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Mr Ryan Falkenmire
PORT STEPHENS COUNCIL
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Our File No: EF20/16189
Our Ref: DOC20/646664
Your ref: DA16-2020-81-1

Email: ryan.falkenmire@portstephens.nsw.gov.au

Dear Mr Falkenmire

DEVELOPMENT APPLICATION REFERRAL, 17A Irrawang Street, Raymond Terrace – Kings Hill Water and Wastewater Infrastructure – Water Reticulation System and Sewerage System, PORT STEPHENS COUNCIL LGA (DA16-2020-81-1)

On 28 July 2020, Port Stephens Council referred a response to submissions (RTS) document prepared by Arcadis for the above project. That document responded to comments and recommended conditions to manage a historical archaeological item listed on the Local Environmental Plan (LEP) as set out in a letter dated 6 April 2020 from the Heritage Council of NSW. The referral was made under Clause 5.10 of the Port Stephens LEP 2013 for the Irrawang Pottery Site – Item A4.

The referred application is 'designated development' within the meaning of the *Environmental Planning and Assessment Act 1979*. The Application seeks approval to construct a water and wastewater supply pipeline and waste-water pumping station supporting the Kings Hill Urban Release Area.

Arcadis and their heritage consultants met with Heritage NSW and Port Stephens Council on 25 August 2020. The meeting discussed the RTS and aimed to clarify requirements to conduct Aboriginal archaeological testing in direct proximity to the historical archaeological site. The site contains potential for archaeological evidence of Aboriginal occupation which may post-date 1788, known as 'post contact archaeology'. HNSW notes that the Irrawang Pottery site has a large curtilage which include the homestead of the Pottery owner – Mr James King, a significant historic figure in NSW. These two sites form part of a continuous landscape as they are directly related (King being the owner of the Pottery), although the physical relationship and how it is interpreted was recently interrupted by the construction of the Pacific Highway.

Following the meeting of 25 August, Arcadis issued a Memo to Port Stephens Council and Heritage NSW on Friday 28 August 2020. The memo provides an updated response to Heritage NSW amending its previous commentary in the RTS. Arcadis supports all conditions, with a slight amendment requested for Condition 3, to clarify the wording. HNSW agreed that an amendment to condition 3 could be possible provided the same intent, to ensure that any outcomes required from Heritage Act 1977 approvals (if issued) are maintained through the condition. The disturbance of this significant LEP listed heritage item needs to be appropriately linked to the Port Stephens Council consent to ensure that any final excavation results are reported.

Heritage NSW reiterates our previous advice dated 6 April 2020 and reiterated at the meeting of 25 August, that the project should continue to refine its impacts to avoid as much as possible any disturbance to the Kings Homestead (associated outbuildings) as part of the Irrawang Pottery site.

HNSW also notes that depending on the results of the s140 excavation permit for testing and the ultimate alignment and impact of the pipeline, a further s140 application may be required for the project. If a further approval under s141 of the *Heritage Act 1977* were required, the project would need to clearly outline how it has been amended to avoid as much as possible impacts to the site.

The recommended conditions have been slightly amended to reflect the possibility of two s140 excavation permits being linked to the Development Consent, ensuring any results are linked via Condition 3. The further amendment is shown in bold text below.

The conditions are repeated below to Council with further amendment to Condition 3:

Recommended conditions of consent:

1. Prior to any ground disturbance works occurring on the site, the Applicant shall engage a suitably qualified historical archaeologist to undertake a detailed historical archaeological assessment of the site. An archaeologist familiar with significant early Colonial potters and pottery sites would be preferred. The Assessment shall comply with Heritage Council of NSW guidelines including but not limited to Assessing Significance for Historical Archaeological sites and Relics 2009 and Archaeological Assessments 1996. This assessment should identify what relics are likely to be present, assess their significance (also considering previous archaeological studies) and consider the impacts from the proposal on the resource. A program of archaeological testing/investigation to adjust the alignment of the pipeline away from significant archaeological relics should form part of this program.
2. The Applicant will need to obtain an approved s140 application under the Heritage Act 1977 prior to any ground disturbing activities commencing. That application must clearly outline all mitigation measures are proposed to avoid harm to any significant deposits associated with the Irrawang Pottery site. The application must include appropriate strategies to manage avoidance of State significant archaeology associated with the Irrawang Pottery site.
3. Prior to the commencement of operational use of infrastructure, the Applicant shall supply a copy of written correspondence from the Heritage Council of NSW or its delegate confirming that their requirements under **all** Heritage Act 1977 approvals **have been satisfied**.

Reasons: The subject site has potential to contain historical archaeological relics, which are protected under s.139 of the Heritage Act 1977. The Applicant must obtain an approval under s.141 of the Heritage Act 1977 prior to any harm occurring to relics. If more than one s140 is required for the project, the final reporting commitments linked to the approvals should be delivered prior to commencement of the infrastructure under condition 3 above.

If you have any questions regarding the above matter please contact Felicity Barry, Senior Historical Archaeologist, at Heritage NSW, Department of Premier and Cabinet by email at Felicity.Barry@environment.nsw.gov.au.

Yours sincerely



2 September 2020

Dr Siobhan Lavelle, OAM
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AS DELEGATE OF THE NSW HERITAGE COUNCIL OF NSW

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