

These sites tend to be located near water sources and include artefact scatters, rock engravings and art sites.

5.4 Predictive Model

The above information indicates that it is highly likely that sites will be located on the subject site. It is located close to water and lithic resources for the manufacture of stone tools are located nearby. Historically the area provided an abundance of resources to enable the Darug to live comfortably off the land. Such resources included stone material for stone tool manufacture and rock outcrops to sharpen axes, a variety of plant and animal material for food plus fresh water for drinking and the provision of fish and other seafood. Many sites have been located in the area indicating that large groups of people lived in the area.

The study area itself would have been an ideal camping and foraging location given its proximity to fresh water.

It is possible that artefacts made from chert and silcrete could be located on the site. Such artefacts would be characterised by the residue from stone tool making and could include tools such as small blades and points. It is also possible that ground edge axes could be located on the site. However, to locate such artefacts a high ground visibility is required (ie, a landscape which is not completely covered in grasses which make it impossible to see the ground surface where artefacts may be located).

As there are no actual sandstone outcrops or platforms located on the subject site it is not expected that art sites, shelters or rock engravings would be located.

In addition, as the area has been denuded of original vegetation and utilised for grazing for many years, it is not expected that scarred or carved trees would be located on the site. The only trees remaining within the study area have been planted in more recent years.

6.0 RESULTS

No Aboriginal objects, artefacts or sites were located during the course of the survey. However, this lack of sites could not be considered a true indication of the Aboriginal cultural landscape within the study area. The dense ground cover precluded the possibility of locating any artefacts or artefact scatters and affected the detectability of artefacts.

Given the dense cover of grass the only manner in which to accurately determine the presence or otherwise of artefacts is through a program of sub-surface testing across the study area.

Such testing should focus on the areas of high ground in the centre and to the north of the study area and on the flat land to the south.

7.0 LEGISLATION

National Parks & Wildlife Act 1974

The National Parks & Wildlife Act (NPW Act) provides statutory protection to all Aboriginal objects or sites within New South Wales. The Department of Environment and Conservation (DEC) is the State Government agency responsible for the implementation and management of this Act.

Part 6 of the NPW Act provides provision for protection of all "Aboriginal objects" which are defined as "any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of... New South Wales..."

In particular, Section 90 (Part 6 of the NPW Act) states that it is illegal to knowingly destroy, deface or damage an Aboriginal object without first obtaining the written consent of the Director-General.

If development work commences on the site without the recommended program of sub-surface testing and an Aboriginal object or site is uncovered, work will have to cease in the vicinity of that object or artefact whilst advice is being sort from the Department of Environment and Conservation. This could potentially cause lengthy delays to the development timetable.

If an Aboriginal object or site is damaged or disturbed during development work without the prior consent of the Department of Environment and Conservation, penalties will occur. Such penalties can include fines and/or imprisonment.

Therefore a program of sub-surface testing is strongly recommended to ensure that Aboriginal objects, artefacts or sites are not inadvertently damaged during development. Such prior program of sub-surface testing will also ensure that delays do not occur once development has commence.

Section 87 (Part 6 of the NPW Act) details the provisions for the issue of written consent to impact upon an Aboriginal object. According to DEC policies, such permission may be issued for research or other purposes once a detailed assessment of the object has been undertaken which clearly outlines the justification for such disturbance and once satisfactory consultation has been undertaken with the relevant Aboriginal community or people.

To undertake the program of sub-surface testing as recommended in this report a Permit under Section 87(1) of the *National Parks & Wildlife Act 1974* will need to be applied for. This report provides the required assessment as to the reason for such permit application.

The Section 87(1) permit under Part 6 of the *National Parks & Wildlife Act 1974* should be applied for from the Department of Environment and Conservation. A copy of the permit application form is attached at Appendix B. The permit application should be completed by the archaeologist who will be undertaking the program of sub-surface testing and should be accompanied by:

- A copy of this report.
- Proof that adequate consultation has been undertaken with the relevant Aboriginal community, in accordance with DEC's "Interim Community Consultation Requirements for Applicants", a copy of which is attached at Appendix C. These guidelines require extensive consultation including advertising in the local newspapers seeking comment on the proposed program of sub-surface archaeological excavation (see Part B, page 5 in the guidelines attached at Appendix C).
- A cheque for the fee as outlined in the permit application shown at Appendix B.

Applying for a permit is a lengthy process. The consultation phase would take a minimum of one month. Once the permit application with proof of consultation is submitted to DEC, it can take up to eight weeks for DEC to process the application (therefore, there is a minimum of three months to undertake consultation and obtain the permit, however, it is most likely that it will take longer). Once the permit is issued, sufficient time should be allowed for the program of sub-surface testing, before development of the site begins. Therefore, it is important that the proponent allow sufficient time for the consultation and sub-surface testing to occur prior to any development of the site to ensure that delays to the commencement of the development do not occur.

8. RECOMMENDATIONS FOR ABORIGINAL HERITAGE

The following recommendations are made on the basis of:

- Legal requirements under the terms of the National Parks & Wildlife Act 1974 (as amended) which states it is an offence to damage or destroy an Aboriginal item without first gaining the consent of the Director of the NSW National Parks & Wildlife Service.
- Consultation with the Deerubbin Local Aboriginal Land Council, Darug Tribal Aboriginal Corporation, Darug Aboriginal Custodian Organisation
- Research into the archaeological record for the Cumberland Plain area in general and the Emu Plains area in particular.
- Results of the site survey and assessment as outlined in this report.

IT IS THEREFORE RECOMMENDED THAT:

1. Due to the poor ground visibility which prevented the possibility of determining the presence or otherwise of Aboriginal artefacts or objects on the subject land that a program of sub-surface testing be undertaken prior to any development of the subject site. Once such sub-surface testing is completed, further management recommendations will need to be formulated in relation to the proposed development and management of any sites located.
2. Such sub-surface testing be undertaken in consultation with the Deerubbin Local Aboriginal Land Council, Darug Tribal Aboriginal Corporation, Darug Aboriginal Custodian Organisation.
3. A permit should be applied for from the Department of Environment and Conservation (as outlined in Section 7 of this report) to undertake such sub-surface testing.
4. Development of the site should not occur until such sub-surface testing has been completed and further recommendations formulated. It is possible that Aboriginal objects or stone artefacts will be located within the study area. It is an offence to damage or disturb these objects without first obtaining the permission of the Department of Environment and Conservation
5. One copy of this report should be forwarded to each of the following organisations:

The Chairperson
Deerubbin Local Aboriginal Land Council
PO Box 3184
Mt Druitt Village NSW 2770

Ms Leanne Wright
Darug Aboriginal Custodian Organisation
PO Box 36
Kellyville NSW 2155

Ms Celestine Everingham
Darug Tribal Aboriginal Corporation
90 Hermitage Road
KURRAJONG HILLS NSW 2758

6. One copy of this report should be forwarded to:

The Aboriginal Sites Registrar
Aboriginal Heritage Information and Management System
Department of Environment and Conservation
PO Box 1967
Hurstville NSW 2220

SECTION C: NON-ABORIGINAL HERITAGE

9. HISTORICAL DEVELOPMENT

9.1 Brief History of Emu Plains

On 26 June 1789 Captain Watkin Tench, an officer of the Royal Marines, and a small party set out on an expedition to explore the western parts of the colony, beyond the areas investigated by Governor Phillip earlier in the month. Phillip's aim was to assess the land's characteristics and potential for cultivation. At this stage in the colony's development, settlement did not extend to the Blue Mountains. What is now known as the Nepean River was reached on 27 June and the potential of the land to the west of the river, later known as Emu Plains, was considered. They travelled north along the river seeing evidence of Aboriginal occupation and recent flooding (Tench 1788 cited in Stacker 2000: 1).

Tench reported to Governor Phillip that the land was 'tolerably plain' but would cause little hindrance to settlers who sought to cultivate it. In December 1789 Lieutenants Dawes and Johnson were next to visit the location aiming to explore the western side of the river. They crossed at the ford, to the north of the site reached by Tench. They traversed the plain and then continued for about 15 miles into the mountains (Tench 1788 cited in Stacker 2000: 1-2).

Sir John Jamison and Dr Robert Townson showed interest in the land at Emu Plains and on arrival in the colony both applied for land grants. Jamison eventually received a grant on the eastern side of the Nepean River. In 1806 Governor Bligh banned settlers from crossing the Nepean however it appears that in July 1808 'rebel' Governor Lieutenant George Johnston had granted much of the land at Emu Plains to his son, George as well as 500 acres to William Lawson. Governor Macquarie revoked the grants in 1810. The Colonial Secretary's Papers indicate however that settlers were grazing cattle at Emu Island in 1812 and a General Order against trespassing of cattle was issued (CSP 11 Apr 1812 State Records NSW). In February 1813 it was again announced that the land was to be exclusively used for Government cattle and another warning was posted (CSP, SRNSW).

Emu Plains is thought to have been named based on the sighting of many emus, wrongly identified as cassowaries, in the area. Tench made a note of 'cassowaries' on the map he prepared of the area (Stacker 2000: 2-3). Early records sometimes refer to the site as 'Emu Island' although it is debated whether it appeared to be island-like during times of flood and that the course of the river has now changed somewhat; or that the name was not meant literally and referred to the open area of the plain. Gregory Blaxland who saw the area in 1813 stated then that it was not an island at all. Governor Macquarie made the same comment on his tour in April 1813 and suggested that the name be changed. It later became known as 'Emu'. The name 'Emu Plains' was formalised in July 1814 when plans were made to construct a road over the Blue Mountains (Stacker 2000: 2-3).

Preparations for the crossing of the Blue Mountains had been made since 1813 and while work was in progress in 1814 no one was permitted to cross the ford without an official pass. A hut was built at Emu Plains as a depot for stores and tools and William Cox proceeded to survey and mark out the proposed route over the mountains (Stacker 2000: 4). The road building by convicts commenced at the ford and proceeded over the plain and onto Lapstone Hill. The road was completed in January 1815 (Stacker 2000: 4-5). Cox's road over the Mountains traversed Emu Plains in a south-westerly direction from the ford to ascend the slopes steeply. The Old Bathurst Road surveyed by Sir Thomas Mitchell ran in a westerly direction from the ford. This also proved too difficult for bullock teams and Mitchell laid out a third route up Lapstone Hill 1833 (Fox & Associates 1991: 28).

A more permanent base for journeys to Bathurst was then established at Emu Plains. This involved rounding-up wild cattle, land clearance, construction of a cottage and huts, stables and stockyards for the horses and bullocks necessary for the arduous journey. Joseph Greenhatch, who had cleared the land, also grew some wheat for his own use. Macquarie reported on the progress at the site on his journey to Bathurst in April 1815 stating that the ford was safe and the Nepean only about 6 inches (150mm) deep in this section. He inspected the site again in October of that year and was pleased with the progress of the Government herds which now included 480 heifers (Stacker 2000: 6).

The Great Western Road from Parramatta to Emu Ford was completed on 24 January 1818 and tolls were imposed (CSP SRNSW). In the following year Macquarie established a convict farm at Emu Plains, considered to be a suitable site due to its good soil and relative isolation. The aim of the Government Agricultural Establishment was to be a place of hard labour while providing convicts with agricultural training that would hopefully 'reform' them (Stacker 2000: 9). Richard Fitzgerald, an ex-convict, was appointed as superintendent of Emu Plains and the farm was equipped with carpenters, a blacksmith, tools and stores with which to build accommodation for 200 convicts and barracks for the soldiers (Stacker 2000: 11-13).

In September 1819 Fitzgerald reported to Macquarie that nearly 2000 acres of the land at Emu Plains would be suitable for cultivation. In December 1820 a house referred to as Government House was constructed for the Superintendent and included accommodation for the Governor (Stacker 2000: 13-14). The farm was soon productive and deemed by Macquarie and others to be a success (Stacker 2000: 16). By 1822 there were several substantial buildings including a 1 ½ storey-brick residence for the Superintendent and the Governor as well as cottages, barracks, guard house, lock-up, a granary, store, two barns and log huts for up to 500 convicts. Crops grown there included tobacco, wheat, maize, potatoes, turnips, peas and beans (Stacker 2000: 18-19). Female convicts were sent to Emu Plains in 1822 however it was soon discontinued despite good reports as to the improved behaviour of the male convicts (Stacker 2000: 27). This settlement, including Government House was located to the south east of the present study area.

In 1825 a French visitor, René Primevère Lesson wrote that 'the land was once covered by great trees, while at the present time it is bare'. What attracted his attention when Emu Plains was reached,

...is the residence of the Superintendent of the Crown Farm., situated on an eminence, and not far from which are located the convict huts, that, surrounded by tree, form a kind of pleasant little village in the midst of the regularity of the plain. Most of the bark huts that served to shelter the workmen when the land was being cleared still stand. The farm buildings, the stables the cattle shed and the gardens have been located near the river (cited in Mackaness 1965: 146-50).

Superintendents employed at the farm during its operation included, Lieutenant Peter Murdoch 1822-4), Alexander Kinghorne 1824-6), James Kinghorne 1826-9), John Maxwell 1829-31) and James Smith Acting Superintendent 1831). Each had a different management style and developed the establishment in different ways. Some superintendents attracted attention from critics of the establishment. Despite physical and social changes the farm maintained its productivity. During Alexander Kinghorne's tenure he arranged for the wheat to be milled at a mill that he had constructed on a property at Castlereagh, across the river. He also constructed a threshing machine on the Emu Plains farm (Stacker 2000: 39). In 1825 Kinghorne approved the construction of a theatre and production of plays by convicts 1825 & 1830), in the process creating 'quite a stir in the colony' (Riviere 1825: 187. cited in Stacker 2000: 43). Not all activities or farming developments were approved of by successive Governors or by the growing community of free settlers and pastoralists.

In November 1827 James Kinghorne reported to Governor Ralph Darling on the farm's progress. A total of 2,700 acres had been cleared and fenced of which 1,112 acres was under cultivation or laid down with English or native grasses. Pasture amounted to 1,587 acres. The crops grown included wheat 175 acres), maize 141 acres), tobacco 10 acres), flax 5 acres) and grass for haymaking 78 acres). Livestock included horses, cattle, oxen, sheep and pigs (Stacker 2000: 50, 52). During 1828 convict 'invalids, cripples and idiots' were housed at Emu Plains and some were employed in physical tasks (Stacker 2000: 54).

By 1830 The Emu Plains Agricultural Establishment had become somewhat run down and was reduced to 100 convicts with little emphasis on agricultural production and focusing more on the management of Government herds. The idea and objectives behind the establishment of the convict farms had become obsolete (Stacker 2000: 62, 67). After a series of disputes, discussions began between John Maxwell, the Superintendent, Governor Darling and the Secretary of State about the abolition of the farm or alternatively its remodelling to improve its efficiency (Stacker 2000: 79). Operations at the farm were reduced but it was kept running. Emu Plains also served as a base for the Mounted Police and for road gangs and it was of some convenience for Darling to maintain it as long as possible (Stacker 2000: 80).

The catalyst for the eventual closure of the farm was a dispute between Maxwell and the Mounted Police over who had certain rights on the farm. Several reports prepared by Maxwell at this time indicate how many men worked at the farm, agricultural production, government stock, building work carried out, timber sawn and provisions made for the Mounted Police (Stacker 2000: 80-81). Preparations were made to reduce all activities and Maxwell resigned on 31 March 1831. General Returns of Stock, final returns for the farm and an inventory by the Board of Survey were prepared prior to the establishment's closure (Stacker 2000: 84-5).

The establishment was now to cater for the Mounted Police and Road gangs only. In November 1831 surplus stock was sent to other sites or sold (Stacker 2000: 86). The Emu Plains Agricultural Establishment was finally closed on 31 August 1832. In the late 1820s and early 1830s the 'forces of private enterprise', together with the growing free population had formed a powerful lobby group calling for convict farms such as that at Emu Plains to be closed down and this was achieved in 1831 (Stacker 2000: 94). The Farm had operated for thirteen years with its peak of production and efficiency in 1825. Its survival through four successive Governors, combined with the changing priorities of the English administration, is evidence of the overall success of the venture and the skills of the farm's Superintendents.

Further details and a comprehensive analysis of the Emu Plains Government Agricultural Establishment can be found in Lorraine Stacker's, 'Chained to the Soil on the Plains of Emu: a Emu History of the Plains Government Agricultural Establishment 1819-1832', published by the Nepean District Historical Society (2000). It includes a detailed bibliography.

The Village of Emu was laid out by Surveyor H.F. White in May 1832. Land was to be sold as town allotments and 20 ha farms as advertised in the Government Gazette of 30 July 1832. The present day Gough, Jamison,

Russell, Brougham, Grey and Bedford Streets are evidence of the original town layout. It was located at a distance from the low-lying alluvial flats and from the main road over the mountains. The area developed slowly except for the inns located on the main road and there appeared little interest in Emu Plains other than for farming (Fox & Assoc 1991: 1) 22).

The Mounted Police continued to use the Farm's buildings and land. The place soon became run-down. A description by Baron Charles von Hugel of Emu Plains in June 1834 depicted it as,

...once being covered with trees and then entirely cleared by the Government, which established a farm here and built the Government House for the officials. This house is distinguished by its ugliness and dilapidation. In the distance a few farm buildings may be seen, but these, as well as the garden, which must have cost a great deal of labour to establish, are in a bad state. The Government has given up all these farms, and this one here will be put up for public auction as soon as the new pass to the last descent of the Blue Mountains is completed.

Von Hugel also noted that the site for the new town was ill-planned, being too far from the Nepean and with no spring (Hugel cited in Stacker 2000: 94-5). Emu Plains continued to be an agricultural district with land taken by orchards, market gardens and dairy farms. It also developed as a market for livestock brought from Western NSW. Inns thrived as a significant number of travellers and stockmen required accommodation and stores prior to or following their trek over the mountains (Stacker 2000: 95). St Paul's Church of England School opened in 1848, indicating that the population was large enough to require and support a church and school.

A bridge over the Nepean took some time to come to fruition. Toby Ryan of Emu Hall, and entrepreneur and farmer made two attempts. The first bridge built in 1855 was washed away by floodwaters soon after its construction and the second failed in 1860 under similar circumstances. John Whitton the Chief Engineer of the NSW Railways then designed the Victoria Bridge to carry both rail and road traffic (Fox & Associates 1991: 28). Construction was commenced in 1867. In October 1867 the town of Emu was extended by Mort & Co in anticipation of the railway and the potential of residential development that often followed the railway's path.

The railway reached Emu Plains in June 1867, and Emu Station, on the south side of the old Bathurst Road opened on August 1868. A new railway station building with stationmaster's residence upstairs was built in 1886 (www.penrithcity.nsw.gov.au). The railway clearly had an impact on population growth with the numbers rising at a steady rate towards the end of the century.

Year	Emu Plains population
1861	107
1871	136
1881	530
1891	642

Table 1: Population data for Emu Plains

Source: WA Coghlan's Census data as shown in Fox and Associates 1991: 52)

An indication of further development in Emu Plains is the establishment of an alluvial gravel pit by the Emu Gravel Company in 1884 of 46 acres on the Nepean River, opposite 'Bird's Eye Corner'. It later became the Emu & Prospect Gravel Company after opening several other quarries (www.westernsydneylibraries.nsw.gov.au/transport/rail.html). During the construction of Warragamba Dam from 1946 a cable was built from Emu Plains to the site to carry blue metal for the dam wall (Fox & Assoc 1991: 49; Parliamentary Return of Landholders District: Windsor Town Emu 1885).

The Emu Plains Prison Farm was established in 1914 on 43 hectares set aside for this use. It is located to the east of the site that is the subject of this report. The site's selection would have been based on its relative isolation from Sydney and the semi-rural environment where inmates could learn various farm related trades. Its establishment encouraged some minor economic and residential in Emu Plains (www.penrithcity.nsw.gov.au/index). Now known as Emu Plains Correctional Centre the site was a prison farm for male offenders for 80 years until it was converted in 1994 into a minimum-security centre to prepare female inmates for release from prison (www.parliament.nsw.gov.au/prod/parliament/hansart.nsf).

9.2 Brief History of the subject site

The site that is the subject of this report was granted to Charles York c.1805-1861), a free settler of Penrith, later of Emu Plains and Mount York. The land at Emu, totalling 55 acres 2 roods and 6 perches was granted by Major General Richard Bourke on 23 September 1833. Portion 149 as it became known was advertised on 18 March 1833 as Lot 6 of 56 acres. York paid £155/10/1 for the site that extended from the Nepean River in the north to Bathurst Road in the south (Lands Dept Serial 32 p.8). York owned several other blocks in Emu including Portions 65, 54 and 59. Later Russell Street was constructed on the site's western boundary.

It is not known how York used the land at Emu although it is likely that it was farmed. York married Maria Chalker 1811-1884) in 1826 at St Lukes, Liverpool. Charles York died in 1861 at Emu Plains, aged 56 years. As shown in *Greville's Post Office Directory* Maria York continued to live at Vine Cottage, Emu Plains until at least 1872. The name 'Vine Cottage' suggests that the family might have operated a vineyard or there was one nearby. The Primary Application for the property indicates that William John Ferguson was in possession of the property possibly as executor) on 12 January 1886, several years after Maria's death. In April of that year the property was conveyed from William Ferguson and James Thomas York one of Charles and Maria's sons) to George Nash. On 18 September 1905 Eliza Nash George Nash's wife) leased the property to Frederick Carter (Lands, PA No 33267).



Figure 6: A map of the Parish of Strathdon, dated 1888, showing land now known as Emu Plains, including Portion 149 owned by Charles York
 Source: Lands Dept Image: 14027401 PMap MN02)

George Nash sold the property to Martin Gilligan in 14 November 1911 (Lands Book 951 No 83). At various times the property was used as security or mortgaged. In 1916 Annie Elizabeth Stephens appears to come into possession of the site and in April 1917 sold it to Anne Dobson (Lands, Book 1107 No 512). Anne's husband Harry Albert Dobson d.7/7/1949) was a farmer at Emu Plains. An option for the lease of the land was taken out by Clarendon Nepean Sands Ltd in February 1935. It is not known if this proceeded (Lands PA No 33267), however large quantities of alluvial sand would have been required for the Sydney building industry and this type of enterprise would have been profitable.

The site was converted to Torrens Title in September 1937. In 1949 the property was transferred to Harry Albert Dobson, the Younger, also a farmer, Edith Muriel Dobson, Jessie Louise Dobson and Florence Marion Dobson, all of Emu Plains and presumably Anne and Harry Dobson's children. Part of the site was leased to the Metropolitan Water Sewerage and Drainage Board in 1952 and a portion resumed by the Electricity Commission in 1962, for a transmission line. In 1963 Harry A. Dobson Jr, Annie Margaret Dobson,

Jessie Louise Dobson and Florence Marion Dobson held the title (Lands Vol 5050 Fol 171).

In 1966 a major portion of the site Lot 4 DP 574650) was transferred to the Blacktown and Districts Plumbing and Draining Company Limited, changing its name to Carthona Properties Pty Ltd in 1975 (Lands Vol 10271 Fol 250).

Evidence of historic structures being constructed on the site such as a house or cottage could not be located. It appears from the historical record that the land was used solely for grazing and that the owners lived in other locations. Animal pens may have been constructed on the site. The convict Agricultural Station and other associated historical buildings were not located on the subject site. They were located to the south east of the subject site.

10. RESULTS

Non-Aboriginal (historic) archaeological sites were not located on the property and it is highly unlikely that any sub-surface historical archaeological remains would exist. The historical evidence as detailed above does not indicate that any formal historic structures were located on the site.

Evidence of structures for animal pens or sheds were located (see Figure 4 and Photographs 14 & 15), but these are not significant and do not need to be retained. They appear to be of more recent construction.

A horse drawn scoop was located near the above structures (Photograph 14). This scoop was used for digging dams and roadworks. A horse drawn plough was used first to plough up the road or dig the dam and the scoop was then used to remove or "scoop up" the loose dirt and gravel. This scoop could be donated to a local Museum or used as a feature in the proposed industrial development.

Whilst the site demonstrates the continuity of agricultural and pastoral activities in Emu Plains since it was cleared for farming and grazing in 1819, it could not be considered a significant cultural landscape.

11. LEGISLATION

There are two sections of the Heritage Act which are relevant to the present study:

Protection of relics and deposits

All historical cultural remains over 50 years old are classed as a relic under the *Heritage Act 1977*. 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"

Under Sections 139 and 140 of the *Heritage Act 1977* a person may not disturb or excavate land to discover, expose or move a relic without first obtaining the permission of the Heritage Council.

As there is no indication that there are any sub-surface "relics" and it is highly unlikely that any historical relics will be uncovered by any proposed development of the subject site, there is no need to apply for a permit.

Whilst the horse drawn scoop would be over 50 years, as it is above ground, it is not classed as a "relic" by the NSW Heritage Office, and can be removed without a permit. The scoop would not be assessed of State significance and therefore it is not necessary to consider nominating it for listing on the State Heritage Register.

State Listed Items

Part 3A, Section 31 of the *Heritage Act 1977* provides that a State Heritage Register is to be maintained by the NSW Heritage Council. Items can only be listed or removed at the Direction of the Minister.

Section 57 (1)(a-h), Part 4 of the *Heritage Act 1977* states that it is an offence to damage, move, destroy or despoil a place listed on the NSW Heritage Register.

A search of the NSW Heritage Register indicates that the subject site is not listed on the State Heritage Register.

8.3 Penrith City Council Local Environmental Plan

The Penrith City Council Local Environmental Plan (LEP) protects items which are listed in the LEP's Heritage Schedule. The LEP provides protection for heritage items from demolition, damage or removal.

The subject site is not listed on the LEP.

12. RECOMMENDATIONS FOR HISTORIC HERITAGE

The following recommendations are made on the basis of:

- Legal requirements under the provisions of Section 139 of the *Heritage Act 1977*, which states that a relic may not be disturbed or excavated.
- Research into the archaeological and historical record of the area as detailed in this report.
- Results of the archaeological survey detailed in this report.

IT IS THEREFORE RECOMMENDED:

1. That there is no constraint, upon historical archaeological grounds, to the proposed rezoning and future redevelopment of the site. however, it should be noted that there are constraints in respect of Aboriginal archaeology. Please see Section B of this report.
2. That no further historical archaeological work or assessment is required in respect of the proposed rezoning or redevelopment, unless any previously undetected sites are located. If that does happen, please refer to recommendations 3-4 below. Again, please note that further sub-surface testing is required in respect of Aboriginal archaeology.
3. The horse drawn scoop located on the property could be donated to a local Museum or used as an interpretative feature within the new development.
4. If any previously undetected historical archaeological site or relic is unearthed or uncovered, work must cease in the vicinity of that site or relic and advice sought from Council's Heritage Advisor and/or the New South Wales Heritage Office on a suitable course of action.
5. All employees and/or contractors engaged in the future redevelopment of the site should be advised that it is an offence under the *Heritage Act 1977* to disturb or excavate a relic.
6. One copy of this report should be forwarded to:

The Librarian
The NSW Heritage Office
Locked Bag 5020
Parramatta 2124

SECTION D:

COMBINED SUMMARY OF RESULTS AND RECOMMENDATIONS

13. SUMMARY OF RESULTS

No Aboriginal objects, artefacts or sites were located during the course of the survey. However, this lack of sites could not be considered a true indication of the cultural landscape within the study area. The dense ground cover precluded the possibility of locating any artefacts or artefact scatters and affected the detectability of artefacts.

No non-Aboriginal (historic) relics were located during the course of the survey. The historical research indicates that it is highly unlikely that any sub-surface archaeological remains or relics would be located on the subject property.

14. SUMMARY OF RECOMMENDATIONS

1. Due to the poor ground visibility which prevented the possibility of determining the presence or otherwise of Aboriginal artefacts or objects on the subject land it is recommended that a program of sub-surface testing be undertaken prior to any development of the subject site.
2. Such sub-surface testing should be undertaken in consultation with the Deerubbin Local Aboriginal Land Council, Darug Tribal Aboriginal Corporation, Darug Aboriginal Custodian Organisation.
3. A permit should be applied for from the Department of Environment and Conservation (as outlined in Section 7 of this report) to undertake such sub-surface testing.
4. Development of the site should not occur until such sub-surface testing has been completed and further recommendations formulated. It is possible that Aboriginal objects or stone artefacts will be located within the study area. It is an offence to damage or disturb these objects without first obtaining the permission of the Department of Environment and Conservation.
5. As no non-Aboriginal (historic) archaeological sites were located on the subject site and it is highly unlikely that any historic sites will be located on the subject land, there is no requirement for any further archaeological assessment in respect of non-Aboriginal (historic) archaeology.
6. The horse drawn scoop located on the property could be donated to a local Museum or used as an interpretative feature within the new development.