

Appendix G

Initial Heritage Advice



MARY DALLAS
CONSULTING
ARCHAEOLOGISTS

CULTURAL RESOURCE ASSESSMENT, PLANNING AND MANAGEMENT

Jeff Bulfin
Precise Planning
PO Box 426
NORTHBRIDGE NSW 1560

Dear Jeff,

Re: 35 Egans Road - Due Diligence Aboriginal Heritage Assessment Requirements

It is understood you require a statement of Aboriginal heritage requirements for a potential rezoning proposal at 35 Egans Road, Oakdale. I have outlined below what is now required in NSW from a due diligence report through to a possible application for a s90 AHIP. I refer to various DECCW guidelines and policies.

Aboriginal heritage in NSW is afforded legal protection by the *National Parks & Wildlife Act* (1974) [the 'NPW Act'], the implementation of which is overseen by the *Department of Environment, Climate Change & Water* (DECCW¹). Aboriginal heritage is managed in relation to proposed development impacts by DECCW policies in relation to the NPW Act, State Government planning policies in relation to the *Environmental Planning & Assessment Act* (1979), and local government planning policies (LEPs, DCPs etc). Recent amendments to the NPW Act in 2010, and associated policy documents have resulted in a major change in the level and type of Aboriginal heritage investigations required in relation to proposed developments or other 'impacting' activities, most notably through the creation of a strict liability offence in relation to Aboriginal heritage, a Due Diligence investigation procedure as a defence to strict liability, and the removal of one of two types of permit previously required to investigate or impact Aboriginal heritage sites ('objects').

The NPW Act provides statutory protection for all Aboriginal 'objects' and 'places' where an 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" [Section 5(1)]

An Aboriginal place must be declared under Section 84 of the Act and be a place that:

in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place for the purposes of this Act." [Section 84].

The 2010 amendments to the NPW Act have retained an offence to knowingly *harm* an Aboriginal object [s86(1)] but greatly increased penalties for such offences. The amendments have also

¹ Originally known as the National Parks & Wildlife Service and in recent years as the Department of Environment and Conservation and Department of Environment and Climate Change.



introduced a new strict liability offence for any *harm* (i.e. knowingly or unknowingly) to Aboriginal objects [s86(2)] or Aboriginal places [s86(4)] without a valid and applicable Aboriginal Heritage Impact Permit under Section 90 of the Act. *Harm* is defined as:

"any act or omission that:

- (a) destroys, defaces or damages the object or place, or*
- (b) in relation to an object—moves the object from the land on which it had been situated, or*
- (c) is specified by the regulations, or*
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c)" [Section 5(1)]*

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object [s87(2)]. Due Diligence assessment can take a number of forms, including a generic process developed by the DECCW (2010a)² or one of an equivalent standard. An exemption is also provided for 'low impact activities' which result in unknowing damage to an Aboriginal object, including a range of common farm and track maintenance activities.

The Due Diligence assessment process outlined by DECCW (2010a) is very basic and designed not to require specialist archaeological or Aboriginal community input. Specifically, a search of the online version of the DECCW Aboriginal Heritage Information Management System Aboriginal Sites Register (the 'AHIMS Register') and potentially a brief consideration of landscape context are all that are strictly required (assuming no recorded Aboriginal sites are shown on the AHIMS Register as occurring within the area proposed for impact).

In reality however, given that such assessments are to provide a legal defence against the strict liability offence for *harm* to an Aboriginal object, any Due Diligence assessment should account for the known incompleteness, inadequacies and errors within the AHIMS Register, the potential for Aboriginal cultural/historical knowledge relating to particular areas and the specialist archaeological interpretation of landscape which may suggest the potential for as yet unrecorded Aboriginal heritage within a particular area. This will provide a more robust defence, and crucially, minimise the likely situations in which Aboriginal heritage may be encountered 'unexpectedly' during site works. In addition, it is important to consider the requirements of local council which often require assessment to be undertaken by a suitably qualified archaeologist and involve some level of Aboriginal community consultation. It is also worth noting that whoever prepares such assessments must take into account other sources of information of which they are aware (DECCW 2010a Page 11, Step 2a).

Recommended Process

MDCA's approach to these requirements is the preparation of a Preliminary Due Diligence Aboriginal Heritage Assessment to meet the requirements of Due Diligence as per the DECCW 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, including a determination of whether further archaeological investigation may be required in relation to the proposal. These will also take into account the requirements of local council (if the consent authority).

These Preliminary Assessments involve basic background research (including a full AHIMS Register search), preliminary site inspection and the preparation of a short letter-style report. Consultation with Aboriginal community representatives is not required under the Due Diligence Code, however the industry Code of Ethics³ to which MDCA subscribes, established best Aboriginal heritage practice, the development application requirements of some local Councils, and the requirements of the Land Rights Act and Native Title Act suggest that the

² See <http://www.environment.nsw.gov.au/licences/archinvestigations.htm>

³ See http://www.aacai.com.au/index.php?option=com_content&task=view&id=14&Itemid=27



involvement of the applicable Local Aboriginal Land Council and any Registered Native Title Claimant Organisation relevant to the study area is warranted.

If the Preliminary Assessment locates no items of Aboriginal heritage significance or potential then further assessment is not required and our report would be sufficient for submission with development application/re-zoning documents. If such items are located then a more comprehensive report detailing management options and more detailed Aboriginal consultation may be required.

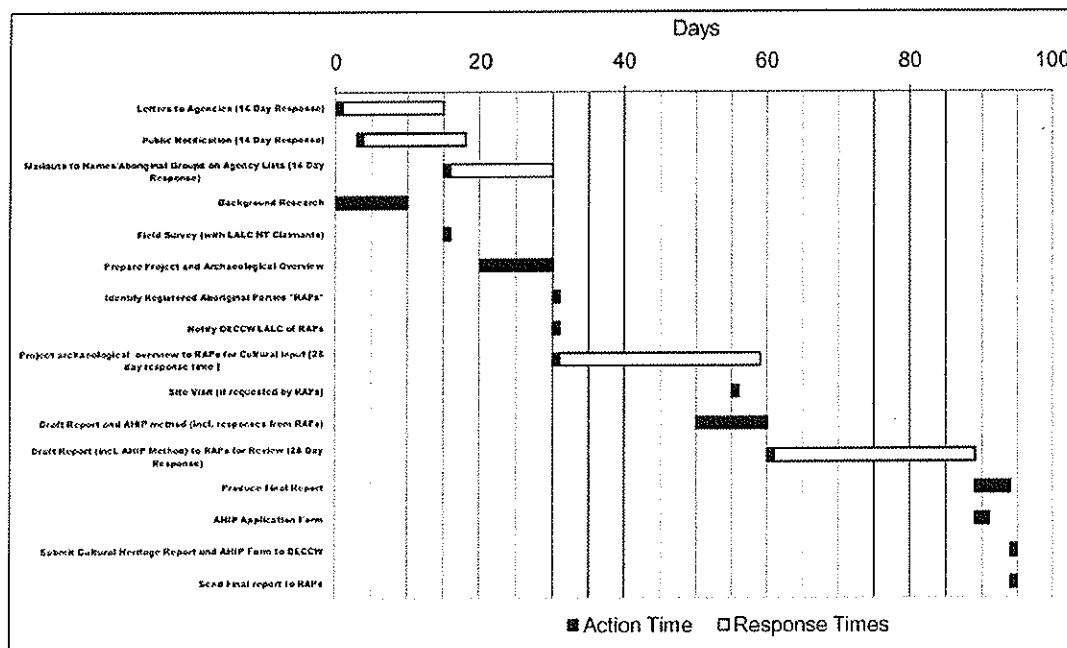
If impacts to Aboriginal objects are proposed, these require an Aboriginal Heritage Impact Permit (AHIP), applications for which must be accompanied by an Aboriginal Cultural Heritage Assessment report. This report documents the archaeological assessment of the study area and proposed impacts, in accordance with DECCW guidelines (2010b)⁴. The assessment must include full documentation of a prescribed process of Aboriginal community consultation in accordance with DECCW guidelines (2010c)⁵, which requires placing a public advertisement to seek expressions of interest in the project (or more precisely the AHIP to be sought) as well as directly notifying Local Aboriginal Land Councils and government agencies dealing with Aboriginal communities in the area. People or organisations can register as "Registered Aboriginal Parties" which provides them with a right to review and comment on aspects of AHIP applications, and to provide advice on Aboriginal cultural and historical significance.

AHIPs can be issued for specific objects or cadastral features (e.g. whole of lot) and can be staged by amendment to include provision for archaeological test excavations followed by salvage or impact. DECCW policy provides for archaeological test excavations to be carried out without an AHIP as long as undertaken in full compliance with the DECCW 2010 *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (2010b). The restrictive methodology in this Code however suggest that most AHIPs requiring initial archaeological test excavation will require a staged AHIP to appropriately meet project requirements and current industry best practice.

There are timing implications inherent in AHIP applications, particularly relating to required minimum response times for the Aboriginal community consultation public notification process. MDCA's approach is to structure the assessment to ensure that actions can be completed as soon as possible on expiration of response times as the chart table below demonstrate. As these demonstrate, a minimum total of 90-95 days from commencement can be anticipated prior to the lodgement of the AHIP application together with completed Aboriginal Cultural Heritage Assessment report. The DECCW application assessment process can then take up to 60 days, suggesting 5-6 months should be allowed for AHIP approvals from time of commissioning. It is noted that where these AHIPs may require archaeological test excavation to determine final management outcomes (where undertaken under an AHIP or not), several additional months may be required to ensure the completion of fieldwork, additional Aboriginal community consultation and (if required) the processing by DECCW of a variation on the initial AHIP for test excavation.

⁴ See <http://www.environment.nsw.gov.au/licences/archinvestigations.htm>

⁵ See <http://www.environment.nsw.gov.au/licences/consultation.htm>



Stage	Time Required	Concurrent Assessment Tasks
1. Identification of Registered Aboriginal Parties (RAPs) - public notification - direct contact with agencies (e.g. DECCW, DAA) - compilation of list of RAPs - notification of DECCW and local LALC of RAPs	30 days	- Background archaeological, environmental, historical research. - Site survey together with relevant LALC and any Registered Native Title Claimants. - Preparation of project overview information and summary of archaeological survey findings.
2. Send out project overview and summary of archaeological research/survey for review by RAPs. RAPs asked to provide any information on cultural significance relevant to the assessment. A possible additional step in this stage may be a site visit if requested by RAPs. This is not an archaeological survey but may be requested to allow RAPs to gain familiarity with the project site and/or the objects for which an AHIP is being sought. Payment of RAPs is not required by DECCW asks proponents to consider reimbursing "demonstrated reasonable out-of-pocket expenses".	30 days	- Prepare draft Aboriginal cultural heritage report and proposed method for any AHIP investigations/salvage/collection. - Incorporate RAP comments as received.
3. Send draft report (with incorporated RAP comments) to RAPs for final review	35 days	- Incorporate RAP comments as received. - Prepare AHIP application form.



		• Produce final report. • Submit final report and AHIP application to DECCW and RAPs.
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As should be clear from the above, beyond the initial Preliminary Assessment phase, a range of policy considerations are involved and scenarios will vary greatly between projects. MDCA's longstanding approach has been to tailor the specific needs of projects to efficiently meet these requirements. As such, on completion of the Preliminary Assessment, should further investigation be required, the options and processes for these would be discussed and outlined.

If you require explanation or clarification of the above, please do not hesitate to contact us.

Yours sincerely,

Mary Dallas
Principal Consultant
Mary Dallas Consulting Archaeologists
21.3.11

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Appendix H

Sydney Water Feasibility Advice



Case Number: 121356

6 October 2010

Precise Planning
c/- Robert Moore & Associates Pty Ltd

FEASIBILITY LETTER

Developer:	Precise Planning
Your reference:	100073
Development:	Lot 93 DP1000055 No.35 Egans Road, Oakdale
Development Description:	Subdivision of 1 lot into 30 torrens title lots
Your application date:	13 September 2010

Dear Applicant

This Feasibility Letter (Letter) is a guide only. It provides general information about what Sydney Water's requirements could be if you applied to us for a Section 73 Certificate (Certificate) for your proposed subdivision. **The information is accurate at today's date only.**

If you obtain development consent for that subdivision from your consent authority (this is usually your local Council) they will require you to apply to us for a Section 73 Certificate. You will need to submit a new application (and pay another application fee) to us for that Certificate by using your current or another Water Servicing Coordinator (Coordinator).

Sydney Water will then send you either a:

- Notice of Requirements (Notice) and Works Agreement (Agreement); or
- Certificate.

These documents will be the definitive statement of Sydney Water's requirements.

There may be changes in Sydney Water's requirements between the issue dates of this Letter and the Notice or Certificate. The changes may be:

- if you change your proposed development, e.g. the development description or the plan/site layout, after today, the requirements in this Letter could change when you submit your new application; and
- if you decide to do your development in stages then you must submit a new application (and pay another application fee) for each stage.

What You Must Do To Get A Section 73 Certificate In The Future.

To get a Section 73 Certificate you must do the following things. You can also find out about this process by visiting www.sydneywater.com.au > Building and Developing > Developing Your Land.

1. Obtain Development Consent from the consent authority for your subdivision proposal.

2. Engage a Water Servicing Coordinator (Coordinator).

You must engage your current or another authorised Coordinator to manage the design and construction of works that you must provide, at your cost, to service your subdivision. If you wish to engage another Coordinator (at any point in this process) you must write and tell Sydney Water.

For a list of authorised Coordinators, either visit www.sydneywater.com.au > Building and Developing > Developing Your Land or call **13 20 92**.

The Coordinator will be your point of contact with Sydney Water. They can answer most questions that you might have about the process and developer charges and can give you a quote or information about costs for services/works (including Sydney Water costs).

3. Major Works Agreement

After the Coordinator has submitted your new application, they will receive the Sydney Water Notice and Works Agreement. You will need to sign and lodge **both originals** of that Agreement with your nominated Coordinator.

The agreement sets out for this subdivision:

- your responsibilities;
- Sydney Water's responsibilities; and
- the Coordinator's responsibilities.

You must do all the things that we ask you to do in that Agreement. This is because lots in your subdivision do not have water and sewer services and you must construct and pay for the following works extensions under this Agreement to provide these services.

After Sydney Water has signed the documents, one of them will be returned to your Coordinator.

Note: The Coordinator must be fully authorised by us for the whole time of the agreement.

4. Water and Sewer Works

4.1 Water

Each lot in your subdivision must have:

- a frontage to a drinking water main that is the right size and can be used for connection; and
- its own connection to that water main and a property service (main to meter) that is available for the fitting of a meter.

Sydney Water has assessed your application and found that:

- The existing 100 mm DICL water main in Egans Road will serve lots 28, 29 and 30.
- **You must construct a water main extension to serve Lots 1 to 27.**
- **You must provide a water service connection and property service (also known as a "property service (main to meter)") at your cost for all lots off the water main construction required above and the existing water main in Egans Road and your Coordinator must manage the work. See section below for details.**
- The existing water property service and meter may be used as a property service (main to meter) for one of the proposed lots if it is located in an appropriate position. Your Coordinator will be able to provide further advice regarding this.
- **Property Service (Main to Meter) Installation Details**

The property service connection must be carried out by a Sydney Water listed Driller and the installation of the property service must either be carried out or supervised by a licensed plumber. They must meet the:

- (a) Administrative requirements of the New South Wales Code of Practice for Plumbing and Drainage; and
- (b) Sydney Water Property Service (Main to Meter) Installations Technical Requirements.

Before the Certificate can issue, your Coordinator must give Sydney Water:

- All the "Work as Constructed" information that shows what was constructed; and
- Certification that the property service works comply with Sydney Water's requirements.

4.2 Sewer

Each lot in your subdivision must have a sewer main that is the right size and can be used for connection. That sewer must also have a connection point within each lot's boundaries.

Sydney Water has assessed your application and found that:

- **You must construct a sewer main extension to serve Lots 1 to 30.**

5. Ancillary Matters

5.1 Asset adjustments

After Sydney Water issues this Notice (and more detailed designs are available), Sydney Water may require that the water main/sewer main/stormwater located in the footway/your property needs to be adjusted/deviated. If this happens, you will need to do this work as well as the extension we have detailed above at your cost. The work must meet the conditions of this Notice and you will need to complete it **before we can issue the Certificate**. Sydney Water will need to see the completed designs for the work and we will require you to lodge a security. The security will be refunded once the work is completed.

5.2 Entry onto neighbouring property

If you need to enter a neighbouring property, you must have the written permission of the relevant property owners and tenants. You must use Sydney Water's **Permission to Enter** form(s) for this. You can get copies of these forms from your Coordinator or the Sydney Water website. Your Coordinator can also negotiate on your behalf. Please make sure that you address all the items on the form(s) including payment of compensation and whether there are other ways of designing and constructing that could avoid or reduce their impacts. You will be responsible for all costs of mediation involved in resolving any disputes. Please allow enough time for entry issues to be resolved.

5.3 Costs

Construction of these **future** works will require you to pay project management, survey, design and construction costs **directly to your suppliers**. Additional costs payable to Sydney Water may include:

- water main shutdown and disinfection;
- connection of new water mains to Sydney Water system(s);
- design and construction audit fees;
- contract administration, Operations Area Charge & Customer Redress prior to project finalisation;
- creation or alteration of easements etc; and
- water usage charges where water has been supplied for building activity purposes prior to disinfection of a newly constructed water main.

Note: Payment for any Goods and Services (including Customer Redress) provided by Sydney Water will be required prior to the issue of the Section 73 Certificate or release of the Bank Guarantee or Cash Bond.

Your Coordinator can tell you about these costs.

OTHER THINGS YOU MAY NEED TO DO

Shown below are other things you need to do that are NOT a requirement for the Certificate. They may well be a requirement of Sydney Water in the future because of the impact of your development on our assets. You must read them before you go any further.

Stamping and approval of your building plans

Please note that the building plans must be stamped and approved when each lot is developed. This can be done at a Quick Check agency. For an agency list visit www.sydneywater.com.au > Building and Developing > Quick Check or call 13 20 92).

This is not a requirement for the Certificate but the approval is needed because the construction/building works may affect Sydney Water's assets (e.g. water, sewer and stormwater mains).

Your Coordinator can tell you about the approval process including:

- Possible requirements;
- Costs; and
- Timeframes.

Note: You must obtain our written approval before you do any work on Sydney Water's systems. Sydney Water will take action to have work stopped on the site if you do not have that approval. We will apply Section 44 of the Sydney Water Act 1994.

Backflow Prevention Water supply connections

A backflow prevention containment device appropriate to the property's hazard rating must be installed at the property boundary. The device is to be installed on all water supplies entering the property, regardless of the supply type or metering arrangements. It is needed to reduce the risk of contamination by backflow from these supplies.

A licensed plumber with backflow accreditation can advise you of the correct requirements for your property. To view a copy of Sydney Water's Backflow Prevention Policy and a list of backflow accredited plumbers visit www.sydneywater.com.au > Plumbing > Backflow Prevention.

The water service for your development

Sydney Water does not consider whether the existing water main(s) talked about above is adequate for fire fighting purposes for your development. We cannot guarantee that this water supply will meet your Council's fire fighting requirements. The Council and your hydraulic consultant can help.

You must make sure that each dwelling/lot has its own 20mm meter.

When access to the water supply is required, the property owner or agent must apply to Sydney Water online. Sydney Water must install a water meter before any water is used. It is illegal for anyone other than a Sydney Water employee to remove the locking mechanism on the water meter.

The online application can be found by visiting our website www.sydneywater.com.au > Plumbing. The applicant will need to have the:

1. Account (Property) Number which can be obtained from the Coordinator; and
2. Serial Number which can be found on the metal tag on your property service.

You can find more information by using the "Ask Sydney Water" section of our website.

Fire Fighting

Definition of fire fighting systems is the responsibility of the developer and is not part of the Section 73 process. It is recommended that a consultant should advise the developer regarding the fire fighting flow of the subdivision and the ability of Sydney Water's system to provide that flow in an emergency. Sydney Water's Operating Licence directs that Sydney Water's mains are only required to provide domestic supply at a minimum pressure of 15 m head.

Disused Water Service Sealing

You must pay to disconnect all disused private water services and seal them at the point of connection to a Sydney Water water main. This work must meet Sydney Water's standards in the NSW Code of Practice for Plumbing and Drainage (the Code) and be done by a licensed plumber. The licensed plumber must arrange for an inspection of the work by a NSW Fair Trading Plumbing Inspection Assurance Services (PIAS) officer. After that officer has looked at the work, the drainer can issue the Certificate of Compliance. The Code requires this.

Disused Sewerage Service Sealing

Please do not forget that you must pay to disconnect all disused private sewerage services and seal them at the point of connection to a Sydney Water sewer main. This work must meet Sydney Water's standards in the NSW Code of Practice for Plumbing and Drainage (the Code) and be done by a licensed drainer. The licensed drainer must arrange for an inspection of the work by a NSW Fair Trading Plumbing Inspection Assurance Services (PIAS) officer. After that officer has looked at the work, the drainer can issue the Certificate of Compliance. The Code requires this.

Soffit Requirements

Please be aware that floor levels must be able to meet Sydney Water's soffit requirements for property connection and drainage.

Other fees and requirements

The requirements in this Notice relate to your Certificate application only. Sydney Water may be involved with other aspects of your development and there may be other fees or requirements. These include:

- plumbing and drainage inspection costs;
- the installation of backflow prevention devices; and
- council fire fighting requirements. (It will help you to know what the fire fighting requirements are for your subdivision as soon as possible. Your hydraulic consultant can help you here.)

No warranties or assurances can be given about the suitability of this document or any of its provisions for any specific transaction. It does not constitute an approval from Sydney Water and to the extent that it is able, Sydney Water limits its liability to the

reissue of this Letter or the return of your application fee. You should rely on your own independent professional advice.

END

Appendix I

GMS - Oakdale Structure Plan

