



Office of
Environment
& Heritage

DOC17/485380-15
MP10 0136 MOD 1

Ms Emma Butcher
Planning Officer, Regional Assessments
Department of Planning & Environment
Emma.Butcher@planning.nsw.gov.au

Dear Emma

Response to submissions – modification to Riverside Tea Gardens concept plan (MP10 0136 MOD1)

I refer to your email dated 15 October 2018 requesting the Office of Environment and Heritage (OEH) review the submitted Aboriginal Cultural Heritage Assessment (ACHA) report and updated Aboriginal Cultural Heritage Management Plan (ACHMP) for the Major Project MP10 0136 MOD1, Riverside Tea Gardens' residential subdivision located at Tea Gardens within the MidCoast Local Government Area (LGA).

OEH has reviewed the supplied documents with respect to Aboriginal cultural heritage. OEH's recommendations are provided in **Attachment A** and detailed comments are provided in **Attachment B**. If you require any further information regarding this matter, please contact Steven Cox, Senior Team Leader Planning, on 4927 3140 or via email at rog.hcc@environment.nsw.gov.au.

Yours sincerely

Sharon Molloy 29/11/2018

SHARON MOLLOY
Director Hunter Central Coast Branch
Conservation and Regional Delivery Division

Contact officer: LAURA DAFTER
02 4927 3132

Enclosure: Attachments A and B

OEH's recommendations

Riverside Tea Gardens Modification of Concept Plan (MP10 0136 MOD1) – Aboriginal cultural heritage

1. The Aboriginal cultural heritage assessment should be updated to demonstrate the study area has been adequately assessed in accordance with OEH requirements, particularly Requirements 5, 9 and 10 of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW*.
2. If archaeological test excavation of the Riverside_02 midden is recommended, it should be undertaken as part of the current pre-approval assessment.
3. The Aboriginal cultural heritage assessment should be updated to ensure the significance of the Riverside_02 midden is adequately assessed and justified in accordance with Section 2.4 of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*. If archaeological test excavation of the Riverside_02 midden is recommended, the results of this investigation should inform the significance assessment.
4. The Aboriginal cultural heritage assessment should be revised to clearly identify the nature and extent of the modified concept plan works and assess the potential for the activity to harm the Aboriginal cultural heritage values associated with the Riverside_02 midden, in accordance with Section 2.5 of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*.
5. The Aboriginal cultural heritage assessment should be revised to demonstrate that harm avoidance or conservation outcomes have been considered for the proposed activity, in accordance with Section 2.6 of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*.
6. OEH notes the opposing views expressed by registered Aboriginal parties with respect to the findings and recommendations of the Aboriginal cultural heritage assessment, and particularly acknowledges the objections raised by KLALC, but recommends that these objections should not constrain the proposal to undertake test excavation of the Riverside_02 midden.
7. The Aboriginal cultural heritage management plan should be updated following the completion of any necessary test excavation, to ensure all management strategies are appropriate to the significance of the identified Aboriginal heritage values in accordance with Section 2.7 of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*.

OEH's detailed comments

Riverside Tea Gardens Modification of Concept Plan (MP10 0136 MOD1) – Aboriginal Cultural Heritage

1. OEH is not satisfied that the additional 5.83 hectares of land has been adequately assessed

The Office of Environment and Heritage (OEH) previously reviewed the modified concept plan in February 2017 (DOC17/13881-4) and identified that an additional 5.83 hectares of land associated with the proposed commercial precinct had not been assessed as part of the original Aboriginal Heritage Assessment (ERM 2011) for the modified concept plan. OEH recommended that the potential Aboriginal cultural heritage values of this additional 5.83 hectares of land should be assessed. In response, the applicant has supplied the *Riverside at Tea Gardens Aboriginal Cultural Heritage Assessment* (ERM 2018a) which covers this additional portion of land.

OEH has reviewed the Aboriginal cultural heritage assessment and understands that this assessment identified one shell deposit (Riverside_02) outside the 5.83 hectare study area, but within the broader area subject to the modified concept plan (this site is discussed further below). OEH understands that no Aboriginal sites or significant cultural heritage values were identified within the 5.83 hectare area of land itself during the Aboriginal cultural heritage assessment, and that this area has been assessed to have low archaeological potential for any unidentified sites to be present (ERM 2018a). However, OEH is currently not satisfied that the additional 5.83 hectares of land has been adequately assessed in accordance with OEH requirements.

The Aboriginal cultural heritage assessment does not clearly outline the sampling strategy that was adopted for the assessment area, nor does it record and analyse survey coverage data, as per Requirements 5, 9 and 10 of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW*. OEH is therefore unable to determine whether the additional 5.83 hectares area of land was adequately assessed and form a view with respect to the potential for the modified concept plan to impact upon Aboriginal cultural heritage values within this area.

Recommendation 1

The Aboriginal cultural heritage assessment should be updated to demonstrate the study area has been adequately assessed in accordance with OEH requirements, particularly Requirements 5, 9 and 10 of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW*.

2. The Riverside_02 midden should be appropriately identified and described

The Aboriginal cultural heritage assessment identified one shell deposit (Riverside_02) outside the 5.83 hectare study area, but within the broader modified concept plan area. The site is described as a highly disturbed midden deposit which comprises two discreet areas of shell deposit surrounded by disturbed areas with imported fill. The Aboriginal cultural heritage assessment state that "confirmation of the site extent is difficult from surface survey only as it is obscured by the imported fill" (ERM 2018a: 25). The Aboriginal cultural heritage assessment assessed the site to have moderate archaeological potential and recommended surface collection and possible test excavation of the midden. A procedure for this test excavation has been included in the *Riverside at Tea Gardens Updated Aboriginal Cultural Heritage Management Plan* (ACHMP) (ERM 2018b).

Considering the difficulty noted in confirming the extent of the Riverside_02 midden based on the surface evidence alone, and the conclusion that the midden has moderate archaeological potential, it is unclear why the recommended test excavation has not been undertaken to inform

the current Aboriginal cultural heritage assessment. OEH guidelines state that the purpose of test excavation is to collect information about the nature and extent of sub-surface Aboriginal objects, based on a sample derived from sub-surface investigations. Therefore, if test excavation is deemed necessary to characterise the nature or extent of sub-surface deposits, this should be completed as part of the current assessment, so that the Aboriginal cultural heritage values of the Riverside_02 midden are adequately identified and described in the Aboriginal cultural heritage assessment prior to project approval.

The test excavation results should inform the significance and impact assessments and the development of appropriate conservation, harm avoidance or mitigation measures for the project.

OEH is not satisfied that the Aboriginal cultural heritage assessment adequately identifies and assesses the Aboriginal cultural heritage values of the Riverside_02 midden in accordance with OEH requirements. OEH does not support the current recommendation to complete test excavation post-approval under the Aboriginal cultural heritage management plan.

Recommendation 2

If archaeological test excavation of the Riverside_02 midden is recommended, it should be undertaken as part of the current pre-approval assessment.

3. The significance of the Riverside_02 midden should be appropriately justified

The significance of the Riverside_02 midden has been assessed by ERM with respect to Aboriginal cultural and scientific significance. The Aboriginal cultural heritage assessment determined that the site retains moderate archaeological potential and assessed it to be of low scientific significance and low Aboriginal social significance (see Table 6.1 of ERM 2018a). OEH is not satisfied that the Aboriginal cultural heritage assessment adequately justifies these assessments of low significance or demonstrates that the significance assessment has been undertaken in accordance with OEH requirements.

With respect to scientific significance, OEH notes that the Riverside_02 midden has been assessed by ERM to have moderate archaeological potential, with an associated recommendation for test excavation to occur. The test excavation procedure outlined in the ACHMP is designed to identify whether 'significant cultural deposits with research potential' are present (see Figure 7.1 in ERM 2018b). This suggests that the scientific significance (including research potential) of the midden is not currently understood, and that further investigation of the site's sub-surface potential via testing is necessary to characterise the nature, extent and significance of the midden. The current assessment of low scientific significance is not consistent with the proposal to undertake test excavation to identify whether 'significant cultural deposits with research potential' are present. The assessment of scientific significance should be informed by the results of the proposed test excavation.

With respect to Aboriginal cultural significance, Section 6.1.4 of the Aboriginal cultural heritage assessment only discusses the archaeological significance of the site. This section provides no details of the outcomes of consultation with the registered Aboriginal parties, nor does it provide any other information to support the finding that the Riverside_02 site is of low Aboriginal social significance. The absence of any discussion of registered Aboriginal party feedback, combined with the statement that registered Aboriginal parties "will also be provided the opportunity to comment on the cultural and social significance assessment of the study area" (ERM 2018a:34), suggests that the outcomes of consultation with respect to Aboriginal cultural significance may not have been considered in making this assessment.

OEH is not satisfied that significance of the Riverside_02 midden is adequately assessed and justified, in accordance with OEH requirements.

Recommendation 3

The Aboriginal cultural heritage assessment should be updated to ensure the significance of the Riverside_02 midden is adequately assessed and justified in accordance with Section 2.4

of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*. If archaeological test excavation of the Riverside_02 midden is recommended, the results of this investigation should inform the significance assessment.

4. The impacts to the Riverside_02 midden must be adequately assessed

The Aboriginal cultural heritage assessment does not adequately identify and assess the potential impacts of the modified concept plan on the Aboriginal cultural heritage values associated with the Riverside_02 midden. This is in part because the nature, extent and significance of this site are not adequately described (refer to Recommendations 2 and 3 above), and because the Aboriginal cultural heritage assessment does not clearly describe the proposed works or adequately consider their potential impacts on the midden. The Aboriginal cultural heritage assessment states that Riverside_02 will not be impacted because of the modified concept plan, but that it will be disturbed by excavation works in the water management area (noting that no further assessment of this disturbance is provided). OEH understands that the excavation works in the water management area are part of the modified concept plan proposal, and so the statement that the modified concept plan will not impact upon the midden appears to be incorrect.

OEH understands that the Riverside_02 midden is located within the Stage 1A area of the modified concept plan, which is a water management area designated as 'recharge basins'. Figures 8 and 9 of the modified concept plan indicate that this area will be subject to bulk cut/fill excavation works under the modified concept plan (Tattersal Lander Pty Ltd 2016). It is therefore likely that the proposed modified concept plan will significantly impact upon the Riverside_02 midden. The Aboriginal cultural heritage assessment currently provides no detailed discussion of the proposed activity or an assessment of the degree of harm that may occur to the Aboriginal cultural heritage values of the Riverside_02 midden.

OEH is not satisfied that the Aboriginal cultural heritage assessment adequately identifies and assesses potential impacts of the proposal on Aboriginal cultural heritage values.

Recommendation 4

The Aboriginal cultural heritage assessment should be revised to clearly identify the nature and extent of the modified concept plan works and assess the potential for the activity to harm the Aboriginal cultural heritage values associated with the Riverside_02 midden, in accordance with Section 2.5 of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*.

5. The Aboriginal cultural heritage assessment does not attempt to avoid impact or identify conservation outcomes

The Aboriginal cultural heritage assessment does not demonstrate any attempt to avoid harm to Aboriginal cultural heritage values or consider sustainable conservation outcomes (understanding that harm avoidance is not always possible, but the applicant must demonstrate that alternatives have been considered). Consideration of harm avoidance or conservation outcomes within the Aboriginal cultural heritage assessment must be undertaken in consultation with Aboriginal people and be informed by a clear understanding of the Aboriginal cultural heritage values for the project, which is currently lacking (refer to Recommendation 2).

OEH is not satisfied that the Aboriginal cultural heritage assessment adequately considers harm avoidance or considers whether conservation outcomes could be achieved for the project.

Recommendation 5

The Aboriginal cultural heritage assessment should be revised to demonstrate that harm avoidance or conservation outcomes have been considered for the proposed activity, in accordance with Section 2.6 of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*.

6. There are opposing views among RAPs about the findings of the Aboriginal cultural heritage assessment

The Aboriginal cultural heritage assessment documents opposing views expressed by the registered Aboriginal parties in relation to the findings of the Aboriginal cultural heritage assessment and the resulting management procedures that are recommended.

Karuah Local Aboriginal Land Council (KLALC) does not agree that the shell material recorded as Riverside_02 is a midden and does not support the recommendations for test excavation or surface collection to be completed under the Aboriginal cultural heritage management plan. KLALC also states that if test excavation is believed to be warranted, this should be undertaken as part of the initial Aboriginal cultural heritage assessment (note that OEH agrees with this view, as per Recommendation 2).

In contrast, the remaining registered Aboriginal parties (Karuah Indigenous Corporation, Nur Run Gee and Mur Roo Ma Inc) all support the assessment of the shell material as a midden and endorse the management recommendations for surface collection and potential test excavation.

OEH acknowledges the opposing views expressed by registered Aboriginal parties with respect to the findings of the Aboriginal cultural heritage assessment, and particularly recognises the objections expressed by KLALC in relation to the Riverside_02 midden. However, OEH is of the view that the applicant can proceed with the current recommendations for test excavation as this approach would not have any negative material outcome on Aboriginal cultural heritage values if the deposit is not a midden. Although KLALC asserts that the shell material is not an Aboriginal midden and does not support test excavation of this site, the proposed test excavation is an appropriate precautionary approach.

Recommendation 6

OEH notes the opposing views expressed by registered Aboriginal parties with respect to the findings and recommendations of the Aboriginal cultural heritage assessment, and particularly acknowledges the objections raised by KLALC, but recommends that these objections should not constrain the proposal to undertake test excavation of the Riverside_02 midden.

7. The Aboriginal cultural heritage management plan should not include procedures for primary site investigation

The Aboriginal cultural heritage management plan outlines a range of strategies to minimise harm to the Riverside_02 midden, including mitigation by way of surface collection, test excavation (if subsurface potential is identified) and further archaeological excavation (if significant cultural deposits with research potential are identified through testing). OEH notes that the Aboriginal cultural heritage management plan is a management tool, and as such, it should not include procedures for primary site investigation and assessment, such as the test excavation that is proposed in Section 7.

The stated objective of the test excavation methodology is to “inform the management of the site during construction” (ERM 2018b:26). Therefore, this testing should be undertaken as part of the Aboriginal cultural heritage assessment and the results should be used to inform the development of appropriate management strategies within the Aboriginal cultural heritage management plan. Test excavation is not an appropriate mitigation strategy for inclusion within the Aboriginal cultural heritage management plan.

In the absence of any test excavation results, it is unclear whether the mitigation measures that are subsequently proposed (archaeological excavation as per Section 7.3) are appropriate. The archaeological excavation procedure is not adequately described or quantified, and without some understanding as to the nature and extent of potential sub-surface deposits, it is difficult to determine whether this proposed management strategy is appropriate.

Recommendation 7

The Aboriginal cultural heritage management plan should be updated following the completion of any necessary test excavation, to ensure all management strategies are appropriate to the significance of the identified Aboriginal heritage values in accordance with Section 2.7 of the *Guide to Investigating, Assessing and Reporting on Aboriginal cultural heritage in NSW*.

