



25 January 2023

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications: 598/2022/1

**ADDRESS:** 17 Dover Road ROSE BAY 2029

**PROPOSAL:** Demolition of existing at-grade car park and encroaching structures and construction of: A mixed use building with frontage to Wilberforce Avenue incorporating a new multi-storey car park, ground floor retail premises and community centre and public amenities across multiple levels; Single storey ground floor retail building with frontage to Dover Road; and public domain and landscaping works.

**FROM:** Vanessa Wood - Heritage Officer

**TO:** Mr V Aleidzans

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### DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Allen Jack + Cottier, dated 10 December 2022, and numbered DA0000 – DA8004
- Statement of Environmental Effects by SJB Planning, dated December 2022
- Survey plan by S.J. Dixon and Associates, ref 52899, dated 2 July 2020
- Aboriginal Heritage Impact Assessment by Curio Projects, dated December 2022

### SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps – street view

### STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

### ASSESSMENT OF HERITAGE IMPACT

**Compliance with the relevant legislative framework and planning controls**

### SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

The property is not a listed heritage item and is not located within a Heritage Conservation
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Area.

The subject property current contains a carpark, with no notable built structures. As such, a Demolition Report was not required as part of the DA submission.

A Pre-DA was undertaken for the proposal in 2022. (Pre-DA2022/25/1) A heritage referral response was not required as part of the assessment.

National Parks and Wildlife Act 1974

The site is in an area of Potential Aboriginal Heritage Sensitivity. Therefore, an Aboriginal Heritage Impact Assessment was required as part of the DA to ascertain whether potential Aboriginal cultural heritage will be impacted by the proposal.

A basic search conducted on AHIMS (Aboriginal Heritage Information Management System) on 25 January 2023 from the Heritage NSW website has revealed that there are 0 recorded Aboriginal sites recorded within a 200m buffer in or near the above location and 0 Aboriginal sites within a 0m buffer in or near the above location.

The site does not contain landscape features that indicate the likely existence of Aboriginal objects as defined in Section 2, Step 2 p.12 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW ('Due Diligence Code') published by the Department of Environment, Climate Change and Water and dated 13 September 2010.

The subject site is considered to be on 'disturbed land' as per the definition outlined in the Due Diligence Code, p. 18.

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose.

The 'Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW' (2010) prescribes that an extensive search must be undertaken if AHIMS has shown that there are Aboriginal sites or places in the search area.

The Office of Environment & Heritage (OEH) disclosures for AHIMS searches are copied below:

- *You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.*
- *If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.*
- *The information derived from the AHIMS search is only to be used for the purpose for which it was requested.*
- *AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;*
- *It is not be made available to the public.*
- *Information recorded on AHIMS may vary in its accuracy and may not be up to date.*
- *Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings.*
- *Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.*
- *Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they*



are not recorded as a site on AHIMS.

The Applicant has provided an Aboriginal Heritage Impact Assessment (the 'report') prepared in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW' published by the Department of Environment, Climate Change and Water and dated 13 September 2010 and in accordance with Attachment 10 of Council's DA guide available at: [https://www.woollahra.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf](https://www.woollahra.nsw.gov.au/__data/assets/pdf_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf)

Rebecca Agius of Curio Projects is a qualified Aboriginal heritage consultant who inspected the property on 22 November 2022 on foot. Steven Ella of La Perouse Local Aboriginal Land Council also attended the inspection.

Consultation with the La Perouse Local Aboriginal Land Council was undertaken on 28 October 2022.

There has been consideration of relevant previous Aboriginal heritage investigations, as detailed in Section 4.4 of the report.

The AHIMS of the OEH was consulted on 27 October 2022 and the extensive search is attached at Appendix A of the report. None of these sites are within the study area. There are 4 sites within a 1km buffer of the study area.

The report concludes the following:

- *There are no registered Aboriginal objects and/or sites located within or directly adjacent to the study area.*
- *The study area is recognised to be situated within an area that would have had access to the coastal, extensive swamplands and their associated resources.*

The report identifies the following potential for unexpected findings within the area:

- *Past land-use practices within the study area have likely resulted in the removal of the upper portion of natural soils. However, deeper, less disturbed soil deposits associated with the Tuggerah soil landscape unit retain the potential to preserve Aboriginal archaeological resources. If present, archaeological deposits within the study area would have the potential to contribute important information the pre-contact and contact Aboriginal occupation of the study area and Sydney region more broadly.*
- *The results of geotechnical investigations completed within the study area confirm the presence of natural marine sands to a depth of at least 27.5 m below the ground surface. These sands are considered to be consistent with the natural soil profiles of the area and therefore have the potential to preserve sub-surface Aboriginal objects. The deeper, undisturbed soils under existing paved car park and below existing disturbance associated with historical land use is assessed as being of high Aboriginal archaeological potential.*
- *The proposed activity, particularly in relation to the construction of the basement car park, has the potential to impact natural soil profiles, and thus Aboriginal archaeological deposits in this area if present. The nature and extent of sub-surface archaeological deposits, however, remains unknown.*

The report recommends the following:

- **Recommendation 1: Further Aboriginal heritage assessment and investigation:**
  - *Due to the high potential for Aboriginal objects to be present within the soil profiles*



*below existing land disturbance, it is recommended that further assessment in the form of an Aboriginal Cultural Heritage Assessment (ACHA) including consultation with relevant Aboriginal stakeholders be completed to investigate, assess and manage both tangible and intangible Aboriginal cultural heritage resources within the study area. This further assessment must be completed in accordance with relevant Heritage NSW statutory guidelines.*

*Consultation with relevant Aboriginal stakeholders must be undertaken in accordance with Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010.*

*As part of this further assessment, a program of Aboriginal archaeological testing in association with the Registered Aboriginal Parties (RAPs) should be undertaken prior to bulk excavation and construction of the underground car park and in all areas where the natural ground surface will be disturbed. Due to the coastal nature of the study area with the potential to contain midden material and/or burials, test excavation under the Code of Practice, will not be possible. In this instance, any future Aboriginal archaeological test excavation at the study area would require approval under a s90 Aboriginal Heritage Impact Permit (AHIP).*

*Following the completion of any future test excavations within the study area, the Aboriginal Heritage Sensitivity map for part or all of the area investigated should be updated based on the nature and extent of sub-surface Aboriginal archaeological deposits identified (if present).*

*A copy of the ACHA and any updated Aboriginal site information (such as AHIMS site card/s if required) should be submitted to the Heritage NSW AHIMS and copies provided to the La Perouse LALC and Council.*

- **Recommendation 2: Aboriginal cultural heritage induction:**

- *A site induction should be provided to all employees/contractors engaged on the redevelopment of the study area. The induction material should include an overview of the types of sites to be aware of (i.e., artefact scatters or concentrations of shells that could be middens), obligations under the NPW Act, and the requirements of an archaeological finds' procedure (refer to Recommendation 3 and 4 below).*

- **Recommendation 3: Aboriginal unexpected finds procedure:**

*Upon discovery of an archaeological feature that is suspected to be an Aboriginal Unexpected Find (excluding human remains- see Recommendation 6 below), the following procedure should be followed:*

- *Cease works in the immediate vicinity of the find.*
- *Contact the Project archaeologist to verify the nature of the find.*
- *If Unexpected Find is confirmed as Aboriginal archaeology, Project archaeologist will notify Project RAPs and DPIE of the find. If Unexpected Find is confirmed as not Aboriginal in origin, Project archaeologist will provide advice for works to recommence.*
- *Project Archaeologist/Project RAPs will undertake a preliminary assessment and recording of the find.*
- *Formulate archaeological or heritage management plan- specific to nature of the find.*
- *Implement archaeological/heritage management plan.*
- *Works may commence once archaeological/heritage management plan has been successfully implemented and Project archaeologist provides sign off to contractor*



*for works to resume in vicinity of find.*

- **Recommendation 4: Human remains procedure:**

*While not anticipated to be encountered within the study area, the unexpected discovery of any potential skeletal remains during development works would be managed in accordance with the approved Heritage NSW protocol for the discovery of human remains which is stated as:*

*If any suspected human remains are discovered and/or harmed the proponent must:*

- *Not further harm these remains.*
- *Immediately cease all work at the particular location.*
- *Secure the area so as to avoid further harm to the remains.*
- *Notify the local police and OEH's Environment Line on 131 555 as soon as practicable and provide any available details of the remains and their location.*
- *Not recommence any work at the particular location unless authorised in writing by Heritage NSW.*

Given the above, it is concluded that an unexpected findings condition of consent will need to be imposed as part of the DA consent.

#### Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

The existing car park has no heritage significance and does not make any contribution to the heritage significance of Rose Bay. The property is not heritage listed and is not located within a heritage conservation area.

Considering that there are no built structures on the site, an archival recording condition is not required.

#### *Significance of items in the vicinity*

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

## **CONCLUSION**

#### National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

#### Woollahra LEP 2014

- Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra.

#### *Part 5.10*

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the heritage items in the vicinity will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.





## RECOMMENDATION

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions.

### 1. Deferred commencement

Development consent is granted subject that this consent is not to operate until the Applicant satisfies the Council, in accordance with the Regulations, as to all matters specified in this condition:

- a) An Aboriginal Cultural Heritage Assessment (ACHA), including consultation with relevant Aboriginal stakeholders, is to be completed to investigate, assess and manage both tangible and intangible Aboriginal cultural heritage resources within the study area. This further assessment must be completed in accordance with relevant Heritage NSW statutory guidelines. Consultation with relevant Aboriginal stakeholders must be undertaken in accordance with Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010.
- b) As part of this further assessment, a program of Aboriginal archaeological testing in association with the Registered Aboriginal Parties (RAPs) is to be undertaken prior to bulk excavation and construction of the underground car park and in all areas where the natural ground surface will be disturbed. Due to the coastal nature of the study area with the potential to contain midden material and/or burials, test excavation under the Code of Practice, will not be possible. In this instance, any Aboriginal archaeological test excavation at the study area requires approval under a Aboriginal Heritage Impact Permit (AHIP) issued under s.90 of the *National Parks and Wildlife Act 1974*. The Applicant must satisfy the terms and conditions of the issued AHIP before the proposed works for the development can commence.

### 2. Aboriginal Objects – Unexpected Findings

If unexpected Aboriginal objects or bones are found during any activity associated with this consent, you must:

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks and Wildlife Act 1974* may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

**Note:** The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10 (Autotext BB10)



### 3. Skeletal Remains

If any skeletal remains suspected of being human are found during construction works, work must cease immediately and no further disturbance of the site must occur. The NSW Police and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified and details of the remains and their precise location are to be provided.

Standard Condition: B9

### 4. Aboriginal Heritage Due Diligence Responsibilities

Nothing in this approval allows to cause harm to an Aboriginal object as defined in the *National Parks & Wildlife Act 1974*. Under the *National Parks & Wildlife Act 1974*, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.

Standard Condition: B12 (Autotext BB12)

### 5. Aboriginal Heritage Induction

- a) All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the *National Parks and Wildlife Act 1974*;
- b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council or by a heritage consultant with Aboriginal heritage expertise, if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and
- c) Documentary evidence demonstrating compliance with a. and b. above being submitted to Council and the Principal Certifier.

Standard Condition: B13 (Autotext BB13)

Vanessa Wood - Heritage Officer