



Our ref: DOC23/137937

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Dear Mr Strassmeir,

### Heritage NSW Advice - Draft Planning Proposal - 10 and 20 Brooks Point Road, APPIN NSW 2560

Thank you for your referral to Heritage NSW in relation to the Draft Planning Proposal, for 10 and 20 Brooks Point Road, Appin. I note that the subject area forms of the Greater Macarthur Growth Area (GMGA), and that Wollondilly Shire Council (Council), is seeking to rezone the subject site from a rural landscape zone to facilitate the development of low and medium density housing. This proposal will involve amending maps that form part of the Wollondilly Local Environmental Plan (LEP) 2011 in relation to land zoning, lot size, floor space ratio and height of buildings.

Heritage NSW has previously provided advice (dated 8 August 2022 reference DOC22/480959) to Council, in relation to this matter. I note this advice remains relevant and should be considered in conjunction with our advice provided below. Heritage NSW previously recommended that a comprehensive Aboriginal Cultural Heritage Assessment Report (ACHAR), including an archaeological assessment, and consultation with the Aboriginal community be undertaken to inform this planning proposal. Heritage NSW reiterates the recommendations of that advice.

In November 2018, the Department Planning and Environment (DPE) released the Greater Macarthur 2040 - Interim Plan, to guide the implementation of the changes within the GMGA. The aim of this plan is *'to meet the needs of the population while conserving local character including heritage and environmental values.'* Heritage NSW notes that the planning principles for heritage outline that precinct planning must:

1. Be informed by Aboriginal Cultural Heritage Assessment, including consultation with the Aboriginal community;
2. Include further investigation to define appropriate design of precincts to protect heritage significance;
3. Address sympathetic adaptive re-use of heritage items consistent with their significance;
4. Provide opportunities for using heritage item curtilages for open space or environmental conservation and where appropriate, to preserve the character of the area and identified cultural values, and
5. Protect all heritage items from development.

For the proposed rezoning to satisfy these five planning principles, Heritage NSW recommends that detailed assessments (including conservation and interpretation plans), be undertaken *prior* to the planning proposal stage. Heritage NSW strongly recommends undertaking detailed assessment upfront to inform the Master Plan, Indicative Layout Plan and Land Zoning Map, to *avoid* potential impacts to Aboriginal cultural heritage and environmental heritage. This will assist in avoiding delays during the later planning phases.

In preparing the below advice we have reviewed the following documents that were provided with this request for initial advice:

- *Planning Proposal 10 and 20 Brooks Point Road, Appin*, prepared by Beveridge Williams for Appin Farmers Pty Ltd and Auslands Developments Pty Ltd, dated 20 December 2022.
- *289 Brooks Point Road, Appin, Proposed Rezoning Historic Heritage Assessment*, prepared by Navin Officer heritage consultants Pty Ltd, dated 19 January 2023.

Heritage NSW has reviewed the above information in preparing the following advice in relation to Aboriginal cultural heritage, State heritage and environmental heritage matters. Heritage NSW recommends that additional assessment be undertaken to further inform the planning proposal and ensure appropriate heritage protection measures are implemented.

### Summary of Heritage NSW advice

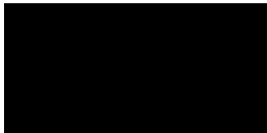
Heritage NSW recommends that the following key matters are addressed to inform the planning proposal:

1. Ensuring that adequate heritage assessment has been conducted across the proposed rezoning subject area.
2. Prepare a comprehensive Aboriginal Cultural Heritage Assessment Report (ACHAR) that includes Aboriginal community consultation and archaeological assessment.
3. Preparing a Historical Archaeological Assessment that includes a SoHI and Archaeological Research Design.
4. The Appin Massacre Cultural Landscape (SHR 02067) and Windmill Hill Group, including Ruins (SHR 01931) are located in the vicinity of the subject site. The planning proposal and associated heritage assessments **needs to be revised to reflect these listings** and any potential impacts on these items. A SoHI must be prepared for:
  - Appin Massacre Cultural Landscape.
  - Windmill Hill Group, including Ruins.

Further detailed advice is included at **Attachment 1**.

If you have any questions about the advice above, please contact Lara Goldstein by email at [lara.goldstein@environment.nsw.gov.au](mailto:lara.goldstein@environment.nsw.gov.au) or by phone on 02 9895 6408.

Yours sincerely



Nicole Davis  
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Heritage NSW  
Department of Planning and Environment  
(As Delegate under *National Parks and Wildlife Act 1974*)  
23 March 2023

Enclosure: Attachment 1 – Additional detailed heritage comments

## Attachment 1 – Additional detailed heritage comments

### Aboriginal cultural heritage considerations under Part 6 of the *National Parks and Wildlife Act 1974*

As outlined in our previous advice of 8 August 2022, an Aboriginal cultural heritage site (a culturally modified tree, AHIMS site # 52-2-4730) is recorded on the land to which this scoping proposal applies. This site may be in the proposed Strategic Conservation Area. Heritage NSW supports this outcome and long-term protection measures for the site. Heritage NSW recommends that any future development design or planning proposals clarify the location of the site in relation to the strategic conservation area.

The broader landscape of this area contains significant Aboriginal cultural heritage sites and values, including the Appin Massacre Cultural Landscape, art sites, burials, artefact scatters and areas of archaeological potential.

The Planning Proposal report references a Due Diligence Aboriginal Heritage Assessment for Rezoning of Lots 1, 4 and 5 DP 249446, Lot 1 DP 584515 and Lot 3 DP 249446, 10 Brooks Point Road, Appin, Mary Dallas - Consulting Archaeologist, December, I note that this has not been provided with this referral and as such, has not been considered by Heritage NSW.

#### **Due diligence is not an adequate level of assessment to inform the planning proposal**

Heritage NSW does not have a role in assessing or endorsing due diligence assessments, however, I can advise that an assessment under the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (2010)*, is not considered an archaeological assessment, nor is it considered a substitute for an Aboriginal Cultural Heritage Assessment Report (ACHAR).

The due diligence process does not adequately assess the potential impacts of this draft planning proposal on Aboriginal cultural heritage, as required by Local Planning Direction 3.2. I note that no consultation with the Aboriginal community or archaeological assessment has been undertaken. Heritage NSW strongly recommends that this be completed in order to develop and understand the nature and extent of any impacts on Aboriginal objects and values that may occur, should this draft planning proposal and future development proceed.

A full Aboriginal Cultural Heritage Assessment Report (ACHAR) must be prepared in accordance with Heritage NSW guidelines and Heritage recommends that this assessment include:

- Formal Aboriginal community consultation, and
- an Aboriginal archaeological assessment.

The results of the ACHAR will inform the proposed zoning, particularly in relation to protection of Aboriginal cultural heritage sites and values. The requirement for this level of assessment to be prepared at the planning proposal stage is consistent with GMGA Principle 1, and the Greater Macarthur Investigation Area, Archaeological Research Design and Management Strategy (Section 5.2.2).

Further information about preparing an Aboriginal Cultural Heritage Assessment Report (ACHAR) and how consultation with the Aboriginal community should be undertaken is available on our website: [environment.nsw.gov.au/topics/heritage/apply-for-heritage-approvals-and-permits](https://environment.nsw.gov.au/topics/heritage/apply-for-heritage-approvals-and-permits).

### State Heritage Register considerations under the *Heritage Act 1977*

State Heritage Register listed sites are in the vicinity of the subject site. The proposed area for rezoning does not include any identified State Heritage Register (SHR) items within its boundary,

however, I note that the site is located in the vicinity of a number of items of State and local heritage significance:

- 'Appin Massacre Cultural Landscape' (SHR 02067) is listed on the State Heritage Register (SHR) under the *Heritage Act 1977* (the Heritage Act).
- 'Windmill Hill Group, including Ruins' (SHR 01931) is listed on the SHR and listed as 'Windmill Hill Group—Brennan's Farm, Larkin's Farm and Winton's Farm' (LEP Item No. 117) under Schedule 5, Part 1 of the *Wollondilly Local Environmental Plan (LEP) 2011*.

I note that these items are not within the boundaries of the subject area, however, Heritage NSW considers that any future development of the subject area may have an adverse impact on their individual heritage significance.

The Historical/Environmental Heritage Assessment report makes the following recommendation in relation to any future development of the land:

#### ***7.25 Appin Massacre Cultural Landscape***

- *Consideration should be given to the potential impacts that future development might have on the settings and views of the recently listed Appin Massacre Cultural Landscape.*

Heritage NSW supports this recommendation, however, I note due the potential adverse impacts on heritage significance, should future development of the subject area occur, Heritage NSW strongly recommends that a SoHIs be prepared for SHR items - 'Appin Massacre Cultural Landscape' (SHR 02067) and 'Windmill Hill Group, including Ruins' (SHR 01931), to adequately inform the proposed planning proposal.

Heritage NSW notes that the SoHI must be prepared by a suitably qualified heritage consultant to inform the planning proposal and to avoid, mitigate and manage any impacts to the identified item/s. It should be prepared in accordance with Heritage NSW guidelines ([environment.nsw.gov.au/research-and-publications/publications-search/statements-of-heritage-impact](http://environment.nsw.gov.au/research-and-publications/publications-search/statements-of-heritage-impact)).

Further assessment is required. The draft planning proposal does not adequately assess any associated impacts to environmental heritage must to be revised to reflect these listings and any potential impacts on these items.

#### **Historical archaeological considerations under the *Heritage Act 1977***

The proposal is accompanied by a Historic Heritage Assessment report that includes an archaeological evaluation of the study area. In relation to historical archaeology the report recommends:

#### ***7.2.2 Archaeological heritage***

- *No indication of archaeological deposits were noted on the property, however, it is worth noting that should unexpected archaeological deposits occur they may be protected under the Heritage Act 1977 and, therefore, an unexpected finds protocol should be considered for any future development.*

Heritage NSW notes that the report also explains that the archaeological field survey was significantly limited due to a protracted period of heavy rainfall and much of the ground surface of the study area being covered with thick/tall vegetation. Given the survey limitations a deeper level of investigation should be undertaken. It is recommended that a Historical Archaeological Impact Assessment (HHCA) should be carried out early and inform the planning proposal. This assessment should include a

SoHI and Archaeological Research Design (ARD) and be prepared by a suitably qualified archaeologist in accordance with the relevant guidelines and the requirements of the *Heritage Act 1977*.

The ARD should be prepared in accordance with the following Heritage NSW guidelines:

- Archaeological Assessments (1996) – [environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Heritage/archaeological-assessments-guidelines.pdf?la=en&hash=24D62F3BF291592F0DDAEF691AA5F6F9C311879C](http://environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Heritage/archaeological-assessments-guidelines.pdf?la=en&hash=24D62F3BF291592F0DDAEF691AA5F6F9C311879C), and
- Assessing Significance for Historical Archaeological Sites and Relics (2009) – [environment.nsw.gov.au/research-and-publications/publications-search/assessing-significance-for-historical-archaeological-sites-and-relics](http://environment.nsw.gov.au/research-and-publications/publications-search/assessing-significance-for-historical-archaeological-sites-and-relics)

Any archaeological investigations should be carried out in accordance with the *Heritage Act 1977*, including requirement for either a s140 Excavation Permit, or a s139(4) Exception.

Please note that recent changes to Heritage NSW guidelines mean that certain activities and work can be done under a s139(4) excavation permit exception and do not need approval under the *Heritage Act 1977*.

More information is available at: [environment.nsw.gov.au/topics/heritage/apply-for-heritage-approvals-and-permits/historical-archaeology/section-139-4-excavation-permit-exceptions](http://environment.nsw.gov.au/topics/heritage/apply-for-heritage-approvals-and-permits/historical-archaeology/section-139-4-excavation-permit-exceptions).

Depending on the outcomes of the historical archaeological investigation, further consultation with Heritage NSW may be required.

### **Additional recommendations**

In relation to regulatory matters under both the *National Parks and Wildlife Act 1974* and the *Heritage Act 1977*, I note that:

- The current planning proposal is part of the broader proposed rezoning at Appin. As heritage assessment work may not yet have been conducted over other parts of this area there may be a risk that interconnected heritage values across this land have not yet been considered.
- Any preliminary environmental assessments (including geotechnical testing) must ensure that the risk of harm to Aboriginal objects and historical archaeological deposits have been considered and any necessary approvals obtained before ground disturbance works occur.

### **Local heritage considerations under the *Environmental Planning and Assessment Act 1979***

Heritage NSW notes that the Plan area is located in the vicinity of a number of Local heritage items listed under the *Wollondilly Local Environmental Plan (LEP) 2011*.

As local heritage items and Heritage Conservation Areas are protected under the Wollondilly LEP and the Environmental Planning and Assessment Act 1979, Wollondilly Shire Council is the consent authority and the assessment and consideration of impacts on this Local heritage rests with Council.