

Our ref: DOC23/1022372-8

Mr David Kiernan

Senior Strategic Planner

Goulburn Mulwaree Council

David.keirnan@goulburn.nsw.gov.au

Subject: Updated Advice on Planning Proposal – 20-24 Lockyer Street Planning Proposal under Goulburn Mulwaree LEP 2009

Dear David,

Thank you for the opportunity for further comment on the planning proposal for 20-24 Lockyer Street Goulburn.

Heritage NSW continues to recommend that a comprehensive Aboriginal cultural heritage assessment is needed and should inform this planning proposal as per our previous advice dated 27 November 2023, 17 January 2024, and 14 February 2024. The planning proposal area is known to contain three Aboriginal archaeological sites, including one site containing a glass artefact, which is relatively rare and significant as evidence of the early contact period. The assessment also identifies that 'it is highly likely that these sites contain additional artefacts at lower stratigraphic levels.' No assessment of the significance of these sites or the proposal area has been provided. If approved, the rezoning acknowledges that future use of the rezoned land may result in harm to Aboriginal objects. An Aboriginal cultural heritage assessment report should be prepared in accordance with the *Code of practice for archaeological investigation in NSW* (DECCW 2010), the *Aboriginal cultural heritage consultation requirements for proponents* (DECCW 2010) and guided by the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (OEH 2011).

The following reports were considered in our review:

- Aboriginal Due Diligence: 20-24 Lockyer Street, Goulburn – prepared by Hyperion Design, dated 8 September 2023.
- Aboriginal Due Diligence: 20-24 Lockyer Street, Goulburn (updated) – prepared by Hyperion Design, dated May 2024.

We provide the following comments on the Aboriginal Due Diligence: 20-24 Lockyer Street Goulburn NSW (updated) (Hyperion Design dated May 2024):

- A due diligence approach has been conducted for the Assessment of Aboriginal Cultural heritage. We advise Council that an assessment under the 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* is not considered an archaeological assessment or substitute for a comprehensive Aboriginal cultural heritage assessment report. The due diligence process does not adequately assess the impacts of this planning proposal on Aboriginal cultural heritage as required by Local Planning Direction 3.2. This is because without adequate Aboriginal

community consultation the extent of the impacts on Aboriginal objects and heritage values through the planning proposal and future development is not known.

- From the information presented consultation has not been conducted in accordance with *Aboriginal cultural heritage consultation requirements for proponents* (DECCW 2010). While Heritage NSW notes Pejar Local Aboriginal Land Council has been consulted, an Aboriginal cultural heritage assessment requires consultation with the wider Aboriginal community to afford an opportunity for Aboriginal people who hold cultural knowledge provide information regarding cultural significance. As Aboriginal people are the primary determinants of the cultural significance of their heritage cultural significance cannot be assessed without their input.
- The survey information provided does not meet the assessment process and reporting requirements described in the *Code of practice for archaeological investigation in NSW* (DECCW 2010) and *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (OEH 2011).
- The report provided includes no assessment of the significance of the Aboriginal sites and objects identified as per the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (OEH 2011).

With regards to your specific question (provided via email 6 May 2024) about potential zoning of prohibitive environmental zones for the identified Aboriginals sites. Protection through zoning is not typically required, as the sites are protected under the National Parks and Wildlife Act 1974 and will require an Aboriginal Heritage Impact Permit (AHIP) prior to impacts. Two of the identified sites in this case are potential archaeological deposits (PADs) which will require test excavation under the *Code of practice for the archaeological investigation of Aboriginal objects in NSW* (DECCW 2010) to confirm the presence of subsurface deposits and characterise their nature and extent. As they are untested the current boundaries of the sites are indicative only and the results of test excavation would clarify the boundaries and identify areas of highest significance and archaeological potential that should be prioritised for conservation. The results of test excavation should be used to inform the design of future development. If significant Aboriginal cultural heritage values have been identified within the planning proposal areas, then options to avoid impact to these values need to be explored. For example, where the significance of Aboriginal cultural heritage values has been assessed as high, then conservation and avoidance of these values through footprint design should always be the first option. If impact cannot be avoided or if the values have been assessed as moderate, appropriate mitigation measures for impact should be negotiated with the registered Aboriginal parties.

If you have any questions regarding these comments, please contact Alison Lamond, Senior Assessments Officer, at Heritage NSW on 0419 762 918 or alison.lamond@environment.nsw.gov.au.

Yours sincerely

Nicole Davis

Nicole Davis
Manager Assessments
Heritage NSW
Department of Climate Change, Energy, the Environment and Water
As Delegate under *National Parks and Wildlife Act 1974*
8 May 2024



Department of Planning and Environment

Our ref: DOC23/1022372

David Kiernan
Senior Strategic Planner
Goulburn Mulwaree Council
Locked Bag 22
Goulburn NSW 2580

Attention: David Kiernan, Senior Strategic Planner

Pp_2023_2555 20-24 Lockyer Street, Goulburn

Dear Mr Kiernan

Thank you for the opportunity to comment on the planning proposal for 20-24 Lockyer Street, Goulburn under *Goulburn Mulwaree LEP 2009*.

We have reviewed the planning proposal and make the following comments:

**State and local heritage considerations under the *Heritage Act 1977*
As delegate of the Heritage Council**

We advise Council that an assessment under the 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* is not considered an archaeological assessment or substitute for a comprehensive Aboriginal cultural heritage assessment report. The due diligence process does not adequately assess the impacts of this planning proposal on Aboriginal cultural heritage as required by Ministerial Direction 2.3. This is because without Aboriginal community consultation the extent of the impacts on Aboriginal objects and heritage values through the planning proposal and future development is not known.

An Aboriginal cultural heritage assessment and consultation with the Aboriginal community, needs to occur early in the planning process to identify Aboriginal cultural heritage values that may occur within the proposal area and establish how this may constrain future development.

Heritage NSW recommends that a comprehensive Aboriginal cultural heritage assessment is needed and should inform this planning proposal. Early assessment provides the best opportunity to identify and protect Aboriginal cultural heritage values. It also provides certainty to all parties about any future Aboriginal cultural heritage management requirements.

The requirement for a full assessment to be prepared at the planning proposal stage is consistent with insert any Directions or Actions set out in Clause 5.10.8 of the *Goulburn Mulwaree LEP 2009*. It is important that any management, mitigation and conservation mechanisms are developed at the planning proposal stage to help mitigate the cumulative impact of development in this region on Aboriginal cultural heritage.

General Comments

Prior to finalisation of the proposal, Council should be satisfied that all necessary heritage assessments have been undertaken and that any impacts have been sufficiently addressed. Council's assessment should include, but not be limited to, a search of the State Heritage Inventory (<https://www.heritage.nsw.gov.au/search-for-heritage/search-for-nsw-heritage/>) and the Aboriginal Heritage Information Management System (<https://www.heritage.nsw.gov.au/protecting-our-heritage/record-aboriginal-sites/>).

If you have any questions please contact Colleen Klingberg, Assistant Program Coordinator at Heritage NSW, Department of Planning and Environment by phone on 02 9873 8566 or via email Colleen.Klingberg@environment.nsw.gov.au

Yours sincerely

Nicole Davis

Nicole Davis

Manager Assessments

Heritage NSW

Department of Planning and Environment

As Delegate under National Parks and Wildlife Act 1974

27 November 2023