



Your ref: 49462E
Our ref: DOC21/389502-2

Maggie Chapman
Strategic Planner - Special Projects
Shoalhaven City Council

Advice sent via email: council@shoalhaven.nsw.gov.au
cc: Maggie.Chapman@shoalhaven.nsw.gov.au

Dear Ms Chapman,

Planning Proposal – Lots 21 – 24 DP 714096, Warrah Road, Bangalee, PP005, Shoalhaven Local Environmental Plan 2014

Thank you for your referral dated 13 May 2021 inviting comment from Heritage NSW on the Planning Proposal to rezone land at Lots 21 – 24 DP 714096, Warrah Road, Bangalee within the Shoalhaven Local Government Area.

In preparing this advice we have considered the Documents on Exhibition available from the Shoalhaven City Council website and the previous advice provided by Heritage NSW on this Planning Proposal in the letter dated 20 November 2020 (DOC20/947080) and included in **Attachment A**.

The Heritage NSW advice regarding this Planning Proposal has not changed and we strongly support upfront heritage assessment to enable the long-term protection and avoidance of Aboriginal cultural heritage sites and values.

We note Council have incorporated our previous comments and specifically note the commitment by Shoalhaven City Council in the Planning Proposal (pg. 31-32) to address our comments as part of the Development Control Plan. Heritage NSW would like to be provided the opportunity to comment on this document prior to finalisation.

Heritage NSW would also note that if an Aboriginal Heritage Impact Permit (AHIP) is required at any stage, the application must demonstrate that consultation with the Registered Aboriginal Parties (RAPs) has been continuous. Breaks in consultation of over 6 months may not constitute continuous consultation and may require the applicant to restart the consultation process. Please consider this if the original Aboriginal Cultural Heritage Assessment Report is intended to be used in support of an AHIP in the future.

If you have any questions regarding the above advice please contact Emily Dillon, Archaeologist, Aboriginal Cultural Heritage Regulation – South, at Heritage NSW on (02) 6229 7189 or via email at emily.dillon@environment.nsw.gov.au.

Yours sincerely

Jackie Taylor
Senior Team Leader, Aboriginal Cultural Heritage Regulation - South
Heritage NSW
25 June 2021

Encl: Attachment A: Previous Heritage NSW Advice for PP005 dated 20 November 2020

Attachment A: Previous Heritage NSW Advice for PP005 dated 20 November 2020



Our ref: DOC20/947080
Senders ref: PP005, Warrah Road, Bangalee

Mr Eric Hollinger
Coordinator Special Projects
Shoalhaven City Council
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Email: eric.hollinger@shoalhaven.nsw.gov.au

Dear Mr Hollinger

Planning Proposal – Lots 21 – 24 DP 714096, Warrah Road, Banagalee, PP005, Shoalhaven Local Environmental Plan 2014

Thank you for the opportunity to comment on the Planning Proposal to rezone land at Lots 21 – 24 DP 714096, Warrah Road, Banagalee.

We understand that the Gateway Determination for this Planning Proposal (dated 12 July 2016) required an Aboriginal archaeological assessment to be prepared in accordance with Ministerial Direction 2.3 (Heritage Conservation). We note that the Planning Proposal is to be submitted to the Department of Planning, Industry and Environment with a request to amend the Gateway determination.

We have prepared the following advice for Council to consider in relation to Aboriginal cultural heritage regulation matters with reference to the Ministerial Direction 2.3. In preparing this advice we have reviewed the material provided with the referral including the Aboriginal Cultural Heritage Assessment Report (ACHAR) prepared by Mary Dallas Consulting Archaeologists (MDCA, 2018) and the Shoalhaven City Council Planning Proposal PP005, version 2.1, dated June 2019 (SCC 2019).

A summary of our advice is provided below, with additional comments at **Attachment A**.

The Aboriginal cultural heritage assessment addresses Ministerial Direction 2.3
Based on our review, the MDCA (2018) report appears to address the requirements of Ministerial Direction 2.3. The assessment has included Aboriginal community consultation and archaeological survey in accordance with the relevant guidelines.

The assessment has shown that there are two recorded Aboriginal cultural heritage sites within the planning proposal area. However, both sites are outside the proposed development footprint.

We support the avoidance of direct harm to the recorded sites from the proposed development works. However, we have identified that further consideration of some works including vegetation management, bushfire protection works and maintenance of the existing transmission line, have potential to harm the recorded sites.

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We remind Council that an Aboriginal Heritage Impact Permit (AHIP) application may be required if future works cannot avoid harm to the recorded sites.

Summary of Heritage NSW Aboriginal Cultural Heritage Recommendations

We recommend that Council consider:

- Preparing an Aboriginal Heritage Management Plan (AHMP) over the 'Caretaker' Lots 1, 2 and 3 within the E2 zoned land in consultation with the Registered Aboriginal Parties (RAPs).
- Ensuring there is an adequate buffer between site 52-5-0307 and the RU2 (Low Density Residential) zone. The buffer needs to ensure that any work to create a bushfire protection zone does not impact site 52-5-0307.
- Whether future land management works in the E2 (Environmental Conservation) land will require an AHIP to cover harm to site 52-5-0307.
- Whether future maintenance or upgrade work to the transmission line may require an AHIP if harm to site 52-5-0372 cannot be avoided.
- That if Aboriginal objects are found during future works then work must stop and the find must be reported immediately to Heritage NSW by calling Environment Line on 131 555 or emailing info@environment.nsw.gov.au. Where harm to Aboriginal objects cannot be avoided an AHIP application must be prepared.
- Revising the Planning Proposal to ensure the word Aboriginal is capitalised throughout the document.

Please note that the above comments relate to Aboriginal cultural heritage matters only pursuant to the *National Parks and Wildlife Act 1974*. Council may wish to request separate comments from Heritage NSW in relation to matters under the *Heritage Act 1977*.

If you have any questions regarding the above advice, please contact Rose O'Sullivan, Archaeologist, Aboriginal cultural heritage regulation – South, at Heritage NSW, on 4224 4177 or rose.osullivan@environment.nsw.gov.au.

Yours sincerely



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

Encl: Attachment A: Additional comments in relation to the Aboriginal Cultural Heritage assessment

Attachment A: Additional comments in relation to the Aboriginal Cultural Heritage assessment for PP005 Warrah Road, Banagalee

Aboriginal community consultation has been conducted

We note that MDCA (2018) has conducted Aboriginal community consultation in accordance with the *National Parks and Wildlife Regulation 2019* (formerly 2009).

Survey was conducted by MDCA archaeologists and representatives of the Nowra Local Aboriginal Land Council in 2017. This followed a series of earlier surveys in 2006 and 2013 over previous rezoning proposals (MDCA 2018, p.28).

Darug Land Observations also supported the proposed methodology (MDCA 2018, p.15). No comments from the Registered Aboriginal Parties (RAPs) were provided on the draft ACHAR (MDCA 2018, p.16).

Aboriginal objects are recorded in the Planning Proposal area

There are two recorded Aboriginal cultural heritage sites within the Planning Proposal area - 52-5-0307 and 52-5-0372. Both sites were recorded during earlier assessments, and both are outside the subdivision design that is included in the Planning Proposal.

Site 52-5-0307 was recorded in 1995 during an assessment of the Eastern Gas Pipeline. The site consisted of five flaked stone artefacts in a disturbed context adjacent to a gravel quarry. The site card records a low to moderate potential for subsurface deposits to be present. This site could not be relocated during the MDCA surveys (MDCA 2018, p.49).

Site 52-5-0372 is a stone artefact scatter also recorded in 1999 as part of the Eastern Gas Pipeline project. This site had been disturbed by the construction of the transmission line. MDCA (2018) was also unable to relocate this site.

MDCA (2018, p.47) has assessed both sites as being of low scientific significance and note that no site specific Aboriginal cultural values have been reported during the consultation process. MDCA recommend community collection under an AHIP if future development works will harm these sites (MDCA 2018, p.48).

Limitations of the current assessment

While we consider the MDCA (2018) assessment addresses the Ministerial Direction 2.3, we note that there are limitations associated with any heritage assessment.

One limitation is that the boundaries of the recorded sites are not accurately recorded. This is because there is limited information in the existing recordings, and MDCA were not able to relocate the sites during their assessments. To address this, we recommend a buffer is kept between the recorded sites and the proposed works areas.

We note that no archaeological test excavation has been conducted. However, MDCA (2018) has surveyed the proposed impact areas several times and no areas of potential archaeological deposit have been recorded.

MDCA (2018, pp.49-50) state that there is potential for sites such as grinding grooves to be associated with sandstone beds along creek lines in the proposed E2 zoned land. These sites were not identified during the assessment because of vegetation cover along the creek lines, and the limited survey effort in those areas not proposed to be subject to construction

impacts. However, this potential should be considered when planning future management of the E2 zoned land. To address this issue, we recommend that Council consider:

- Providing an adequate buffer between the creek lines and the development footprint
- Preparing an Aboriginal Heritage Management Plan to cover the Caretaker Lots (see below).

If the Planning Proposal is approved and future development proceeds, any developer would need to ensure they consider Aboriginal cultural heritage impacts within their environmental assessments. Where harm to Aboriginal objects cannot be avoided an Aboriginal Heritage Impact Permit (AHIP) application must be prepared. Further information is available on our website: <https://www.heritage.nsw.gov.au/assets/Uploads/files/Applying-for-an-Aboriginal-Heritage-Impact-Permit-Guide-for-applicants..pdf>.

An adequate buffer should be provided between recorded sites and proposed residential areas

We recommend Council ensure there is an adequate buffer between site 52-5-0307 and the RU2 (Low Density Residential) zone. The buffer should ensure that any work to create a bushfire protection zone does not impact site 52-5-0307.

An Aboriginal Heritage Impact Permit (AHIP) application may be required if future land management works in this area cannot avoid harm to Aboriginal objects.

Consideration should be given to the site within the transmission line

Future upgrade work to the transmission line may require an AHIP if harm to site 52-5-0372 cannot be avoided. This needs to be considered during future planning.

We recommend an Aboriginal Heritage Management Plan is prepared

We suggest that Council consider preparing an Aboriginal Heritage Management Plan (AHMP) over the 'Caretaker' Lots 1, 2 and 3 within the E2 zoned land. The AHMP will provide a framework for managing Aboriginal cultural heritage matters within the E2 (Environmental Conservation) land in the context of the proposed adjacent development.

The AHMP needs to be prepared in consultation with the RAPs. The AHMP should be in place before works including vegetation management and bushfire protection in the vicinity of the recorded sites commence.

The AHMP must include:

- How future vegetation management work will avoid harm to Aboriginal objects.
- How future bushfire management and asset protection zones will be planned to avoid harm to Aboriginal objects.
- How Aboriginal objects in the RU2 (Rural Landscape) zone will be managed, with reference to the existing transmission line and future maintenance requirements of that infrastructure.
- A procedure to manage Aboriginal objects that may be identified on this land in the future.
- A protocol for ongoing consultation with the Registered Aboriginal Parties.
- Advice on preparing an AHIP application if harm to Aboriginal objects cannot be avoided by future development, maintenance or land management works.