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APPENDICES

APPENDIX 1: ABORIGINAL COMMUNITY COMMENT



Our commitment is to serve the Aboriginal and Torres Strait Islander peoples and the broader community with our expertise in cultural, economic, social and spiritual services in order to achieve a better future for Indigenous Australians.

GANDANGARA

Local Aboriginal Land Council

Mr. Sam Moody
Biosis Research
18-20 Mandible Street
ALEXANDRIA NSW 2015

July 14, 2008

Dear sir,

REFERENCE: Rosehill Recycled Water Scheme

We acknowledge receipt of and thank you for your advice of 10 July.

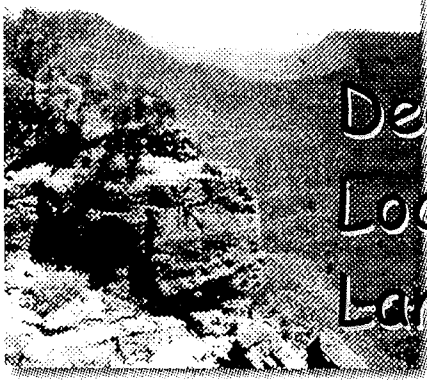
We confirm and register our interest and statutory responsibility pertaining to Aboriginal cultural heritage impacts conducted within our statutory boundary.

We look forward to further consultation as the project progresses.

Yours in the struggle,

Mark (Jack) Johnson
CEO and Solicitor

Phone: (02) 9602 5280
Email: markjohnson@glalc.org.au



Deerubbin Local Aboriginal Land Council

5/271 Beames Avenue
PO Box 3184
Mt Druitt Village
NSW 2770 Australia

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Email: Staff@Deerubbin.org.au
Web: <http://www.deerubbin.org.au>

Samantha Moody
Biosis Research Pty Ltd
18-20 Mandible Street
ALEXANDRA NSW 2015

14 July 2008

Subject: Protection of Aboriginal Cultural Heritage
Recycled Water Scheme
Rosehill

Dear Ms Moody,

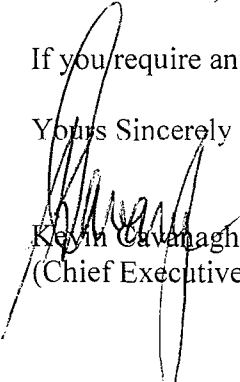
I refer to your letter of 10 July 2008

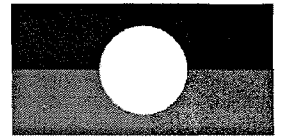
Deerubbin Local Aboriginal Land Council (Deerubbin LALC) would like to inform you, that the route for the proposed Recycled Water Scheme, Rosehill, that is within our Land Council boundary, is north of Parramatta Road, along Wentworth St, Martha St, Deniehy St, Shirley St, Unwin St, Colquhoun St, Devon St, then to the pumping station & reservoir on the corner of Durham St & Grand Parade, Rosehill. The highlighted roads on pages 211 & 212 of UBD Street Directory is our easterly boundaries.

Deerubbin LALC would like to take this time to register our requirement to participate in the Aboriginal Cultural Heritage Investigation within our Land Council Boundary of the Recycled Water Scheme, Rosehill.

If you require any further information, please contact our office.

Yours Sincerely


Kevin Cavanagh
(Chief Executive Officer)



Darug Tribal Aboriginal Corporation

PO Box 441 Blacktown NSW 2148

PH: (02) 9622 4081

Mobile 0431 343 021

Fax: (02) 9622 4081

Email: darug_tribal@live.com.au

ABN: 77 184 151 969

Tuesday, September 02, 2008

Dominic Brady

Archaeologist

Bios Research Pty Ltd

Cultural Heritage Assessment RE: Rosehill Recycled Water Scheme

D.T.A.C would like to thank you for allowing our input this report.

We would like it known that the area involved is the traditional lands of the Darug people.

Social value

To the Darug this area encumbers a lot of traditional meeting places of our ancestors in the teaching of our heritage and culture to our community which have been greatly reduced by the developments over decades and therefore what is left has a very spiritual significance to our community to be recorded photographed for future generations of our people and also the wider community.

Historic Value

Is that the association that the Darug community has with our traditional lands which we were forcibly removed from which stopped the use of these lands from our community for hunting, food gathering, meetings and educating our young and tool making?

Scientific Value

As these areas are being developed over the decades and with no proper research done at these times it is of great scientific value that we will be more aware and involved in what we are doing and will bring one of the Sydney Basin's Clans and with better research methods will give us a better understanding of what to look for.

Aesthetic Value

These areas had a very social value to our community as it was the centre of the Sydney Basin and with all other sites in the area it can be seen that this was a thriving part of day to day business for the Darug community for a host of reasons and usage.

Cultural Landscape

The white community classifies them as cities we classify it as a community and have always respected that the land would provide our food ,shelter, tools and meeting places for different clans to meet, swap arrange marriages this and the surrounding areas have always been one of the Sydney basins meeting places.

We at DTAC which is a nonprofit Corporation working for the Darug community would submit our interest in partaking part of this project as this site has a very high spiritual connection to our ancestors and this will be one of the last chances for us to properly record our Heritage and Culture for future generations of our people and the wider community.

All site workers have completed Cultural Heritage Management Workshops which subjects include:

- ❖ Artefact identification & recording
- ❖ Site identification & recording
- ❖ The Burra Charter
- ❖ Legislation
- ❖ Significance Assessment
- ❖ Management

They have been trained and posses white cards

Our site workers are all members of the Darug community and have meetings with our elders who explain the importance of the work they are doing & the part it has to do with recording the heritage & culture of our people.

We at DTAC believe our community must be trained in all aspects in trying to preserve our heritage & culture for the future generations of all Australians.

We would like it to be known were some Darug people work for their own interests all proceeds from the work we perform goes back to the Darug community to fund projects in the preservation of our Heritage and Culture for the education of the wider community.

We carry all insurances required.

If you require any further information please do not hesitate to contact me.

Hugs & Smiles

Sandra Lee

Secretary DTAC

www.darug.org.au

Darug the Traditional Custodians of the Sydney Basin

Dominic Brady

From: Alfred Sing [asing@glalc.org.au]
Sent: Friday, 19 September 2008 6:20 AM
To: Dominic Brady
Subject: RE: Rosehill Recycled Water Scheme
Importance: High

Howdy Dominic

I have had a chance to read through the report finally this morning! I am satisfied with the methodology and prepared to give support to it!

As discussed, we are therefore prepared to send one of our site monitor's out to assist in the methodology.

We hope that the above satisfies your requirements.

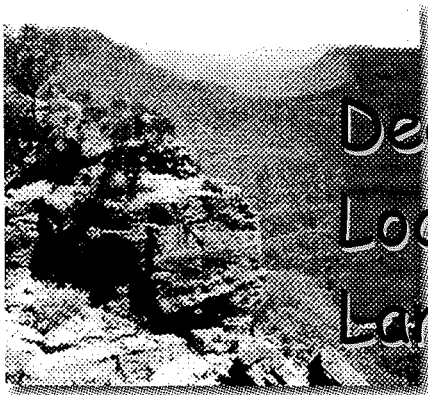
Please do not hesitate to contact me if you have any further issues!

Kind Regards

Alfred Sing

Property Manager & Solicitor
Gandangara Local Aboriginal Land Council

Ph: (02) 9602 5280
Fax: (02) 9602 2741
Email: asing@glalc.org.au



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Dominic Brady
Biosis Research Pty Ltd
18-20 Mandible Street
ALEXANDRIA NSW 2015

Our Reference: 1932

2 September 2008

**Subject: Protection of Aboriginal Cultural Heritage.
Rosehill Recycled water Scheme
Rosehill**

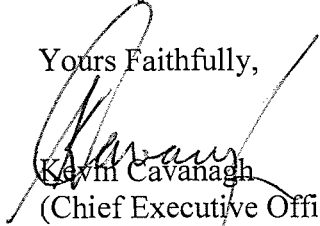
Dear Mr Brady,

Thank you for sending us a copy of the methodology for the Rosehill Recycled Water Scheme for assessment of Aboriginal cultural heritage potential

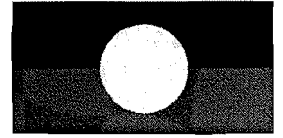
On the basis of the information you have provided to us, Deerubbin Local Aboriginal Land Council, (Deerubbin LALC) has no objections to the methodology for the abovementioned assessment, we look forward to working with you.

Should you wish to discuss this matter, please do not hesitate to contact the writer on 98322457.

Yours Faithfully,


Kevin Cavanagh
(Chief Executive Officer)

c.c. Laurel Alexander, Aboriginal Heritage & Planning Officer – Department of Environment & Climate Change



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Email: darug_tribal@live.com.au

ABN: 77 184 151 969

Tuesday, September 02, 2008

Dominic Brady

Archaeologist

Bios Research Pty Ltd

Cultural Heritage Assessment RE: Rosehill Recycled Water Scheme

D.T.A.C would like to thank you for allowing our input this report.

We are quite happy with the Methodology report and the work put into it and look forward to participating with you for the rest of this project.

Regards

Sandra Lee

Secretary D.T.A.C



GANDANGARA

local aboriginal land council

Mr. Dominic Brady
Biosis Research Pty Ltd
15-17 Henrietta St
CHIPPENDALE NSW 2008

November 3, 2008

Dear Mr. Brady,

REFERENCE: Rosehill Recycled Water Scheme: Aboriginal Archeological & Cultural Heritage Assessment

We acknowledge receipt of and thank you for a copy of the above report dated October 2008.

We support the three (3) recommendations provided for in the report under Part 7.0 and confirm the following qualifications:

Qualification 1.

A CHMP is developed to conduct sub-surface testing of any parts of this zone that will be impacted by the proposed development in order to determine if any potential Aboriginal heritage sites will be impacted. It is important to note that this area encompasses the location and immediate vicinity of an Aboriginal heritage site, an open site and associated PAD (site name: PC1; site identification: 45-5-3272).

The CHMP should also include provisions for the management and storage of any archaeological materials recovered during the sub-surface testing program.

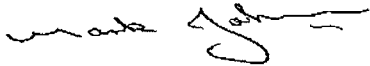
Qualification 2.

That the CHMP includes the requirement and procedures for managing any previously unidentified Aboriginal objects or places identified during any phase of the proposed development. It is recommended that, if any previously unidentified Aboriginal objects or places are identified during any phase of the proposed development, all works cease in the vicinity of the find, and the following agencies and statutory bodies notified:

- DECC; and
- Registered Aboriginal stakeholders: Deerubbin Local Aboriginal Land Council (DLALC); Gandangara Local Aboriginal Land Council (GLALC);

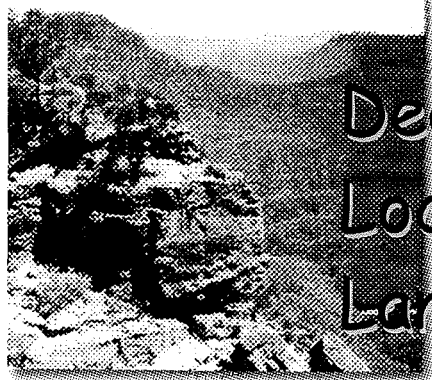
Should further confirmation be sought, please do not hesitate to contact the undersigned. We thank you for this opportunity and look forward to and further consultations on this matter.

Yours in the struggle,



Mark (Jack) Johnson
CEO and Solicitor

Phone: (02) 9602 5280
Email: markjohnson@glalc.org.au



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John Fisher
Infrastructure Development Group
Jemena
C/- Biosis Research Pty Ltd
18-20 Mandible Street
ALEXANDRIA NSW 2015

Our Reference: 1932

16 September 2008

**Subject: Protection of Aboriginal Cultural Heritage.
Rosehill Recycled Water Scheme
Rosehill**

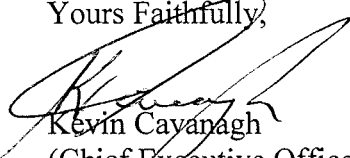
Attention: Dominic Brady,

As you are aware, a representative of Deerubbin Local Aboriginal Land Council (Steve Randall) inspected the Proposed Recycled Water Scheme on the 12th September 2008. An Aboriginal cultural heritage assessment was undertaken to evaluate the likely impact the proposed development has on the cultural heritage of the land.

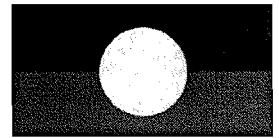
Our representative reports, the study area has been highly disturbed from past developments, with no Aboriginal cultural material (in the form of stone artefacts, for example) being found.

Deerubbin Local Aboriginal Land Council therefore recommends, no objection to the proposed Rosehill Recycled Water Scheme on the grounds of Aboriginal cultural heritage, however prior to any construction or activity that may disturb the topsoil, you shall arrange with Deerubbin LALC for our appropriately qualified representative to be present to monitor such works.

Yours Faithfully,


Kevin Cavanagh
(Chief Executive Officer)

c.c. Laurel Alexander, Aboriginal Heritage & Planning Officer – Department of Environment & Climate Change
c.c. General Manager, Parramatta City Council



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ABN: 77 184 151 969

Thursday, October 30, 2008,

Dominic Brady

Archaeologist

Biosis Research Pty Ltd

RE:Rosehill Recycled Water Scheme

DTAC have read the draft report

1. We believe from our representative Mr. John Riley that the field survey was one of the most comprehensive ones he has had pleasure in doing and has asked us to pass on his compliments
2. . The Aboriginal site registered with AHIMS, PC1 within the immediate vicinity of the study area are all of great value to future generations of our people as our Elders hold these places sacred as they are areas from where they can connect to our ancestors & must be preserved & treated with the upmost respect.
3. We have read the management recommendations & believe that are a very thorough & covers all aspects of the work to be carried out.

We believe that the report has been very well prepared & we at DTAC support all measures it has recommended for the work on this project.

Hugs & Smiles

Sandra Lee

Secretary DTAC

APPENDIX 2: LEGISLATION

COMMONWEALTH LEGISLATION

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

In January 2004 the Commonwealth *Australian Heritage Commission Act 1975* was repealed and in its place amendments to the EPBC Act were made. The amendments were contained in three new pieces of Commonwealth Heritage Legislation. The three new Acts are the:

1. Environment and Heritage Legislation Amendment Act (No. 1) 2003 which:
 - (a) amends the Environment Protection and Biodiversity Conservation Act 1999 to include 'national heritage' as a new matter of National Environmental Significance and protects listed places to the fullest extent under the Constitution
 - (b) establishes the National Heritage List
 - (c) establishes the Commonwealth Heritage List
2. Australian Heritage Council Act 2003 which establishes a new heritage advisory body to the Minister for the Environment and Heritage, the Australian Heritage Council, and retains the Register of the National Estate.
3. Australian Heritage Council (Consequential and Transitional Provisions) Act 2003 which repeals the Australian Heritage Commission Act, amends various Acts as a consequence of this repeal and allows for the transition to the new heritage system.

Any place that has been nominated and assessed as having cultural heritage significance at a national level can be added to the National Heritage List.

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) an action requires approval from the Federal Environment Minister if the action will, or is likely to, have a significant impact on a matter of national environmental significance. Matters of national environmental significance relating to cultural heritage are:

- World Heritage Places, and
- National Heritage Places.

An action includes a project, development, undertaking, activity, or series of activities.

Actions that are likely to have a significant impact on the environment of Commonwealth land (even if taken outside Commonwealth land), and actions taken by the Commonwealth that are likely to have a significant impact on the environment anywhere in the world, may also require approval under the EPBC Act.

NATIVE TITLE ACT 1993

The Commonwealth Native Title Act establishes the principles and mechanisms for the preservation of Native Title for Aboriginal people.

Under Subdivision P of the Act, *Right to negotiate*, native title claimants can negotiate about some proposed developments over land and waters (known as 'Future Acts') if they have the right to negotiate. Claimants gain the right to negotiate if their native title claimant application satisfies the registration test conditions.

The right to negotiate applies over some proposed developments or activities that may affect native title. These are known as future acts under the Native Title Act 1993. Native title claimants only have the right to negotiate over certain types of future acts, such as mining. Activities such as exploration and prospecting on the land do not usually attract the right to negotiate.

The right to negotiate is not a right to stop projects going ahead — it is a right to have a say about how the development takes place. In some situations, the right to negotiate does not apply. In these circumstances, claimants may have the right to be notified, to be consulted, to object and to be heard by an independent umpire.

The right to negotiate is triggered when a government issues a notice to say that it intends to allow certain things to happen on land, such as granting a mining lease. This notice is called a 'section 29 notice'.

People who claim to hold native title in the area, but have not yet made a native title claimant application, have three months from the date given in the section 29 notice to file a claim if they want to have a say about the proposed development. To get the right to negotiate, the claim must be registered within a month after that.

If the right to negotiate applies, the government, the developer and the registered native title parties must negotiate 'in good faith' about the effect of the proposed development on the registered native title rights and interests of the claimants.

The parties can ask the National Native Title Tribunal to mediate during the negotiations.

If the negotiations do not result in an agreement the parties can ask the Tribunal (no sooner than six months after the notification date) to decide whether or not the future act should go ahead, or on what conditions it should go ahead.

The National Native Title Tribunal administers the future act processes under the Commonwealth legislation. The Tribunal's role includes mediating between parties, conducting inquiries and making decisions (called 'future act determinations') where parties can't reach agreements.

When the Tribunal receives a future act determination application, it must conduct an inquiry (an arbitration) in order to determine whether the future act can be done and if so whether any conditions should be imposed.

A member of the Tribunal (or a panel of three members) will be appointed to conduct the inquiry, and will initially hold a preliminary conference and set directions for the parties to provide submissions and evidence. Members who have mediated a particular matter are not usually appointed as inquiry members. Inquiry members conduct hearings, receive submissions and evidence from the parties and take into account matters set out in section 39 of the Native Title Act such as:

- The effect of the future act on the enjoyment by the native title party of their registered native title rights and interests; their way of life, culture and traditions; the development of their social, cultural and economic structures; their freedom of access to the land and freedom to conduct ceremonies and other cultural activities; and the effect of the future act on any area or site of particular (special) significance to the native title party;
- The interests, proposals, opinions or wishes of the native title party;
- The economic or other significance of the future act;
- The public interest; and
- The presence of any existing non-native title rights and interests and use of the land by other persons (for instance, pastoralists).

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION ACT 1984

The Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* provides protection for Aboriginal cultural property. Whereas the State Act provides legal protection for all the physical evidence of past Aboriginal occupation, the Commonwealth Act deals with Aboriginal cultural property in a wider sense. Such cultural property includes any places, objects and folklore that ‘are of particular significance to Aboriginals in accordance with Aboriginal tradition’. There is no cut-off date and the Act may apply to contemporary Aboriginal cultural property as well as ancient sites.

PROTECTION OF MOVABLE CULTURAL HERITAGE ACT 1986

Australia's movable cultural heritage is protected at both Commonwealth and State levels. This web site only provides information on the Commonwealth laws.

In 1970 the United Nations Educational, Scientific and Cultural Organisation (UNESCO) adopted the UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property. Australia ratified the convention by passing the *Protection of Movable Cultural Heritage Act 1986* (the Act), giving the 1970 Convention force in Australian law.

The Act regulates the export of Australia's significant cultural heritage objects. It is not intended to restrict normal and legitimate trade in cultural property and does not affect an individual's right to own or sell within Australia.

It implements a system of export permits for certain heritage objects defined by the Act as 'Australian protected objects'. Australian protected objects are objects which form part of the movable cultural heritage of Australia and which meet the criteria established under the National Cultural Heritage Control List. The Control List is located in the Regulations to the Act, and divides Australian protected objects into two classes:

- Class A objects which may not be exported
- Class B objects which may be exported if granted a permit under the Act.

A person wishing to export a Class B object is required to apply for a permit in writing. Applications are processed in accordance with the legislative process established under section 10 of the Act.

Certificates of Exemption, granted under section 12 of the Act, allow Australian protected objects that are currently overseas to be imported into Australia and subsequently re-exported. This includes Class A objects.

The Act also includes provisions that allow Australia to respond to an official request by a foreign government to return movable cultural heritage objects that have been illegally exported from their country of origin.

The *Protection of Movable Cultural Heritage Act 1986* is administered by the Minister for the Environment and Heritage. This responsibility was transferred from the Minister for Communication, Information Technology and the Arts in November 2001.

The Movable Cultural Heritage Unit in the Department of the Environment and Heritage provides the Secretariat to the National Cultural Heritage Committee

STATE LEGISLATION

NATIONAL PARKS AND WILDLIFE ACT 1974

The *National Parks and Wildlife Act 1974* provides for the protection of Aboriginal objects (sites, relics and cultural material) and Aboriginal places. Under the Act (S. 5), an Aboriginal object is defined as:

any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

This includes individual artefacts, scatters of stone artefacts, rock art sites, ancient camp sites, human burials, scarred trees, and ruins and archaeological deposits associated with Aboriginal missions or reserves.

Aboriginal places (areas of cultural significance to the Aboriginal Community declared by the Minister) are protected under Section 84 of the Act.

Aboriginal objects (any material evidence of the Aboriginal occupation of NSW) are protected under Sections 86, 87 and 90 of the Act. Section 86 of the Act identifies that a person, other than the Director-General or a person authorised by the Director-General in that behalf, who:

- (a) *disturbs or excavates any land, or causes any land to be disturbed or excavated, for the purpose of discovering an Aboriginal object*

is guilty of an offence under the NPW Act.

The *National Parks and Wildlife Act* requires that a permit from the Director General be obtained before archaeological fieldwork involving disturbance to an Aboriginal heritage site is carried out. Consent is granted under section 87 and 90 of the Act. Queries and applications to excavate or disturb an Aboriginal archaeological site for purposes of archaeological fieldwork, should directed to the relevant Planning and Aboriginal Section Manager at the appropriate Environment Protection and Regulation Branch office.

Section 91 of the Act requires the mandatory reporting of the discovery of Aboriginal objects, and establishes a mechanism for interim protection orders that may be used to protect objects. Identified Aboriginal objects and sites are registered with the NSW Department of Environment and Conservation (DEC) on the Aboriginal Heritage Information Management System (AHIMS). DEC administers *the National Parks and Wildlife Act 1974*.

HERITAGE ACT 1977

The *Heritage Act* 1977 details statutory responsibilities for historic buildings and gardens, historic places and objects, historical archaeological sites, and historic shipwrecks. The Act is administered by the Heritage Council of New South Wales, through the NSW Heritage Office.

The aim of the Act is to conserve the ‘environmental heritage’ of the state, which includes items such as buildings, works, relics, moveable objects or precincts significant for historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic values. A ‘Place’ is defined as an area of land, with or without improvements and a ‘Relic’ is defined as any:

deposit, object or material evidence:

- (a) *which relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and*
- (b) *which is 50 or more years old.*

An excavation permit is required for any works, excavations or activities, associated with an archaeological site. Excavation permits are issued by the Heritage Council of New South Wales in accordance with sections 60 or 140 of the *Heritage Act*.

It is an offence to disturb or excavate land to discover, expose or move a relic without obtaining a permit from the NSW Heritage Council.

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- (1) *A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit.*
- (2) *A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit.*

Excavation permits are usually issued subject to a range of conditions that will relate to matters such as reporting requirements and artefact cataloguing, storage and curation. A permit may be required from the Heritage Council of NSW for works or activities associated with a registered place or object.

General queries about site issues and permit applications can be made to the archaeological officers at the Heritage Office. The contact details are:

NSW Heritage Office

3 Marist Place

PARRAMATTA NSW 2150

Ph: (02) 9873 8500

Fax: (02) 9873 8599

Consultation and discussion with the NSW Heritage Office should begin well before lodging an application for a permit to disturb or destroy a historical archaeological site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The *NSW Environmental Planning and Assessment Act* will have relevance for all development projects because it requires that environmental impacts are considered in land-use planning and decision making. The definition of 'environment impacts' includes impacts on the cultural heritage of the project area. The Act has three relevant parts: Part III, which governs the preparation of planning instruments; Part IV, which relates to development where consent is required under an environmental planning instrument (EPI); and Part V, which relates to activity where development consent is not required but some other government approval assessments are needed.

Under the Act, local government authorities and The Department of Infrastructure, Planning and Natural Resources (formerly Planning NSW) prepare local and regional environmental planning instruments (LEPs and REPs) to give statutory force to planning controls. These may incorporate specific provisions for conserving and managing archaeological sites.

Integrated Development Assessment (IDA) was introduced under the *Environmental Planning and Assessment Act* so that all matters affecting a development application would be considered by the consent authority in an integrated way.

Integrated Development is one which requires development consent as well as one or more approvals from different government agencies. Such agencies may include NSW DEC or the NSW Heritage Council. If a development is likely to impact a heritage item, the consent authority must refer it, to NSW DEC (for Indigenous objects) or the NSW Heritage Council (for sites listed on the State Heritage Register) prior to approval determination.

The Local Government Act 1993

Under the State Local Government Act, councils can prepare local approvals policies that set out specific matters for consideration in relation to applications to demolish, build or undertake works. Archaeological sites could be considerations under such policies.