



Our ref: DOC21/350760-14

Caleb Ball
Principal Planning Officer
Infrastructure Assessments
Department of Planning, Industry & Environment
By email: caleb.ball@planning.nsw.gov.au

Advice provided via the Major Project Portal

Dear Mr Ball,

Advice on EIS - Budawang School for Special Purposes (SSD-8845345)

Thank you for your referral dated 4 May 2021 inviting comments from Heritage NSW on the exhibited Environmental Impact Statement (EIS) for the above State Significant Development (SSD). We note that the development application is for demolition of existing infrastructure (including a preschool and school building), earth works and construction of five purpose-built buildings (and associated infrastructure including carpark, landscaping, fencing and signage), for a new school for special purposes in Milton, NSW (Budawang School).

Heritage NSW has reviewed the following documents to inform our assessment:

- *Environmental Impact Statement: Budawang School (SSD-8845345)* (EIS) – prepared by Mecone, dated April 2021
- Appendix 2a - *Site Survey Plans*
- Appendix 7 - *Heritage and Historical Archaeological Report* – prepared by Tocomwall Pty Ltd (Tocomwall), dated February 2021
- Appendix 8 - *Aboriginal Cultural Heritage Assessment Report (ACHAR)* – prepared by Tocomwall Pty Ltd (Tocomwall), dated February 2021
- Appendix 16 - *Geotechnical Report* – prepared by Douglas Partners Pty Ltd, dated April 2021
- Appendix 24 - *Consultation Report* – prepared by SJA, dated April 2021
- SEARs for SSD-8845345, issued 26 August 2020

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

Aboriginal cultural heritage regulation review of EIS, ACHAR and Consultation Report

The Aboriginal Cultural Heritage Assessment Report (ACHAR) identified that most of the development footprint has been significantly disturbed during past construction of the school, playing fields, parking areas, vehicle access and building slabs. The survey results, detailed in Appendix 6 of the ACHAR (not Appendix 5 as stated in the ACHAR) did not identify any archaeological material during survey, but identified an area within the development footprint, 'considered likely to retain some intact natural soil profiles' (Tocomwall 2021:255).

Archaeological test excavations were undertaken across this remnant soil profile in accordance with *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010)* to better assess the integrity, extent, distribution, nature and overall significance of the archaeological record.

The testing program identified two Aboriginal stone artefacts that were 'part of a disperse [sic] low density scatter in the A horizon soil that did not exhibit stratification' (Tocomwall 2021:46).



This site, presumably an artefact scatter (2 artefacts), with associated potential archaeological deposit (PAD) was assessed as having low overall significance due to the limited information that it could provide in regard to our understanding of 'the site, locality and region'. The site has 'cultural and historical values due to a nearby former campsite and because of its views to important landscape features in the area, and due [to] its association with cultural stories'.

This artefact scatter, and associated PAD will be directly harmed during earthworks and construction of building: block C. The ACHAR has not demonstrated attempts to avoid impact upon cultural heritage values, identify conservation outcomes, or propose measures to mitigate impacts. The EIS and the ACHAR found that 'the proposal will result in minor but acceptable impacts on Aboriginal cultural heritage'.

The ACHAR has significantly complied with the *Code of Practice for Archaeological Investigations in NSW (DECCW 2010)* and the *Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECCW 2010)*, and was guided by the *Guide to Investigation, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales (OEH 2011)*.

The ACHAR, EIS and Consultation Report make the following recommendations:

- 'If any unanticipated Aboriginal archaeological objects, sites or PAD are identified during the construction program within the impact footprint, works should cease immediately, and notify Heritage NSW' (Tocomwall 2021:48).
- 'If any human remains are identified during the earthworks within the impact footprint works should cease immediately and the Police and NSW Heritage [sic] should be contacted' (Tocomwall 2021:48).
- 'The procedure for the storage and reburial of Aboriginal objects will be determined in consultation with the registered Aboriginal stakeholders, and the School Infrastructure NSW if it is proposed to rebury the artefacts within the school grounds. A proposal to rebury the artefact at the southern end of the study area has been proposed to the RAPs' (Tocomwall 2021:48).
- Creation of an 'unexpected finds protocol to mitigate damage to archaeological sites' (Mecone 2021: 165).
- 'An Aboriginal Heritage Impact Permit (AHIP) is going to be obtained prior to any works commencing on site and consultation with the local Aboriginal community to take place in order to seek guidance on the incorporation of Aboriginal considerations into the design of the project' (SJA 2021:7).
- 'Further consultation be undertaken to determine how most appropriately to approach the integration of Indigenous heritage into the design. Potentially including a "Yarning circle" that will serve a pedagogical function as a gathering space within nature, and Indigenous and endemic planting is used throughout the site' (Mecone 2021:83).

Aboriginal cultural heritage regulation advice

The proposed development will directly harm Aboriginal cultural heritage. The artefact scatter, with associated PAD, will be directly impacted during construction of the school. In considering the EIS, ACHAR and Consultation Report, their findings and recommendations, and harm to the Aboriginal heritage site, Heritage NSW recommends the following:

- An 'Unexpected Finds Procedure' must be in place throughout the proposed works, with procedures in place for notification of a heritage consultant, Heritage NSW, Ulladulla Local Aboriginal Land Council and the Registered Aboriginal Parties (RAPs) where unexpected finds are identified. Persons entering the land such as employees, contractors, sub-contractors, agents and invitees must be inducted in the Unexpected Finds Procedure.

- Further consultation with RAPs is required to determine where artefacts recovered during construction and through test excavations (undertaken in preparation of the ACHAR) are to be stored or reburied. Requirement 26 “Stone artefacts deposition and storage” in the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (24 September 2010), available online at: <https://www.heritage.nsw.gov.au/assets/Code-of-Practice-for-Archaeological-Investigation-in-NSW.pdf> must be complied with.
- An Aboriginal Site Monitor should be present during works that impact subsurface within the location of the artefact scatter, and associated PAD. This will require the boundaries of the site, and associated PAD to be defined and mapped prior to works commencing.
- 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.

We note the recommendation in the Consultation Report states an Aboriginal Heritage Impact Permit (AHIP) is going to be obtained prior to any works. Heritage NSW advises that an AHIP is not required under a SSD approval.

We support the incorporation of Aboriginal cultural heritage interpretation into the development design and support the recommendation to continue Aboriginal consultation to determine how to do this most appropriately.

We remind the proponent and archaeological consultants that the artefact scatter, and associated PAD (as detailed in the ACHAR) must be registered with the Aboriginal Heritage Information Management System (AHIMS). Aboriginal Site Impact Recording Forms must also be submitted to AHIMS following construction of the Budawang School.

If you have any further questions in relation to this matter, please contact Aara Welz, Archaeologist, at Aboriginal Cultural Heritage Regulation South on 02 4224 4160 and aara.welz@environment.nsw.gov.au.

Yours sincerely



Jackie Taylor
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Heritage NSW
31 May 2021