



James McDonagh
Team Leader
Energy, Resources & Industry Planning Assessments
Email: James.McDonagh@planning.nsw.gov.au

Your reference: SSD-9099356
Our reference: DOC23/77101

Dear James,

Heritage NSW - Advice on Environmental Impact Statement (EIS) - State Significant Development (SSD-9099356) – Holcim Salt Ash Sand Operations Project

Thank you for your referral uploaded to the Major Projects Portal on 3 February 2023 seeking advice on the above State Significance Development (SSD) proposal.

We have prepared the following advice to assist the Department in considering Aboriginal cultural heritage matters for this SSD application. The advice is based on the review of the following documents:

- Appendix M – Aboriginal Cultural Heritage Assessment Report – (including Appendices 1-3) prepared by Artefact Heritage, dated June 2022.
- Holcim Salt Ash Sand Operations State Significant Development – Environmental Impact Statement prepared by Element Environment, dated November 2022.

The review has identified some matters in relation to the Aboriginal Cultural Heritage Assessment Report (ACHAR) that need to be addressed.

We have included detailed advice in **Attachment A** and recommended draft Conditions of Approval in **Attachment B**. Please note that our advice relates only to Aboriginal cultural heritage regulation matters. You may wish to seek separate advice from Heritage NSW in relation to matters under the *Heritage Act 1977*.

If you have any questions regarding these comments, please contact Nicola Roche, Senior Assessments Officer, at Heritage NSW on 0400 133 251 and nicola.roche@environment.nsw.gov.au.

Yours sincerely

Sam Gibbins
A/Manager Assessments
Heritage NSW
Department of Planning and Environment
(As Delegate under *National Parks and Wildlife Act 1974*)
Date: 2 March 2023



Attachment A – Detailed Aboriginal Cultural Heritage Advice

Aboriginal Cultural Heritage Assessment Report (ACHAR)

1. Heritage NSW notes that the Aboriginal Heritage Information Management System (AHIMS) search is greater than 12 months old at the time of submission. Heritage NSW requires, as per Requirement 1b of the *Code of Practice*, that AHIMS searches are contemporaneous with the project. We consider that AHIMS searches of over 12 months old need to be updated. Please provide an updated AHIMS search.
2. The ACHAR references the presence of three previously recorded sites within the project area, being AHIMS #38-4-0298, 38-4-0299 and 38-4-0300. These sites were recorded in 1981 and it was recommended that a Consent to Destroy permit (now referred to as an Aboriginal Heritage Impact Permit – AHIP) be obtained for sites #38-4-0299 and #38-4-0300. The ACHAR states that site #38-4-0298 and 38-4-0300 have been destroyed and that site #38-4-0299 has been substantially impacted but remains present. Heritage NSW has no record of an AHIP having been issued for these sites. Please clarify the approvals context under which these sites were harmed.
3. Please include mapping of survey transects on Figure 12.
4. Please clarify whether the reference to Survey Unit 4 in Section 6.1.1 has been made in error as this survey unit is not shown in Figure 12 or in survey coverage information.
5. It is understood that three areas were identified as having archaeological potential (test areas 1-3) based on the lower level of disturbance and landforms within these areas. However, based on a review of aerial photography, it appears that there are similar vegetated landforms in other portions of the project area outside test areas 1-3. Please clarify (including provision of mapping of the extent of prior sand extraction) why these areas were assessed as not having archaeological potential.
6. Please include mapping of test pit locations (showing the number of artefacts recovered in each unit) in the relevant section of the ACHAR main text.
7. There is a lack of clarity regarding the potential for additional archaeological deposits to be present in Test Area 1 outside the specified site areas, which have been defined based on the distribution of surface artefacts and the presence of artefacts within test pits. On p34, the ACHAR states ‘The high density nature of the artefactual deposit within test area 1 suggests knapping and other repeated activities that would result in the deposition of artefacts did occur frequently at this location’. On this basis and with reference to the outcomes of the test excavation, please clarify why Test Area 1 has not been recorded as a large site containing a discontinuous distribution of subsurface and surface Aboriginal objects across the area. This is particularly relevant given that the intended distribution of test pits within this area could not be excavated and thus there is not full coverage of the area.
8. Section 2.5.6 of the EIS identifies that the project area is located at the rear of dunes that are part of the Phase II dune system within the Stockton Bight formation. It is acknowledged that the Phase II dunes overlie Phase I foredune ridges and that the project will result in extraction of sand from Phase I and Phase II dunes. On this basis, the ACHAR must consider the potential for an additional stabilised soil profile associated with Phase I dunes to be present below the depths subject to test excavation. The ACHAR must provide strategies for the identification and management of Phase I profiles should they be exposed during operations.
9. The statement of significance provided in Section 10.7 acknowledges that the project area is of very high Aboriginal cultural significance however the final sentence

concludes that it 'has no specific cultural heritage values'. This contradicts the input provided by the Registered Aboriginal Parties and requires clarification.

10. Section 12.2 of the ACHAR references establishment of exclusion zones around specific site areas. It is noted that the ACHAR identifies that no impacts will occur to landforms located outside the approved disturbance footprint (including portions of test areas 1-3). Please clarify how the portion of the project area outside the approved disturbance footprint will be protected and managed, including protection from incidental impacts.
11. The unexpected Aboriginal heritage find policy provided in Section 12.6 states that 'assessment and approval may be required before works can continue' at the location of the find. Heritage NSW requires that the policy outline a clear process for the management of any unexpected finds that includes guidelines for the assessment of significance and provision of specific management strategies and methodologies to be applied based on the significance and type of find identified.
12. The unexpected Aboriginal heritage find policy provided in Section 12.6 refers to an inspection being undertaken by a qualified archaeologist however Section 13.2 references the inspection being undertaken by a qualified archaeologist and registered Aboriginal stakeholder. Please edit Section 12.6, as agreed with Leonard Anderson.

Consultation

13. Please provide a copy of the final Test Excavation methodology that was provided to the RAPs. The ACHAR notes that this methodology includes consideration of the requirement to expand test pits based on a request from Worimi Local Aboriginal Land Council however the criteria for expansion are not discussed in the ACHAR.
14. Appendix 3 documents that the draft ACHAR and a subsequent revision were provided to three Registered Aboriginal Parties for review and comment. Given that there are nine Registered Aboriginal Parties for the project (excluding Mindaribba LALC who withdrew from the process) please clarify why the opportunity to review and comment on the draft ACHAR was not provided to all Registered Aboriginal Parties in accordance with the requirements of Clause 60(8) of the *National Parks and Wildlife Regulation 2019*.

Aboriginal Cultural Heritage Management Plan (ACHMP)

- Heritage NSW recommends that an ACHMP be developed and implemented for the project. Heritage NSW recommends the requirement for an ACHMP should be included in the Conditions of Approval and that an ACHMP be created and approved by Department of Planning and Environment prior to any development activities occurring within the project area. Recommended conditions for an ACHMP have been included in **Attachment B**.



ATTACHMENT B: RECOMMENDED DRAFT CONDITIONS FOR ABORIGINAL CULTURAL HERITAGE

Below are our recommended draft conditions for the protection of Aboriginal Heritage and the implementation of an Aboriginal Cultural Heritage Management Plan.

Aboriginal Heritage

- 1) All reasonable steps must be taken so as not to harm, modify or otherwise impact Aboriginal objects except as authorised by this approval.
- 2) The Registered Aboriginal Parties (RAPs) must be kept informed about the SSD. The RAPs must continue to be provided with the opportunity to be consulted about the Aboriginal cultural heritage management requirements of the SSD.

Aboriginal Cultural Heritage Management Plan

- 3) Prior to carrying out any development, the Applicant must prepare an Aboriginal Cultural Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:
 - a) be prepared by suitably qualified and experienced persons;
 - b) be prepared in consultation with Registered Aboriginal Parties;
 - c) be reviewed by Heritage NSW;
 - d) include a description of the measures that would be implemented for:
 - i) the ongoing protection and management of the areas (and the Aboriginal objects they contain) located within the project area but outside the approved footprint (as mapped in the EIS);
 - ii) salvaging the Aboriginal objects located within the approved disturbance footprint, including community collection of Aboriginal objects within known sites subject to harm (namely AHIMS #38-4-0298, 38-4-0300, SA AS 01, SA IF 03 and SA SIF 02);
 - iii) ongoing consultation with the Registered Aboriginal Parties in relation to actions undertaken under the Aboriginal Cultural Heritage Management Plan and any subsequent review of the Aboriginal Cultural Heritage Management Plan;
 - iv) a strategy for the long-term management of any Aboriginal objects collected (including those from the test excavation program);
 - v) a contingency plan and reporting procedure including:
 - (1) Unexpected Aboriginal Heritage Finds and Human Remains Procedures to manage unexpected Aboriginal objects or values in accordance with any guidelines and standards prepared by Heritage NSW. The Unexpected Aboriginal Heritage Finds procedure must include provision for the assessment of significance and application of specific management strategies (such as community collection, excavation or conservation).
 - (2) the Unexpected Aboriginal Heritage Finds and Human Remains Procedure must be prepared by a suitably qualified and experienced heritage specialist in relation to Aboriginal cultural heritage, in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010) and submitted to the Planning Secretary for information no later than one (1) month before the commencement of construction.
 - (3) the Unexpected Aboriginal Heritage Finds and Human Remains Procedure, as submitted to the Planning Secretary, must be implemented for the duration of construction.
 - e) ensuring workers on site receive suitable heritage inductions prior to carrying out any development on site, and that records are kept of these inductions; and



- e) include a requirement to complete a report documenting the outcomes of Aboriginal cultural heritage salvage works. The report must be prepared by a suitably qualified expert and must:
 - i) document the results of the works (with artefact analysis and identification of a final repository for finds);
 - ii) confirm that Aboriginal Site Impact Recording forms have been submitted for all sites subject to harm; and
 - iii) be provided to the Registered Aboriginal Parties for review and comment (with a minimum of a 28 day review period) before the report is finalised. The final report must be provided to the Planning Secretary, Heritage NSW, the relevant Councils, and the relevant Local Aboriginal Land Council, and the Registered Aboriginal Parties within 24 months of the completion of the Aboriginal cultural heritage salvage works.