



Our ref: DOC20/881125-13
Your ref: SSD-10385

Rita Hatem
Social and Other Infrastructure Assessments
Planning and Assessment Group
Department of Planning, Industry and Environment
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Advice provided via the Major Project Portal

Dear Ms Hatem

Notice of Exhibition of application for Kambala Sport, Wellbeing and Senior Learning Precinct (SSD 10385)

Thank you for your referral dated 26 October 2020 inviting comment from Heritage NSW on the above State Significant Development (SSD) proposal. We note the proposed development is for a Sport, Wellbeing and Senior Learning Precinct at the existing Kambala School.

Aboriginal cultural heritage regulation is now part of Heritage NSW

On 1 July 2020 the Aboriginal cultural heritage regulation functions under the *National Parks and Wildlife Act 1974* were transferred from the Department of Planning, Industry and Environment (DPIE) to Heritage NSW in the Department of Premier and Cabinet. All references to DPIE administering Aboriginal objects and Aboriginal places needs to be updated to Heritage NSW.

Heritage NSW has reviewed the following documents as part of our assessment:

- *Environmental Impact Statement*, (EIS) prepared by Ethos Urbis, dated 20 October 2020
- Appendix G - *Construction Management Plan (CMP) Kambala*, prepared by BuildCorp, dated 21 October 2020
- Appendix N - *Conservation Management Plan, Kambala School - Tivoli*, prepared by Urbis, dated 23 July 2020
- Appendix P – *Aboriginal cultural heritage assessment (ACHA) – Kambala School, Rose Bay NSW*, prepared by Eco Logical Australia, dated 3 June 2020

We provide the following comments in relation to Aboriginal cultural heritage regulation matters.

Aboriginal cultural heritage regulation review of EIS and ACHA

The ACHA has assessed that there is low to nil potential for archaeological material to be located or harmed within the development area due to high disturbance associated with the early urban development of Sydney. It is noted that only four areas were assessed which were open areas containing no structures, with an effective coverage recorded as 0%, although there is no map showing the survey transects employed across the development area. No test excavations have been considered or undertaken to confirm the disturbance levels or any low subsurface potential.

We note the ACHA states that a copy of the draft ACHA was provided to Registered Aboriginal Parties for review and comment.

The itself ACHA contains several errors including:

- incorrectly recommending that a section 90 Aboriginal Heritage Impact Permit (AHIP) be sought if Aboriginal objects are to be moved or harmed (pages vi and 35). Heritage NSW notes that an AHIP is not required as the proposed development has been declared SSD.
- referring to the *National Park and Wildlife Regulation 2009* (page 7). Heritage NSW can advise that the Regulation was updated in 2019 with the Aboriginal cultural heritage clauses re-numbered.
- incorrectly referencing section 5.3, under section 3.2.2, as containing the survey details (page 16).
- having no text under section 4.1.3 Previous archaeological research and studies – within the study area (page 22).
- no letter attached from La Perouse LALC in Appendix C as stated under section 4.3 Field Survey (page 24).
- section 7.1.2 incorrectly refers to OEH (page 33). This should now refer to Heritage NSW.
- a number of references within the ACHA are not listed in the References section on page 36: Kate Sullivan & Associates 2001 (page 22); Jo McDonald CHM 2010 (page 22); Brown 2008 (page 34); Australian Heritage Commission 2002 (page 34); Byrne et al 2003 (page 34).

We note the EIS summarises the mitigation measures from the ACHA. The mitigation measure for Aboriginal Archaeology outlined in Table 6 of the EIS is: “If any unexpected archaeological items are found, the procedures in the Aboriginal Heritage Impact Statement should be followed”. While Heritage NSW supports an unexpected item procedure, we note that the recommendations listed in the ACHA incorrectly recommend seeking an AHIP.

We note the Construction Management Plan does not contain any provisions for Aboriginal cultural heritage matters to be considered as part of construction activities.

Under 6.2.1.3 and 8.7 of the Conservation Management Plan there are several errors including outdated references to the Office of Environment and Heritage administering the *National Parks and Wildlife Act 1974* (NPW Act) and the National Parks and Wildlife Service needing to be informed under Section 91 of the NPW Act. Heritage NSW, in the Department of Premier and Cabinet, now administers Part 6 of the NPW Act in relation to Aboriginal cultural heritage regulation matters and section 91 of the NPW Act was renumbered to section 89A in 2010 under amendments to the NPW Act.

Aboriginal cultural heritage regulation advice

While the proposed development appears to have low potential to impact on Aboriginal cultural heritage, we provide the following recommendations:

- An Unexpected Finds Protocol for Aboriginal objects needs to be prepared as part of the Construction Management Plan (CMP) for the site and be implemented during all development works.
- The ACHA needs to be updated to ensure it correctly references the appropriate legislative and approval context in the recommendations.
- We would support ongoing consultation with the Aboriginal community as part of construction activities.
- We note the ACHA outlines heritage interpretation elements that could be considered as part of the development and we would support the preparation of a Heritage Interpretation Plan that incorporates Aboriginal history and cultural heritage.

- Heritage NSW also recommends that the Aboriginal Participation in Construction Policy (APIC) is considered for this development.

If you have any questions regarding the above advice please contact me on (02) 6229 7089 or via email at jackie.taylor@environment.nsw.gov.au.

Yours sincerely



Jackie Taylor
Senior Team Leader, Aboriginal Cultural Heritage Regulation - South
Heritage NSW
23 November 2020