

Aboriginal Heritage Impact Permit

Section 90 of the *National Parks and Wildlife Act 1974*



Office of
Environment
& Heritage

AHIP number: C0003000

(AHIMS Permit ID: 4157)

AHIP Issued To:

Thornton Waters Pty Ltd
27 Lawson Street
Penrith, NSW 2750

OEH Office issuing this AHIP

Office of Environment and Heritage

Regional Operations Division

Hunter Central Coast

Locked bag 1002 Danger NSW

Additional details for public register

a) Name of development or project	Sophia Waters
b) Location	Lots 1, 2 and 3 DP1224086, Raymond Terrace Road and McFarlanes Road
c) Local Government Area(s)	Maitland Council LGA
d) Description of harm authorised	<ul style="list-style-type: none">• Certain Aboriginal objects must not be harmed• Community collection• Harm to certain Aboriginal objects through the proposed works• Other action causing harm
e) AHIP commencement date and duration	<i>Commencement:</i> 10 November 2017 <i>Duration:</i> 10 Years

AHIP TO HARM ABORIGINAL OBJECTS

A. Background

- (i) On August 1 an application was made to the Chief Executive of the Office of Environment and Heritage (OEH) for an Aboriginal Heritage Impact Permit (AHIP) pursuant to s.90 of the *National Parks and Wildlife Act 1974* (the Act).
- (ii) OEH has considered the application and supporting information provided, and matters under section 90K of the Act and decided to issue an AHIP subject to conditions.

B. AHIP issued subject to conditions

An AHIP is issued to harm Aboriginal objects identified in Schedules B and C, in accordance with the conditions of this AHIP.

This AHIP is issued pursuant to section 90 of the Act.

C. Commencement and duration of AHIP

This AHIP commences on the date it is signed unless otherwise provided by this AHIP.

Unless otherwise revoked in writing, this AHIP remains in force for:

- (i) Ten years from the date of commencement, that is, until 10 November 2027

D. Proposed Works

Sofia Waters is a council approved residential development proposed for Lots 1, 2 and 3 of DP1224086 (see **Figure 1**). Proposed impacts to the AHIP area include heavy machinery movement, clearing of existing vegetation, installation of sewer, water, electrical, telecommunications and road infrastructure, and construction of residential allotments and associated outbuildings, concreting and fencing.

Note: A Dictionary at the end of the AHIP defines terms used in this document. Further information about this AHIP is also set out after the Dictionary.



Steven Cox
Senior Team Leader - Planning
Hunter Central Coast Branch
Regional Operations Division
(by Delegation)

DATED: 10 November 2017

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LAND TO WHICH THIS AHIP APPLIES

The AHIP Area covers the entirety of Lots 1, 2 and 3 of DP 11224086, Raymond Terrace Road, Thornton North, NSW. The AHIP area is situated within the Parish of Alnwick, County of Northumberland, within the Maitland Local Government Area, being that area outlined in red in Figure 1 below.

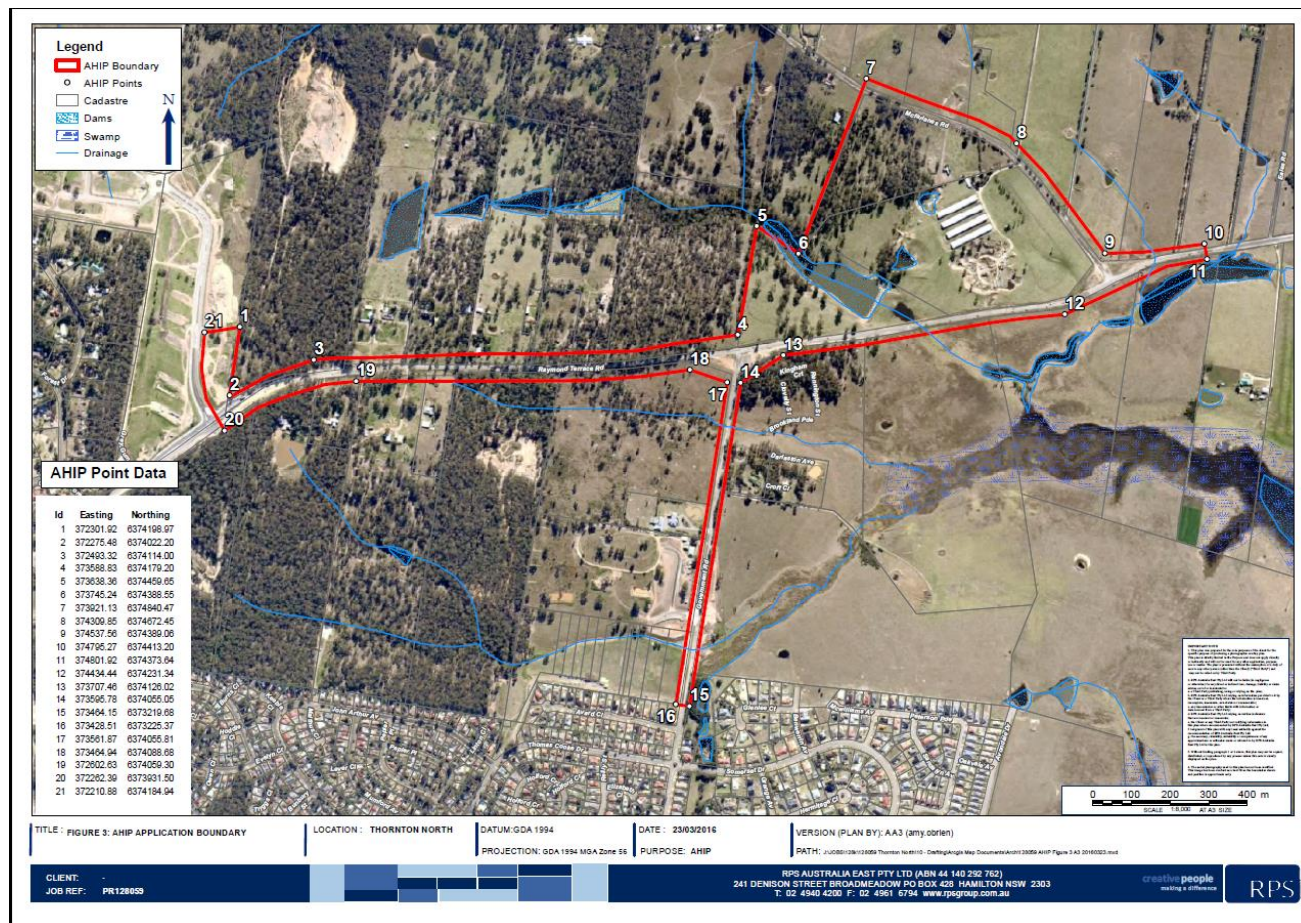


Figure 1: AHIP Area outlined in red.

CONDITIONS

The conditions of this AHIP specify the actions that are permitted and/or required in relation to areas and Aboriginal objects, which are detailed in the Schedules that follow.

Administrative Conditions

Responsibility for compliance with conditions of AHIP

1. The AHIP holder must ensure that all persons involved in actions or works covered by this AHIP (whether employees, contractors, sub-contractors, agents or invitees) are made aware of and comply with the conditions of this AHIP.

Project manager to oversee the actions relating to this AHIP

2. A suitably qualified and experienced individual must be appointed as a project manager who is responsible for overseeing, for and on behalf of the AHIP holder, all the actions relating to this AHIP.
3. The individual appointed as project manager must be the project manager nominated in the application form.
4. If an alternative to the nominated project manager is appointed, OEH must be notified of their contact details within 14 days of this appointment.

Actions must be in accordance with AHIP application

5. All actions on the land must be carried out in accordance with the application except as otherwise expressly provided by a condition of this AHIP.

Operational Conditions

Certain Aboriginal objects must not be harmed

6. All human remains in, on or under the land must not be harmed, other than any human remains identified in Schedule B4.
7. The Aboriginal objects described in Schedule A must not be harmed.
8. The authority to harm (by means of community collection or other works) any unexpected Aboriginal objects (that are not currently registered on AHIMS or detailed in this AHIP) only extends to Aboriginal objects that are assessed to be of a similar or lesser value to those authorised for harm under this AHIP (i.e. being of low scientific and cultural value) being isolated finds or artefact scatters.
9. If any Aboriginal objects or sites are recovered during the initial ground clearing activities that are not of similar or of lesser value than the AHIMS sites subject to this permit, and are not isolated finds or artefacts scatters, all works must cease and OEH must be notified. OEH will determine what level of further assessment (if any) is required before works can recommence. This assessment (if required by OEH) must be completed by the managing archaeologist in consultation with the RAP's. It should be noted that depending upon the nature and scope of the additional Aboriginal objects or sites recovered, further approval to harm may not be granted by OEH.

Community collection

10. The Registered Aboriginal Parties must be provided with an opportunity to collect Aboriginal objects within the entire project area as described in Schedule B3.
11. The opportunity for community collection must be provided:
 - (a) in accordance with methodology that was provided with the application,
 - (b) before any harm to the AHIMS registered site described in Schedule C can commence,
12. Aboriginal objects that are recovered during the community collection may be analysed on-site and/or may be taken off-site for further analysis as decided by the registered Aboriginal parties.
13. If an opportunity for community collection has been provided and this collection does not occur, the AHIP holder may proceed with any actions to harm Aboriginal objects described in Schedule C, in accordance with the conditions of this AHIP.

Harm of certain Aboriginal objects through the proposed works

14. The Aboriginal objects described in Schedule C may be harmed. Nothing in this condition authorises harm to Aboriginal objects described in Schedule A (whether human remains, Aboriginal objects or 'no-harm areas').
15. Aboriginal objects described in Schedule C2 must not be harmed if they are unexpected objects which:
- do not accord with the predicted nature, extent and significance of objects in this location and/or,
 - are assessed to be of a higher archaeological and/or cultural value than those authorised for harm under this AHIP (being the values ascribed to the identified AHIMS sites subject to this permit).
16. Aboriginal objects described in Schedule C must not be harmed unless:
- all opportunities for community collection of Aboriginal objects described in Schedule B3 have been provided for that area.

Temporary storage of certain Aboriginal objects

17. Any Aboriginal objects that are removed from the land by actions authorised by this AHIP, must be moved as soon as practicable to the temporary storage location detailed in the table below, pending any agreement reached about the long term management of the Aboriginal objects.
18. The temporary storage location is as follows:

Location name:	Mindaribba Local Aboriginal Land Council (MLALC)
Address:	1A Chelmsford Drive, Metford New South Wales 2323
Storage particulars:	Locked Keeping Place, MLALC

19. Any Aboriginal objects stored at the temporary storage location must not be further harmed, except in accordance with the conditions of this AHIP.

Long term management of certain Aboriginal objects

20. A Care Agreement form has been submitted and is pending authorisation for the AHIMS registered objects identified in this AHIP to be transferred to the MLALC for long-term management. The Care Agreement form must be finalised on completion of the community collection works once all recovered objects have been catalogued.
21. Requirement 26 "Stone artefact deposition and storage" in the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (24 September 2010, available online at: <http://www.environment.nsw.gov.au/licences/archinvestigations.htm>) must be complied with.

Notification and Reporting Conditions

Notification of commencement and completion of actions

22. Written notice must be provided to the OEH office at least 7 days prior to the commencement of actions authorised by this AHIP.
23. Written notice must be provided to the OEH office within 7 days of the completion of actions authorised by this AHIP.

Copy of this AHIP and notices to be provided to Registered Aboriginal Parties

24. A copy of this AHIP must be provided to each Registered Aboriginal Party, within 14 days of receipt of the AHIP from OEH.
25. Where this AHIP is varied or transferred, a copy of the AHIP variation or transfer notice must be provided to each Registered Aboriginal Party, within 14 days of receipt of the notice.

Human remains

26. If any human remains (other than any human remains described in Schedule B4) are discovered and/or harmed in, on or under the land, the AHIP holder must:
 - (a) not further harm these remains
 - (b) immediately cease all work at the particular location
 - (c) secure the area so as to avoid further harm to the remains
 - (d) notify the local police and OEH's Environment Line on 131 555 as soon as practicable and provide any available details of the remains and their location, and
 - (e) not recommence any work at the particular location unless authorised in writing by OEH.

Incidents which may breach the Act or AHIP

27. The AHIP holder must notify the OEH office in writing as soon as practicable after becoming aware of:
 - (a) any contravention of s.86 of the Act not authorised by an AHIP, and/or
 - (b) any contravention of the conditions of this AHIP.

Reports about incidents which may breach the Act or AHIP

28. Where OEH suspects that an incident has occurred which may have breached the Act or AHIP, OEH may request a written incident report, which includes the following:
 - (a) the nature of the incident
 - (b) the actual or likely impact of the incident on Aboriginal objects and/or Aboriginal places
 - (c) the nature and location of these Aboriginal objects and/or Aboriginal places, referring to and providing maps and photos where appropriate
 - (d) any conditions of an AHIP which may have been breached, and
 - (e) the measures which have been taken or will be taken to prevent a recurrence of the incident.
29. The incident report must be provided to the OEH office within the timeframe specified in the request.

Provision of Aboriginal Site Impact Recording Form

30. An Aboriginal Site Impact Recording Form must be completed and submitted to the AHIMS Registrar, for each AHIMS site identified in Schedules B and C, within 4 months of the completion of the actions authorised by this AHIP.

Note:

- (i) The Aboriginal Site Impact Recording Form can be found on the OEH website:
<http://www.environment.nsw.gov.au/licences/DECCAHIMSSiteRecordingForm.htm>
- (ii) Contact details for the AHIMS Registrar can be found on the OEH website:
<http://www.environment.nsw.gov.au/contact/AHIMSRegistrar.htm>

General Conditions

Indemnity

31. The AHIP holder agrees to indemnify and keep indemnified, the Crown in right of NSW, the Minister administering the Act, the Chief Executive of OEH, and their employees, agents and contractors, in the absence of any willful misconduct or negligence on their part, from and against all actions, demands, claims, proceedings, losses, damages, costs (including legal costs), charges or expenses suffered or incurred by them resulting from:
- (a) any damage or destruction to any real or personal property; and
 - (b) injury suffered or sustained (including death) by any persons arising out of or in connection with any actions undertaken pursuant to this AHIP.

Release

32. The AHIP holder agrees to release to the full extent permitted by law, the Crown in right of NSW, the Minister administering the Act, the Chief Executive of OEH, and their employees, agents and contractors, in the absence of any willful misconduct or negligence on their part, from all suits, actions, demands and claims of every kind resulting from:
- (a) any damage or destruction to any real or personal property; and
 - (b) injury suffered or sustained (including death) by any persons arising from or in connection with any actions undertaken pursuant to this AHIP.

Written notice

33. Any requirement to provide written notice to the OEH office in this AHIP may be complied with by faxing the notice to the OEH office's fax number or by sending by registered post to the OEH office's address. The OEH office's contact details are specified at the front of this AHIP.

SCHEDULES

The following schedules identify the areas and Aboriginal objects that are subject to the conditions of this AHIP.

Schedule A: Aboriginal objects which must not be harmed

A1 Human remains

All human remains in, on or under the land must not be harmed, other than any human remains identified in Schedule B4, as specified by the conditions of this AHIP.

A2 Aboriginal objects that are identified on AHIMS

Not applicable

A3 No-harm areas

Not applicable

A4 Unexpected Finds

Aboriginal objects identified as unexpected finds must not be harmed if they:

(a) do not accord with the predicted nature, extent and significance of objects in this location and/or,

(b) are assessed to be of a higher archaeological and/or cultural value than those authorised for harm under this AHIP (being the values ascribed to the identified AHIMS sites subject to this permit).

Schedule B: Aboriginal objects that may be harmed through the certain actions

B1 Movement only

Not Applicable

B2 Test/Salvage excavations

Not Applicable

B3 Community collection

Community collection may be carried out throughout the entire AHIP Area detailed in **Figure 1** in accordance with the conditions of this AHIP.

The community collection area includes the following known Aboriginal objects, as identified on AHIMS (excluding any Aboriginal objects described in **Schedule A**):

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Portion of Site (whole or part)	AHIMS Site ID	Site Feature	Site Name	Information access restriction? (Y/N)	Easting	Northing	Datum
Whole	38-4-1788	Isolated Find	RPSJN1	N	373954	6374267	GDA
Whole	38-4-1789	Artefact scatter	RPSJN2	N	373940	6374242	GDA
Whole	38-4-1790	Artefact scatter	RPSJN3	N	374431	6374267	GDA

B4 Other

Not Applicable

Schedule C: Aboriginal objects which may be harmed through the proposed works

The Aboriginal objects described in this schedule may be harmed, but only in accordance with the conditions of this AHIP (excluding any Aboriginal objects described in Schedule A).

C1 Harm of Aboriginal objects identified on AHIMS

Portion of Site (whole or part)	AHIMS Site ID	Site Feature	Site Name	Information access restriction? (Y/N)	Easting	Northing	Datum
Whole	38-4-1788	Isolated Find	RPSJN1	N	373954	6374267	GDA
Whole	38-4-1789	Artefact scatter	RPSJN2	N	373940	6374242	GDA
Whole	38-4-1790	Artefact scatter	RPSJN3	N	374431	6374267	GDA

C2 Areas where harm to Aboriginal objects is authorised

- Subject to conditions specified in **Schedule A**, harm to Aboriginal objects is authorised for all Aboriginal objects in, on or under the land identified within the AHIP Area detailed in **Figure 1**.

DICTIONARY

In this AHIP, unless the contrary is indicated the terms below have the following meanings:

Aboriginal object	has the same meaning as in the Act.
Act	means the <i>National Parks and Wildlife Act 1974</i> .
AHIMS	means the Aboriginal Heritage Information Management System maintained by OEH, as defined in s.90Q of the Act.
AHIP	means Aboriginal Heritage Impact Permit
AHIP holder	means the entity or person listed on the cover page under the heading “AHIP issued to”.
Application	means the completed application form and all other documents in written or electronic form which accompanied the application when it was lodged or which were subsequently submitted in support of the application.
Community collection	means the collection of Aboriginal objects by one or all Registered Aboriginal Parties or their representatives.
Community collection area	means an area described as a community collection area in Schedule B3
Harm	has the same meaning as in the Act. In relation to Aboriginal objects, harm means the movement, damage, defacement and/or destruction of Aboriginal objects. In relation to an Aboriginal place, harm means the damage, defacement and/or destruction of the Aboriginal place.
Land	means the land described under the heading “Land to which this AHIP applies”.
No-harm areas	means those areas described in Schedule A3.
OEH	Office of Environment and Heritage (NSW).
OEH office	means the office listed on the cover page of this AHIP.
Proposed works	means the works described under the heading “D. Proposed Works” at the front of this AHIP.
Public register	means the public register established under s.188F of the Act, that contains details of AHIPs issued by the Chief Executive of OEH, as described under the heading “Information about this AHIP”.
Registered Aboriginal Parties	means the Registered Aboriginal Parties listed in the application.
Salvage excavation	means an archaeological excavation carried out in accordance with the methodology accompanying the application, as modified by the conditions of this AHIP. The purpose of salvage excavation is to recover a sample of Aboriginal objects as an archival record of Aboriginal life from a site that will be destroyed.
Salvage excavation area	means any area described as a salvage excavation area in Schedule B2.

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- Test excavation** means an archaeological excavation carried out in accordance with methodology accompanying the application, as modified by the conditions of this AHIP. The purpose of test excavation is to collect a sample of Aboriginal objects, in order to establish the nature and extent of sub-surface Aboriginal objects and to assist in the assessment of management options for the site.
- Test excavation area** means any area described as a test excavation area in Schedule B2

INFORMATION ABOUT THIS AHIP

Public Register

Under section 188F of the Act, the Chief Executive of OEH is required to keep a public register containing the details of each AHIP issued. The details of this AHIP that will be published on the public register are outlined on the front page of this AHIP.

The public register is available online at www.environment.nsw.gov.au

Appeals

Under section 90L of the Act, the AHIP holder may appeal to the Land and Environment Court if they are dissatisfied with any condition of this AHIP. The appeal must be lodged within 21 days of the date this AHIP was issued.

Penalties for breach of the Act or AHIP condition

Significant penalties can be imposed by the Land and Environment Court for harm to an Aboriginal object or Aboriginal Place other than as authorised by a condition of an AHIP, or for a breach of an AHIP condition. OEH can also issue penalty notices for a breach of the Act or AHIP condition.

Responsibility for obtaining all approvals and compliance with applicable laws

The AHIP holder is responsible for obtaining and complying with all approvals necessary to lawfully carry out the work referred to in this AHIP, including but not limited to development consents.

Other relevant provisions of the *National Parks and Wildlife Act*

Newly identified Aboriginal objects must be notified to the Chief Executive of OEH under s.89A of the Act using the form available online at www.environment.nsw.gov.au

Stop work orders, interim protection orders and remediation directions may be issued in certain circumstances to protect Aboriginal objects or places.

Obligation to report Aboriginal remains under Commonwealth laws

The AHIP holder may have additional obligations to report any discovery of Aboriginal remains under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

Exercise of investigation and compliance powers

Officers appointed or authorised under the Act may exercise certain powers and functions, including the power to enter land.

Duration of AHIP

This AHIP remains in force for the period specified in the AHIP.

Variation of AHIP

The AHIP holder may apply to the OEH office for a variation of any conditions of an AHIP, using the AHIP variation application form available online at www.environment.nsw.gov.au. Requests for significant variations must be accompanied by evidence of further consultation with Registered Aboriginal Parties and may include payment of fees.

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The conditions of an AHIP may be varied at any time by the Chief Executive of OEH in order to correct a typographical error or to resolve an inconsistency between conditions. The AHIP holder may appeal a decision of the Chief Executive of OEH to vary the conditions of the AHIP.

Transfer of AHIP

The AHIP holder may apply to transfer this AHIP to another person by using the AHIP transfer application form available online at www.environment.nsw.gov.au.

Surrender of AHIP

The AHIP holder may apply to surrender this AHIP by using the AHIP surrender application form available online at www.environment.nsw.gov.au. The surrender must be approved by the Chief Executive of OEH and may be subject to conditions.

Suspension and revocation of AHIP

An AHIP may be suspended or revoked at any time at the discretion of the Chief Executive of OEH. Prior to suspending or revoking the AHIP, the AHIP holder will be given notice and an opportunity to make submissions. The AHIP holder will be notified in writing of the final decision. The AHIP holder may appeal a decision to revoke the AHIP.

Entry to land

An AHIP does not automatically entitle its holder to enter land for the purpose of conducting work related to the AHIP. The AHIP holder is responsible for obtaining permission to enter land from the owner and/or occupier of the land.

Disclosure of information pursuant to lawful requirement

This AHIP does not prevent the disclosure of any information or document in OEH's possession in accordance with any lawful requirement.

Making copies of reports

By providing a report, the AHIP holder acknowledges that OEH can use the information in that report to inform its regulatory functions, note details of that report in AHIMS and include a copy of the report in its library which may be available to members of the public.

OEH is able to make copies of any reports provided to OEH under this AHIP.