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Planning Officer  
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2 February 2016

cc. Adam Bishop  
Senior Environmental Consultant  
KMH Environmental  
Level 1, 81 Hunter Street  
Newcastle NSW 2300  
Via Email: [abishop@kmh.com.au](mailto:abishop@kmh.com.au)

Dear Thomas,

**Re: Proposed Dolwende Quarry Aboriginal Heritage Impact Assessment (AHIP), 21 May 2015,  
McCardle Cultural Heritage (MCH)**

Tocomwall has previously made submissions to both the OEH and the DPE (letters dated 8 and 25 May 2015: also attached to the email and the submission to the DPE). Please refer to this other letters in regard to a more detailed (initial) review by Tocomwall of the shortcomings of the MCH report. The following letter has some additional comments that KMH may wish to consider with regard to the current SSD.

Tocomwall have had concerns about the level of consultation, the appropriateness of that consultation, in addition to serious issues with the nature of the archaeological reporting. Those concerns have been ignored by MCH, KMH, OEH (who passed the matter over to the DPE due to the matter being a SSD) and the DPE.

Of considerable significance to the MCH report is the fact that they have failed to acknowledge that the Native Title Claim by the Plains Clan of the Wonnarua People (NC2013/006 - Scott Franks and Anor on behalf of the Plains Clans of the Wonnarua People) was registered on the 16 January 2015 despite being notified of this registration by Tocomwall on several occasions.

As you are aware, consultation with Aboriginal communities in NSW in regard to heritage assessments is undertaken through OEH's *Aboriginal cultural heritage consultation requirements for proponents 2010* ('the requirements').

In light of what the requirements clearly identify in regard to Registered Native Title Claimants, the approach by MCH in the consultation process of engaging with the Native Title Claimants has failed to address these requirements, namely (pp8):

*'In some cases, the information required for decision making will be held by Aboriginal people with statutory recognition for certain lands:*

- *Aboriginal owners in accordance with the NSW ALR Act and/or*
- ***Native title holders or registered native title claimants in accordance with the Native Title Act 1993 (Cth) and NSW Native Title Act 1994***

*It is acknowledged that Aboriginal people who, through a historical presence in a particular area, may have developed cultural knowledge relevant to the Aboriginal objects and/or places based on knowledge passed down to them by Aboriginal people with a traditional connection to Country. DECCW respects the rights of Aboriginal people with a historical connection to Country to, with their permission, act on behalf of Aboriginal people with a traditional connection to Country. DECCW acknowledges that in some cases it will only be Aboriginal people with a historical connection to an area who have the knowledge to inform the assessment of cultural significance of certain objects/places; e.g. on Aboriginal reserves and missions. (my emphasis)*

As was clearly demonstrated in the recent NSW Land and Environment Case - Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure & Anor; Australian Walkabout Wildlife Park Pty Limited (ACN 115 219 791) at Trustee for the Gerald and Catherine Barnard Family Trust v Minister for Planning and Infrastructure & Anor – there are serious issues with the way that consultation is currently undertaken by heritage consultants using the requirements. The MCH cultural assessment of the proposed quarry leaves the cultural assessment open to considerable criticism and challenge.

In light of the findings of this court case, Tocomwall would like to see a more appropriate anthropological study of the cultural values of the study area, designed and implemented by a qualified anthropologist with appropriate field and interview techniques. This needs to be undertaken in order to fully appreciate the cultural significance before the archaeological report can be supported. As it currently stands, the cultural assessment is insufficient and needs to be undertaken in a more thorough manner by an appropriately qualified anthropologist.

As you can appreciate the current status of the MCH report leaves the proponent open to a legal challenge. In particular the recent NSW Land and Environment Case quoted above supports Tocomwall's position on this subject.

Tocomwall would like to put KMH on notice that if steps are not taken to address the concerns outlined in this letter and those of the previous letter (letter dated 25 May 2015) we will be seeking an injunction under Section 10 in the NSW Land and Environment Court.

Tocomwall looks forward to meeting with you as soon as possible to discuss and expedite these matters.

Regards,



Jakub Czastka (Chaz)



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