Appendix F

Aboriginal cultural heritage

Sydney CityGrid Project

Aboriginal Cultural Heritage Assessment

May 2008

A Report to PlanCom Consulting Pty Ltd

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EXECUTIVE SUMMARY

The Project

Over the next 10 years EnergyAustralia needs to construct new, or upgrade and refurbish existing, zone substations and replace high voltage cables supplying the substations. The project comprises two elements, the Sydney CityGrid Project (Concept Application) and the Belmore Park Zone Substation Project Application.

As part of the environmental assessment for the above, a detailed heritage impact assessment (Aboriginal and non-Indigenous) was required be carried out, including an assessment on impacts on areas of archaeological potential. This report provides the results of the Aboriginal cultural heritage component of that assessment.

Findings

Sixteen previously recorded Aboriginal sites have been located in the vicinity of the proposed Sydney CityGrid Project.

No Aboriginal sites or objects were identified during this investigation.

Recommendations

- It is concluded that the potential for Aboriginal sites to be present within the area of impact associated with the proposed Sydney CityGrid Project is low to negligible and as a consequence, no further archaeological investigation is required;

- It is recommended that the limited potential for remnant and dispersed Aboriginal artefacts to occur be considered when the excavations associated with the proposed tunnel connections and/or extensions where there are interfaces with surface facilities or surface facilities are proposed for the proposed project occur. The availability of appropriately trained archaeological personnel should be arranged prior to the commencement of any historical excavation; and

- In the unlikely event that Aboriginal relics are uncovered by construction or excavation works, it is recommended that a response strategy be adopted and incorporated into contingency management plans prior to the commencement of works.

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1. INTRODUCTION

1.1 Project Description

Peak electricity demand in the Sydney CBD is growing at an average rate of 1.7% per annum driven primarily by new residential, hotel and office developments. Over the next 10 years EnergyAustralia needs to construct new, or upgrade and refurbish existing, zone substations and replace high voltage cables supplying the substations in order to:

- Meet n-2 license conditions;
- Cater for future demand and introduce new technologies that are likely to reduce electricity 'losses' by reducing the resistance of the electricity network; and
- Ensure timely replacement of infrastructure which is due for retirement to maintain a reliable supply of electricity for the CBD.

Building works would include the construction of up to three zone substations (including, if necessary, the demolition and/or refurbishment of existing zone substations and would most likely include integrated commercial/retail developments on or in conjunction with the zone substations). The Project also involves the construction of up to three new tunnel sections in the Sydney CBD, and the city fringes, which would 'link' the existing tunnel networks and key zone substations servicing the city together. Figure 1.1 shows the City East Cable Tunnel (Proposed Horizontal Alignment Options) together with the locations of the current and proposed substations, etc.

The project comprises two elements, the Sydney CityGrid Project (Concept Application) and the Belmore Park Zone Substation Project Application. The components of these two elements are outlined below.

Sydney CityGrid Project (Concept Application)

New and/or refurbished substations in the Sydney CBD and a tunnel network for 132kV cables comprising:

1. Extension to the existing City South Cable Tunnel from Wade Place to Riley Street, Surry Hills (approximately 150 m);
2. Stub tunnel connection from the existing City South Cable Tunnel (nominally 20 m below Campbell Street) to Belmore Park Zone Substation;
3. Belmore Park Zone Substation, encompassing commercial/retail development (at the corner of Pitt, Hay and Campbell Streets);
4. City East Cable Tunnel (approximately 3.2 km) from Riley Street, Surry Hills to Erskine Street, City North, inclusive of potential ventilation shaft and services at a midway along the alignment;
5. City East Zone Substation, potentially encompassing commercial/retail development (at a site yet to be determined);
6. New Sub-transmission Switching Station (STSS) at Riley Street, Surry Hills, and potentially a tunnel services control and access to the City East Cable Tunnel (in the alternative the control and access would be located at a midway point along the tunnel alignment); and
7. Potential refurbishment or replacement of the existing Dalley Street Zone Substation or building at a nearby site (including possible use of 183-185 Clarence Street as a switching station).

1. Belmore Park Zone Substation, encompassing commercial/retail development (at the corner of Pitt, Hay and Campbell Streets); and

2. Stub tunnel connection from the existing City South Cable Tunnel (nominally 20 m below Campbell Street) to Belmore Park Zone Substation.

As part of the environmental assessment for the above, a detailed heritage impact assessment (Aboriginal and non-Indigenous) was required be carried out, including an assessment on impacts on areas of archaeological potential.

This report provides the results of the Aboriginal cultural heritage component of that assessment.

1.2 Legislative Basis

On 11 February 2008, the Minister for Planning, Frank Sartor MP, in pursuance of section 75B(1) of the *Environmental and Assessment Act 1979*, declared the development described below as a project to which Part 3A of that Act applies.

Development by EnergyAustralia for the purposes of upgrading the electricity supply network in the Sydney Central Business District (known as the 'Sydney CityGrid Project'), located within the City of Sydney local government area, and involving:

1. construction and operation of up to three new zone substations (including, as necessary, the demolition and/or refurbishment of existing zone substations, and the construction and use of commercial and/or retail developments on, adjacent to, or integrated with, the new zone substations);

2. The refurbishment and augmentation of existing zone substations;

3. The replacement of, and upgrades to, EnergyAustralia's existing high voltage cable network;

4. The construction and use of tunnels for the installation and operation of high voltage cables and associated cables and other infrastructure; and

5. The construction, operation and use of associated works, including ventilation shafts and access structures,

generally in the locations, or following the route, shown on the indicative map prepared by EnergyAustralia dated December 2007 and titled 'Sydney CityGrid Project' (Figure 1.1).

1.3 Report Outline

This report:

- Documents consultation with Aboriginal organisations carried out in the course of the investigation;
- Describes the methodology employed in the cultural heritage assessment;
- Describes the environmental setting of the study area;
- Provides a background of local and regional archaeology for the study area;
- Documents the results of a field survey of the study area;
- Summarises the statutory requirements relevant to the Aboriginal cultural heritage of the Sydney CBD study area; and
- Provides management considerations and recommendations based on the results of the investigation.

2. ABORIGINAL PARTICIPATION

The Sydney CBD falls within the boundaries of the Metropolitan Local Aboriginal Land Council (MLALC). That Land Council was contacted in writing and by telephone to inform them of the project and to organise representation during the field survey.

Unfortunately, the MLALC sites officer was unavailable to attend on the day of the survey. As such, in a telephone conversation with the MLALC office it was determined that a draft copy of this report would be sent to the Land Council for review with an invitation to comment on the Sydney CityGrid Project and the conclusions and recommendations drawn from this heritage study.

Consequently, on 2 June 2008, a draft copy of this report was sent to the MLALC with an invitation to comment on it. Subsequent to follow-up discussions with the MLALC, another copy of this report was sent on 24 June 2008. As at 25 July 2008, no response has been received from that organisation.

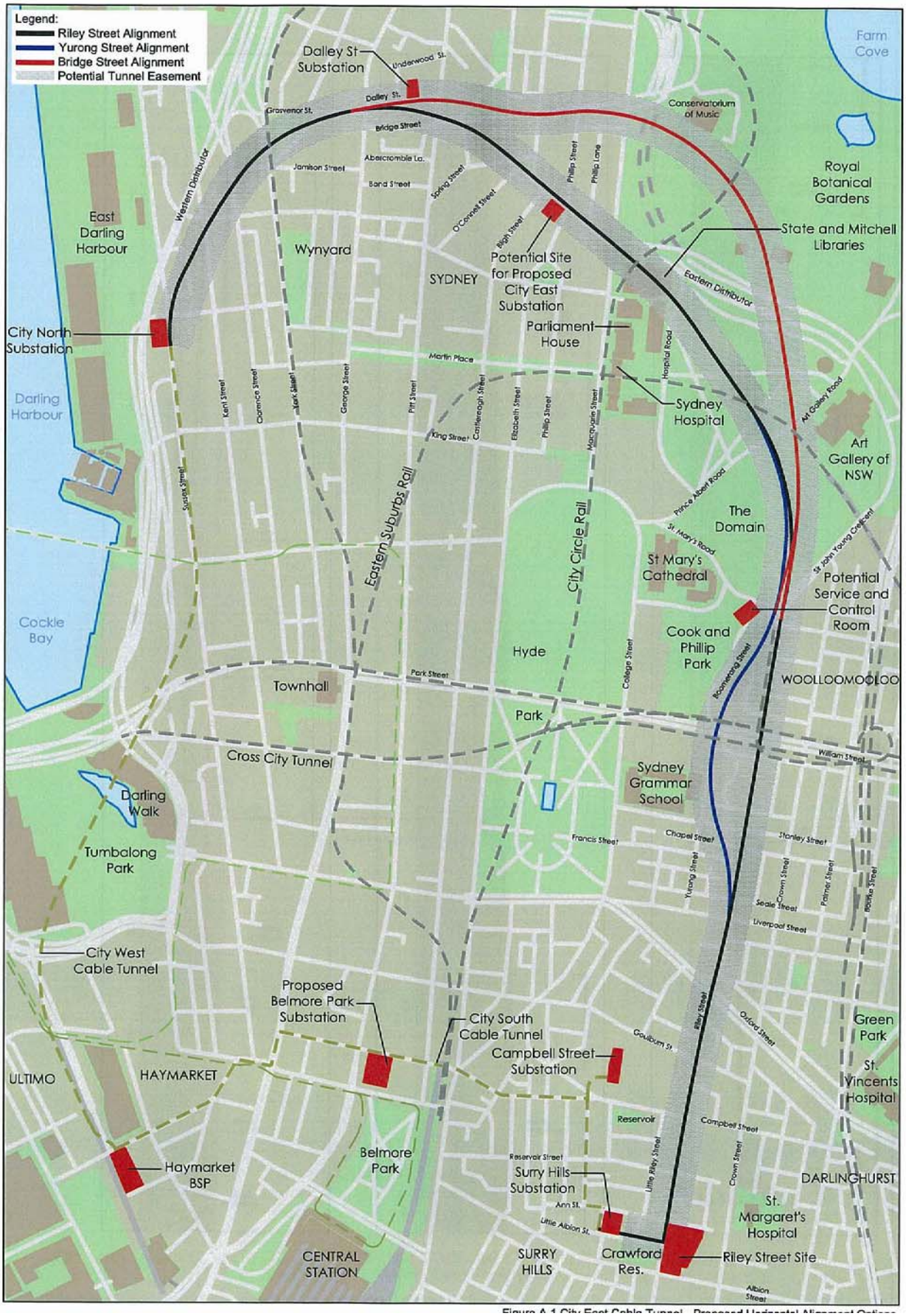

Figure 1.1 Map showing the City East Cable Tunnel (Proposed Horizontal Alignment Options) together with the locations of the current and proposed substations, etc. (courtesy of EnergyAustralia and PlanCom).

3. STUDY METHODOLOGY

3.1 Literature and Database Review

A range of documentation was reviewed in assessing archaeological knowledge for the Sydney CityGrid study area and its surrounds. This literature and data review was used to determine if known Aboriginal sites were located within the area under investigation, to facilitate site prediction on the basis of known regional and local site patterns, and to place the area within an archaeological and heritage management context. The review of documentary sources included heritage registers and schedules, local histories, and archaeological reports.

Aboriginal literature sources included the Aboriginal Heritage Information Management System (AHIMS) maintained by the NSW Department of Environment and Climate Change (DECC) and associated files and catalogue of archaeological reports; published monographs and other relevant material, as necessary.

3.2 Fieldwork

Fieldwork was undertaken over one day on Tuesday 6 May 2008 and involved inspection of each of the extant and proposed substation and switching station locations, and tunnel extension and connection alignments.

3.3 Project Personnel

Archaeologists Lindsay Smith and Rebecca Yit carried out the field work and prepared this report.

4. ENVIRONMENTAL CONTEXT

4.1 The Pre-Urban Landscape

Prior to the creation of Sydney, the land on which the CBD is situated formed a predominantly sandstone ridgeline and promontory extending northward between the embayments of the present Darling Harbour and Woolloomooloo Bay. Local surface drainage consisted of a series of north-south trending broad open valleys that merged via low-lying ground with the estuarine flats of the coastal embayments. These valleys are now infilled with colluvium and anthropogenic fill material and form palaeochannels. Between the valleys, north-south trending bedrock rises formed gentle ridgelines. Bedrock consists of the Triassic Hawkesbury sandstone formation.

The vegetation of the sandstone slopes of the Port Jackson hinterland would have consisted of woodland, with a turpentine-ironbark forest in elevated contexts (Benson and Howell 1990).

European development of the area has transformed the surface topography and drainage of the region. The shoreline has been extended seaward with the extensive use of fill, particularly in the low-lying and upstream extent of the embayments. The original eastern and southern shoreline and Darling Harbour and Cockle Bay embayment have been extensively reclaimed, raised, and formalised. The low-lying estuarine flats which once fringed Cockle Bay, and were illustrated in an 1802 engraving entitled *Plan de la Ville de Sydney* (Lesuer in Smith 1992), have been filled and used for commercial development, parkland and road construction. Woolloomooloo Bay originally extended over 200 metres south of the present Cowper wharf edge.

Most of the surface terrain of the CBD has been substantially backfilled and levelled. This has involved the infilling of the drainage lines and reduction of locally elevated topography. Drainage lines now flow below ground within an urban sub-structure of pipes and conduits. Soils on the sandstone slopes would have been typically shallow and easily disturbed as a result of initial farming activities, and subsequent building and city infrastructure development.

4.2 The Proposed Substations, Switching Station and Tunnels

Each of the extant and proposed substation and switching station locations at Haymarket, Surry Hills, Riley Street, Cook and Phillip Park, Bent Street, and Dalley Street are in areas of heavily disturbed contexts. Those areas now comprise buildings, car parks, building sites and/or artificially created parks.

The proposed tunnel extension and connection alignments essentially stretch from Little Albion Street in Surry Hills east to Riley Street then north along that street and Boomerang Street to the east of the Domain before arcing northwest across the northern part of Sydney CBD and turning south to culminate near Erskine Street, adjacent to East Darling Harbour. Although most, if not all, of those locations may have been disturbed through the extensive use of fill or through levelling, this is not entirely certain.

The portion of the proposed works that is most relevant to an assessment of the potential for Aboriginal sites consists of those areas where ground disturbance is proposed, impacting on present and former land surface deposits. These primarily consist of the areas of the proposed tunnel extension and connection locations.

5. ABORIGINAL CONTEXT

5.1 Aboriginal Language and Tribal Boundaries

The exact pre-contact and contact boundaries of Aboriginal territories which existed prior to 1788 in the Sydney region are impossible to reconstruct because of the lack of reliable data available from that period of time. There are a number of differing versions of tribal and linguistic boundaries in the literature. Smith (1992) notes that at the time of the arrival of the first fleet at Botany Bay the area from north of Broken Bay south to Botany Bay was occupied by a large tribal grouping identified as Guringai speakers. The central Sydney area also variously falls within the Dharawal (Eades 1976), Dharug (Kohen 1986) and Guringai or Cadigal (Capell 1970, Turbet 1989) language areas.

Tindale (1974) places a group named the Eora north of Botany Bay and south of Woy Woy. Ross (1988) has a Guringai tribe occupying Port Jackson and Kohen (1986) has a Dharug tribe extending across the southern shores of Port Jackson. References from the early explorers indicate that there was little contact between coastal and inland tribes. Tench (1961) in 1793 noted that coastal Aborigines had no knowledge of the region west of what is now known as Parramatta.

Although no reliable appraisal of the number of Aborigines living in the Sydney area was made by early observers, it has been estimated that the population density for the region was between five and ten individuals per square mile (Maddock 1972). With European settlement this population was quickly decimated, and in less than a century traditional Aboriginal lifestyle patterns in the Sydney area were virtually destroyed.

5.2 Regional Overview

The Sydney Basin has been the subject of intensive archaeological survey and assessment for many years. This research has resulted in the recording of thousands of Aboriginal sites and a wide range of site types and features. The most prevalent sites or features include isolated finds, open artefact scatters or camp sites, middens, rock shelters containing surface artefacts and/or occupation deposit and/or rock art, open grinding groove sites and open engraving sites. Rare site types include scarred trees, quarry and procurement sites, burials, stone arrangements, carved trees, and traditional story or other ceremonial places.

Aborigines have lived in the Sydney region for at least 20,000 years (Stockton and Holland, 1974). Late Pleistocene occupation sites have been identified around the fringes of the Sydney Basin at Shaws Creek (13,000BP) in the Blue Mountain foothills (Kohen 1984), at Mangrove Creek (11,000BP) and at Loggers Shelter (Attenbrow, 1981). Nanson et al (1987) have suggested that artefacts found in gravels of the Cranebrook Terrace indicate Aboriginal occupation over 40,000 years ago, however, there is some doubt as to the contextual integrity of these artefacts.

The majority of both open and rockshelter sites in the Sydney region date to within the last 3,000 years. A similar trend in occupation age occurs in dated deposits in NSW coastal sites. This has led many researchers to propose that population and occupation intensity increased from this period (Attenbrow 1987; Kohen 1986; McDonald and Rich 1993; McDonald 1994). The increased use of shelters postdates the time when sea levels stabilised after the last ice age around 5,000 years ago (the Holocene Stillstand). Following the stabilisation of sea levels, the development of coastal estuaries, mangrove flats and sand barriers would have increased the resource diversity, predictability, and the potential productivity of coastal environments for Aborigines. In contrast, occupation during the late Pleistocene (prior to 10,000BP) may have been sporadic and the Aboriginal population relatively small.

An assessment of the Cross City Tunnel route was conducted by Navin Officer Heritage Consultants (1999). Taking account of the built-up nature of the proposed Cross City Tunnel route and absence of surviving original land surfaces such as in parkland and other reserves, it was concluded that there was low to negligible potential for undisturbed Aboriginal archaeological material to survive within the proposed Cross City Tunnel route.

5.3 The Proposed Substations, Switching Station and Tunnels

There are 16 reported Aboriginal sites in the vicinity of the anticipated areas of development impact. Table 5.1 describes these sites and Figure 5.1 shows their locations in relation to the proposed Sydney CityGrid Project.

Table 5.1 Summary of previously identified Aboriginal sites in the vicinity of the proposed Sydney CityGrid Project.

Site ID	Site Name	Grid Reference (AGD)	Site Type
1853	Lilyvale	334056.6251791	Midden
2299	First Government House	334576.6251541	Burial/s, Historic Place
2580	Junction Lane	335176.6250601	Open camp site
2581	Angel Place	334506.6251291	Open camp site
2629	Broadway 1	333165.6249291	Artefact
2647	KENS Site 1	333856.6250976	Artefact
2651	William St PAD	334905.6250411	PAD
2652	Ultimo PAD1	334556.6250191	PAD
2663	Mountain Street Ultimo	333406.6249591	Artefact/PAD
2666	Wattle Street PAD1	333256.6249450	PAD
2680	Broadway Picture Theatre PAD1	333256.6249191	PAD
2687	Crown Street PAD1	335056.6250491	PAD
2742	171-193 Gloucester Street PAD	334032.6251652	PAD
2783	PAD Central Royal Botanic Gardens	335006.6251221	PAD
2796	320-328 George Street PAD	334205.6251241	PAD
2838	420 George Street PAD	334186.6250861	PAD

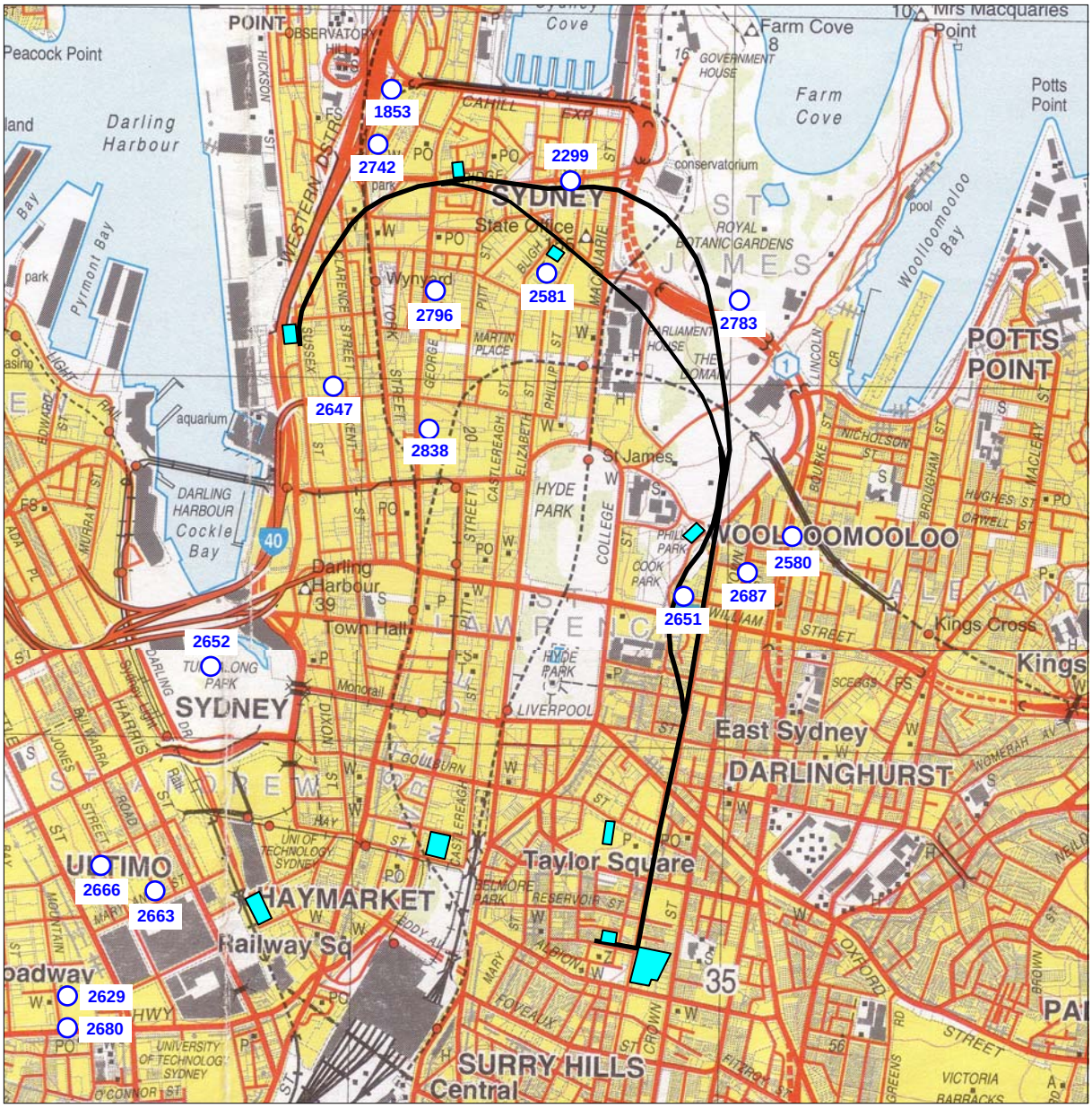

Figure 5.1 Extracts from 1:25,000 topographic maps Parramatta River (9130-3N) and Botany Bay (9130-3S), 3rd Editions (NSW Land and Property Information) showing locations of previously recorded Aboriginal sites (numbered) and proposed Sydney CityGrid infrastructure (light blue) and alignment (black line).

5.4 Archaeological Potential of the Study Area

The detection of sixteen Aboriginal sites in the vicinity of the anticipated areas of development impact demonstrates that remnants of Aboriginal archaeological material may survive in limited contexts in the now highly modified environment of the CBD. However, the likelihood that Aboriginal site remnants survive in an undisturbed context is remote.

Given the high degree of landform modification within the intensely urbanised area of Sydney's CBD, the remaining Aboriginal archaeological resource is likely to consist of isolated remnants that are hard to predict at a local level.

Greatest potential for subsurface archaeological deposits can be predicted to occur within:

- The pre-European foreshore zone, up to 200 m from the former shoreline, especially where the former land surface was lower than the current (artificially elevated) one;

- Formerly lower lying areas which have been subsequently filled to provide an elevated building or road platform; and

- Where excavation for building foundations or below-ground levels has not removed the pre-European soil profile.

Deposits underlying road carriageways and their adjacent pavements are likely to be highly disturbed due to the construction of the road foundation, former road surfaces and grades, and the intrusion of below ground service trenches for sewer and water pipelines and telecommunication cables. High-rise structures and buildings with basements are also unlikely to overlie sediments with any archaeological potential, due to the high level of disturbance and soil extraction required during construction.

The potential for direct impact to surviving archaeological deposits by the proposed Sydney CityGrid Project is considered to be very limited:

- Above ground works may impact Aboriginal archaeological deposits where relatively undisturbed original land surface soil profiles are encountered on well-drained elevated landforms within 100 m of a natural water source; and

- Below ground works may impact archaeological deposits where excavations are close to the surface and encounter former or current upper soil profile sediments.

Figure 5.2 illustrates the changes in the estuarine and marine shoreline of Cockle Bay/Darling Harbour resulting from urbanisation and infilling. It is clear that the proposed connecting tunnel to the City North Substation, situated at the western end of Erskine Street, will be located in an area of former shoreline, and it is possible that any associated foreshore deposits containing archaeological material will be impacted during excavation of the tunnel at that location.

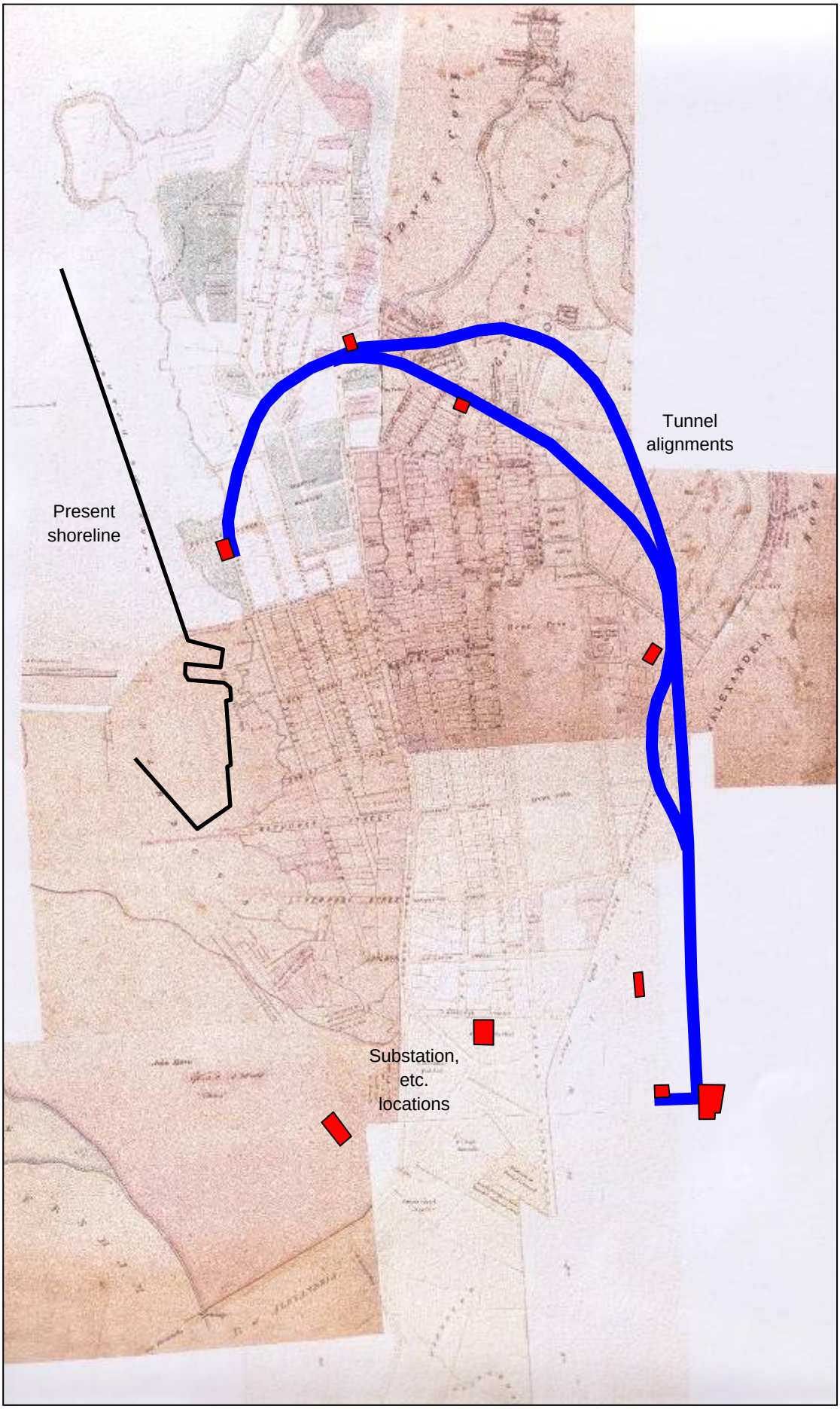

Figure 5.2 Extracts from various late nineteenth-century parish maps of Sydney showing original and present shorelines of Cockle Bay/Darling Harbour and overlay of proposed Sydney CityGrid Project infrastructure (NSW Department of Lands Parish Maps).

6. RESULTS

6.1 Aboriginal Sites

No Aboriginal sites or objects were identified during this investigation. However, as noted above, all of the ground surface and subsurface disturbance areas associated with the extant and proposed substation and switching station locations, and tunnel extension and connection alignments are assessed to have low to negligible potential for Aboriginal archaeological remains.

6.2 Aboriginal Cultural Values

An assessment of the Aboriginal cultural values of sites can only be made by the Aboriginal community, in this case, the Metropolitan Local Aboriginal Land Council (MLALC).

As the MLALC sites officer was unavailable to attend on the day of the survey, it was agreed that a draft copy of this report would be sent to the Land Council for review with an invitation to comment on the Sydney CityGrid Project and the conclusions and recommendations drawn from this heritage study, and to provide an assessment of the their cultural values of sites within the study area.

Consequently, on 2 June 2008, a draft copy of this report was sent to the MLALC with an invitation to comment on it. Subsequent to follow-up discussions with the MLALC, another copy of this report was sent on 24 June 2008. As at 25 July 2008, no response has been received from that organisation.

6.3 Survey Coverage and Visibility Variables

The effectiveness of archaeological field survey is to a large degree related to the obtrusiveness of the sites being looked for and the incidence and quality of ground surface visibility. Visibility variables were estimated for all areas of survey within the study area. These estimates provide a measure with which to gauge the effectiveness of the survey and level of sampling conducted. They can also be used to gauge the number and type of sites that may not have been detected by the survey.

Ground surface visibility is a measure of the bare ground visible to the archaeologist during the survey. There are two main variables used to assess ground surface visibility, the frequency of exposure encountered by the surveyor and the quality of visibility within those exposures. The predominant factors affecting the quality of ground surface visibility within an exposure are the extent of vegetation and ground litter, the depth and origin of exposure, the extent of recent sedimentary deposition, and the level of visual interference from surface gravels. Two variables of ground surface visibility were estimated during the survey:

- A percentage estimate of the total area of ground inspected which contained useable exposures of bare ground; and

- A percentage estimate of the average levels of ground surface visibility within those exposures. This is a net estimate and accounts for all impacting visual and physical variables including the archaeological potential of the sediment or rock exposed.

A total of 100% of the ground area in the study area was inspected during the survey, with 0.0% providing useable archaeological exposures.

Taking into account survey coverage, archaeologically useable exposures, and visibility variables, the effective survey coverage (ESC) was 0.0% of the total survey area. The ESC attempts to provide an estimate of the proportion of the total study area that provided a net 100% level of ground surface visibility to archaeological surveyors.

7. STATUTORY AND POLICY CONTEXT[1]

7.1.1 *National Parks and Wildlife Act 1974*

The following summary is based on:

- The provisions of the current *National Parks and Wildlife Act 1974* (NP&W Act) as amended; and
- Department of Environment and Climate Change (DECC) policy as presented in the 1997 Standards and Guidelines Kit for Aboriginal Cultural Heritage provided by the (then) NSW NPWS, and as communicated orally to the consultants on a periodic basis.

The guideline documents presented in the 1997 Standards and Guidelines Kit were stated to be working drafts and subject to an 18 months performance review. The Standards Manual was defined not to be a draft and subject to periodic supplements.

With the exception of projects subject to the provisions of Part 3A of the EP&A Act, the NP&W Act (as amended) provides the primary basis for the legal protection and management of Aboriginal sites within NSW. The implementation of the Aboriginal heritage provisions of the Act is the responsibility of the DECC.

The rationale behind the Act is the prevention of unnecessary or unwarranted destruction of relics, and the active protection and conservation of relics that are of high cultural significance.

With the exception of some artefacts in collections, or those specifically made for sale, the Act generally defines all Aboriginal artefacts to be 'Aboriginal objects' and to be the property of the Crown. An Aboriginal object has a broad definition and is inclusive of most archaeological evidence The Act then provides various controls for the protection, management and disturbance of Aboriginal objects.

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.' [s5(1)].

In practice, archaeologists use a methodology that groups 'Aboriginal objects' into various site classifications according to the nature, occurrence and exposure of archaeological material evidence. The archaeological definition of a site may vary according to survey objectives; however a site is not recognised or defined as a legal entity in the Act. It should be noted that even single and isolated artefacts are protected as Aboriginal objects under the Act.

The investigation, use or destruction of Aboriginal objects is managed through a system of permits and consents under the provisions of s87 and s90 of the Act. Section 87 relates to actions which do not involve direct damage to Aboriginal objects, and s90 relates to damage or defacement of Aboriginal objects.

Under s87 of the Act, it is an offence to do any of the following without a Permit from the Director-General of the DECC: disturb or excavate any land for the purpose of discovering an Aboriginal object; disturbing or moving an Aboriginal object; take possession of or removing an Aboriginal object from certain lands; and erecting a building or structure to store Aboriginal objects on certain land (s86). The maximum penalty is $11,000 for individuals and $22,000 for corporations.

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[1] The following information is provided as a guide only and is accurate to the best knowledge of Navin Officer Heritage Consultants. Readers are advised that this information is subject to confirmation from qualified legal opinion.

Under s90 of the Act, a person who, without first obtaining the consent of the Director-General knowingly destroys, defaces or damages, or knowingly causes or permits the destruction or defacement of or damage to, an Aboriginal object or Aboriginal Place is guilty of an offence against the Act.

Where salvage actions (such as collection or re-positioning) are proposed in conjunction with an application to destroy Aboriginal objects, then an application for a s87 permit must accompany the s90 application. This is because a consent issued solely under s90 of the Act is not considered to permit actions other than those which destroy, deface or damage Aboriginal objects.

In January of 2005, the DECC introduced *Interim Guidelines for Aboriginal Community Consultation* with regard to the preparation of applications for a consent or permit under Part 6 (s87 and s90) of the NP&W Act. The Interim Guidelines include a required process of notification of intended applications in the local media, an invitation for stakeholder groups to register interest, and various time periods providing an opportunity for registered stakeholders to comment and review proposed methodologies and assessments.

It should be noted that s75U of the EP&A Act (as amended) establishes an exemption to the application of s87 and s90 of the NP&W Act. It states that a Permit under s87 or a consent under s90 of the NP&W Act is not required for an approved project subject to the provisions of Part 3A of the EP&A Act. Section 75U also extends this exemption to include 'any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this Part in connection with an application for approval to carry out the project or of a concept plan for the project' (s75(U)4 EP&A Act 1979 (as amended)).

Section 175B of the NP&W Act outlines circumstances where corporation directors may be taken to have contravened these provisions, based on the acts or omissions of that Corporation.

The processing and assessment of permit and consent applications is dependent upon adequate archaeological review and assessment, together with an appropriate level of Aboriginal community liaison and involvement (refer Standards for Archaeological Practice in Aboriginal Heritage Management in 1997 NPWS Standards and Guidelines Kit).

The Minister may declare any place which, in his or her opinion, is or was of special Aboriginal significance with respect to Aboriginal culture, to be an Aboriginal place (s84). The Director-General has responsibility for the preservation and protection of the Aboriginal place (s85). An area declared to be an Aboriginal place may remain in private ownership, or be acquired by the Crown by agreement or by a compulsory process (s145).

The Director General may make an interim protection order and order that an action cease where that action is, or is likely to, significantly affect an Aboriginal object or Aboriginal place. Such an order is current for 40 days (s91AA, Schedule 3[10]). Such an order does not apply to certain actions, such as where they are in accordance with development consents or emergency procedures.

General Management Constraints and Requirements

Except where a project is subject to the provisions of Part 3A of the EP&A Act, the NP&W Act, together with the policies of the DECC provide the following constraints and requirements on land owners and managers:

- It is an offence to knowingly disturb an Aboriginal object (or site) without an appropriate permit or consent (s87 and s90);

- Prior to instigating any action which may conceivably disturb an Aboriginal object (this generally means land surface disturbance or felling of mature trees), archaeological survey and assessment is required (refer Standards for Archaeological Practice in Aboriginal Heritage Management in 1997 NPWS Standards and Guidelines Kit);

- When the archaeological resource of an area is known or can be reliably predicted, appropriate landuse practices should be adopted which will minimise the necessity for the

destruction of sites/Aboriginal objects, and prevent destruction to sites/Aboriginal objects which warrant conservation (refer Standards for Archaeological Practice in Aboriginal Heritage Management in 1997 NPWS Standards and Guidelines Kit) and

- Documented and appropriate consultation with relevant Aboriginal Community representatives is required by the DECC as part of the prerequisite information necessary for endorsement of consultant recommendations or the provision of consents and permits by the DECC (refer Standards for Archaeological Practice in Aboriginal Heritage Management in 1997 NPWS Standards and Guidelines Kit).

Statutory Constraints Arising from Artefacts which Constitute Background Scatter

Background scatter is a term used generally by archaeologists to refer to artefacts that cannot be usefully related to a place or focus of past activity. There is no single concept for background 'scatter' or discard, and therefore no agreed definition. The recognition of background material within a particular study area is dependent on an appreciation of local contextual and taphonomic factors. Artefacts within a 'background' scatter can be found in most landscape types and may vary considerably in density.

Standard archaeological methodologies cannot effectively predict the location of individual artefacts within background scatters. Surface survey may detect background material either as individual artefacts ('isolated finds'), or even as small, low-density 'sites'. Subsurface testing may sample, and through analysis, characterise background material. However, beyond the scope of archaeological sampling, the potential to encounter background artefacts within the context of development related ground disturbance will always remain.

Most previous cultural resource management archaeological methodologies have acknowledged that there is little scientific justification for the conduct of archaeological salvage or ground disturbance monitoring to affect the recovery of background artefacts. The intrinsic scientific value of any recovered artefacts does not, in general, outweigh the expense of conducting the monitoring. However, low density distributions of artefacts are a current subject of interest by some heritage practitioners and DECC policy regarding this issue may change in the future. The monitoring of construction related ground works by Aboriginal groups is now increasingly practiced. The recovery of background scatter artefacts is often a probable outcome of such monitoring exercises.

Given the nature of statutory and DECC policy requirements in NSW, the detection of background artefacts during monitoring can be problematic. Except where a project is subject to the provisions of Part 3A of the EP&A Act, or where an Aboriginal object is covered by a current Consent or Permit (or Heritage Impact Permit (HIP)), from DECC, all further impact to an Aboriginal object detected during development works, and to the ground in its immediate vicinity, must cease until an appropriate Permit or Consent is gained. It may take up to eight weeks for this to occur. However, in the past the DECC has not as a general rule granted consents to cover artefacts within background scatters which remain undescribed and undetected. This is because the DECC sought to provide consents where the significance and location of the Aboriginal objects to be impacted could be reliably defined. By their very nature, this may not be possible for artefacts that constitute a background scatter.

The present application of policy of the DECC does not provide for a consistent or proactive means of dealing with the statutory constraints posed by the detection of background scatter artefacts during development works. In those cases where the provisions of Part 3A of the EP&A Act do not apply, an option is the provision by the DECC of a s87 Permit or s90 Consent which includes all Aboriginal objects situated within the defined development site rather than specific sites or finds within it. This approach has been adopted by some DECC branch jurisdictions where an assessment has been provided which suitably investigates the known and predicted incidence of Aboriginal objects potentially subject to disturbance. Other DECC jurisdictions do not accept this approach and only provide permits and consents for known and defined Aboriginal object occurrences.

It should therefore be noted, that in the event that an Aboriginal artefact ('Aboriginal object') is detected during ground disturbance within a development study area, and that area or Aboriginal object is not covered by a Permit or Consent to Destroy (or HIP), there may be considerable delays to development works while an application for a Consent to Destroy is processed.

7.1.2 *National Parks and Wildlife Amendment Act 2001*

This Act identifies that the requirement for a s90 'consent to destroy' from the Director-General has been replaced by a 'heritage impact permit'. It also includes the following provisions:

- Section 90 (1) – The offence under s90 of the Principal Act of 'knowingly' destroying, defacing or damaging Aboriginal objects and Aboriginal Places without consent has been changed so that the element of knowledge has been removed. The amended s90(1) reads:

  'A person must not destroy, deface, damage or desecrate, or cause or permit the destruction, defacement, damage or desecration of, an Aboriginal object or Aboriginal place.'

- Section 90 (1B) – Subsection 90 (1) does not apply with respect to an Aboriginal object or Aboriginal place that is dealt with in accordance with a heritage impact permit issued by the Director-General;

- Section 90 (1C) – It is a defence to a prosecution for an offence against subsection (1) if the defendant shows that

  (a) he or she took reasonable precautions and exercised due diligence to determine whether the action constituting the alleged offence would, or would be likely to, impact on the Aboriginal object of Aboriginal place concerned, and

  (b) the person reasonably believed that the action would not destroy, deface, damage or desecrate the Aboriginal object or Aboriginal place.

- Section 90 (8) and 90 (9) – A court is able to direct a person to mitigate damage to or restore an Aboriginal object or an Aboriginal place in appropriate circumstances when finding the person guilty of an offence referred to in s90 of the Principal Act.

7.1.3 *Environmental Planning and Assessment Act 1979*

This Act (EP&A Act) and its regulations, schedules and associated guidelines require that environmental impacts are considered in land use planning and decision making. Environmental impacts include cultural heritage assessment. The Act was reformed by the *Environmental Planning and Assessment Amendment (Infrastructure and other Planning Reform) Act 2005*.

Part 3A of the EP&A Act

Part 3A of the Act is a recent amendment and establishes a separate streamlined and integrated development assessment and approvals regime for major State government infrastructure projects, development that was previously classified as State Significant development, and other projects, plans or programs declared by the Minister for Planning.

Part 3A removes the stop-the-clock provisions and the need for single-issue approvals under eight other Acts, including the NP&W Act and the *Heritage Act 1977*. Environmental planning instruments such as the heritage provisions within REP and LEPs, (other than State environmental planning policies) do not apply to projects approved under Part 3A.

Where warranted the Minister may declare any project subject to Part 3A to be a critical infrastructure project. These projects only require a concept approval in contrast to other Part 3A projects which require project approval. In most circumstances, a concept approval will be obtained to establish the environmental performance requirements and consultation requirements for the implementation of the subsequent stages of the project.

Under the provisions of Part 3A, proponents of major and infrastructure projects must make a project application seeking approval of the Minister. The application is to include a preliminary assessment of the project. Application may be for concept plan approval or full approval. Following input from relevant agencies and council(s), DoP will issue the proponent with requirements for the preparation of an Environmental Assessment and a Statement of Commitments. The Statement of Commitments will include how the project will be managed in an environmentally sustainable manner, and consultation requirements.

Following submission of an Environmental Assessment and draft Statement of Commitments to DoP, these documents are variously evaluated, reviewed, circulated and exhibited. The proponent may modify the proposal to minimise impacts in response to submissions received during this process. The proponent then provides a Statement of Commitments and, following any project changes, a Preferred Project Report. An assessment report is then drafted by the Director-General and following consultation with relevant agencies, a final report with recommendations for approval conditions or application refusal is submitted to the Minister. The Minister may refuse the project, or approve it with any conditions considered appropriate.

7.1.4 Implications for the proposed Sydney CityGrid Project

In the unlikely event that Aboriginal relics are uncovered by construction or excavation works, it is recommended that the following response strategy be adopted and incorporated in contingency management plans prior to the commencement of works:

a) Stop all impactive works or actions which may disturb the area of the find or exposed Aboriginal relic (relics may conceivably involve: stone artefacts, bones, midden shells and hearth remnants);

b) Consult with the Cultural Heritage Area, NSW National Parks and Wildlife Service Division, Department of Conservation and Climate Change, regarding an appropriate course of action;

c) Consult with the Metropolitan Local Aboriginal Land Council;

d) If human skeletal material is uncovered then the NSW Police would also need to be contacted; and

e) Carry out any requirements indicated by the DECC.

In addition, as the Minister for Planning, has declared the Sydney CityGrid Project to be a project to which Part 3A of the *Environmental and Assessment Act 1979* applies, then a Permit under s87 or a consent under s90 of the NP&W Act are not required for the project. Equally, the DECC Interim Guidelines for Aboriginal Community Consultation with regard to the preparation of applications for a consent or permit under Part 6 (s87 and s90) of the NP&W Act also do not apply to this project.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

There may be some very limited potential for remnant and dispersed Aboriginal artefacts to be present within deposits in the CBD and to be disturbed by excavations associated with the proposed tunnel connections and/or extensions for the proposed project. However, as a general observation, the ground surface and subsurface disturbance areas associated with the proposed Sydney CityGrid are assessed to have low to negligible potential for Aboriginal archaeological remains.

Although many of the areas are characterised by fill overlying remnant soils, the soil sediments are either unlikely to include the upper soil profile as a discrete intact layer, or preserve sediments which were originally low-lying and poorly drained. Topography characterised by poorly drained and low-lying ground has minimal archaeological potential due to its poor amenity as a camp site or other occupation area.

The low to negligible Aboriginal archaeological potential of the proposed Sydney CityGrid Project is based on the following points:

- The excavations at the western area of Sydney CBD (adjacent to East Darling Harbour) where there are interfaces with surface facilities or surface facilities are proposed would impact remnant soils which originally formed a low lying and poorly drained landsurface associated with the estuarine sediments of Cockle Bay;

- Most of the other excavations would occur in sediments previously disturbed to a high degree as a result of road construction and development; and

- The former land surfaces prior to the deposition of the now overlying fill are likely to have been highly impacted by past European land use, including farming, urban and commercial development.

Further investigation such as pre-construction subsurface testing or monitoring of construction works is not considered to be warranted.

8.2. Recommendations

It is recommended that:

1. No further Aboriginal archaeological investigation is required for the Sydney CityGrid Project.

2. The limited potential for remnant and dispersed Aboriginal artefacts to occur should be considered when excavations associated with the proposed tunnel connections and/or extensions where there are interfaces with surface facilities or surface facilities are proposed for the proposed project occur.

   An appropriately trained archaeologist should be available (on call) during excavations (including historical archaeology excavations if and when these are required) to identify Aboriginal Objects and provide advice where necessary.

3. In the unlikely event that Aboriginal Objects are uncovered by construction or excavation works, it is recommended that the following response strategy be adopted and incorporated into contingency management plans prior to the commencement of works:

   a) Stop all impactive works or actions which may disturb the area of the find or exposed Aboriginal Object (objects may include: stone artefacts, bones, midden shells and hearth remnants);

   b) Contact project archaeologist and organise for inspection of site/material;

c) Consult with the Department of Conservation and Climate Change, regarding an appropriate course of action;

d) Consult with the Metropolitan Local Aboriginal Land Council regarding an appropriate course of action

e) Carry out any requirements indicated by the DECC and the Metropolitan Local Aboriginal Land Council

4. Three copies of the final report should be forwarded to the NSW DECC at the following address:

Cultural Heritage Officer
Conservation Planning Unit
Metro EPRD
NSW Department of Environment and Climate Change
PO Box 1967
HURSTVILLE NSW 2220

5. One copy of this final report should be forwarded to the MLALC, at the following address:

Mr Allen Madden
Sites Officer
Metropolitan Local Aboriginal Land Council
PO Box 1103
STRAWBERRY HILLS NSW 2012

9. REFERENCES

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