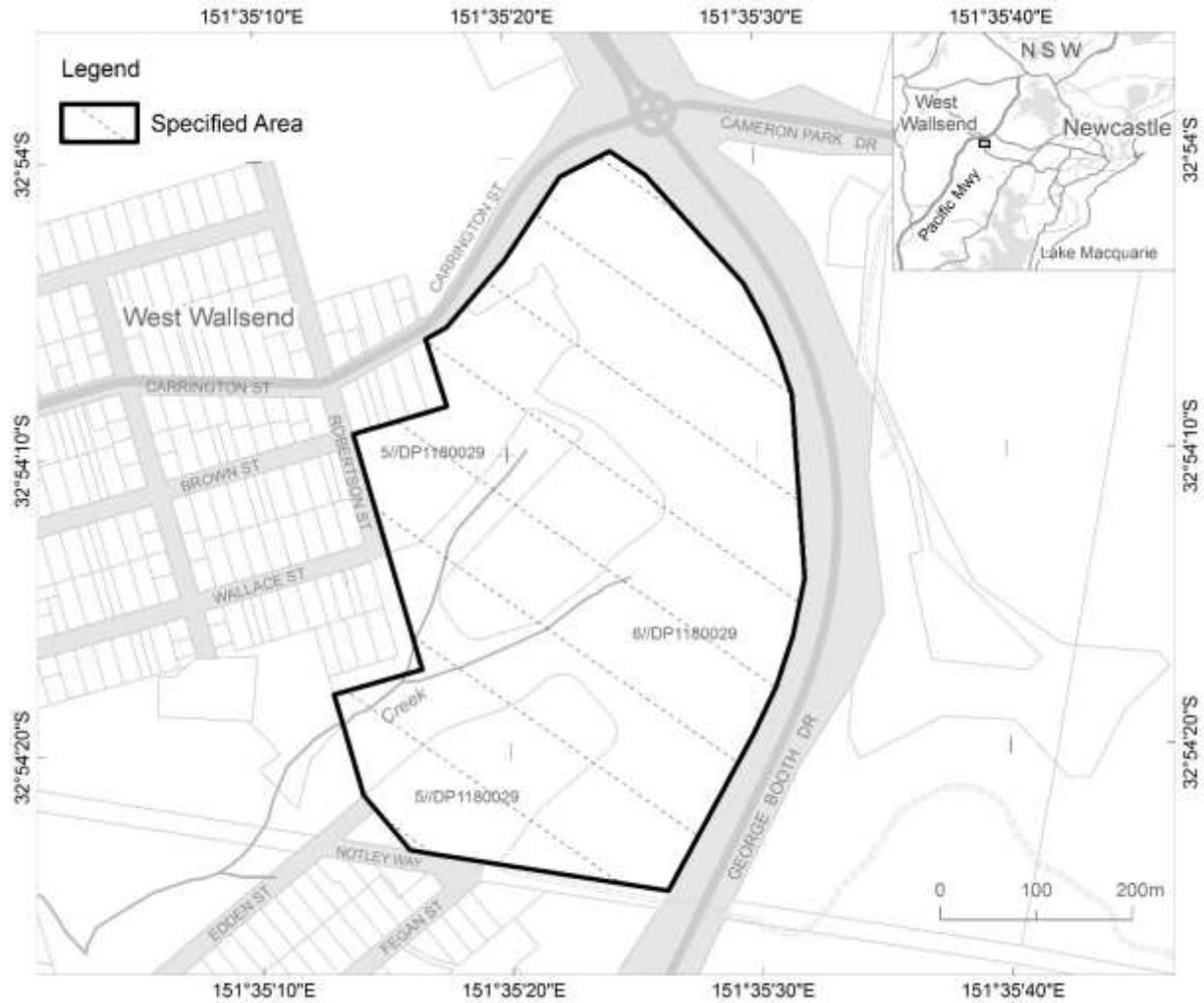


Map showing the proposed works in relation to the Specified Area (Butterfly Cave, West Wallsend, NSW)

The applicant specifies the area for which protection is sought as being located in West Wallsend, New South Wales which fall within the proposed subdivision and residential development of Appletree Grove Estate – Stage 7 and 9 located within land owned by real estate developer Hammersmith Management Pty Ltd, owned by Roche Group. The development footprint intersects with the applicants Specified Area, at Lots 5/DP1180029 and 6/DP1180029.





CORRECTION TO GAZETTE NOTICE –

APPLICATION FOR PROTECTION OF BUTTERFLY CAVE, WEST WALLSEND UNDER THE *ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984*

This notice corrects information in Gazette notice C2017G00684 published on 22 June 2017. The original notice included a map which did not accurately identify the area sought to be protected under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. A copy of the correct map is included in the notice below. This notice also extends the period for submission of representations from 12 July 2017 until 21 July 2017.

A complete copy of the notice, as amended, is produced below:

Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)

Notice of an application for the protection of Butterfly Cave, West Wallsend

Invitation to make representations

I, Susan McIntyre-Tamwoy, hereby give notice as follows:

The Minister for the Environment and Energy, the Hon Josh Frydenberg MP, being the Minister responsible for the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (the Act), has received an application made under section 10 of the Act seeking to protect Butterfly Cave, West Wallsend, in New South Wales, and nominated me to provide a report to him under section 10(1)(c) of the Act.

The applicants

The application is made by the New South Wales Aboriginal Land Council, on behalf of the Awabakal Local Aboriginal Land Council.

The purpose of the application

The application seeks the preservation or protection of the area specified in the application, and shown at Figure 1 below, from injury or desecration. Section 10 of the Act enables the Minister to decide whether to make a declaration to preserve and protect the specified area, if the Minister is satisfied that the area is a significant Aboriginal area and is under threat of injury or desecration. In the Act, the term 'significant Aboriginal area' refers to an area that is of particular significance to Aboriginal people in accordance with Aboriginal tradition. Section 3 of the Act provides definitions of 'significant Aboriginal area' and other relevant terms including 'Aboriginal tradition' and 'injured or desecrated'. The area specified for protection, the claimed significance of the area, and the claimed nature of the threat of injury or desecration are set out below.

Matters the report is required to deal with

The Minister will consider my report under section 10 of the Act in relation to the area specified for protection before deciding whether to make a declaration under section 10 of the Act. Under section 10(4) of the Act, the report is required to deal with the following matters:

- (a) the particular significance of the area to Aboriginals;

- (b) the nature and extent of the threat of injury to, or desecration of, the area;
- (c) the extent of the area that should be protected;
- (d) the prohibitions and restrictions to be made with respect to the area;
- (e) the effects the making of a declaration may have on the proprietary or pecuniary interests of persons other than the Aboriginal or Aborigines making the application or on whose behalf the application is made;
- (f) the duration of any declaration; and
- (g) the extent to which the area is or may be protected by or under a law of New South Wales, and the effectiveness of any remedies available under any such law.

The area sought to be protected (the 'specified area')

1. The applicant specifies the area for which protection is sought as being located in West Wallsend, New South Wales and comprising Lots 5/DP1180029 and 6/DP1180029.

The area includes Butterfly Cave and a minimum radius of 100 m around the cave, including the following features:

- aquifers,
- stone arrangement,
- traditional journey path,
- main creek,
- feeder creek, and
- food source areas.

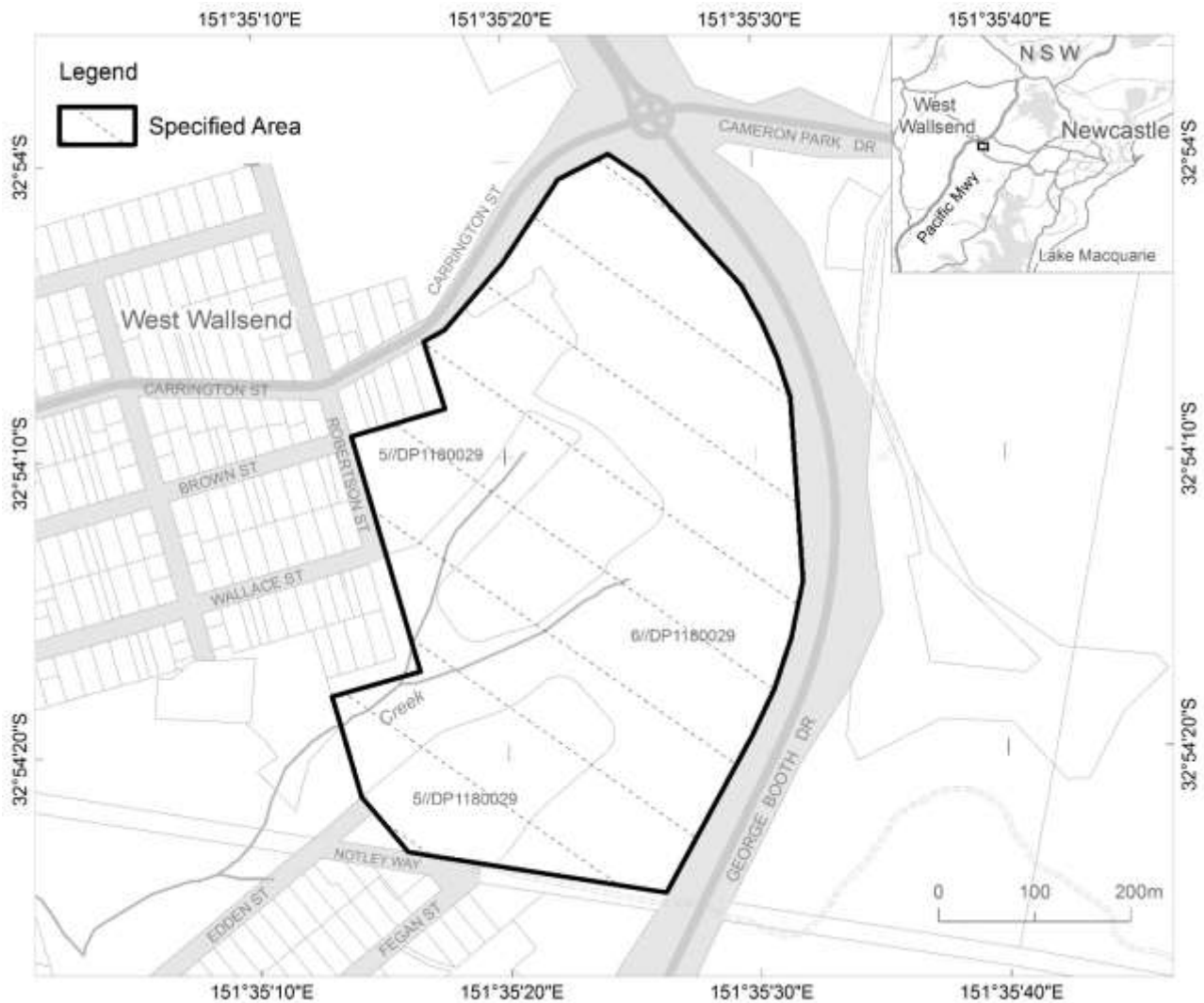


Figure 1 Map showing the specified area known as Butterfly Cave, West Wallsend, New South Wales

Claimed nature of particular significance

The application indicates that the particular significance of the specified area arises because:

- Butterfly Cave is a site of sacred women’s business.
- The seclusion of the cave is also significant as it provides privacy for women’s traditional and sacred activities.
- Along with wildlife, the native vegetation within the specified area has a practical, aesthetic and spiritual value and provides a source of food and medicine.
- The specified area continues to be used as a place to learn about traditional practices such as collecting bush foods and natural medicines.
- It is a place for cultural and spiritual connection, and education of Aboriginal and non-Aboriginal women and girls. This is supported through the NSW Department of Education’s Sista Speak Program.

Claimed threat of injury or desecration

The application indicates that the potential injury or desecration is associated with the proposed subdivision and residential development of Appletree Grove Estate – Stage 7 and Stage 9. This includes the proposed construction of a road less than 10 metres, and dwellings and associated services less than 20 metres from Butterfly Cave. The application indicates that, as the specified area is significant as a food source area, the removal of native vegetation and diversion of water courses irrevocably affects the traditional use of the

area. Additionally, the application indicates that since the proposed development will occur approximately 10 metres away from Butterfly Cave, it will lose its significance as a private and secluded place for Aboriginal women. The application further claims that the use of heavy machinery and construction tools is a source of vibration that may cause irreversible physical damage to Butterfly Cave. Other threats of injury or desecration outlined in the application include reduced access to Butterfly Cave for Aboriginal women, a loss of the traditional access path and the risk of vandalism associated with increased human activity in the area.

Invitation to make representations

Interested persons are invited to make representations on this matter to:

Susan McIntyre-Tamwoy

Associate Director

Extent Heritage Pty Ltd

Level 3, 73 Union St

Pymont NSW 2009

Telephone: 0428 673 112

Email: submissions@extent.com.au

Representations must be made in writing by close of business by 21 July 2017 or within such further period as I may allow. **You should not send your representations directly to the Minister.**

If you wish to claim confidentiality over any part of your representation, please identify why you are claiming confidentiality and how you want confidentiality to apply. All representations, whether or not they are provided in confidence, will be provided to the Minister for the Environment and Energy, and the Department of the Environment and Energy, along with the section 10 report. Representations, even those subject to confidentiality, may be disclosed where it is authorised or required by law, to meet procedural fairness requirements, and in response to a request by a House or Committee of the Parliament of the Commonwealth.



The Hon Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

MD18/157
MS17-001720

The Hon Josh Frydenberg MP
Minister for the Environment and Energy
PO Box 6022
House of Representatives
CANBERRA ACT 2600

By email: josh.frydenberg.mp@aph.gov.au

Dear Minister

Josh

Thank you for your letter about an application to protect Butterfly Cave in West Wallsend under the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

The NSW *National Parks and Wildlife Act 1974* (NPW Act) protects Aboriginal cultural heritage in NSW. The Act sets out regulatory options for the protection of Aboriginal cultural heritage, and allows for the declaration of an Aboriginal place where that place is of special significance.

Declarations provide a high level of protection for the declared area and its surrounds, and create strict liability offences for the harm or desecration of Aboriginal objects and Aboriginal places. It also allows for stop work orders where work is, or is about to, affect an Aboriginal object or Aboriginal place, and allows interim protection orders to be made.

In May 2013, Butterfly Cave was declared an Aboriginal place under the NPW Act. The declaration included a clearly defined and declared boundary of 20 metres from the cave's centre. The Appletree Grove Estate residential development had been approved by the Hunter and Central Coast Joint Regional Planning Panel under the *Environmental Planning and Assessment Act 1979* before the declaration of the Aboriginal place. The development's footprint is outside the statutory boundary.

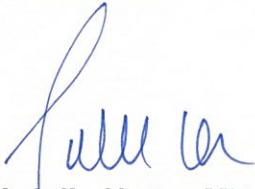
The NPW Act provides protection against harm to or desecration of the Butterfly Cave Aboriginal Place whether the action occurs within the boundary or not. If the Office of Environment and Heritage (OEH) becomes aware of actions that could cause harm to or desecration of Butterfly Cave Aboriginal Place, it can use its regulatory options to address such matters.

I am advised that the gazettal of Butterfly Cave as an Aboriginal place under the NPW Act is an effective measure to protect the area.

OEH continues to work with key stakeholders in the development of a draft plan of management for Butterfly Cave Aboriginal Place that will guide management of the cultural values of the place and address access and privacy issues for the community.

I trust this information is of assistance.

Yours sincerely



Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

10.5.18

From: s47F [redacted]@lakemac.nsw.gov.au]
Sent: Wednesday, 13 June 2018 1:36 PM
To: ATSIHPA <ATSIHPA@environment.gov.au>
Subject: FW: Ministers decision regarding the protection of the Butterfly Caves WEST WALLSEND

Attention: s22 [redacted]

Hi s22 [redacted]

Following our telephone conversation this afternoon, please see the e-mail below sent to the developers representatives regarding Council's intention to delay approving a Construction Certificate for Stage 7 at Appletree Grove Estate, West Wallsend. Please note that this is also the case for Stage 9 i.e. the other remaining stage in the subdivision.

If you have any further information or updates regarding the case please don't hesitate to contact myself by either e-mail or phone.

Regards,



s47F [redacted]
Senior Development Engineer
P: s47F [redacted]
E: s47F [redacted]@lakemac.nsw.gov.au

126-138 Main Road Speers Point
NSW 2284
Box 1906 HRMC NSW 2310



lakemac.com.au

From: s47F [redacted]
Sent: Tuesday, 14 November 2017 8:06 AM
To: s47F [redacted]
Cc: s47F [redacted]
Subject: FW: Ministers decision regarding the protection of the Butterfly Caves WEST WALLSEND [DLM=For-Official-Use-Only]

Hi s47F [redacted]

Please see below the latest update from Minister Frydenberg's office regarding the Butterfly Cave section 10 case under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. It is still Council's intention to delay the approval of the CMP and Stage 7 Construction Certificate until the Minister has announced his decision.

Regards,

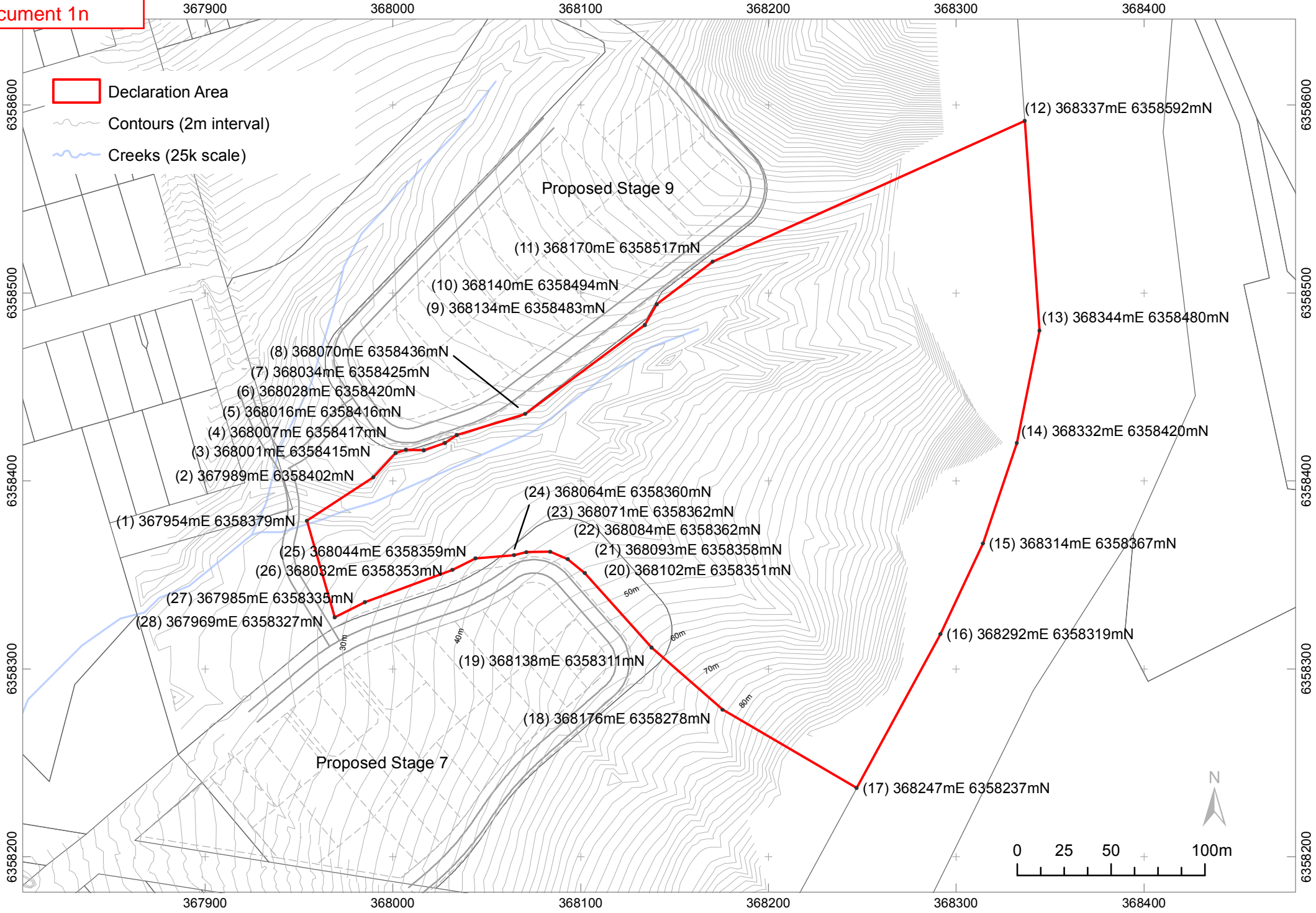


s47F [redacted]
Senior Development Engineer
P: s47F [redacted]
E: s47F [redacted]@lakemac.nsw.gov.au

126-138 Main Road Speers Point
NSW 2284
Box 1906 HRMC NSW 2310



lakemac.com.au





Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019

I, Melissa Price, Minister for the Environment, make the following declaration.

Dated 25 January 2019

Melissa Price
Minister for the Environment

Part 1—Preliminary matters

1 Name

This instrument is the *Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019*.

2 Commencement

This instrument commences on the day after registration.

3 Authority

This instrument is made under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

4 Definitions

In this instrument:

Act means the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

authorised person has the meaning given by subsection 6(5).

boundary line has the meaning given by item 1 of Schedule 1.

declared area means the area described in section 5 of this instrument.

Geocentric Datum of Australia 1994 (GDA94) means Australia's current national datum system. A geodetic datum is a system of latitude and longitude coordinates and reference points that is used to locate places on the Earth.

MGA94 means the Map Grid of Australia, the standard map projection associated with GDA94. It is a 'Cartesian coordinate system' which uses eastings and northings rather than latitude/longitude, and in which the world is divided up into 60 zones for reference.

land includes soil and vegetation.

Note: A number of expressions used in this instrument are defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, including the following:

- (a) Aboriginal;
- (b) area;
- (c) significant Aboriginal area.

Part 2—Declaration to preserve and protect a significant Aboriginal area

5 Declared area

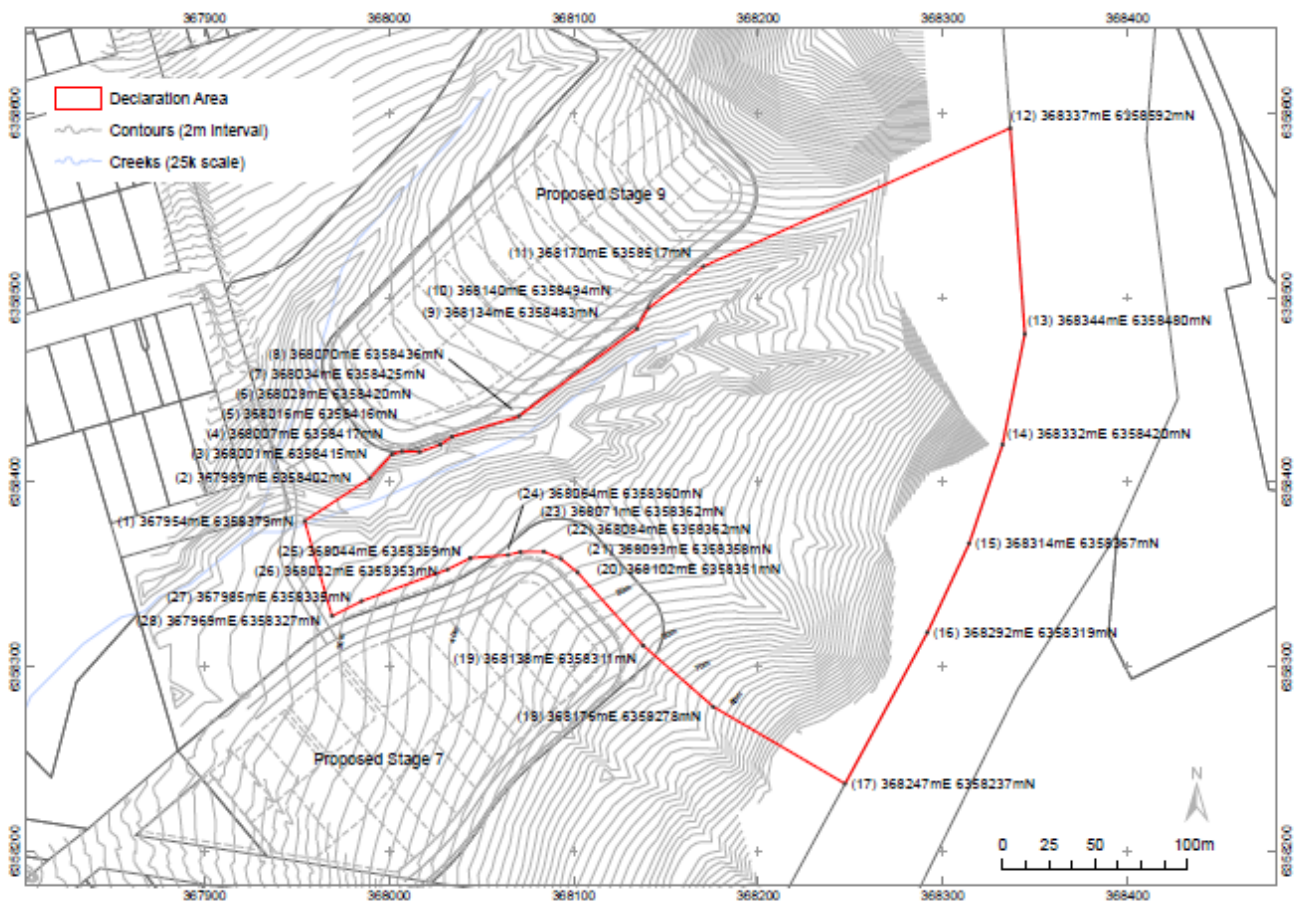
- (1) The area to which this declaration applies (the *declared area*) is the area bounded by the *boundary line*.

Note: The *boundary line* is defined in Schedule 1.

- (2) The position of the declared area is to be determined by reference to the Geocentric Datum of Australia 94 and MGA94 .

Note: *Geocentric Datum of Australia* and *MGA94* are defined in section 4.

- (3) The following map illustrates the declared area:



6 Prohibitions and restrictions with respect to the declared area

- (1) For section 10 of the Act, the declared area is a significant Aboriginal area that is to be preserved and protected from injury and desecration.
- (2) A person must not do any act in, on or near the declared area that will, or is likely to, injure or desecrate the declared area.

Note: Subsection 3(2) of the Act relevantly states that for the purposes of the Act, an area shall be taken to be injured or desecrated if:

- (i) it is used or treated in a manner inconsistent with Aboriginal tradition;
- (ii) by reason of anything done in, on or near the area, the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or
- (iii) passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal Tradition.

Note: Under subsection 22(1) of the Act, a person commits an offence if the person engages in conduct that contravenes a provision of a declaration made under Part II of the Act in relation to a significant Aboriginal area.

- (3) Without limiting subsection (2), a person must not:
 - (a) pass through or over, or enter, the declared area; or
 - (b) conduct any activity that will, or is likely to, damage or deface any rock or land in the declared area; or
 - (c) bulldoze, grade, drill, excavate, cut, fill, blast, clear, demolish, tunnel, burn, remove, or otherwise damage land in the declared area; or
 - (d) build or construct any road, building or structure in, or intruding into, the declared area; or
 - (e) conduct any activity that will, or is likely to, disturb soil or vegetation in the declared area, [except where consistent with a plan of management made under the *National Parks and Wildlife Act 1974* (NSW) that has been endorsed by the Awabakal Local Aboriginal Land Council];
 - (f) disturb vegetation on land surrounding the declared area in a manner that will increase the visibility of the area.

Note: Under subsection 22(1) of the Act, a person commits an offence if the person engages in conduct that contravenes a provision of a declaration made under Part II of the Act in relation to a significant Aboriginal area.

- (4) Subsections (2) and (3) do not apply to acts done by an authorised person:
 - (a) for the purposes of practising or observing Aboriginal traditions, observances, cultural practices, customs, or beliefs;
 - (b) for the purposes of education, research, management, monitoring, revegetation, restoration or rehabilitation; or
 - (c) where doing the act is authorised or required by law.
- (5) A person is an **authorised person** in relation to the doing of an act if:
 - (a) the person has received permission to do the act from the Awabakal Local Aboriginal Land Council; or
 - (b) the person is authorised or required by law to do the act.

-
- (6) For the purposes of paragraph 5(b), a person is authorised or required by law to do an act if a plan of management under the *National Parks and Wildlife Act 1974* (NSW) that has been developed in consultation with, and endorsed by the Awabakal Local Aboriginal Land Council and that plan of management authorises or requires the doing of the act.
- (7) For the purposes of paragraph 5(b), subject to subsection (6), a person is not authorised or required by law to do an act merely because the person has received an approval, permission, authority or consent to undertake activities in connection with using or developing land in, on or near the declared area.

Schedule 1—Boundary line

1 Boundary line of the declared area

- (1) The *boundary line* is a line commencing at the point in item 1 of the following table and proceeding through each of the coordinates listed in column 1 of the table in the manner described in column 2 of the table:

Item	Column 1	Column 2
	The line runs from this point...	thence...
1	The whole of the area bounded by a line commencing at the point MGA Zone 56 367954mE and 6358379mN	and then generally north east to the point
2	367989mE and 6358402mN	then generally north east to the point
3	368001mE and 6358415mN	then generally north east to the point
4	368007mE and 6358417mN	then generally east to the point
5	368016mE and 6358416mN	then generally north east to the point
6	368028mE and 6358420mN	then generally north east to the point
7	368034mE and 6358425mN	then generally north east to the point
8	368070mE and 6358436mN	then generally north east to the point
9	368134mE and 6358483mN	then generally north east to the point
10	368140mE and 6358494mN	then generally north east to the point
11	368170mE and 6358517mN	then generally north east to the point
12	368337mE and 6358592mN	then generally south to the point
13	368344mE and 6358480mN	then generally south west to the point
14	368332mE and 6358420mN	then generally south west to the point
15	368314mE and 6358367mN	then generally south west to the point
16	368292mE and 6358319mN	then generally south west to the point
17	368247mE and 6358237mN	then generally north west to the point
18	368176mE and 6358278mN	then generally north west to the point
19	368138mE and 6358311mN	then generally north west to the point
20	368102mE and 6358351mN	then generally north west to the point
21	368093mE and 6358358mN	then generally north west to the point
22	368084mE and 6358362mN	then generally west to the point
23	368071mE and 6358362mN	then generally west to the point
24	368064mE and 6358360mN	then generally west to the point
25	368044mE and 6358359mN	then generally south west to the point
26	368032mE and 6358353mN	then generally south west to the point
27	367985mE and 6358335mN	then generally south west to the point
28	367969mE and 6358327mN	then generally north west back to the point of commencement

- (2) Directions included in the table in subitem (1) are indicative only.

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019

Purpose and Operation

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the **ATSIHP Act**) preserves and protects significant traditional areas and objects (including Aboriginal remains), that are of particular significance to Aboriginal persons and Torres Strait Islanders, from injury or desecration. This includes an area of land in Australia or beneath Australian waters, an area of water in Australia or an area of Australian waters.

The ATSIHP Act recognises the body of traditions, observances, customs and beliefs of Aboriginal persons and Torres Strait Islanders generally or of a particular community or group thereof, including any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.

The Declaration

Part II of the ATSIHP Act (Part II) provides for the protection of significant Aboriginal areas and objects. Under section 10 of the ATSIHP Act, the Minister may, by legislative instrument, make a declaration to preserve or protect a significant Aboriginal area that is under threat of injury or desecration.

The *Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019* (the **Declaration**) is made under section 10 of the ATSIHP Act. The purpose of the Declaration is to preserve and protect Butterfly Cave, the surrounding native bushland, and the catchment and gully system which directly feeds into and drains from the Butterfly Cave that formed Butterfly Cave (the declared area) from injury or desecration.

Butterfly Cave and its surrounds are a significant Aboriginal area that is of particular significance to Awabakal women. The purpose of the Declaration is to protect the Butterfly Cave and its surrounds from threats of injury or desecration posed by development activities.

Background

In 2016, the then Minister for the Environment and Energy, the Hon Josh Frydenberg MP received an application from the New South Wales Aboriginal Land Council (NSWALC) on behalf of the Awabakal Local Aboriginal Land Council (the **applicant**) seeking the preservation or protection of Butterfly Cave and its surrounds from the development footprint of the proposed residential development of the Appletree Grove Estate – Stage 7, 8 and 9, West Wallsend, NSW (the **application area**) from injury or desecration.

On 11 May 2017, the then Minister for the Environment and Energy, the Hon Josh Frydenberg MP nominated Dr Susan McIntyre-Tamwoy to prepare a report in accordance with subsection 10(4) of the Act. The report was provided to the Minister on 5 September 2017.

Consultation

In accordance with subsection 10(3)(ii) of the ATSIHP Act, Dr McIntyre-Tamwoy published a notice in the *Government Notices Gazette* (Commonwealth) and in the *Newcastle Herald* inviting interested persons to make representations in connection with the report by 12 June 2017. An amendment to this notice to reflect an updated map submitted by the applicant was published in the *Government Notices Gazette* (Commonwealth) and the *Newcastle Herald* on 30 June 2017. The latter notice extended the consultation period from 12 July 2017 until 21 July 2017.

Thirty-seven representations were received in addition to the original application, including representations from the developer of the Appletree Grove residential development, Hammersmith/Roche Group, and Lake Macquarie City Council.

The Department undertook separate consultations with the applicant and the Hammersmith/Roche Group in relation to matters raised by the application.

On 30 July 2018, Dr McIntyre-Tamwoy met with the Awabakal women at the Awabakal Land Council's Office in relation to matters raised by the application.

On 21 August 2018, Dr McIntyre-Tamwoy met with representatives of Hammersmith/Roche Group in relation to matters raised by the application.

Protection under State legislation

Butterfly Cave and a boundary of 20 metres around the centre of the cave are protected as a declared Aboriginal Place under the *National Parks and Wildlife Act 1974* (NSW). In accordance with section 13 of the ATSIHP Act, on 21 December 2017, the Minister consulted with the NSW Minister for the Environment, Local Government and Heritage as to whether there is effective protection of the application area under NSW law. The NSW Minister for the Environment, Local Government and Heritage advised that the protections afforded by the *National Parks and Wildlife Act 1974* (NSW) provide a high level of protection for the Butterfly Cave and its surrounds, and create strict liability offences for the harm or desecration of the Aboriginal area.

Decision to make the Declaration under section 10 of the ATSIHP Act

The Minister was satisfied that the declared area is a significant Aboriginal area that is under threat of injury or desecration. The Minister was not satisfied that the declaration of the Butterfly Cave Aboriginal Place under section 84 of the *National Parks and Wildlife Act 1974* (NSW) provided effective protection of the declared area. The Minister has made the Declaration under section 10 of the ATSIHP Act to protect the declared area from the threat of injury or desecration.

The Office of Best Practice Regulation determined that the Instrument will have a minor regulatory impact on business, community organisations or individuals, and therefore a Regulation Impact Statement is not required.

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Declaration commences the day after registration.

Explanation of provisions

Preliminary matters

Part 1 sets out the preliminary matters of the Declaration.

Name of Instrument

Section 1 of the Instrument states the name of the Instrument, which is the *Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019*.

Commencement

Section 2 of the Instrument specifies that the Instrument commences on the day after it is registered.

Authority

Section 3 of the Instrument specifies the authority for the Instrument, which is subsection 10(1) of the ATSIHP Act.

Definitions

Section 4 of the Instrument defines the terms used in the Instrument.

Part 2—Declaration

Part 2 of the Declaration provides for those matters required to be covered under sections 10 and 11 of the ATSIHP Act.

Section 5 provides the area to which the Declaration applies (the declared area).

- Subsection (1) provides that the declared area is identified by reference to the boundary line, the coordinates of which are specified in item 1 of Schedule 1.
- Subsection (2) provides that the position of the declared area is to be determined by reference to the Geocentric Datum of Australia (GDA94 geocentric data set).
- Subsection (3) provides an illustrative map of the area.

Section 6 is a provision for the purpose of paragraph 11(b) of the ATSIHP Act and provides for and in relation to the protection and preservation of the area from injury or desecration.

- Subsection (1) provides that the specified area is to be preserved and protected from injury or desecration under section 10 of the ATSIHP Act. This provision is declaratory in nature, and does not contain any prohibitions or restrictions.
- Subsection (2) provides that a person must not do any act in, on or near the declared area that will, or is likely to, injure or desecrate the declared area. This is the principal prohibition within the Declaration, which applies generally to acts in, on or near the declared area.
 - Note 1 to subsection (2) describes when an area shall be taken to be injured or desecrated.
 - Note 2 to subsection (2) explains that under subsection 22(1) of the Act, a person commits an offence if the person engages in conduct that contravenes a provision of a declaration made under Part II of the Act in relation to a significant Aboriginal area.
- Subsection (3) provides that, without limiting subsection (2), a person must not undertake certain activities. In summary, these prohibitions and restrictions are directed at preventing:
 - public access to the declared area;
 - activities that damage or deface rock or land in the declared area;
 - the conduct of development, clearing, earthworks, or related activities in the declared area;
 - the building of roads, buildings or structures in, or intruding into, the declared area; and
 - activities that disturb soil or vegetation in the declared area.
- Subsection (4) provides that subsections (2) and (3) do not apply to acts done by an authorised person for certain purposes. These include:
 - the purposes of practising or observing Aboriginal traditions, observances, cultural practices, customs, or beliefs;
 - the purposes of education, research, management, monitoring, revegetation, restoration or rehabilitation; and

- where doing the act is authorised or required by law, or by a plan of management made under the *National Parks and Wildlife Act 1974* (NSW).
- Subsection (5) provides that a person is an authorised person in relation to the doing of an act if:
 - the person has received permission to do the act from the Awabakal Local Aboriginal Land Council; or
 - the person is authorised or required by law to do the act.
- Subsections (4) and (5) are intended to give control over access to the declared area to Awabakal women and the Awabakal Local Aboriginal Land Council. Paragraphs (4)(c) and (5)(b) provide an exemption for acts that are authorised or required by law to be done, which is intended to facilitate lawful access, such as by essential services (such as firefighters, police, ambulance / rescue) or as required or authorised by other legislation. However, this exemption is subject to subsection (7).
- Subsection (6) provides that for the purposes of paragraph (5)(b), a person is authorised or required by law to do an act if a plan of management under the *National Parks and Wildlife Act 1974* (NSW) that has been developed in consultation with the Awabakal Local Aboriginal Land Council authorises or requires the doing of the Act. This provision is intended to recognise that in participating in the development of a plan of management, the Awabakal Local Aboriginal Land Council may authorise the doing of certain acts, that would otherwise be prohibited under subsections (2) and (3), if those acts are conducted in a particular manner. This could include activities that may result in the disturbance of vegetation or soil, or access to the declared area in a manner that is consistent with Aboriginal traditions.
- Subsection (7) provides that for the purposes of paragraph (5)(b), but subject to subsection (6), a person is not authorised or required by law to do an act merely because the person has received an approval, permission, authority or consent to undertake activities in connection with using or developing land in, on or near the declared area. This is intended to clarify that approvals (however described) under State planning laws (such as a development approval) are excluded from the category of activities that are authorised or required by law for the purposes of the exemptions from subsections (2) and (3).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019

This Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Declaration

The *Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019* (the Declaration) is made under s 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act). Section 10(1) of the ATSIHP Act allows the Minister to make a declaration if the Minister: has received an oral or written application by or on behalf of an Aboriginal or a group of Aborigines, is satisfied that the area is a significant Aboriginal area and that it is under threat of injury or desecration, has received and considered a report from a nominated person, and has considered such other matters as he or she thinks relevant.

Section 5 of the Declaration specifies an area (the declared area), which includes Butterfly Cave, the native bushland that provides privacy, aesthetics and cultural resources, and the catchment and gully system which directly feeds and/or drains from the Butterfly Cave and that formed Butterfly Cave rock-shelter and its water features.

Under section 6(1) of the Declaration, the declared area is declared under section 10 of the ATSHIP Act to be preserved and protected from injury or desecration in the manner specified in subsection 6(2).

Subsection 6(3) prohibits particular actions:

- that will adversely affect the use or significance of the specified area in accordance with Aboriginal tradition
- that will, or is likely to injure or desecrate the declared area
- that will, or is likely to impact the structure of the Butterfly Cave rock-shelter.

Subsection 6(4) provides that subsections 6(2) and (3) do not apply to particular activities conducted for particular purposes.

Human rights implications

The Declaration engages the following rights:

- the right to enjoy and benefit from culture
- the right to freedom of thought, conscience and religion or belief
- the right to education
- the right to equality and non-discrimination

- the right to self-determination.

The right to enjoy and benefit from culture

The right to enjoy and benefit from culture is contained in Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 27 of the ICCPR protects the rights of individuals belonging to ethnic, religious and linguistic minorities within a country to enjoy their own culture. Article 15 of the ICESCR protects the right of all persons to take part in cultural life.

The United Nations Human Rights Committee has stated that culture can manifest itself as a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples, which may include such traditional activities as fishing or hunting and the right to live on lands protected by law.¹

The UN Human Rights Committee has considered cases which call into question the impact of the right of minorities to enjoy their own culture on the rights of others. It has stated that commercial activity on lands belonging to minorities that has a limited impact on the right of minorities to enjoy their own culture may not be incompatible with Article 27. In these cases, the Committee has been influenced by the fact that consultation with affected minority representatives has taken place in the process of deciding to approve the activity.²

The United Nations Committee on Economic, Social and Cultural Rights has stated that Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected.³ The Committee has stated that limitations on the right to take part in cultural life may be necessary in certain circumstances, in particular in the case of practices attributed to customs and traditions which infringe upon other human rights.⁴

The declared area is a significant Aboriginal area because the Awabakal people, in particular the Awabakal women, use the declared area for traditional activities. The Declaration will protect the rights of the Awabakal people, and in particular the rights of the Awabakal women, to continue to enjoy and benefit from their culture by preserving and protecting the declared area from injury or desecration.

The declared area is located within a larger area of land owned by Hammersmith Management Pty Ltd, which intends to undertake commercial activity on the land. A possible effect of the Declaration is that Hammersmith Management Pty Ltd may be able to proceed with undertaking some commercial activities near the declared area and such commercial activity might have some impact on the Awabakal people's right to enjoy their own culture. As part of consultations conducted prior to the making of the Declaration, the Awabakal women expressed concerns that the boundary of the declared area did not address all of their

1 United Nations Human Rights Committee, General Comment No 23 (1994).

2 United Nations High Commissioner for Human Rights, Individual Report on the International Covenant on Civil and Political Rights, Report No 2 (2013).

3 The Committee on Economic, Social and Cultural Rights, General Comment No 21 (2009).

4 The Committee on Economic, Social and Cultural Rights, General Comment No 21 (2009).

concerns relating to the impact of proposed development by Hammersmith Management Pty Ltd. The Awabakal women preferred that the Declaration specify a larger area and the proposed development by Hammersmith Management Pty Ltd not proceed.

The boundary of the declared area means that the traditional activities of the Awabakal people could still be undertaken within the boundaries of the declared area and therefore the impact of any commercial activity on the Awabakal people's right to enjoy their own culture will be limited. The Declaration strikes an appropriate balance between the interests of the Awabakal people and Hammersmith Management Pty Ltd.

Right to freedom of thought, conscience and religion or belief

Article 18 of the ICCPR protects the right of individuals to think freely, and to entertain ideas and hold positions based on conscientious or religious or other beliefs. Subject to certain limitations, persons also have the right to demonstrate or manifest religious or other beliefs, by way of worship, observance, practice and teaching.

The Declaration promotes this right as it preserves and protects the declared area that is a culturally significant place for the Awabakal people, and in particular, Awabakal women. The Declaration allows the local Indigenous community to express their spiritual and cultural connection to the area, and practice those beliefs, privately and without outside interference.

The right to education

The right to education is contained in Article 13 of the ICESCR. The Declaration engages the right to education by preserving and protecting the declared area, so that the traditional activities of the Awabakal people can be continue to be undertaken in the declared area. Some of those traditional activities include educational activities.

The right to equality and non-discrimination

Articles 2, 16 and 26 of the ICCPR affirm the rights of all people to be treated equally. Article 2 of the ICERD further prohibits discrimination on the basis of race.

The Declaration, by specifying the declared area as a significant Aboriginal area and prohibiting any action that will or is likely to adversely affect the use or significance of the declared area in accordance with Aboriginal tradition, favours the interests of Awabakal people over those of other persons. In doing so, the Declaration treats the Awabakal people differently on the basis of their race, with the result that other persons do not benefit from being able to take particular actions that might affect the declared area.

While the Declaration constitutes differential treatment on the basis of race, it can be characterised as a 'special measure' with the meaning of Article 1(4) of the ICERD. Article 1(4) provides that 'special measures' are deemed not to be discrimination. Special measures are designed to 'secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.' For a measure to be characterised as a 'special measure' it must:

- be for a particular group or individuals;
- be taken for the sole purpose of securing the adequate advancement of those groups or individuals;

- be necessary; and
- not continue after its objectives have been achieved.

The Declaration meets these criteria. The Declaration:

- preserves and protects the declared area for the benefit of the Awabakal people
- has the sole purpose of protecting the rights of the Awabakal people to continue to enjoy their own culture and undertake traditional activities in the declared area
- is necessary, otherwise the rights of the Awabakal people will not be preserved in relation to the declared area
- continues indefinitely, given that the the declared area will need to be preserved and protected from injury or descretion in perpetuity.

Right to self-determination

The rights of peoples to freely determine their political status and freely pursue their economic, social and cultural development is contained in Articles 1 of the ICCPR and the ICESCR. The right is a collective right applying to groups of peoples, in contrast to rights to culture which protect the rights of individuals within a group.

The right to self-determination is also contained in Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). While the UNDRIP is not included in the definition of ‘human rights’ under the *Human Rights (Parliamentary Scrutiny) Act 2011*, it provides some useful context on how human rights standards under international treaties apply to the particular situation of Indigenous peoples.

The Declaration promotes the right to self-determination for people of Aboriginal and Torres Strait Islander descent, and in particular for the Awabakal people, as it enables them to observe and take part in cultural practices on their own terms. The Declaration protects the specified area from actions that will adversely affect the use of the area for traditional Aboriginal activities, and preserves activities undertaken for the purposes of tradition, cultural practice, education, management, research, monitoring or rehabilitation undertaken by or led by Awabakal women. In this way, the Declaration enables the Awabakal people to determine how to enjoy their own culture in the declared area and to protect the cultural integrity of the area. This is particularly important as the declared area is currently under threat by development, land clearing and other measures that will increase public access to the declared area and the potential for disturbance to traditional activities within the declared area.

Relevantly, the Awakabal people have been involved in the process which has led to the Declaration. The application for the Declaration was made by the New South Wales Aboriginal Land Council (NSWALC) on behalf of the Awabakal Local Aboriginal Land Council.

Conclusion

The Declaration is compatible with human rights because it promotes the right to enjoy and benefit from culture, the right to education, and the right to equality and non-discrimination

through the protection and preservation of the declared area, and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

Mr James Christian
Chief Executive Officer
New South Wales Aboriginal Land Council
PO Box 1125
PARRAMATTA NSW 2124

Dear Mr Christian

I refer an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) seeking protection of the Butterfly Cave rock-shelter and surrounding area from injury or desecration as a result of the proposed subdivision and residential development of Appletree Grove Estate – Stage 7, 9 and 9, located within land owned by real estate developer, Hammersmith Management Pty Ltd, owned by Roche Group (Hammersmith/Roche Group).

I have carefully considered the application and evidence including the report by Dr Susan McIntyre-Tamwoy provided under section 10 of the ATSIHP Act. I have decided to make a declaration under section 10 of the ATSIHP Act in respect of part of the area specified in the application as shown and described in **Attachment A**. I have decided not to make a declaration under section 9 of the ATSIHP Act in regard to the area specified in the application.

The declaration will be published in the Commonwealth Gazette and in the Newcastle Herald. It will also be tabled in Parliament and registered as a significant Aboriginal area by the Australian Institute of Aboriginal and Torres Strait Islander Studies.

I have forwarded a copy of this letter to Hammersmith/Roche Group, Lake Macquarie City Council and NSW Minister for the Environment, Local Government and Heritage.

Yours sincerely

MELISSA PRICE

Enc: Section 10 declaration instrument – Butterfly Cave, West Wallsend (NSW)



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

s47F

Hammersmith Management Pty Ltd for Hammersmith / Roche Group
PO Box 325
DOUBLE BAY NSW 1360

Dear s47F

I refer to an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, s22 on s22 or ATSIHPA@environment.gov.au

Yours sincerely

MELISSA PRICE



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

s47F

Development Assessment and Compliance
Lake Macquarie City Council
126-138 Main Road
SPEERS POINT NSW 2284

Dear s47F

I refer to an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, s22 on s22 or ATSIHPA@environment.gov.au

Yours sincerely

MELISSA PRICE



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

The Hon Gabrielle Upton MP
Minister for the Environment, Local Government and Heritage
GPO Box 5341
SYDNEY NSW 2001

Dear Minister

I refer an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

I note your advice to the former Minister for the Environment and Energy, the Hon Josh Frydenberg MP on this matter dated 10 May 2018 and have carefully considered your advice as part of my deliberations.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, §22 on §22 or ATSIHPA@environment.gov.au

Yours sincerely

MELISSA PRICE



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

Mr Craig Ritchie
Chief Executive Officer
Australian Institute of Aboriginal and Torres Strait Islander Studies
GPO Box 553
CANBERRA ACT 2601

Dear Mr Ritchie

I refer to an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

Please find enclosed a copy of the declaration I have made in this matter for entry in the AIATSIS register of significant Aboriginal areas as required under section 14(2)(b) of the ATSIHP Act.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, s22 [REDACTED] on s22 [REDACTED] or ATSIHPA@environment.gov.au

Yours sincerely

MELISSA PRICE



Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019

I, Melissa Price, Minister for the Environment, make the following declaration.

wl Dated ³¹~~25~~ January 2019

Melissa Price
Minister for the Environment

Part 1—Preliminary matters

1 Name

This instrument is the *Aboriginal and Torres Strait Islander Heritage Protection (Butterfly Cave, West Wallsend, NSW) Declaration 2019*.

2 Commencement

This instrument commences on the day after registration.

3 Authority

This instrument is made under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

4 Definitions

In this instrument:

Act means the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

authorised person has the meaning given by subsection 6(5).

boundary line has the meaning given by item 1 of Schedule 1.

declared area means the area described in section 5 of this instrument.

Geocentric Datum of Australia 1994 (GDA94) means Australia's current national datum system. A geodetic datum is a system of latitude and longitude coordinates and reference points that is used to locate places on the Earth.

MGA94 means the Map Grid of Australia, the standard map projection associated with GDA94. It is a 'Cartesian coordinate system' which uses eastings and northings rather than latitude/longitude, and in which the world is divided up into 60 zones for reference.

land includes soil and vegetation.

Note: A number of expressions used in this instrument are defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, including the following:

- (a) Aboriginal;
- (b) area;
- (c) significant Aboriginal area.

Part 2—Declaration to preserve and protect a significant Aboriginal area

5 Declared area

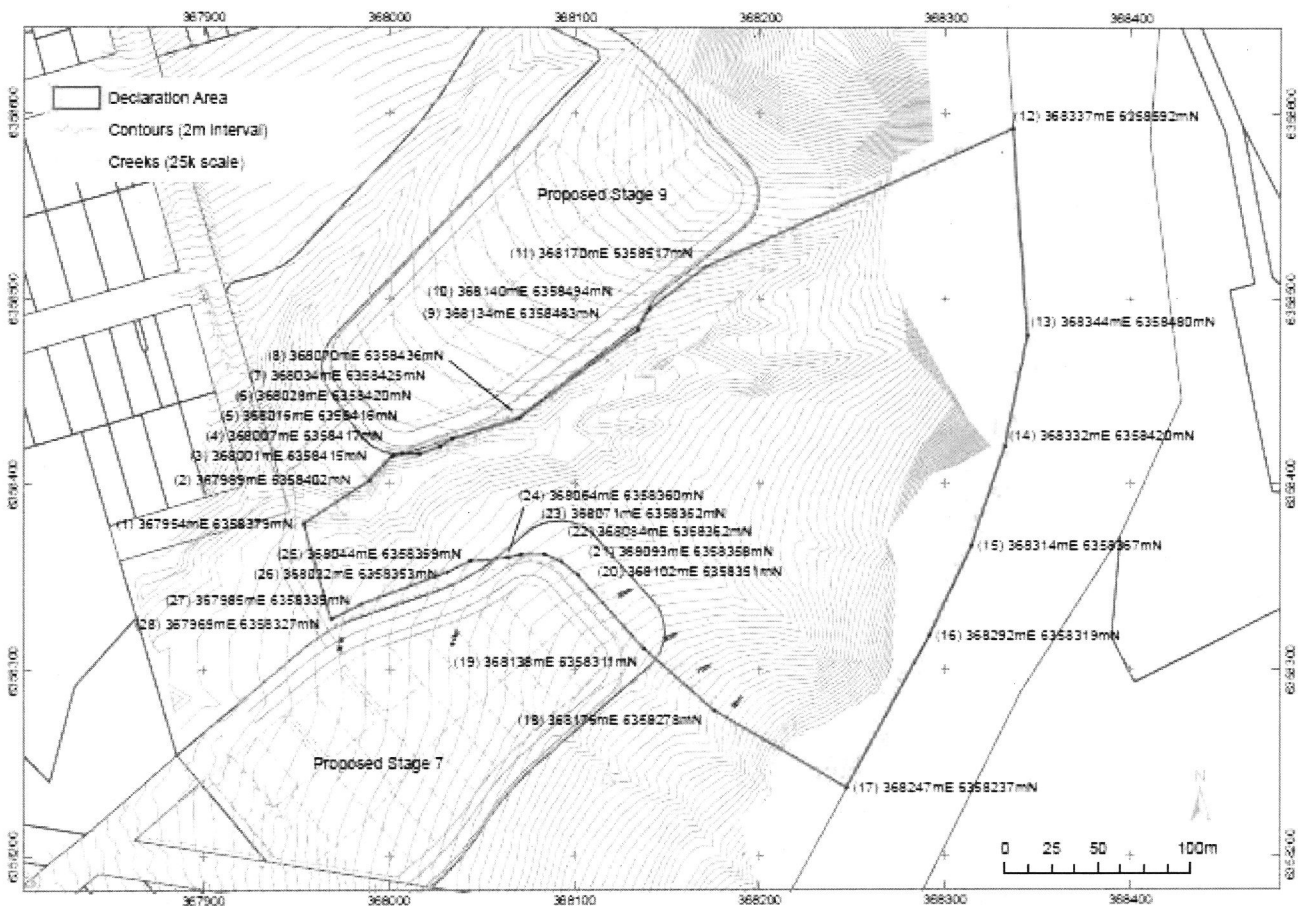
- (1) The area to which this declaration applies (the *declared area*) is the area bounded by the *boundary line*.

Note: The *boundary line* is defined in Schedule 1.

- (2) The position of the declared area is to be determined by reference to the Geocentric Datum of Australia 94 and MGA94.

Note: *Geocentric Datum of Australia* and *MGA94* are defined in section 4.

- (3) The following map illustrates the declared area:



6 Prohibitions and restrictions with respect to the declared area

(1) For section 10 of the Act, the declared area is a significant Aboriginal area that is to be preserved and protected from injury and desecration.

(2) A person must not do any act in, on or near the declared area that will, or is likely to, injure or desecrate the declared area.

Note: Subsection 3(2) of the Act relevantly states that for the purposes of the Act, an area shall be taken to be injured or desecrated if:

- (i) it is used or treated in a manner inconsistent with Aboriginal tradition;
- (ii) by reason of anything done in, on or near the area, the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or
- (iii) passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal Tradition.

Note: Under subsection 22(1) of the Act, a person commits an offence if the person engages in conduct that contravenes a provision of a declaration made under Part II of the Act in relation to a significant Aboriginal area.

(3) Without limiting subsection (2), a person must not:

- (a) pass through or over, or enter, the declared area; or
- (b) conduct any activity that will, or is likely to, damage or deface any rock or land in the declared area; or
- (c) bulldoze, grade, drill, excavate, cut, fill, blast, clear, demolish, tunnel, burn, remove, or otherwise damage land in the declared area; or
- (d) build or construct any road, building or structure in, or intruding into, the declared area; or
- (e) conduct any activity that will, or is likely to, disturb soil or vegetation in the declared area, [except where consistent with a plan of management made under the *National Parks and Wildlife Act 1974* (NSW) that has been endorsed by the Awabakal Local Aboriginal Land Council];
- (f) disturb vegetation on land surrounding the declared area in a manner that will increase the visibility of the area.

Note: Under subsection 22(1) of the Act, a person commits an offence if the person engages in conduct that contravenes a provision of a declaration made under Part II of the Act in relation to a significant Aboriginal area.

(4) Subsections (2) and (3) do not apply to acts done by an authorised person:

- (a) for the purposes of practising or observing Aboriginal traditions, observances, cultural practices, customs, or beliefs;
- (b) for the purposes of education, research, management, monitoring, revegetation, restoration or rehabilitation; or
- (c) where doing the act is authorised or required by law.

(5) A person is an **authorised person** in relation to the doing of an act if:

- (a) the person has received permission to do the act from the Awabakal Local Aboriginal Land Council; or
- (b) the person is authorised or required by law to do the act.

-
- (6) For the purposes of paragraph 5(b), a person is authorised or required by law to do an act if a plan of management under the *National Parks and Wildlife Act 1974* (NSW) that has been developed in consultation with, and endorsed by the Awabakal Local Aboriginal Land Council and that plan of management authorises or requires the doing of the act.
- (7) For the purposes of paragraph 5(b), subject to subsection (6), a person is not authorised or required by law to do an act merely because the person has received an approval, permission, authority or consent to undertake activities in connection with using or developing land in, on or near the declared area.

Schedule 1—Boundary line

1 Boundary line of the declared area

- (1) The *boundary line* is a line commencing at the point in item 1 of the following table and proceeding through each of the coordinates listed in column 1 of the table in the manner described in column 2 of the table:

Item	Column 1	Column 2
	The line runs from this point...	thence...
1	The whole of the area bounded by a line commencing at the point MGA Zone 56 367954mE and 6358379mN	and then generally north east to the point
2	367989mE and 6358402mN	then generally north east to the point
3	368001mE and 6358415mN	then generally north east to the point
4	368007mE and 6358417mN	then generally east to the point
5	368016mE and 6358416mN	then generally north east to the point
6	368028mE and 6358420mN	then generally north east to the point
7	368034mE and 6358425mN	then generally north east to the point
8	368070mE and 6358436mN	then generally north east to the point
9	368134mE and 6358483mN	then generally north east to the point
10	368140mE and 6358494mN	then generally north east to the point
11	368170mE and 6358517mN	then generally north east to the point
12	368337mE and 6358592mN	then generally south to the point
13	368344mE and 6358480mN	then generally south west to the point
14	368332mE and 6358420mN	then generally south west to the point
15	368314mE and 6358367mN	then generally south west to the point
16	368292mE and 6358319mN	then generally south west to the point
17	368247mE and 6358237mN	then generally north west to the point
18	368176mE and 6358278mN	then generally north west to the point
19	368138mE and 6358311mN	then generally north west to the point
20	368102mE and 6358351mN	then generally north west to the point
21	368093mE and 6358358mN	then generally north west to the point
22	368084mE and 6358362mN	then generally west to the point
23	368071mE and 6358362mN	then generally west to the point
24	368064mE and 6358360mN	then generally west to the point
25	368044mE and 6358359mN	then generally south west to the point
26	368032mE and 6358353mN	then generally south west to the point
27	367985mE and 6358335mN	then generally south west to the point
28	367969mE and 6358327mN	then generally north west back to the point of commencement

- (2) Directions included in the table in subitem (1) are indicative only.



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

The Hon Gabrielle Upton MP
Minister for the Environment, Local Government and Heritage
GPO Box 5341
SYDNEY NSW 2001

31 JAN 2019

Dear Minister *Gabrielle,*

I refer an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

I note your advice to the former Minister for the Environment and Energy, the Hon Josh Frydenberg MP on this matter dated 10 May 2018 and have carefully considered your advice as part of my deliberations.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, s22 on s22 or ATSIHPA@environment.gov.au

Yours sincerely


MELISSA PRICE



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

3 1 JAN 2019

s47F

Development Assessment and Compliance
Lake Macquarie City Council
126-138 Main Road
SPEERS POINT NSW 2284

Dear **s47F**

I refer to an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, **s22** on **s22** or ATSIHPA@environment.gov.au

Yours sincerely


MELISSA PRICE



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

Mr James Christian
Chief Executive Officer
New South Wales Aboriginal Land Council
PO Box 1125
PARRAMATTA NSW 2124

31 JAN 2019

Dear Mr Christian

I refer an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) seeking protection of the Butterfly Cave rock-shelter and surrounding area from injury or desecration as a result of the proposed subdivision and residential development of Appletree Grove Estate – Stage 7, 9 and 9, located within land owned by real estate developer, Hammersmith Management Pty Ltd, owned by Roche Group (Hammersmith/Roche Group).

I have carefully considered the application and evidence including the report by Dr Susan McIntyre-Tamwoy provided under section 10 of the ATSIHP Act. I have decided to make a declaration under section 10 of the ATSIHP Act in respect of part of the area specified in the application as shown and described in **Attachment A**. I have decided not to make a declaration under section 9 of the ATSIHP Act in regard to the area specified in the application.

The declaration will be published in the Commonwealth Gazette and in the Newcastle Herald. It will also be tabled in Parliament and registered as a significant Aboriginal area by the Australian Institute of Aboriginal and Torres Strait Islander Studies.

I have forwarded a copy of this letter to Hammersmith/Roche Group, Lake Macquarie City Council and NSW Minister for the Environment, Local Government and Heritage.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Melissa Price'.

MELISSA PRICE

Enc: Section 10 declaration instrument – Butterfly Cave, West Wallsend (NSW)



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS18-000701

Mr Craig Ritchie
Chief Executive Officer
Australian Institute of Aboriginal and Torres Strait Islander Studies
GPO Box 553
CANBERRA ACT 2601

31 JAN 2019

Dear Mr Ritchie

I refer to an application under sections 9 and 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (cth) (ATSIHP Act) on behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

Please find enclosed a copy of the declaration I have made in this matter for entry in the AIATSIS register of significant Aboriginal areas as required under section 14(2)(b) of the ATSIHP Act.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, s22 on s22 or ATSIHPA@environment.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Melissa Price'.

MELISSA PRICE



THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT

MS18-000701

s47F

3 1 JAN 2019

Hammersmith Management Pty Ltd for Hammersmith / Roche Group
PO Box 325
DOUBLE BAY NSW 1360

Dear s47F

I refer to an application under sections 9 and 10 of the
Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (cth) (ATSIHP Act) on
behalf of the Awabakal Local Aboriginal Land Council (the Applicant) in relation to an area
known as Butterfly Cave, West Wallsend, New South Wales (NSW), on 12 October 2016.

Please find enclosed a copy of my letter to the applicants informing them of my decision.

If you have any questions please contact departmental officer, s22 on s22 or
ATSIHPA@environment.gov.au

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Melissa Price'.

MELISSA PRICE



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS19-000106

Mr James Christian
Chief Executive Officer
NSW Aboriginal Land Council
PO Box 1125
PARRAMATTA NSW 2124

Dear Mr Christian

I refer to your request for a statement of reasons of 14 February 2019 in relation to my decisions of 31 January 2019 where I decided not to make declarations under section 9 and section 10(1) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* in respect of certain parts of the area for which the New South Wales Aboriginal Land Council sought protection on behalf of the Awabakal Local Aboriginal Land Council.

A statement of my reasons is enclosed.

A copy of my statement, redacting any culturally sensitive information, has also been provided to the Roche Group Pty Limited.

Yours sincerely

MELISSA PRICE

Enc: Statement of Reasons for Butterfly Cave.



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS19-000106

s47F

Roche Group PTY Limited
PO Box 325
DOUBLE BAY NSW 1360

Dear s47F

On 31 January 2019 I decided to make a declaration under section 10(1) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* to protect part of the area known as Butterfly Cave and its surrounds.

On the same date, I also made decisions not to make declaration under section 9 and section 10(1) in respect of certain parts of the area that were the subject of the application before me.

A statement of my reasons for this decision is enclosed. The redactions to this copy of the statement of reasons are undertaken to remove culturally-sensitive information.

Yours sincerely

MELISSA PRICE

Enc: Statement of Reasons for Butterfly Cave.



**THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT**

MS19-000106

Mr James Christian
Chief Executive Officer
NSW Aboriginal Land Council
PO Box 1125
PARRAMATTA NSW 2124

19 FEB 2019

Dear Mr Christian

I refer to your request for a statement of reasons of 14 February 2019 in relation to my decisions of 31 January 2019 where I decided not to make declarations under section 9 and section 10(1) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* in respect of certain parts of the area for which the New South Wales Aboriginal Land Council sought protection on behalf of the Awabakal Local Aboriginal Land Council.

A statement of my reasons is enclosed.

A copy of my statement, redacting any culturally sensitive information, has also been provided to the Roche Group Pty Limited.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Melissa Price'.

MELISSA PRICE

Enc: Statement of Reasons for Butterfly Cave.



THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT

MS19-000106

s47F

Roche Group PTY Limited
PO Box 325
DOUBLE BAY NSW 1360

19 FEB 2019

Dear s47F

On 31 January 2019 I decided to make a declaration under section 10(1) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* to protect part of the area known as Butterfly Cave and its surrounds.

On the same date, I also made decisions not to make declaration under section 9 and section 10(1) in respect of certain parts of the area that were the subject of the application before me.

A statement of my reasons for this decision is enclosed. The redactions to this copy of the statement of reasons are undertaken to remove culturally-sensitive information.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Melissa Price'.

MELISSA PRICE

Enc: Statement of Reasons for Butterfly Cave.