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A conspiracy of silence - the NSW National Parks and Wildlife Service and Aboriginal Cultural Heritage Sites

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Abstract

The New South Wales National Parks and Wildlife Service (NP&WS), under the National Parks and Wildlife Act 1974 (NSW) ('the Act'), is responsible for the 'care, control, and management' of Aboriginal cultural heritage sites (middens, burial sites, rock art sites, etc.) throughout NSW.² Section 90 of the Act states that it is an offence to destroy, deface or disturb an Aboriginal site, and that consent to do so must be sought from the Director of the Service. It is questionable not only whether it is appropriate that the Service should wield such power, but also if it is adequately carrying out its statutory duty, when the system under which it operates is leading to the silent, unseen destruction of sites on a daily basis throughout NSW. Whilst the Service, in collaboration with local Aboriginal communities, has achieved much in the preservation and protection of significant Aboriginal cultural heritage sites since 1974, it is not above criticism, and areas such as public education programs and identification of sites outside of national parks and reserves have been severely neglected. Part of the problem is the system itself, which, by default, has allocated to the NP&WS the central role of manager, and destroyer, of Aboriginal cultural heritage sites, as opposed to a more regional or community based approach with direct Aboriginal control. Furthermore, the Service, whose primary responsibility is the management of the State's national parks, has limited resources with which to carry out its duty in this area, allocating individual officers vast tracts of the State for which they must bear responsibility for site management. In many cases, ongoing involvement by local Aboriginal communities is limited, voluntary and under-resourced.

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A Conspiracy of Silence

The NSW National Parks and Wildlife Service

and Aboriginal Cultural Heritage Sites

by Michael Organ

Government Inaction

The New South Wales National Parks and Wildlife Service (NP&WS), under the *National Parks and Wildlife Act 1974* (NSW) ('the Act'), is responsible for the 'care, control and management' of Aboriginal cultural heritage sites (middens, burial sites, rock art sites, etc.) throughout NSW.² Section 90 of the Act states that it is an offence to destroy, deface or disturb an Aboriginal site, and that consent to do so must be sought from the Director of the Service.

It is questionable not only whether it is appropriate that the Service should wield such power, but also if it is adequately carrying out its statutory duty, when the system under which it operates is leading to the silent, unseen destruction of sites on a daily basis throughout NSW. Whilst the Service, in collaboration with local Aboriginal communities, has achieved much in the preservation and protection of significant Aboriginal cultural heritage sites since 1974, it is not above criticism, and areas such as public education programs and identification of sites outside of national parks and reserves have been severely neglected. Part of the problem is the system itself, which, by default, has allocated to the NP&WS the central role of manager, and destroyer, of Aboriginal cultural heritage sites, as opposed to a more regional or community based approach with direct Aboriginal control. Furthermore, the Service, whose primary responsibility is the management of the State's national parks, has limited resources with which to carry out its duty in this area, allocating individual officers vast tracts of the State for which they must bear responsibility for site management. In many cases, ongoing involvement by local Aboriginal communities is limited, voluntary and under-resourced.³

Just as questions have recently been raised concerning the role of bodies such as the Australian Museum and Australian Institute of Aboriginal and Torres Strait Islander Studies in "the institutionalisation, fragmentation and alienation of our cultural heritage"⁴ by their policies of centralised collection of Aboriginal cultural heritage items, so also the NP&WS must be open to criticism and public accountability over its dealings with Aboriginal heritage sites and the 'collection' it administers through reports and information contained within its Sites Register. Deficiencies in this area are addressed further.

The NP&WS has had responsibility for the 'protection and management' of Aboriginal cultural heritage sites since 1969. The 1974 Act formalised this responsibility, however there was no specific role for the Aboriginal community set out within the original legislative framework. The Act called for the creation of an Aboriginal Relics Advisory Committee which would 'consider' reports and advise the relevant Minister and Director of the NP&WS "on any matter relating to the preservation, control of excavation, removal and custody of relics or Aboriginal places." (s28) No reference was made to destruction of sites. Unfortunately the committee was composed largely of non-Aboriginal archaeologists, anthropologists and bureaucrats, and, as the title suggests, it had an advisory role only, with no direct involvement in the day to day management of sites.

The Committee went into recess in 1979 and in 1980 a Parliamentary Select Committee produced a rather enlightened report entitled *Aboriginal Land Rights and Sacred and Significant Sites*, which recommended the establishment of an Aboriginal Heritage Commission, taking responsibility for site management away from the NP&WS.⁵ Unfortunately this proposal was not taken up by government or the Service. In its stead an Interim Aboriginal Sites Advisory Committee was created, with approximately half comprised of Aboriginal regional representatives. The committee first met on 8 December 1980, and thereafter infrequently (bimonthly or quarterly) until 1986, when reference to it disappears from the NP&WS Annual Reports. In 1989 the report of the Ministerial Task Force on Aboriginal Heritage and Culture once again recommended the establishment of a commission to administer the conservation of cultural heritage sites independently of the Service.⁶ A 1992 amendment to the *National Parks and Wildlife Act* (affecting ss27 and 28 and Schedule 9) reconstituted an Aboriginal Cultural Heritage (Interim) Advisory Committee (ACHIAC), with an Aboriginal majority of 8 members plus chair. It held its first meeting in 1993. The NSW Office of Aboriginal Affairs has

also recently established an Aboriginal Cultural Heritage Working Group to look into the implementation of the 1989 Ministerial Task Force recommendations. However, despite this activity, the system of site management remains largely unchanged from that which came into operation in 1975.

Protector of Sites

The mechanisms of the 1974 Act are such that when a site is 'discovered' and the NP&WS notified, a professional archaeologist, in collaboration with a representative of a local Land Council or other Aboriginal group, carries out an investigation. A report is prepared, assessment made, and the site is listed on the Service's Site Register, if warranted. This investigative and consultative process leads to recommendations for the future control and management of the site. However the Service is ultimately the official 'protector' of such sites, with powers (and a duty) to police breaches of the Act.

Whilst this process may have seemed an efficient way in which to manage Aboriginal cultural heritage sites back in 1974, it is no longer appropriate, having led to the institutionalisation, fragmentation and alienation referred to above. Decentralisation of cultural heritage collections and information, and an emphasis on local community involvement and responsibility for individual sites is the preferred option. The present system has inherent flaws and is failing to protect sites from the ever encroaching pressures of development, especially along the east coast of NSW, the area which also happens to contain the highest density of such sites. Furthermore, the whole process of enforcing the Act is, in the opinion of the author, surrounded by a bureaucratic veil of secrecy which makes access difficult for those not part of a system which involves the staff of NP&WS, professional archaeologists and anthropologists, and the few individual Aboriginal representatives responsible for such matters.

Whilst giving the NP&WS widespread powers, the 1974 Act also allows it to play a merely reactive role in site management, rather than actively working with local communities in identifying and defending cultural heritage sites, especially those in urban areas. It appears the Service only becomes involved when it is notified of a site, and this usually occurs when there is an imminent threat of destruction as part of

a development proposal. The Service does not, as a general rule, undertake upon its own initiative broad regional surveys in non-National Park areas to identify significant sites and therefore build up a database upon which assessments of relative values can be made on a local or regional basis. It largely relies on its Site Register, which consists of information supplied by archaeologists and interested members of the public. Though an important resource, this has its limitations.

As an example, let us suppose that in an unspecified urbanised and coastal local government area the Service has a total of 3 burial and 2 midden sites listed. Locals may be aware of many more such sites which have never been fully investigated or placed upon the NP&WS Site Register. Therefore the 2 midden sites so registered may not be representative of the middens still extant in the area. They may also contain as yet undiscovered burials, or may not be the most significant middens in the area in terms of age, content, and condition. Additional burial and rock art sites most likely exist elsewhere in the region. Therefore the NP&WS Sites Register may present a totally erroneous picture of the true extent of Aboriginal cultural heritage sites still present in the designated local government area. It will also reinforce the assumption that few sites survive in urban and built-up areas. This is not necessarily the case, however it is an attractive viewpoint for developers and government bodies not wishing to see development stifled by heritage issues.

Furthermore, when archaeologists are called on to carry out a study of a specific site in the municipality as a result of a development application or stop-work order, they usually undertake a literature search and check the site register to obtain a broad perspective of the items or sites most likely to be found. If this information is lacking, and the NP&WS Register is deficient, the archaeologist may be led to pronounce (erroneously) that few Aboriginal cultural heritage sites remain extant in the area. Site reports usually contain value judgements made by the archaeologist regarding regional or local significance. For the NP&WS to subsequently issue a 'consent to destroy' order or recommend other management options based on often limited and questionable information is of serious concern.

Finally, many of these archaeological reports, often produced in haste under pressure from developers or local government, are academic and technical in style, and fail to adequately incorporate ethno-historical and anthropological information of specific interest to the locality or region. Much can be missed as the archaeologist focuses solely on the precise site described in the brief, with the landowner's boundaries. As a large number of reports are commissioned by developers, there is obvious pressure for archaeologists to recommend site destruction wherever possible, to ensure

development proceeds. This pressure is also brought to bear upon the NP&WS, and as a result it is able to talk of 'sites which must be destroyed' whilst at the same time proclaiming its responsibility for 'the care, protection and preservation of all Aboriginal sites and relics'.⁷ A conflict of interest between the 'independent' consultant (archaeologist) and employer (developer) may arise in which 'consent to destroy' is a preferred option in a majority of cases.

There is no real opportunity for public critical analysis of reports prepared by or for the Service. Liaison with the local Aboriginal community in this whole process is not mandatory according to the Act, though such involvement is a matter of policy by the Service, and the ACHIAC does exist as an avenue for policy input. Most archaeologists make concerted efforts to inform the local people of their work and findings, involving them in digs and distributing copies of reports. However the process is far from a true collaboration. More active involvement between archaeologists, Service officers and members of the local community is needed if individual sites are to be adequately recorded, interpreted and preserved for future generations.

Unknown Destruction

It is a harsh reality that at present developers or landowners are free to destroy unregistered Aboriginal cultural heritage sites - whether middens, ceremonial grounds, rock art or engraving sites - if they are not found out, though the 1974 Act legally obliges them to notify the NP&WS upon discovering such a site. Unfortunately the majority of landowners and developers in NSW (into which category could also be placed local and state government instrumentalities) are not so virtuous, or knowledgeable of Aboriginal cultural heritage issues and interested in Koori culture to a degree where they would jeopardise their development plans by informing the Service and/or local Aboriginal community of such a discovery. They usually only do so when forced.

The recent hysteria over the *Mabo* decision clearly shows the level of ignorance and fear within the community regarding Aboriginal claims to land. Such claims are often associated with cultural heritage and sacred sites, therefore the potential for conflict in NSW is significant if a comprehensive survey of such sites were to be carried out. Most non-Aboriginal landowners would not welcome the idea of finding a midden or heritage site on their land, fearing that it would compromise their ownership rights. They see all Aboriginal sites as 'sacred sites' and react accordingly.

As an example, I was told recently of a Lake Illawarra man who in 1991, upon digging up an ancient stone axe in his backyard, destroyed it for fear that the local Land Council would stake a claim on his land. No official report was ever made, and the information was supplied to the author strictly 'off the record', though there was no reason to doubt its authenticity. Such ill-conceived misconceptions by members of the

non-Aboriginal community must raise doubts as to how far we have come over the last few decades in understanding and appreciating Australia's Aboriginal heritage, and how successful we have been in spreading the message to those largely set in their ways.

Discoveries By Chance

The present *National Parks & Wildlife Act* does not specifically call on the NP&WS to actively seek out and identify items of Aboriginal cultural significance, though such a role is desirable, if not by the Service, then by some other organisation.⁸ It would be unwieldy to suggest that an archaeological survey be carried out on all land subdivisions and developments processed by local and state government. However a balance must be achieved. More archaeological investigations need to be carried out and their results disseminated amongst the public rather than just the NP&WS, planners, archaeologists and a few Aboriginal representatives. Unfortunately at the moment precious little development is subject to such scrutiny, and Aboriginal sites are unknowingly (or knowingly) being destroyed as a result.

For example, when excavations were begun last year on a residential development site at Wollongong Harbour, a passer-by happened to notice shell fragments and evidence of a midden recently uncovered by a backhoe. He informed the author, who notified the NP&WS. Appropriate action was taken. Work was immediately stopped and an archaeologist employed to investigate the site. A large, undisturbed, regionally significant midden was found and the developer was forced to work around it and alter his development proposal accordingly.⁹ Another study was carried out in February 1994 prior to the commencement of work.

In hindsight it was only fortuitous that such an important site was discovered and temporarily saved. It is extremely doubtful as to whether the developer or backhoe driver would have notified the NP&WS of this midden, as the Act requires. Their defence could have been that they did not know it was an Aboriginal midden. And there's the rub. As development occurs up and down the coast, hundreds, perhaps thousands of unregistered Aboriginal cultural heritage sites are being destroyed annually, with few brought to the notice of the NP&WS or local Aboriginal communities. It could be argued that those which are discovered in urban areas deserve special consideration.

In the above case, the author was made to feel that his action in notifying the Service was threatening development and jobs in Wollongong, all for the sake of an Aboriginal 'rubbish dump'.¹⁰ Subsequent to the notification, the Service tried to accommodate the developer as much as possible. The outcome was that permission was granted for the midden to be partially destroyed and buried underneath a carpark and 7 storey building, and the development application was approved by Council, with minor alterations.¹¹ Such is the outcome of a process which aims to 'preserve

and protect' Aboriginal cultural heritage sites. During this whole episode the author was never officially informed by the NP&WS of their actions or recommendations for the midden, despite the fact that he had initiated its intervention. At the end of the day it appeared that the only one to benefit was the archaeologist who was paid to prepare a report on the site, said report now buried in the archives of the NP&WS and Wollongong City Council, and the developer, although the latter was temporarily inconvenienced and Council was forced to carry out extra paperwork. Whilst this process did secure the preservation of the majority of the midden, and some local media publicity, access will be severely limited once the concrete is poured, as will further investigations of the site or its use by the local Aboriginal community.

The following questions need to be asked: how has the community benefited from the discovery of this regionally significant midden, and the Service's management of it as prescribed by the Act? Is the NP&WS fulfilling its duty of preserving and protecting Aboriginal cultural heritage sites such as coastal middens by allowing their partial or complete destruction? Is it aware, in each case, of the full extent or regional scarcity of sites to which it issues 'consent to destroy' notices?

Another recent case in the Illawarra involved a coastal midden which was under investigation by archaeologists at Wollongong University with regards to carbon dating and structure. It was regionally significant and a known burial site, having had a skull removed from it by local police in 1974 (present whereabouts unknown). Nevertheless, it was chosen as the site for a car park by consultants engaged in a Local Environment Study prepared for Wollongong City Council during 1993.¹² The consultants were aware of the Aboriginal significance of the site, but in the author's opinion they failed to show due regard to this in preparing their recommendations for future development. It is hoped that a more sensitive use of the midden and burial site will be achieved, though the recent construction nearby of a cycle-way is placing further stress on the area.

'Conspiracy of Silence'

The underlying rationale behind the NP&WS role in the management of Aboriginal cultural heritage sites is the identification, investigation, and 'protection' from the community at large and acts of vandalism. Aboriginal cultural values regarding secrecy and sacredness are also considered. As a result, the Service is secretive regarding such sites and any associated information including archaeological reports which describe their contents. It is usually only when these investigations are written up in scholarly journals or books such as Josephine Flood's *Archaeology of the Dreamtime* that the community at large is made aware of this work. This is unacceptable, for a number of reasons.

Firstly, many members of the local Aboriginal community, plus those non-Koori interested in protecting and promoting Aboriginal culture, are never made aware of

studies or site discoveries in their region. All this research and archaeological investigation comes to nought, with the suspicion that they are largely reports prepared by archaeologists for fellow archaeologists. The general community is not considered to have a role to play in this process, while the jargon of the various reports could make it difficult for Aboriginal people in the future to reclaim their heritage. The whole system is outdated, with the majority of archaeologists being non-Koori and the NP&WS keeping a tight rein over intellectual and physical access to this material.

Secondly, the Service argues that by keeping such site localities secret they are protecting them from unwarranted use and abuse. This is a strong defence, yet it too is flawed. This secretiveness has meant that not only is the public and much of the local Aboriginal community unaware of such sites, but also bodies such as local councils and State government departments remain in the dark. Ignorance is widespread, and a common defence of inaction. Aboriginal cultural heritage is at the bottom of the list when it comes to matters to be considered by such institutions with regards to development and planning. It is obvious that less concern will be shown for such issues if they remain largely unknown. Therefore this policy is working against the preservation of such sites.

It is a fact that the majority of archaeological reports prepared for Aboriginal heritage sites are carried out under the terms of the *National Parks and Wildlife Act* and *Environmental Planning and Assessment Act 1979* (NSW) ('EP&A Act'), as part of specific development proposals and at the instigation of local government Councils. According to the *EP&A Act*, any such reports are public documents available for assessment and copying by any individual interested in the specific development and acting according to the tenets of the Act.¹⁴ The legal right of the NP&WS to withhold any such report from public access is questionable, although the argument of access to information versus protection of individual sites complicates the situation. Also of concern are the procedures put in place limiting access to information on specific cultural heritage sites. In order for a member of the public to use the NP&WS Site Register, or unpublished archaeological reports held by them, they must first obtain permission from the relevant local Land Council, and thereafter from the Service and/or author. This can be a bureaucratic nightmare for both Aboriginal and non-Aboriginal people, and is not easily achieved, for a variety of political and logistic reasons.¹⁵

Another criticism of the Service is its failure to develop a public profile on cultural heritage matters, or enforce a presence in local government bureaucracy such that Aboriginal issues are an everyday (or at least annual) consideration by local planning department staff and those responsible for development application approvals. This 'conspiracy of silence' therefore affects not only the general

community but also the various levels of government. The NP&WS has failed to force local government to accept its responsibilities in this matter, despite providing advice and issuing official guidelines such as the 1986 *Planning for Aboriginal Site Management: a Handbook for Local Government Planners*.¹⁶ Of course, local government is also to blame for not having taken the issue up earlier.

It is twenty years since the *National Parks and Wildlife Act* came into force, yet it could be argued that during the intervening period there has been minimal increase in community awareness of Aboriginal cultural heritage issues, especially in urban areas of the State where there is most likelihood of destruction due to development.

Local Government's Role

With the NP&WS taking a reactive but major role in the protection and management of Aboriginal cultural heritage sites in developed, urbanised areas of the State, and Aboriginal Land Councils often distracted by internal politics from the role of active site identification and protection, it could fall upon local government to assume some responsibility for identification and protection of sites. As yet this has not happened on a widespread scale, although in light of the Bicentennial and more recent *Mabo* debate, some Councils are addressing the problem. A good example is Wyong City Council which, since 1987, has implemented an Aboriginal Heritage Policy as part of its general planning structure, such that cultural heritage sites are now regularly identified, classified and incorporated within its geographical database.¹⁷

As an example of past neglect, on the South Coast we have Shoalhaven City Council's construction of a toilet block on an Aboriginal burial ground during 1974, despite much vehement opposition from the local community,¹⁸ and Wollongong Council's record in this field is one, at best, of doing the least amount as required by the various Acts. Wollongong's specific failings in this area were brought to light during the recent attack by the Minister for the Environment, Chris Hartcher, and the NP&WS, in relation to the alleged destruction of part of an Aboriginal midden at Lake Illawarra in the furtherance of construction of a cycleway.¹⁹ Whilst Council proclaimed its innocence in this specific issue,²⁰ and the matter is now before the Courts, it, like many other local government bodies, is nevertheless guilty of neglect in not actively seeking to identify items of Aboriginal cultural heritage over the years and incorporating their conservation within various planning instruments. For these failings local government can be called to task.

Solutions

Whilst the problems of site identification and management in New South Wales are obvious, the solutions are not so simple. Two Parliamentary Committees, in 1980 and 1989, have recommended the establishment of an Aboriginal Heritage Commission, yet governments have balked at taking this up.

There is no doubt that a dedicated, independent, adequately resourced organisation, with Aboriginal control, needs to be created to more appropriately deal with cultural heritage sites on a State-wide basis and raise the level of public awareness on such issues. Aboriginal groups, local government, and other interested parties need to become more involved, at a local level, in preserving sites for future generations.

In the interim, a program of regional surveys of urban areas of NSW should be undertaken, involving the NP&WS, local government and Aboriginal communities. Such a program should be funded by the three tiers of Government and aim to identify extant Aboriginal cultural heritage sites. ATSIC and the NSW Land Council could perhaps also apportion some of their respective budgets to programs which identify, on a local and regional level, cultural heritage sites. Input could be sought not only from trained archaeologists, but also local elders, historians, anthropologists and the general community. Previous studies could be collected and made accessible. With such a database of information available, sites could be prioritized with the aim of affording appropriate levels of protection and management, and eventual incorporation into local government development control plans. In the short term, specific geographical areas most under threat of development, and/or of most significance to the Aboriginal community, should receive priority.

The NP&WS would better serve the community by reassessing its role of official protector of Aboriginal cultural heritage sites, and work towards transferring its powers and responsibilities to the proposed Aboriginal Heritage Commission outlined in the 1989 Ministerial Task Force Report. Whatever the eventual outcome, the right to issue 'Consent to destroy' permits, if it is to exist at all, should be taken from the Director and handed back to the Aboriginal community. At the very least the NP&WS should expand its role in raising public awareness of Aboriginal cultural heritage issues on a local and regional level. At the moment it could be argued that its present policy is leading to the destruction of more sites than are being protected, especially in coastal areas around centres of population. The fact that this destruction of known significant sites occurs with the approval of the Service seriously compromises its position, and raises the question as to whether it should continue to exercise such power.

* Michael Organ would like to thank Carol Speechley of Wollongong University's Aboriginal Education Unit for her ongoing support and advice.

Endnotes:

1. S. Sullivan of the Australian Heritage Commission, in a review of Stanbury, P., and Clegg, J., "A field guide to Aboriginal rock engravings with special reference to those around Sydney", (Sydney University Press, 1990), in *Archaeology in Oceania*, 27, 1 April 1992, 47.
2. *National Parks and Wildlife Act 1974 (NSW)*, Part 6 - *Relics and Aboriginal Places*. See also ss62-4, 72-82, 85, 89-90, 157-161.
3. Efforts are being made to involve Aboriginal people in joint management of National Parks with the NP&WS via

the presentation of the *National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992*, however this has its limitations. Refer Lipman, Z., & Don, K., "Aboriginal Joint Management Of National Parks: Why New South Wales Still Has A Long Way To Go", *ALB 2/60*, pp6-8.

4. Fourmile, H., "The Need for an Independent National Inquiry into State Collections of Aboriginal and Torres Strait Islander Cultural Heritage", *ALB 2/56*, pp3-4.

5. *Parliament of NSW, Aboriginal Land Rights and Sacred and Significant Sites - First Report from the Select Committee of the Legislative Assembly Upon Aborigines, Part 1 - Report and Minutes of Proceedings, Part 2 - Minutes of Evidence*, AGPS, Sydney, 1980.

6. *Report of the NSW Ministerial Task Force on Aboriginal Heritage and Culture*, NP&WS, Sydney, 1989.

7. Annual Report of the NP&WS for 1982-83, AGPS, Sydney, 1983, p40.

8. Volunteer and NP&WS sponsored bodies do exist which partially fulfil this role. One such example is the Illawarra Prehistory Group which, under the leadership of professional archaeologist Caryl Sefton, has for more than a decade systematically surveyed the catchment area south west of Sydney and prepared detailed reports for the Service's Sites Register. However such groups are not common, and their work is not necessarily geographically comprehensive due to lack of funding and resources.

9. Navin, K., "Belmore Basin Midden, Wollongong, Archaeological Investigation", unpublished report to Saxon Building Projects, December 1992; Failes, Geoff, "Luxury Villas Work Ban - Koori Relics Found at Site", *Illawarra Mercury*, 26 November 1992. This particular development site had during 1991-2 been the subject of an action by local residents in the Land and Environment Court, and on appeal to the Supreme Court, against Wollongong City Council's development approval (75 LGRA 112), however the presence of an Aboriginal midden on site was as yet unknown.

10. Based on comments made to the author by the 'passer-by' who informed him of the midden's presence, after having spent a number of days on site fossicking for old bottles and speaking to the workers there.

11. Refer report to Wollongong City Council's Development and Planning Committee, 27 April 1993.

12. Gutteridge, Haskins & Davey, *Sandon Point Local Environment Study*, Sydney, May 1993. Prepared for Wollongong City Council. This contains a copy of K. Navin's *Assessment of Aboriginal Archaeological Resource, Sandon Point, Wollongong, NSW, Acton, October 1992*, 25p. See also Navin, K., and Officer, K., *Further Archaeological Investigations, Danton Point, Wollongong, NSW, Acton, November 1993*.

13. Sullivan, S., *op. cit.*

14. According to s77(9) of the *Environmental Planning and Assessment Act 1979 (NSW)*, which deals with documentation accompanying Development Applications, it is clearly stated that: "Upon an application being made under this section the applicant, not being entitled to copyright, shall be deemed to have indemnified all persons using the application and documents in accordance with this Act, against any claim or action in respect of breach of copyright". This section thereby indemnifies a local Council or interested member of the public against any copyright breaches which may take place in the course of using material such as archaeological reports prepared in accordance with the Act. This "use" will usually be to study in detail the information provided in such reports in order to assess the effects of a proposed development on an Aboriginal cultural heritage site. Also applicable is s86 of the Act, which states: "At the places [Council Offices] and during the period specified in a notice under s84(1), any person may inspect the development application referred to in the notice and documents accompanying that application and may make extracts from or copies thereof". Therefore, the taking of copies of archaeological and environmental reports is accounted for and acceptable under the Act. Moreover, upon lodging a Development Application (which may be accompanied by such reports, along with detailed maps and plans) a developer automatically indemnifies any person against a charge of breach of copyright in copying this material, where the copied material will be used in making a valued assessment of the specific development proposal. In other words, such material is on the public record.

15. For example, within the Illawarra region, the Land Council, according to the opinion of some elders, is run by 'out-of-townners' and individuals with tenuous local ties, if any. As such, political and family tensions result in the descendants of the original tribal groups - the Wodi Wodi people - not being represented on the local Land Council, and therefore not having a say in the management of

Illawarra cultural heritage sites, although they care deeply for their fate. Such management is usually in the hands of a few individuals on the Land Council. The person who performed such a task in Illawarra for almost twenty years, and who had local Aboriginal community support, having been delegated the responsibility by his father, once told me that he had few of the final archaeological reports prepared during the period for which he was responsible. He alone was the local storehouse of such information for all sections of the community. Unfortunately he no longer carries out this role.

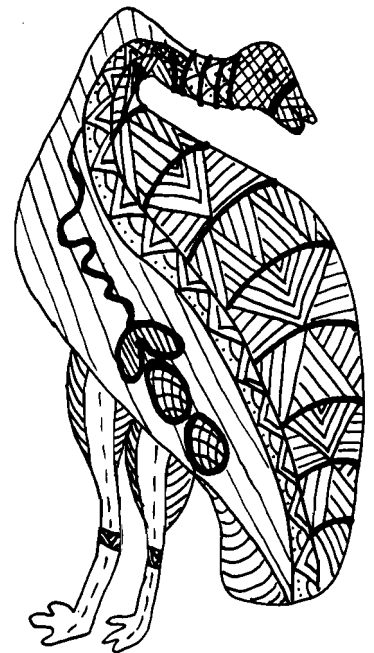
16. Ross, A., (ed), *Planning for Aboriginal Site Management: A Handbook for Government Planners*, NP&WS, Sydney, 1986.

17. Smith, D., "Aboriginal Sites - A System for Planning and Management", *Australian Planner*, December 1993, pp75-78; Dallas, M., Menses, P., and Rola-Wojciechowski, *Aboriginal Resources Planning Study for Wyong Council, NSW, Wyong Council*, 1987.

18. Stokes, I., and Strewer, O., "Pissing on the Burial Ground", *The Living Daylights*, 12-18 March 1974.

19. "Koori site 'destroyed' - Probe may lead to council being prosecuted", *Illawarra Mercury*, 4 June 1993. The Minister, in a press release, claimed "Council had a long history of breaches of the Aboriginal provisions of the *National Parks and Wildlife Act* and had shown total disregard over the years, damaging Aboriginal sites at Windang Surf Club (1985), Judbooley Park (1988), Windang Caravan Park (1990), Windang foreshore (1990 and 1992) and Wollongong's North Beach (1993) while undertaking works". Quoted from an editorial by journalist, Geoff Failes, *Illawarra Mercury*, 9 June 1993.

20. "State Govt 'cowardly in Koori site row' - [Lord Mayor] Campbell slams Minister", *Illawarra Mercury*, 7 June 1993; "Koori Midden Not Significant - Expert", *Illawarra Mercury*, 8 June 1993. Council was eventually summoned by the NP&WS to appear in Wollongong Court on 17 September on a charge of knowingly damaging an Aboriginal midden at Windang between 19 February and 10 March 1992.



Artwork

by Mundara Koorang,
from the EORA Centre,
Chippendale, Sydney.