Collaborative Solutions) and the Snake has been driven out to sea. The Evans River and Snake Island are embodiments of events in the journey and the struggle between the two. The story of three others is also mentioned, as is the existence of the rain *djurbi:l* in the headland area. Despite quotes in the Assessment Report indicating the related value of all these aspects, there is a seeming lack of understanding as to the nature of integrated cultural landscape and the importance of these relationships and the belief system imbued in the relationship between mythological being, landform and current descendants. This is indicated by the conclusion, quoted and supported in the Assessment Report that:

*By reference to the work of the NPWS Sites of Significance team (Creamer 1984) and subsequent anthropological work by Johnson and Walters (1986) Dallas concluded that the Goanna Headland mythology and the river and snake mythology did not impinge on the Iron Gates Project Area at that time (Dallas 1990: 16).*

31. I note that none of the studies quoted undertook specialist cultural heritage studies. The Assessment Report itself states on page 62:

*Importantly, the value of intangible connections to landscapes and objects by Aboriginal people has been well documented by Australian anthropologists since the late 19th Century (Weiner 2011:189). The value of the intangible often far outweighs values placed on the physical (Turnpenny 2007).*

32. It is difficult to understand why a specialist cultural heritage study was not undertaken to fully assess the evidence for cultural heritage values and the potential impacts of the development through consideration of the relevant literature and consultation with the relevant Knowledge Holders.

33. Dallas is quoted on page 31 of the Assessment:

*It is clear from discussions with Local Land Council representatives that they wish to preserve the site in its natural setting. They have expressed concern that **the site might be spoiled in some way** by the presence of a large*

*housing development on the opposite side of the river and have sought **assurance that the natural vegetation adjacent to the river on that side of the river should not be removed...** (Dallas 1990: 19).*

34. Dallas et al reduce the expression of intangible cultural heritage being damaged or 'spoiled in some way' to a simple statement being about not removing vegetation. This is not my understanding of the expressed view of the deceased key knowledge holders Mary Wilson (Cowan), Lawrence Wilson or their descendants<sup>8</sup>. I note that the following is directly quoted from the signed submission made in 2014 by four of the children of Lawrence Wilson:

*IRON GATES SUBMISSION CUSTODIANS*

*We, the traditional Bandjalang Custodians - appointed by passed elder, our father, Lawrence Wilson who originally filed and won our Native Title Claims - are highly insulted by the Iron Gates development proposal, and have repeatedly tried to convey this to the consultants. The development imposes a residential area over one of our most precious and meaningful places, the Gumigurrah site that was our people's Winter camp site, the crossing point for our people and ceremonial site where brides were exchanged. It is also the site where the massacre took place, where our ancestors were raided at dawn by a punitive party and subsequently massacred while fleeing.*

*Whenever we go to the site we think of our forebears, of the beauty and spirituality of their lives that was so deeply respectful of Nature and our laws. If this proposal goes ahead in its current form it will make it impossible for us to feel good about our situation because we will be always reminded by white people living in a short distance from our own camp site and how it appears that the white people have now won and totally dominate our most precious traditions. Never mind that we now have native title rights over our land - that would mean nothing if our site is overwhelmed by this development and the visual impact, noises, pets and motors of a residential area.*

---

<sup>8</sup> This view is based on lengthy field work over a period of at least 7 years.

*We totally disagree with the Heritage study's conclusion that the current buffer is sufficient wide or well conserved to protect cultural values at the midden site and ongoing natural values. It is completely insufficient both for our needs and the needs of nature. We demand that the ongoing heritage study corrects this mistake and records our objections in detail.*

35. This suggests that the consultation process has not appropriately accessed the views of the key knowledge holders on this matter.

36. As has been noted, the area is of importance to members of other Bundjalung sub-tribes also. In this respect the Assessment Report states (page 25):

*Marcus Ferguson advised that Jali LALC and its members had a long association with the current project and the surrounding area. It was their understanding that the midden site subject to the AHIP (IGO1) was associated with the cultural activities at Gumigadah [sic]. In this manner it was a site of high significance. They also confirmed their understanding that the western ride line of the Project Area was a traditional pathway, used by people moving north to south. Both Mr Brown and Mr Ferguson supported the strategy in the AHIP to collect the shell and re deposit it within the origin midden boundaries. They did not support general development of the area for residential purposes, based on its proximity to the Gumigadah campsite and massacre location.*

37. This indicates an assertion of wider regional intangible cultural heritage values to the Indigenous community. However due to the focus of this Assessment Report, these indications of wider values are not evaluated in terms of the appropriate criteria rather it is stated as a conclusion to this paragraph:

*However, it was noted that the physical boundaries of both places would not be impacted by the Project.*

38. This again focuses only on material heritage and does not appear to reasonably address the Indigenous informant's perspective. It is also simply incorrect in respect to the traditional pathway and the midden.

This leads directly to a consideration of the consultation process.

### **The Consultation Process**

39. The OEH Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 state that (page 2):

*Aboriginal people are the primary source of information about the value of their heritage and how this is best protected and conserved and must have an active role in any Aboriginal cultural heritage planning process.*

40. The key point in terms of Aboriginal cultural heritage (as stated in DECCW's/OEH Fact Sheet 1<sup>9</sup>) is:

*Notably, specific details and aspects or areas of cultural knowledge are generally held and maintained by individuals or within particular family groups. Although the broader community may be aware of the general features or elements of that knowledge, it is not a common practice within Aboriginal society for detailed cultural knowledge to be vested in the broader community or within Aboriginal community organisations, although it is these organisations that often defer to particular individuals or family groups as being the knowledge-holders of particular sets of cultural knowledge about places or the environment.*

41. Further DECCW's (Now OEH) Aboriginal cultural heritage consultation requirements for proponents 2010 state (page 8):

*Traditional owners or custodians with appropriate cultural heritage knowledge to inform decision making who seek to register their interest as an Aboriginal party are those people who:*

- *continue to maintain a deep respect for their ancestral belief system, traditional lore and custom*
- *recognise their responsibilities and obligations to protect and conserve their culture and heritage and care for their traditional lands or Country*

---

<sup>9</sup> DECCW 'What is Aboriginal cultural knowledge' Fact Sheet 1, a supplement to the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 under the National Parks and Wildlife Act 1974



- *have the trust of their community, knowledge and understanding of their culture, and permission to speak about it.*

42. In respect to this study this would entail detailed consultation with key knowledge holders. As the Burra Charter states:

*It is critical that assessments of cultural significance for Indigenous heritage places reflect the views and input of the relevant Indigenous knowledge-holders.*

43. In relation to the Iron Gates site the existing documentary record clearly identifies Mary Cowlan (Wilson) and Lawrence Wilson as key knowledge holders who have now passed away. The descendents of these key knowledge holders, in particular those who have taken on the mantle of traditional caretakers of their traditional lands, can be reasonably expected to have been consulted with as the primary partners in the assessment process.

44. It is difficult to fully evaluate the consultation process as *Appendix C: Iron Gates Community Consultation File* has not been made available. Some points relevant to parts of the Assessment Report can be made.

45. The Assessment Report is not clear as to how it established knowledge holders, who it established as knowledge holders, or the basis on which such individuals were established as knowledge holders. The Assessment Report states on page 21 that Doug Wilson was nominated by Erica (Kim) Wilson and Kellie. These are Lawrence Wilson's daughters and there are a number of mentions of Doug Wilson as a knowledge holder and as being taught by Lawrence. It further states that William and Warren Drew wanted to 'speak to their Elders' before nominating appropriate knowledge holders. No further information is provided as to who such 'Elders' would be or if they were consulted or who, if anyone, was subsequently nominated as a knowledge holder.

46. The next paragraph is headed a 'Meeting of Knowledge Holders'. This included Doug Wilson, who could be regarded as an established knowledge holder. Also included was Murray (John) Roberts, who is a Widjabul not a Bandjalang man. The basis of inclusion is not stated. His inclusion is considered reasonable given that he is an Elder of a neighbouring group who holds knowledge as an Elder and has had a

close association with Lawrence Wilson (who was married to Pauline Roberts, Murray (John) Roberts first cousin). However, this is not stated within the Assessment Report and it is unclear on what basis he was understood to have been included.

47. The meeting also included Warren and William Drew who represent the Cavenagh family in the native title body but the basis of their inclusion as knowledge holders is not specified. It is noted that they are stated elsewhere in the Assessment Report to have wished to consult with their Elders prior to nominating knowledge holders this would indicate that at that point they did not consider themselves to be knowledge holders. The meeting also included Victor Williams who is not Bandjalang. Victor is the son of Stan Williams, a direct descendant of Billy Williams, a Githabul apical ancestor, and Amelia Slockee. The basis of Victor Williams being identified as a knowledge holder is again not specified. The other two individuals involved in the meeting were Everick researchers.

48. Then the Assessment Report states on page 44:

*A field survey of the proposed development footprint for Aboriginal and historic cultural heritage was carried out by Traditional Owners: William Drew (Senior), William Drew (Junior), Daniel Wilson and Lewis Williams. Everick Heritage was represented by Tim Robins (Director) and Adrian Piper (Archaeologist). The field inspection was conducted on July 18, 2014.*

49. Daniel is the brother of Doug Wilson, Lewis Williams is the son of Ruth, elder sister of Lawrence Wilson who as Lawrence's nephew may well be a knowledge holder but this is not specified; and William Drew Sn and Junior whose basis of inclusion in the field survey is not commented on.

50. Expert consideration as to who are the knowledge holders is a vital aspect of any cultural heritage assessment.

51. The field survey as described on pages 44-48 focused entirely on archaeological scientific value, concentrating on site visibility, degree of disturbance and archeological predictive models. It seems no attempts to assess Aboriginal cultural heritage was involved. Such site based field surveys can not be regarded as a replacement for detailed consultation with key knowledge holders in regard to the

intangible cultural heritage values of a site. Such specialist assessment consultation needs to occur separately and in addition to archaeological field surveys.

52. On page 26 of the Assessment Report there is mention of the care needed to classify a site according to whether it is an artefact scatter or a midden etc. While there may have been oral traditions relevant to such classification, more importantly the aspect of the sites relating to cultural value in relation to long term use, and/or intertwined mythological and ceremonial activities has not been evaluated due to the lack of a specialist heritage study.
53. The desktop review section of the Assessment Report is marred by the unsupportable claim (page 26) that many of the AHIMS site reports were restricted and therefore no data of their placement or importance was considered. As stated above, site reports are not restricted in relation to Native Title matters. Clearly these sites could have been and should have been evaluated.
54. The consideration of 6.4 'intangible' heritage values states (page 36):
- Mythological sites may not have physical characteristics which can be identified by archaeological surface surveys, and knowledge of their existence is frequently restricted within the Aboriginal community itself, due to the intergroup and intra- group information distribution rules.*
55. This is precisely why one-to-one interviews with key knowledge holders both on and off site by specialist cultural heritage practitioners experienced in intangible cultural heritage assessment is essential in assessing a project such as this, that is a project located in an area with known intangible cultural heritage values. There is no indication that such detailed one-on-one consultation with Knowledge Holders took place.
56. The section on cultural significance of the Project Area (p. 62) in the Assessment Report states:

*An integral part of contextualising a cultural landscape is to facilitate the incorporation of the knowledge of Traditional Owners. This can enable a comprehensive understanding of the socio-cultural context and a true recognition of significance and meaning (Ross et al .2003:80). For some Aboriginal people sites have a particular significance which has little or no relationship to the archaeological significance (Greer 1999:117).*

*To assess Aboriginal cultural heritage sites appropriately, they must be seen in the context of the people to whom the sites are significant (Godwin and Weiner 2006:127; Greer 1999:116). For Aboriginal people, places are situated within a complex web of memories, beliefs, stories, practices, family members, local environments and cultural places that together constitute a cultural landscape that represents both ancient, traditional life and dynamic living traditions (Bradley et al. 2002:9; Ross 1996:4; Smith and Burke 2005:389). This view embraces Aboriginal people's conception of space and time, where "places always exist in relation to other ... places" and "the past impacts actively on the present" (Smith and Burke 2005:382)*

57. While these are excellent quotes there is no indication in the Assessment Report that the views expressed have been put into action in the consultation process or the assessment of cultural heritage values or the mitigation considerations.

58. Page 65 of the Assessment Report specifically states that:

*Through the course of community consultation, a picture has developed of the significance of the Project Area and surrounds to the Bandjalang and Aboriginal people of the wider Richmond Valley region. The following statement on cultural significance has been developed through **telephone communications, community meetings and field surveys** involving the Richmond Valley Aboriginal community. Their involvement provided the socio-cultural context of the area, encompassing past and present activities and sets the archaeological research into a broader cultural landscape (Ross et al. 2003:80).*

59. This summary would appear to indicate that no process of one-on-one interviews with key Knowledge Holders took place.

60. On page 20 of the Assessment Report that:

*Everick has made a commitment to the Aboriginal community to document the consultation process as fully as possible. **This report includes all written comments received from the Aboriginal stakeholders,** enabling Everick to make an informed and accurate assessment of the significance of any cultural heritage within the Project Area.*

61. The process for accessing key Knowledge Holder information for the Assessment Report was seriously flawed. The assessment of cultural heritage values in relation to intangible sites cannot be undertaken through large scale consultation meetings, archaeological surveys or a request for written responses<sup>10</sup>. The negotiation with Knowledge Holders regarding the sharing of their cultural information is a delicate process that requires substantial negotiation and discussion in order to successfully access the cultural information required to undertake a comprehensive assessment of intangible cultural heritage values.

62. Further the Assessment Report states on page 21 that:

*Members of the Wilson family discussed the history of development in the immediate area and the fact that their family had been involved in court cases objecting to the development. They did not want to see any development at the site.*

63. Despite the protocol expressed in Fact Sheet 1 quoted above, the position of the key Knowledge Holder family does not seem to be well represented in the conclusions as to the possible harm to the sites cultural heritage values.

64. On page 22/23 the Assessment Report noted that:

*The knowledge holders agreed that the midden and surrounding area was an area of particular significance, however, **it was important to view the cultural landscape as a whole.***

65. Again, this recording of the Knowledge Holders' view, in this instance emphasising the importance of a cultural landscape perspective in assessing values and significance, is not appropriately explored in terms of its meaning for the intangible cultural heritage values of the site.

---

<sup>10</sup> Appendix B of the DECCW 'Aboriginal cultural heritage consultation requirements for proponents 2010, states '...the proponent provides the methodology(s) to provide written **or oral** comment.'

66. In terms of access to various organisations contacted to nominate stake holders, the original list while very limited was added to at length by OEH. However, although 17 groups were invited to nominate stakeholders it is not indicated in the Assessment Report how many responded. There were seven stakeholders registered. No senior Elders of other areas were registered. It is not clear whether the Bundjalung Elders Council nominated stakeholders. I have been told that the Elders Council have expressed concern as to the consultation process. This is difficult to evaluate due to the lack of detail on consultation in the report and requires further investigation.
67. It is not possible to assess the appropriateness of correspondence with stakeholders other than that with Jali LALC and the Cook family which was undertaken by NTSCORP. My understanding is that some of the listed stakeholders have not been satisfied with the consultation process.
68. The inability to successfully arrange a meeting with the Cook family due to Ms Lois Cook being twice unavailable is difficult to understand. I am not clear whether the Cook family were only stakeholders or were also identified as Knowledge Holders. In my opinion, once a Knowledge Holder has been identified, it is important to the consultation process that every attempt is made to successfully consult with that individual. It is not clear, without the full consultation material, whether the two attempts can be considered to be adequate. Also there are other members of the Cook family, such as Lewis Cook who is the half brother of Lawrence Wilson and the Andersons who are also Cooks, who could have been consulted if Lois Cook was not available.
69. Page 26 of the Assessment states:
- A draft of this heritage assessment was provided to the Aboriginal Stakeholders for comment on 20 April 2015 with a request for feedback and comments on the report to be submitted by 22 May 2015 (Appendix C). No written comments or feedback were provided at the close of the review period. No explicit comments were made on the report at the meeting held on 4 June 2015 (Appendix C).*
70. I would note that requesting written submissions especially with regard to key Knowledge Holders is not a culturally congruent method of ensuring that, as the OEH Guidelines set out:

*Aboriginal people must have an active role in any Aboriginal cultural heritage planning process.*

71. It is not possible to assess the meeting on 4 June 2015 as the documentation as to that meeting is not provided. Page 25 states:

*In response to a letter from the OEH requesting further information on the consultation process for the Iron Gates AHIP, the Proponent undertook additional consultation with the Registered Stakeholders. The topic was placed on the agenda for a meeting of the Bandjalang Aboriginal Body Prescribed Corporate Board of Directors on 18- 19 August 2015. A quorum was not reached and no formal decisions were passed at the meeting.*

72. It is questionable if listing a topic on the agenda of a formal meeting called for other purposes can be seen as undertaking consultation. It is not clear from this account if all registered stakeholders were members of the meeting group or if the stakeholders and any Knowledge Holders were informed that the meeting would be discussing the Iron Gates proposal.

### **Mitigation**

73. As Appendix D: Iron Gates Proposed Impact Mitigation Strategy is not available it is not possible to assess the mitigation strategy. As some mitigation ideas are mentioned I make the following comments:

- a. Where the Wilson family is opposed to suggested mitigation, their status as key Knowledge Holders and caretakers is not sufficiently recognised.
- b. Despite considerable material re Lawrence Wilson's views as well as Mary Wilson Cowan and other elders, these materials have not been considered.
- c. Historical data of opposition to aspects of the Iron Gates development has not been accessed or evaluated in this Assessment.
- d. The suggestions on page 4/5 on cultural interpretations and signage and cultural walks are in direct opposition to the recorded views of the deceased key Knowledge Holder Lawrence Wilson who avoided declaration of the area as an Aboriginal Place partly because of the fear of OEH undertaking just such activities.

- e. The find procedure is relevant only to material objects not to any other aspects of cultural heritage.
  - f. Given the nature of the river crossing, the oral traditions of the massacre and aftermath it would be extraordinary if there were not Aboriginal human remains in the area.
  - g. There is mention of collection, redeposit, re vegetation etc in respect to the midden. It is stated that the collection strategy was revised due to a meeting but neither the revised strategy (Appendix D) nor the meeting (Appendix C) are available for evaluation of the strategy.
74. Finally as the intangible cultural heritage of the site is not assessed, none of the mitigation suggestions deal with the complex of law, culture and land management that is core cultural heritage value of the site:

*The land is the physical representation of the underlying reality of its creation, history and religious meaning. This underlying reality is the law, both in the sense of natural law and in the sense of the law that humans must follow. Stories, ceremonies, songs and paintings all communicate directly with the underlying reality. The power of the ancestral figures is expressed throughout the land they travelled and is often particularly strong where they came to rest. The landforms are themselves, and are also the link to the power of the ancestors and the spiritual. One aspect of initiation is the imprinting of the forms of the core sites and their meaning. The knowledge held in stories directs the behaviour, which then manages the land and its resources.<sup>11</sup>*

#### **My assessment of the significance of the Project site**

75. My assessment of the Project site is based on my work with the Bandjalang prior to their Native Title Claim from mid-1996 through to 2002, particularly working with Lawrence Wilson and other Bundjalung elders who had close connections to him. During this time I frequently travelled through his

---

<sup>11</sup> I. Riebe Personal File for Bandjalang Native Title Claim, 26<sup>th</sup> June 1997 p.29, passim.



country with Lawrence and others he chose to include. In 2001 I led the Collaborative Solutions team in an Aboriginal Place assessment of the area from Goanna Headland to Black Rocks.

76. From this material I provide some extracts to indicate the significance of the Iron Gates Project site and surrounding area to the Bandjalang people and their Bundjalung neighbours.

*This site has mythological, ceremonial, and pre and post invasion historical meaning. These major sets of meanings come together to give it the great importance it has to the wider Bundjalung community and to the Bandjalang<sup>12</sup> sub tribe in particular.*

*It is a traditional mythological site containing two major Bundjalung wide stories, that of the Goanna and Snake and the origin story of the Three Brothers. Mythological sites traditionally have ceremonial sites nearby where ceremonies and other activities relevant to that site are performed. Within the range of the form of the Goanna, there are three 'clever' caves and at least one Bora Ring.*

*This traditional spiritual meaning of the Goanna is overlaid with the historical meaning of it being a massacre site where one of the major massacres took place that affected the history of the Bandjalang people and the Bundjalung as a whole. This occurred in 1843 and over 100 people, men, women and children, are said to have been killed.*

*There is evidence of other Bundjalung tribes making use of the djurbi:l and all Elders of Bundjalung have acted to protect the site in the past. The health of Bundjalung people, in Bundjalung cultural belief, is closely related to the health and survival of their key totemic sites or djurbi:l. The Goanna is one of, if not the, key site and therefore the health and survival of the Goanna is of great importance for the identity and well being of Aboriginal people in the area. The strongest wish of the Elders who have the keeping*

*of the Goanna is that it be kept intact and acknowledged in its full form and that desecration and injury to the land forms cease. Mary Wilson and her descendents are the recognised owners of the Djurbi:l, a fact recognised when the freehold title of 45 hectares of the Goanna was formally handed to her by the then Minister for Lands in 1985. She was particularly concerned to maintain the whole area and keep the Goanna safe saying: "He must never die."<sup>13</sup>*

77. While the shape of the Goanna itself was the core area of the site to be formally declared, the sites and connections that are directly in the Iron Gates Project area were also mentioned for protection. The winter camp, Gúmmigará associated special caves, the crossing of the river that was damaged in the 1950s, the midden across the river, the 'Warrior trees' that were damaged in 1996, the pathway of the Goanna and the Snake including parts of the Evans River and Snake Island, as well as middens and pathways down the coast, are all part of the same complex site.
78. The particular unique value of this site is that the oral traditions are intact and held by the custodian family that traces back to Mamoon, who was born in the early 1800s, and that these traditions relate directly to the land forms and ecosystems of the area as known and cared for by the custodians. It cannot be stressed enough that the whole area on both sides of Evans River constituting the Goanna and its immediate environment are a single complex site of high cultural significance.
79. The fauna and flora of the area is considered part of the intangible cultural heritage. The health of the humans and the ecosystem are seen as interlinked. Lawrence Wilson often spoke of the need to manage the water

---

<sup>12</sup> The spelling Bandjalang is reserved for the sub-tribe that spoke the particular Bandjalang dialect. The spelling Bundjalung is reserved for the association of all the tribes of the different dialects and the overall language.

<sup>13</sup> Newspaper cutting from RRHS marked Northern Star 13.9.1985 (1987) In Aboriginal Section Case 15 Envelope Evans Head. [this is possibly an incorrect date]

ways and the regrowth in the area and expressed disappointment when there was interference or lack of traditional management.

**The assessment of significance of the 2001 study was as follows:**

80. The following was the assessment of the significance of the area within which the Iron Gates project is located as given in the 2001 Aboriginal Place assessment:

*When evaluating the current situation, the historical background of the management of the area must be kept well in mind. It is the wish of the custodians that all further interference be stopped and that whatever is still extant be saved and retained as a site of importance to them and to Bundjalung culture generally. All investigators should be aware that whilst they are observing severely interfered with sites, the full extent and meaning of those sites is preserved in the memory of the custodians and valued by them as such.*

*The report<sup>14</sup> that was the basis of the Dirawong Trust management plan assessed the area as highly significant and made a number of recommendations, some of which are reproduced below. Unfortunately, a number of the recommendations have not been followed. It would appear that a greater degree of protection is required to ensure the survival of this important site.*

*"While Goanna Headland has ceased to be a location of ceremony, present day Bundjalung people still view the headland as a special place. It symbolises for them important aspects of their identity, of what it means to be Bundjalung, what it means to be Aboriginal. This importance was manifest when the headland was proposed as Claim Number 1 under the Aboriginal Land Rights Act, 1983. In deference to this significance it is recommended:*

*That the Goanna Headland Reserve be declared an Aboriginal Place under the National Parks and Wildlife Act, 1974.*

---

<sup>14</sup> Harvey Johnston and Ian Walters, *An Archaeological and Anthropological survey of Goanna Headland*, A report to the Crown Lands Office, Grafton, 1986.

*That all sites and places of significance to Aboriginal people within the Reserve be preserved in perpetuity as part of the heritage of all Australians.*

*That conservation of the mythological and archaeological resources are not an issue separate from conservation of the natural resources of the Reserve. The Goanna is not a series of isolated localities and relics but a complex of cultural and natural feature, which together form an area of significance. Conservation of this significance will be best served by ensuring long term preservation of the natural flora and fauna and strictly limiting further developments of any kind on the Reserve.*

*That Bundjalung people be actively encouraged to become part of the management and affairs of the Reserve both at an administrative level through representation on the Trust and at a participant level through employment on any works undertaken to rehabilitate and conserve the Reserve.*

*That a dialogue be established between the Trust and the Bundjalung community and that full and adequate representations be obtained from the Bundjalung community with regard to the future use of the Reserve, an area which is the hub of their local heritage.*

*That the name of the Reserve continue to be Goanna Headland.*

*That the most appropriate land use consistent with all of the above is a public Recreation Reserve dominated by native flora and native fauna with public access available via one (1) gravel road to Chinamans Beach and walking tracks, and further characterized by a general absence of modern structures, fences or signs.*

*That the natural environment of the Reserve be enhanced and reinforced by the removal of the currently disused barbeques and unofficial camping areas at Chinamans Beach. The Reserve should not be used as a picnic area/camping area but should be maintained*

*Expert Review of Aboriginal Cultural Heritage Assessment, Iron Gates Residential Subdivision*  
*as an Aboriginal Place with minimal artificially introduced architecture*  
*or sign posting*<sup>15</sup>

81. The 2001 Aboriginal Place assessment further recommended:

*That vehicular traffic across the reserve be totally and effectively banned.*

*That no gravel road or erosion control measures as proposed be undertaken at Evans Head Lighthouse in consideration of the damage such development will achieve on known archaeological sites and areas and soils considered to be archaeologically rich.*

*That future erosion control measures on Red Hill Land System be aware of the location of archaeological sites and other areas considered archaeologically rich and that disturbance to these areas be avoided.*

*That revegetation of archaeological sites on the Red Hill Land System and Chinamans Beach Land System be a high priority.*<sup>16</sup>

#### Assessment of Significance Based On Link to Tradition

*Oral tradition relating to this site has been transmitted from generations present before European entry to the present Elders generation, with the links clearly demonstrated and material documented for each of the generations. Such maintenance of living traditions based on pre European belief systems is becoming less and less common and the preservation of selective sites that make this possible should be prioritised. A mythological site where the significance of the land form is well known, where the stories related to it are still transmitted orally and where the associated ceremonial sites are both well documented and authenticated by current traditional owners is very rare. The site is significant as the djurbi:l of those particularly responsible for it. It has known relationships to other djurbi:l sites in other areas. It also has significance in having landforms related to two major story cycles of the Bundjalung. All this makes it a key site for both the Bundjalung traditional owners and all Bundjalung. The importance of this site has been clearly expressed in joint actions by the various Bundjalung groups*

---

<sup>15</sup> Johnston and Walters op.cit pages 68-71

<sup>16</sup> Johnston and Walters op.cit pages 68-71

*Expert Review of Aboriginal Cultural Heritage Assessment, Iron Gates Residential Subdivision*

*throughout their post invasion history. These actions included it being the first land claim through the Land Rights Act in the area, and it being the site of protests by the combined Elders of the Bundjalung people.*

#### Assessment of Significance Based On Historical Events

*The historical significance is mainly as a massacre site. This massacre is both well documented and well remembered in oral tradition. There is a complex of meaning usually associated with massacre sites. They are often initiated at favoured camp sites, as victims were usually sought out where they slept in large numbers. This is the case here where the massacre began at the winter camp. The site is the burial place of many ancestors whose bones were found for a long time afterwards and whose spirits are thought to be still connected to the site. Massacre sites while commemorative of death are also commemorative of survival. Despite the horror of the killings people have survived to remember and honour their dead.*

#### Assessment of Significance Based On Current Situation

*The meaning of the site is well known and appreciated by all Bundjalung and many European residents. It is a site that has been the scene of joint action of all Bundjalung tribes to protect it.*

*It is a site where the traditional owners are well documented and have survived to this current generation. Furthermore, the transmission is continuing to the children and grandchildren of current Elders.*

*While pastoralism, sand mining, bombing, and more recently urban development and tourism have encroached on the site, it seems sufficient heritage has survived to make for preservation and protection to be worthwhile. The meaning and significance of the site has not been extinguished.*

82. The declaration of an Aboriginal Place for the whole area of the Goanna and associated sites was in process however Lawrence Wilson, due to a perception that the declaration of an Aboriginal Place on the area would diminish his control over the safeguarding of his sites, withdrew his support at the last moment. This was despite his previous strong commitment and desire for an Aboriginal Place Declaration. The impression gained by Mr. Wilson was that it was the then National Parks and Wildlife Service's intention that people other than the Bundjalung be involved in the

management of Gúmmigará and Bundjalung National Parks and related areas.

**The likely effect of the Project on the cultural heritage values of the area**

83. The potential impact of the Iron Gates Project on the cultural heritage values of the area, as expressed by the Aboriginal Knowledge Holders, is illustrated through those Knowledge Holders history of objection to this and other developments in the area on the basis of their negative impact on those cultural heritage values.

84. Aspects of destruction to the middens and to the river are mentioned in 1974:

*The Bundlung [sic] Reserve is sacred land, not only to local Aborigines but to the tribes of the Clarence, Woodenbong and the Tablelands..... A rare coral reef in the river would be destroyed if the latest county council proposal went ahead, she [who?] said.* <sup>17</sup>

85. In later years Lawrence Wilson often noted the damage done both to middens and to valuable swamp lands and lagoons in his country by flood mitigation strategies and other canal works.

86. In 1985 Goanna Headland was the first land claim lodged under the NSW Aboriginal Land Rights Act,

*Mrs. Mary Wilson the oldest surviving member of her tribal group came to Sydney, to accept the 'letter of grant' from the NSW Minister for Natural Resources. Goanna Headland was the first claim to Aboriginal land lodged under NSW land rights legislation in December 1983. 'The original claim for 400 hectares was reduced to a grant of 45 hectares. The balance of the claim will be administered as a coastal reserve by a private trust with Aboriginal representation.'*

---

<sup>17</sup> *ibid.* Note that considerable work has been done since this period causing the damage to reef and other areas as mentioned here.

*Without some form of protection, Mrs. Wilson was concerned that the goannas would leave the headland area, she still visits regularly from her home at Coraki.<sup>18</sup>*

87. Thus in terms of the intangible heritage the feared effect of interference with the Goanna and the area which is its place of dwelling, is that it will leave. The Goanna is the key djurbi: I not only the Bandjalang but of the whole of the Bundjalung people. Currently the Goanna lies facing the ocean to ward off the snake it has driven into the ocean in order to protect the land and its people. The danger is that the protective being that is a key aspect of health, safety and identity will be driven out.

88. The intensity of the connection impressed the then Minister for Lands:

*The Minister for Lands Mr Hallam handed over 45 hectares in Goanna Headland, South Evans Head to three local Aboriginal Land Councils (Jali, Bogal and Ngulingah). Mrs. Mary Wilson of Box Ridge accepted the title. Mrs. Wilson's father was born near Goanna Headland. The draft plan of management by Dirawong trust was announced.*

*If anybody has any doubt about the spirituality and commitment and link that Aboriginal people have with this continent they should have listened to Mrs. Wilson communicating with her father in her original language.<sup>19</sup>*

89. In the Northern Star in 1984 it was reported that:

*The headland remains in a sorry state with rains washing out tracks, turning them into gullies....Many of the stone tools are eroding out of the sand where four-wheel-drive tracks have washed out, '[Ms Lesley Maynard] says. 'Plenty of this evidence dates back to prehistoric times. The area is of even greater spiritual significance...I know of 13 separate sites beside the Goanna itself.' ....Ms Maynard is in two minds whether to talk about the area, and her worst fears have been given some grounds in the past months since the significance of the area has been made more public. She like many others*

---

<sup>18</sup> 13/9/1985 Northern Star.

<sup>19</sup> Mr. Hallam quoted in Northern Star 12/6/1987.



*Expert Review of Aboriginal Cultural Heritage Assessment, Iron Gates Residential Subdivision*  
*involved in researching the area and looking after it, is worried that calling attention to the ancient sites, souvenir hunters will pick it over.*

90. One of the dangers of the sites being revealed in an attempt to protect them is that that very revealing can lead to more damage. In 1984 Lois Cook, stated of the area [The Evans Headland area and surrounds] that,

*Since the place has had some publicity, in the past few weeks there have been a lot of stone artefacts disappearing there. That makes it harder to determine places of Aboriginal importance, and harder to prove our claim. It's against the law and the people who took them should put them back.*<sup>20</sup>

91. Protests against developments in the area continued,

*In 1995 new road works began at Evans Head. A Bundjalung protest led to a meeting with Elders and Richmond River Shire Council where the council engineer declared that 'if the Elders do not want the road and the culverts to it, it will not go ahead and what has been done will be blocked up'.<sup>21</sup> Shortly after the road was put through and tarred. The Bundjalung Elders' physical protest on site halted this work, but it was completed shortly after the protest.*<sup>22</sup>

92. In my opinion, the traditional owners and Knowledge Holders for the area within which the Iron Gates Project is located clearly regard development activity as highly harmful to the site.

### **Mitigation strategies**

93. As stated above it is not possible to know without Appendix D what the Assessment Report's proposed mitigation strategies are. However I note that the view of the Knowledge Holders and traditional custodians of the site as expressed in the material discussed above is that the damage to the cultural integrity of the site, which is based on the rare combination of a strong living oral tradition and existent related land forms, cannot survive

---

<sup>20</sup> Anon, 'The headland no one wanted', *Northern Star*, 10/3/1984, cutting in RRHS Aboriginal Section, Case 15 EvansHead.

<sup>21</sup> Notes from meeting at Evans Head RSL 1995 (Riebe meetings file)

<sup>22</sup> See account above p. 18ff.

the area undergoing residential settlement and the associated development such as will occur under the current Project proposal.

**Additional comment**

94. I do not think that the consultation process has fully accessed the knowledge and views of the key Knowledge Holders. The main intent of the OEH and Burra Charter guidelines is to emphasise the importance of Aboriginal input into planning decisions in areas of high Aboriginal cultural heritage value. Given the uniqueness of the survival of the complex of area, people, history and mythological significance this area is part of a high cultural value site of local and national importance.
95. There are few, if any, other sites of this integrated, complex nature still available for protection on the Eastern sea board of Australia, where once such sites were numerous. That at least one such site should be preserved and safeguarded as the unique example of the rich traditional culture of the wider area would seem to be indicated.

**Brief note of relevant qualifications of Inge Riebe**

96. I received a Master of Arts (First Class Honours) at University of Sydney in 1974 based on field work in Papua New Guinea. I continued in Papua New Guinea with an Australian National University PhD scholarship and completed the fieldwork, research, and seminar components of the doctorate without submitting a dissertation.
97. I worked on a number of consultancies including social impact studies and oral history studies for University of Papua New Guinea and the PNG Government from 1976-1980.
98. From 1996 - 1999 we worked in Northern NSW on Native Title research for Tabulam-Bundjalung, Baryulgil-Bundjalung, Byron Bay Area mediation, Widjabul, Gullibul, Coodjinburra and Bandjalang. From 2000 – 2004 I undertook work for NSW National Parks and Wildlife Service, eleven Assessments of Significance for Aboriginal Place Declarations, eight of them in Bundjalung areas including Goanna Headland to Black Rock, and a major Heritage study of Wollumbin.
99. From 2009 – 2016 I have undertaken prima facie reports, advice and assessment, and Anthropological expert opinion reports on various Native Title matters in NSW and Queensland.