



Office of  
Environment  
& Heritage

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SSD 14 6519

Mr Thomas Watt  
Senior Planning Officer, Resource Assessments  
Department of Planning and Environment  
thomas.watt@planning.nsw.gov.au

Dear Mr Watt

**Dolwendee Quarry Project - Supplementary Response to Submissions Report**

I refer to your e-mail dated 21 October 2016 with a copy of a supplementary response to submissions report prepared by the applicant for the Dolwendee Quarry Project (SSD 14 6519). The Office of Environment and Heritage (OEH) understands that this supplementary report was prepared in response to OEH's previous advice on the exhibited Environmental Impact Statement and that it covers the adequacy of consultation with Aboriginal stakeholders and the need for a geomorphological survey of the site.

OEH has reviewed the supplementary response to submissions report and agrees that the proponent has met the requirements of Director General's Requirements for the project in relation to Aboriginal cultural heritage matters. The report, however, contains a misunderstanding of how a proponent for a development can identify an Aboriginal knowledge holder in relation to any area of land. A current practise exists for this task, along with guidance documentation. This is discussed in **Attachment A**.

If you require any further information regarding this matter please contact Robert Gibson, Regional Biodiversity Conservation Officer, on 4927 3154.

Yours sincerely



28 OCT 2016

**RICHARD BATH**  
Senior Team Leader Planning, Hunter Central Coast Region  
Regional Operations

Enclosure: Attachment A

## **ATTACHMENT A: OEH REVIEW OF THE SUPPLEMENTARY RESPONSE TO SUBMISSIONS REPORT FOR THE DOLWENDEE QUARRY PROJECT (SSD 14 6519)**

OEH acknowledges that the proponent for the Dolwende Quarry Project has now undertaken the required geomorphological assessment, has consulted with the registered Native Title claimant group (Tocomwall), and has fulfilled the Aboriginal cultural heritage conditions outlined in the Director General's Requirements.

OEH would like to address a misconception outlined in the *Dolwende Quarry Project Supplementary Response to Submissions Report* (KMH 2016:p. 7) which states:

*"No archaeologist or proponent can, nor has the right, to identify and select who is a knowledge holder and who is not. This is a cultural decision that can only be determined by Aboriginal people. OEH are fully aware of this issue as they themselves are not able to assist in making such determinations".*

In response to the statement reproduced above, please note that the consultation principles outlined in Section 1.3 of the *Aboriginal cultural heritage consultation requirements for proponents* (ACHCRs) (DECCW, 2010) recognise the rights and interests of Aboriginal people in their cultural heritage, and that all parties concerned with identifying, conserving and managing cultural heritage should acknowledge, accept and act on the principles that Aboriginal people are the primary source of information about the value of their heritage and how this is best protected and conserved. These guiding principles also acknowledge that Aboriginal people:

- must have an active role in any Aboriginal cultural heritage planning process
- must have early input into the assessment of the cultural significance of their heritage and its management so they can continue to fulfil their obligations towards their heritage; and importantly
- must control the way in which cultural knowledge and other information relating specifically to their heritage is used, as this may be an integral aspect of its heritage value.

The ACHCRs additionally recommend: *"In identifying and managing Aboriginal cultural heritage, uncertainty about Aboriginal cultural heritage values at a site should not be used to justify activities that might harm this heritage"*. (Adapted from *Ask first – a guide to respecting Indigenous heritage places and values*, 2002).

*Ask First* (AHC, 2002: p. 8) provides further guidance for practitioners that are undertaking the initial stages of consultation with *relevant Indigenous people*. AHC (2002: p. 8) particularly references the need to identify both *"Traditional Owners and Other Indigenous People with Rights and Interests in the area"* early in the consultation process. The following *Actions* are described in the 'Initial Consultation' section (AHC, 2002: p. 8). Practitioners are advised to:

1. **Identify** Indigenous people with rights and interests in a place, especially indigenous people authorised to speak for a place, taking into account that Indigenous people will have differing degrees of knowledge about heritage places and their importance;
2. Ensure both men and women with rights and interests in the area are identified because men and women may be responsible for different heritage places and values; and
3. **Identify** Indigenous people who may not necessarily be Traditional Owners but who have interests in an area so that any effects of the project or activity on the Indigenous heritage values of places such as mission stations and historic buildings will be identified.

*Ask First* (AHC, 2002: p. 6) details key guiding principles for identifying and managing Aboriginal cultural heritage. Two of these principles that are relevant in the current discussion include:

1. that uncertainty about Indigenous heritage values at a place should not be used to justify activities that might damage or desecrate this heritage; and
2. that negotiating the level of involvement of the *relevant Indigenous people* is an important part of the early negotiation process.



*Ask First* (AHC, 2002: p. 4) defines **relevant Indigenous people** as both Traditional Owners and other Indigenous people with interests in a place. Importantly, *Ask First* (AHC, 2002: p. 4) further defines the terms 'Traditional Owners' and 'Other Indigenous people with interests' as:

**Traditional Owners** are those people who, through membership in a descent group or clan, have responsibility for caring for particular country. Traditional Owners are authorised to speak for country and its heritage. Authorisation to speak for country and heritage may be as a senior traditional owner, an elder, or in more recent times, as a registered Native Title claimant.

**Other Indigenous people with interests** are those people who through their personal or family history of involvement with a particular place have an interest in its heritage values. Such places could include, but are not limited to, mission stations, places of Indigenous protest, and areas of land where people worked. Sometimes these people are described as custodians, but this can mean different things in different areas of Australia. In some areas custodians are responsible for looking after places and sometimes the stories and ceremonies linked to these places. In other areas custodians are Indigenous people who look after a place on behalf of others.

Further, the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (OEH, 2011) recognises that the identification and assessment of cultural heritage encompasses the four values of the *Australia ICOMOS Burra Charter*: social, historical, scientific and aesthetic values. Australia ICOMOS have additionally developed a number of Burra Charter Practice Notes to provide guidance to practitioners about the application of the *Australia ICOMOS Burra Charter, 2013*. The following Practice Notes are relevant to the current discussion:

- The Burra Charter and Indigenous Cultural Heritage Management
- Understanding and Assessing Cultural Significance
- The Burra Charter and Archaeological Practice
- Preparing Studies and Reports: Contractual and Ethical Issues.

The Burra Charter Practice Note for *Understanding and Assessing Cultural Significance* has been designed for all practitioners who work with Indigenous communities and Indigenous cultural heritage places. Important 'Guidance' material from this one particular *Practice Note* states:

- During consultation, practitioners should seek to exercise objectivity, and they should be rigorous in the process of gathering relevant information. **Practitioners should not be afraid to respectfully ask in-depth questions of traditional owners if those questions will clarify issues relevant to significance and conservation** (emphasis added). It may be necessary to carefully test the information that is provided
- **Practitioners should always ensure that they consult with the appropriate people to speak for country** (emphasis added). Practitioners should seek to gather information from a wide range of knowledge-holders, **taking account of all kinds of connections, whether 'ancestral', 'traditional' or 'historical'** (emphasis added)
- Indigenous people are the relevant knowledge-holders for places of Indigenous cultural significance. Their traditional knowledge and experience must be appropriately used and valued in the assessment of places
- **Advice may need to be sought on who are the relevant knowledge holders** (emphasis added)
- Practitioners should work collaboratively with Indigenous people and **engage with the Indigenous knowledge-holders to gain historic, ethnographic and anthropological data which may be held in a variety of sources including oral, and visual sources** (emphasis added), as well as drawing on and sharing information from other sources such as published accounts
- Article 4 of the Burra Charter guides that:
  - Conservation should make use of all the knowledge, skills and disciplines which can contribute to the study and care of the place.

It is hoped that the above examples illustrate an industry-wide expectation for cultural heritage practitioners to ethically engage with Aboriginal communities to identify relevant Indigenous people who hold cultural knowledge relevant to determining the significance of Aboriginal objects(s) and/or place(s). The application of the *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (DECCW, 2010) relies on the correct identification of Aboriginal people who hold knowledge relevant to determining significance of objects/places.

#### References:

- Australian Heritage Commission (AHC) (2002). *Ask First – A Guide to Respecting Indigenous Heritage Places and Values*. [www.environment.gov.au/heritage/ahc/publications/ask-first-guide-respecting-indigenous-heritage-places-and-values](http://www.environment.gov.au/heritage/ahc/publications/ask-first-guide-respecting-indigenous-heritage-places-and-values)
- DECCW (2010). *Aboriginal Cultural Heritage Consultation Requirements for Proponents*. NSW Department of Climate Change and Water, Sydney.  
[www.oralra.nsw.gov.au/pdf/guidesandinformation/Aboriginal%20cultural%20heritage%20consultation%20requirements%20for%20proponents%202010.pdf](http://www.oralra.nsw.gov.au/pdf/guidesandinformation/Aboriginal%20cultural%20heritage%20consultation%20requirements%20for%20proponents%202010.pdf)
- KMH Environmental (KMH) (2016). *Dolwende Quarry Project Supplementary Response to Submissions Report: Upper Hunter Holdings Pty Ltd*. KMH Environmental Pty Ltd, Brisbane.
- OEH (2011) *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*. NSW Office of Environment and Heritage, Sydney.  
[www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf](http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf)
- Australian ICOMOS (1999). *The Burra Charter: The Australia ICOMOS charter for places of cultural significance*, accessed 21 Jan 2011 at <http://australia.icomos.org/publications/charters/>
- Australian ICOMOS (1988), *Guidelines to the Burra Charter: cultural significance*, accessed 21 Jan 2011 at <http://australia.icomos.org/publications/charters/>