



Our ref: DOC21/306887
Your ref: SSD-10464 (City of Sydney)

Karl Fetterplace
Key Sites Assessments
Planning and Assessment Group
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Advice provided via the Major Project Portal

Dear Mr Fetterplace

Notice of Exhibition – 50-52 Phillip Street New Hotel Stage 1 Concept DA (SSD-10464) (City of Sydney)

Thank you for your referral dated 13 April 2021 inviting comments from Heritage NSW on the exhibited Environmental Impact Statement (EIS) for the above State Significant Development (SSD). We note the Stage 1 SSD DA is a concept proposal for the refurbishment and adaptive reuse of the heritage building (former Department of Public Works), demolition of the other existing buildings (including the commercial building at 52 Phillip Street), and construction of a 48-storey mixed use building on the site, including basement levels.

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

- *Environmental Impact Statement – 50-52 Phillip Street, Sydney: Hotel and Residential Stage 1 Concept Proposal*, prepared by ETHOS URBAN, dated 25 March 2021
- *Appendix R – Aboriginal Cultural Heritage Assessment Report (ACHAR): 50-52 Phillip Street, Sydney*, prepared by Curios Projects, dated December 2020
- *Appendix I - Statement of Heritage Impact (SOHI): 50-52 Phillip Street (Former Department of Public Works), Sydney*, prepared by GBA Heritage, dated March 2021.
- *Appendix P – Historical Archaeological Assessment: 50-52 Phillip Street, Sydney*, prepared by Curios Projects, dated November 2020

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

Aboriginal cultural heritage regulation review of EIS, ACHAR and SOHI

The Aboriginal Cultural Heritage Assessment Report (ACHAR) identifies that due to the level of historical disturbances occurring since 1788, the development envelope has an overall low archaeological potential to contain Aboriginal cultural heritage, or intact subsurface deposit. However, as identified in the ACHAR, Phillip Lane has been subject to the lowest amount of historical excavation and disturbance, with no substantial structure of development undertaken in this location. This area was considered to have 'low-moderate' potential for remnant subsurface deposits and some, albeit assessed as low, potential to contain archaeological deposits.

The ACHAR is effectively a desktop study due to the existence of developments across the entire development envelope providing no ground surface visibility. No Aboriginal objects or

sites were identified during the investigation. However, the ACHAR noted that historical accounts reference the burial of Arabanoo, a Cadigal man, within the grounds of the First Government House in 1789. The presence of this burial is reflected in the registration of AHIMS site #45-6-2299. The exact location of this burial remains unknown, but Appendix P – Historical Archaeological Assessment (page 20) suggest that he ‘was buried within the Governor’s “own garden”, otherwise unidentified but likely to be close to the house and potentially within the study area’. The Historical Archaeological Assessment (page 20) also states that ‘another burial in the Governor’s garden, was the child Balooderry, after a ceremony described in some detail by Collins. The location of this grave is also unknown.’

While no test excavations have been undertaken to confirm any subsurface potential, the ACHAR reports that the results of a desktop geotechnical investigation, and a review of historical records, have confirmed the study area has been subject to moderate - high levels of subsurface disturbance, with the exception Phillips Lane, where disturbances may be superficial.

The ACHAR and EIS make the following recommendations:

- Avoid and conserve (where possible) areas of higher Aboriginal archaeological sensitivity (identified as areas with remnant undisturbed subsurface deposit). This includes:
 - Undertaking further geotechnical investigations to identify high risk/archaeologically sensitive areas (areas with remnant soil profiles) that should be avoided in the final Stage 2 detailed design.
 - Where possible avoid high risk/archaeologically sensitive areas identified through geotechnical investigations and the ACHAR, in the final Stage 2 design.
 - Centre the final Stage 2 design around areas identified in the geotechnical investigation and ACHAR, as having been previously excavated or disturbed,
- Where avoidance of high risk/archaeologically sensitive areas is unfeasible in the Stage 2 design, further archaeological investigation is required. A ‘suggestive archaeological excavation methodology’ presented in the ACHAR (page 68) suggests that the further archaeological investigations would involve:
 - ‘Testing of the impact zone, with ‘test pits along Phillip Street, the base of 52 Phillip Street and along Phillip Lane’ to identify the presence or absence of intact subsurface soil profiles and associated Aboriginal archaeological deposits’.
 - Coordination of Aboriginal Archaeological investigation with historical archaeological investigation works.
 - Being guided by the results of initial testing to determine if salvage excavation should be undertaken within the impacted zone to recover archaeological material.
 - Representatives from the Registered Aboriginal Parties (RAPs) being present for, and participate in, any archaeological investigations.
- Consultation with the project RAPs should be undertaken throughout the subsequent development phases of the project.
- If burials are identified at any stage of the development, this ‘will require a reconsideration for proposed works, requiring in situ retention and significant discussion with Aboriginal community’.
- Incorporate Aboriginal heritage interpretation into the final Stage 2 development design, ‘to conserve and celebrate the social and cultural heritage of the local Darug people and wider local Aboriginal community’.
- The ACHAR will need to be revised to address specific impacts and develop appropriate management strategies to mitigate any impacts of the development once the Stage 2 design is approved.

We note the mitigation measures for Aboriginal cultural heritage detailed in Section 7: Management, Mitigation and Recommendations does not reference 'An Unexpected Finds Procedure' (as alluded to in the ACHAR, page 11). We provide further advice on this below.

We also note that 'Section 7: Management, Mitigation and Recommendations' (Page 68) presents a 'brief suggestive archaeological excavation methodology' and provide further advice on this below.

Aboriginal cultural heritage regulation advice

While the proposed development appears to have low potential to impact on Aboriginal cultural heritage, we support the need for appropriate mitigation and management measures to be adopted to accommodate any finds during the site preparation and construction process.

We provide the following recommendations:

- The ACHAR needs to be revised on approval of the Stage 2 design. This would address specific impacts and develop appropriate management strategies to mitigate these impacts, if appropriate. Impacts and management strategies should be discussed with and allow input from RAPs.
- An unexpected finds procedure must be in place throughout the proposed works, with procedures in place for notification of a heritage consultant, Heritage NSW, Metropolitan Local Aboriginal Land Council and the RAPs where unexpected finds are identified, including in non-Aboriginal archaeological excavations. We note that the ACHAR (page 11) states that 'The Unexpected Aboriginal Finds Protocol (in Section 7.2 of the ACHAR) should be implemented during all ground disturbing works within the 50-52 Phillip Street study area (and included within any Construction Management Plan prepared for site works)'. This Protocol is absent from the ACHAR and needs to be prepared and implement throughout any works that impact subsurface throughout the development process.
- We recommend that if further Aboriginal archaeological investigations are undertaken during subsequent stages of this development, including test pitting or subsequent salvage excavation (if required), this further work must be:
 - conducted in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (DECCW 2010).
 - guided by the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011).
 - undertaken, at a minimum, in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010* (DECCW 2010).
- We support ongoing consultation with the Aboriginal community throughout the next stages of the development, and this should be undertaken, at a minimum, in accordance with the the *Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010* (DECCW 2010).
- We support the incorporation of Aboriginal heritage interpretation into the final Stage 2 development design, 'to conserve and celebrate the social and cultural heritage of the local Darug people and wider local Aboriginal community'.
- The preparation of any non-Aboriginal Archaeological Research Design (ARD) is to include consideration of Aboriginal cultural heritage values to address whether the project area does have potential for Aboriginal objects, and we support the coordination of any future Aboriginal and non-Aboriginal archaeological investigations.
- If suspected human remains are located during any stage of the proposed works, work must stop immediately, and the NSW Police notified. An Archaeologist or Physical

Anthropologist should be contacted in the first instance where there is uncertainty whether the remains are human. If identified as Aboriginal, culturally appropriate management solutions should be co-developed in cooperation with Aboriginal community and RAPs.

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
10 May 2021