

Our ref: HMS ID 8099

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Advice on Modification Report – State Significant Development

Proposal: Warnervale Shopping Centre

Major Project reference: MP10_0195-Mod-2

Received: 28 November 2024

Dear Mr Lennox,

Thank you for your referral seeking advice on the above State Significant Development proposal.

In preparing this advice Heritage NSW has reviewed the following documents:

- Relevant sections of the Modification Report: Warnervale Shopping Centre – MP10_0195 MOD 2 – prepared by Willowtree Planning Pty Ltd, dated 21 October 2024
- Appendix E20: Aboriginal Cultural Heritage Assessment Report – 262 Hakone Road, Warnervale, NSW – prepared by Austral Archaeology Pty Ltd, dated 26 September 2024

It is understood that the proposed application seeks to modify the existing Development Consent MP10_0195 to allow for reconfiguration of the approved Warnervale Shopping Centre at 262 Hakone Road, Warnervale including a reduction in floor space and changes in parking and land uses. An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been prepared by Austral Archaeology Pty Ltd (Austral) to support the Modification Application. It is further understood that the ACHAR has been prepared to serve as a bridging analysis from the assessment completed as part of the 2013 Consent and to ensure that the assessment process aligns with current legislative requirements.

Heritage NSW notes that the ACHAR provided with the Modification Report has not been subject to review and comment by the registered Aboriginal parties (RAPs) as required by Section 60(8) of the *National Parks and Wildlife Regulation 2019*. Until such time as consultation requirements have been met and the report finalised, Heritage NSW cannot provide comprehensive advice to the Department on whether the management recommendations and archaeological assessment provided in the ACHAR are adequate. Nevertheless, Heritage NSW has completed a provisional review of the draft

ACHAR and has identified key matters, as outlined below, that must be addressed in order for Heritage NSW to provide advice regarding project approval.

Aboriginal Community Consultation

1. Heritage NSW requests that the draft ACHAR be provided to the RAPs for review and comment, with any comments received to be addressed in the finalisation of the document. We note that this will include updating several sections in the ACHAR, including but not necessarily limited to, Section 2.5 (Stage 4: Review of Final ACHA), Section 8.2.4 (Social and spiritual significance), Appendix B (Consultation log & documentation).
2. Please provide additional documentation relating to the consultation process including:
 - a. copies of all correspondence received from RAPs during the Stage 1 consultation process (i.e. the emails registering an interest in the project).
 - b. evidence that the draft ACHAR (Stage 4) has been provided to all RAPs and copies of any responses received. This can comprise of copies of dated email records with all relevant email addresses shown and/or delivery / read receipts of the correspondence.
3. We note that Section 2.2.2 states that: *"A review of the consultation identified that Worimi Conservation Lands was not sent Stage 1 to Stage 3 documents. This was rectified on 3 July 2024"*. Please update this section to include the outcomes of this additional consultation including confirmation of whether Worimi Conservation Lands are now considered a RAP for the project.
4. Please update the consultation summary in Section 2 of the ACHAR to include key details such as the dates when various notification letters were sent, and any deadlines for comment.

Archaeological test excavations

5. The ACHAR recommends that an archaeological test excavation program be undertaken to determine the nature and extent of Aboriginal cultural material that may be present within the two areas of moderate potential that have been identified within the study area. As standard practice, Heritage NSW requires that test excavations be undertaken prior to project approval to ensure that the significance of sites is understood, and that all cultural values are accurately assessed and managed. We therefore request that test excavations be completed and the ACHAR be updated based on the results of this additional investigation.
6. As per Section 89A of the *National Parks and Wildlife Act 1974*, please ensure that all sites, including untested areas of potential archaeological deposit (PAD), have been registered with the Aboriginal Heritage Information Management System (AHIMS).

Impact assessment and considerations for avoidance

7. Noting that Figure 9.1 indicates that the northern area of moderate potential (i.e. 'northern PAD') does not appear to be within an area currently proposed for development, please clarify whether the northern PAD will be subject to impacts from the project or whether the area will be avoided; and update the impact assessment accordingly. Where the area will be avoided, the untested area of PAD must be registered with AHIMS, and appropriate management recommendations developed to ensure its protection during construction.

Environmental background and identification of landforms

8. The ACHAR is inconsistent in the landforms that are described as being present within the study area. The discussion of topography in Section 3.1.1, for instance, refers to crest, ridge, spur, shoulder, slope, footslope and valley landforms as being present in the study area. In contrast, the landforms mapped in Figure 3.1, include crest, gentle slope, slope, and terrace landforms, while the predictive model presented in Section 5.1.4, refers to "summit, ridge, shoulders, spur, slope, footslope and valley landforms" as being present in the study area. To address this inconsistency please clarify the landforms present across the study area and update the ACHAR as required to ensure consistency between the different sections of the assessment (i.e., environmental context, predictive model, survey results and discussion).
9. The environmental context presented in Section 3.1 contains erroneous information and must be revised to be specific to the study area and local region (i.e. central coast region). The information provided regarding the Cumberland Plain subregion of the Sydney Basin Bioregion to the west of Sydney, for example, is not environmentally relevant to the current project which is situated approximately 100 km north of Sydney on the central coast. Further, we note that Section 3.1 includes discussion of the topography of the Picton soil landscape which is stated as being "*one of two identified soil landscapes within the study area*" pg.11. This is inconsistent with information provided in Section 3.1.2 (Geology and soils) which indicates that the soil landscapes associated with the study area are the Woodburys Bridge (9131wo) and Gorokan (9131gk). Please review and revise this section for accuracy.

Archaeological background and predictive model

10. The ACHAR states that "*Background research suggested that no other archaeological assessments have been undertaken within the study area*" (pg. iv). Heritage NSW would like to draw Austral's attention to the assessments that were completed as part of the Environmental Assessment (EA) and Response to Submissions prepared in support of the original project. These assessments are publicly available on the major projects website and include:
 - Appendix 0: The archaeological investigation for sites of Indigenous cultural significance on the site of the proposed Warnervale District Town Centre & Sewerage Infrastructure, Warnervale, Central Coast, NSW, prepared by John Appleton, Archaeological Surveys & Reports Pty Ltd, dated March 2004.
 - Appendix E: Aboriginal cultural heritage impact assessment Woolworths & Big W, Warnervale, NSW, prepared by Guringai Tribal Link Aboriginal Corporation, dated 30 January 2012.
 - Appendix E: Aboriginal Cultural Heritage Assessment Report for the Warnervale Town Centre Civic Precinct Development, prepared by Darkinjung Local Aboriginal Land Council, dated 20 January 2012.

In accordance with Requirement 1a of the *Code of Practice for Archaeological Investigation of Aboriginal objects in NSW* (DECCW 2010), please update the ACHAR to include discussion of these previous reports to ensure that the assessment of the regional archaeological data thoroughly collates existing archaeological investigations and predictive models relevant to the study area.

Other comments

For your reference and correction, please be aware of the following errors and omissions:

11. Heritage NSW notes that the ACHAR does not identify the fact that the assessment has been prepared to support a Modification Application being made under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Please update the summary of the legislative process for the project provided in Section 1.4 (and any other sections, as relevant) to include the background details regarding the original project, the (then) Part 3A Concept Approval under MP10_0195, and details of the current Modification Application.
12. We note that the ACHAR currently refers to the 2009 repealed version of the *National Parks and Wildlife Regulation*. Please update all references to the "National Parks and Wildlife Regulation" to reflect the current 2019 version.
13. When preparing the final recommendations for the project (i.e. following the completion of the test excavations and additional RAP consultation), please ensure that they are specific to the fact that this is a State Significant Development, noting that references to Aboriginal Heritage Impact Permits (AHIPs) therefore may not be appropriate.

Following revision of the ACHAR to address the matters identified above, Heritage NSW requests the opportunity to undertake additional review and provide further advice. If you have any questions about this correspondence, please contact Marika Low, Senior Assessments Officer at Heritage NSW on (02) 9873 8500 or heritagemailbox@environment.nsw.gov.au

Yours sincerely,

Alison Lamond

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Major Projects
Heritage NSW
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As Delegate under *National Parks and Wildlife Act 1974*
12 December 2024