



Our ref: DOC22/1023343

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Department of Planning and Environment (DPE)
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Response uploaded via the Concurrence and Referral Portal

Planning Proposal – The Appin (Part) Precinct for Urban Development

Dear Ms Gautam

Thank you for the opportunity to comment on the planning proposal to rezone the Appin (Part) Precinct for urban development, as part of the Greater Macarthur Growth Area (REF-1830, PP-2022-3979).

Heritage NSW has previously provided advice (dated 23 August 2022) to the Department of Planning and Environment (DPE) and Walker Corporation (the proponent) about this proposal. This advice remains relevant and should be read together with the advice below. Our previous advice recommended that comprehensive heritage assessment, including preparing a Cultural Landscape assessment, be conducted at the planning proposal stage. We reiterate the recommendations of our previous advice.

We have prepared the following advice in relation to Aboriginal cultural heritage, State heritage, environmental heritage and historic archaeology matters. Broadly, we recommend some revisions to the planning proposal to ensure appropriate heritage protection measures are implemented as part of the rezoning process. This recommendation is particularly considering the recent listing of the Appin Massacre Cultural Landscape on the State Heritage Register (SHR 02067) on 15 November 2022.

In preparing this advice we have reviewed the following documents that were provided with this referral:

- *Greater Macarthur Growth Area Planning Proposal to Rezone the Appin (Part) Precinct for Urban Development*, prepared by Walker Corporation Pty Ltd, dated 14 November 2022.
- *Greater Macarthur Growth Area Appin (Part) Precinct Plan Heritage Map*, revision 2 dated 28 October 2022.
- *Aboriginal Objects Due Diligence Assessment, Appin (Part) Precinct Plan*, prepared by Niche Environment and Heritage, dated 12 October 2022 (Niche 2022a).
- *Historic Heritage Constraints Assessment, Appin (Part) Precinct Plan*, prepared by Niche Environment and Heritage, dated 12 October 2022 (Niche 2022b).

We note that at the State Heritage Register Committee meeting held on 6 September 2022, Walker Corporation confirmed a number of ongoing commitments. In particular, we support the commitment by Walker Corporation at that meeting to preserve connections between the non-contiguous Appin Massacre Cultural Landscape listed areas, through preserving sight lines, view corridors, and physical connections. Detailed advice on preserving these connections was provided in our advice of 23 August 2022. We recommend that mechanisms to support these commitments are outlined in the planning proposal.

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

We recommend that the following points are addressed as part of the planning proposal:

1. Implementing appropriate planning controls to protect visual and physical connections between the parts of the Appin Massacre Cultural Landscape SHR listed areas.
2. Addressing the recommendations of the Heritage NSW advice (23 August 2022).
3. Updating the planning proposal and associated heritage assessments to reflect the recent listing of the Appin Massacre Cultural Landscape on the SHR.
4. Incorporating the recommendations of the Cultural Values Assessment into the design of the planning proposal (Walker Corporation 2022, pp.168-169).
5. Preparing a comprehensive Aboriginal cultural heritage assessment report (ACHAR) that includes Aboriginal community consultation and archaeological assessment.
6. Preparing a Historical Archaeological Assessment that includes a Statement of Heritage Impact (SoHI) and Archaeological Research Design.
7. Revising the Historic Heritage Constraints Assessment (HHCA) prepared by Niche (2022b) that states that there are no SHR listed places located within the subject area. The Appin Massacre Cultural Landscape is located within the subject area and the Upper Canal System (Pheasants Nest Weir to Prospect Reservoir) (SHR 01373) is situated directly adjacent to the subject area (bisecting it in a north/south direction). This report needs to be revised to reflect these listings and any potential impacts on the items. A SoHI needs to be prepared for:
 - the Appin Massacre Cultural Landscape
 - the Upper Canal System (Pheasants Nest Weir to Prospect Reservoir) (Upper Canal).

Further detailed heritage advice is included for your consideration at **Attachment 1**.

If you have any questions about the advice above, please contact:

- Rose O'Sullivan in relation to Aboriginal cultural heritage matters by email at rose.osullivan@environment.nsw.gov.au or by phone on 02 4224 4177, or
- Lara Goldstein in relation to environmental heritage or historic archaeology matters by email at lara.goldstein@environment.nsw.gov.au or by phone on 02 9895 6408.

Yours sincerely



Sam Kidman
Executive Director
Heritage NSW

As delegate of the Heritage Council of NSW
22 December 2022

Enclosure: Attachment 1 – Additional detailed heritage comments

Attachment 1 – Additional detailed heritage comments

Reflect the Appin Massacre Cultural Landscape State Heritage Register Listing in the Heritage Assessment Reports

The Appin Massacre Cultural Landscape State Heritage Register (SHR) listing was approved by the Minister of Environment and Heritage on 15 November 2022 and is now listed on the State Heritage Register (SHR 02067). We support the commitment in the planning proposal to protect this site complex (Walker Corporation 2022, p.14). However, we recommend that the heritage assessment reports are updated to reflect the recent SHR listing.

Heritage NSW does not support any proposed impacts that would interrupt the connections between the listed portions of the Appin Massacre Cultural Landscape. This reflects the commitments from the State Heritage Register Committee meeting held on the 6 September 2022 (meeting minutes item 5.2). We recommend that detail of how these connections will be protected is provided in the planning proposal. We suggest that appropriate mechanisms may be able to form part of the Precinct Plan Draft Appendix that was provided with the referral.

The boundary of the current planning proposal cuts across the southern areas of the Appin Massacre Cultural Landscape (e.g. Walker Corporation 2022, p.19). We recommend that appropriate planning controls are implemented to ensure holistic heritage management of the SHR listing in the context of separate planning proposal processes.

Aboriginal cultural heritage considerations under the *National Parks and Wildlife Act 1974*

A due diligence assessment report prepared by Niche Environment and Heritage (dated 12 October 2022) has been provided with this referral. In this report, Niche (2022a) has identified highly significant Aboriginal cultural heritage values and sites within the Precinct Plan. This includes the Appin Massacre Cultural Landscape, art sites, artefact scatters, culturally modified trees and axe grinding grooves. Niche (2022b) also identifies the potential for subsurface Aboriginal archaeological deposits.

As explained in our previous advice of 23 August 2020, Heritage NSW does not have a role in assessing or endorsing due diligence assessments. However, we advise the Department that an assessment under the *2010 Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* is not considered an adequate substitute for an Aboriginal cultural heritage assessment report (ACHAR).

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

We support the Niche (2022a) recommendations for a full Aboriginal cultural heritage assessment to be prepared. However, we recommend that the ACHAR is prepared at this point in order to inform the proposed zoning and protection of Aboriginal cultural heritage values. The ACHAR needs to be prepared in accordance with Heritage NSW guidelines and to include:

- Formal Aboriginal community consultation
- An archaeological assessment.

Further information about preparing an ACHAR is available on our website:

<https://www.heritage.nsw.gov.au/applications/aboriginal-objects-and-places/>.

We also note that the Aboriginal Cultural Values Assessment prepared by Waters Consultancy referred to in the planning proposal has not been provided with this referral and has therefore

not been reviewed as part of preparing this advice. We understand from the planning proposal that the draft Aboriginal Cultural Values Assessment is being reviewed by the Registered Aboriginal Parties.

State Heritage Register considerations under the *Heritage Act 1977*

State Heritage Register listed sites are within and immediately adjacent to the Precinct Plan. The Appin Massacre Cultural Landscape (SHR 02067) is located within the subject area and the Upper Canal (SHR 01373) is situated directly adjacent to the subject area (bisecting it in a north/south direction), as described in our previous advice (23 August 2022).

There are also three historic homesteads located within or associated with the Appin Massacre Cultural Landscape: Teston Farm, Lachlan Vale, and Mount Britain. These are all 1810s / 1820s colonial homesteads that have potential for state significant archaeological resources.

While the Upper Canal is not technically within the boundaries of the subject area, as it is flanked for over 5km of its length by the assessment area, future development may have an adverse impact on its heritage significance. A SoHI should be prepared for this item to inform the planning proposal.

We note that any 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).

Historical archaeological considerations under the *Heritage Act 1977*

In relation to historical archaeology, we support the following recommendations within the Historic Heritage Constraints Assessment (HHCA):

3. *Statements of Heritage Impact (SoHIs) be undertaken for each of the following areas of sensitivity prior to any construction works being undertaken:*
 - *The potential location of graves associated with the Appin massacre*
 - *Lachlan Vale Estate (including the estate huts)*
 - *Macquariedale Estate (including Moon's cottage)*
 - *Teston Farm*
 - *Elladale Cottage (Item #I11)*
 - *Northamptondale Group (Item#I13)*

SoHIs for each of these items will build upon research undertaken for this HHCA and will consider specific impacts and mitigation measures for each item.

4. *Photographic archival recording be undertaken for the three sandstone quarries identified within the Subject area prior to any construction works being undertaken.*

We support the report recommendations to prepare a SoHI for each of the areas listed above. We note that several of these areas are now within the Appin Massacre Cultural Landscape (SHR 02067). The SoHI must be prepared for this item to inform the planning proposal.

As noted above, the areas of sensitivity as set out in recommendation 3 of the HHCA (above) now form part of the Appin Massacre Cultural Landscape (SHR 02067). Given that parts of this item have been assessed as having significant archaeological potential, it is recommended that a deeper level of investigation is undertaken. This should take the form of a Historical Archaeological Assessment and include a SoHI and Archaeological Research Design (ARD).

This additional investigation should inform the planning proposal. The Historical Archaeological Assessment must be prepared by a suitably qualified and experienced historical archaeologist in accordance with Heritage NSW guidelines.

The ARD must 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, 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

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

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*, we note that:

- The current planning proposal is part of the broader proposed rezoning at Appin. As heritage assessment work has not yet been conducted over that adjacent land there may be a risk that interconnected heritage values across this land have not yet been considered.
- Niche (2022b, p.71) recommends Ground Penetrating Radar (GPR) survey of the potential location of graves associated with the Appin Massacre Cultural Landscape. However, please be aware that:
 - Any such investigations must be conducted in consultation with the Registered Aboriginal Parties and relevant stakeholders
 - Any such investigations may only be conducted under any required heritage permits
 - Irrespective of any additional GPR survey work, Heritage NSW is unlikely to support impacts from the proposed urban development within the curtilage of the Appin Massacre Cultural Landscape SHR listing.
- 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*

We note that the Plan area includes 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 for local heritage items.

Responsibility for the listing of new local heritage and amendments to existing local heritage rests with Council.