

6 August 2013

07 AUG 2013

Doc. No.....
GDA Ref.....
Years.....

General Manager
Lithgow City Council
180 Mort Street
LITHGOW NSW 2790

Dear Sir/Madam

Following a meeting with the Mayor, Deputy Mayor, Planning Staff Members - Sherilyn Hanrahan, Andrew Muir, Members of the Lithgow Community Forum - Jim Robson, Bob Morris, Barry Funnell, Dick Austin and myself at Council Chambers on 22 July 2013.

The second item to be addressed was a proposed LEP listing of my property, 2200 Great Western Highway, Little Hartley NSW 2790, as a heritage item (QuoteLEP2013).

As this property is tied to a trust of which I am executer and bound by the legal responsibilities encompassed by that, as well as the fact it is my superannuation and as I turn 70 in a few months time its most likely I will be needing to make use of that aspect sooner rather than later.

Apart from not wanting to stand by and watch an asset be turned into a liability, that would do nobody any good and although I am not against Heritage in principal, there are many reasons why I cannot accept this listing as proposed to me by your notice.

As a way of trying to come to an acceptable solution, I offered to sell the site to Council, but apart from the problem of not being able to establish exactly where it is, I was told Council did not have funds for such purchases.

Fortunately, it was resolved at the meeting that if I write a letter stating solid reasons and present it to you on or before 9 August 2013, you would meet with me so we can go through the details and hopefully workout an acceptable arrangement. I am more than happy to work towards that end and all of the foregoing and the following constitutes that letter.

I must emphasis however, that this proposed listing be not included in this LEP and also as it may take some time for me to clear up all legalities and connotations on what hopefully will be an acceptable agreement, then this new proposal would not be included until after this LEP has gone through.

This should not present a problem, for on contact with other Council's Planning Staff and other sources I was informed.

Heritage items such as this are not compulsory.

They have no effect on the passage of the LEP.

They can be included at a later date.

Based on information sent to me from your department at my request and other sources including other councils, plus I am keeping some in reserve, here are some of the reasons:

- As told me by staff, plus quoted on your notice to me the proposed LEP listing is on my whole property approx 700 acres and yet the claimed site area is 81 metres x 45 metres, which is one-850-th of the property.
- Your information states no plan of the site has ever been found.
- That is was supposedly established in 1830 and that most or at least a large part of the (as quoted stockade was moved to a different site at Cose's River in November 1832).
- Ever since I have owned the property approximately 45 years, and inclusive of the pre purchase inspection there was never any visual evidence of any buildings, yards, fences, foundations, etc. In other words it is open grazing farm land with a few trees as evidenced by the photographs taken by Council without permission and used without consultation or permission. Other than scenery there is nothing visual there.
- In your reference it has also stated it was not possible to verify the exact location or physical extent of the stockade remains.
- Also I understand in this LEP you are encompassing some 470 + heritage items, one more or less, at this time, would not make any difference.
- While I don't doubt there was a site of a type at or close to where it is suggested, given the fact there is not now and has not been for maybe 100 years or more anything visual there and that according to your reference most of the material was moved to another site by the original users in November 1832, leaves its overall value questionable.
- But moreover a large amount of the detailed information used to propose this as a site is based on flawed information.

There are many many more points but if we work together there should be no need for them at this time.

I also have an upcoming meeting with Mr Christo Aitken who is an advisor on such matters, who may accompany me to the proposed supposed site for the purpose of assessment and advise, which I may need to include in any agreement. Also, I will be providing a similar letter but with more details individually to each Councillor.

This may seem confrontational, but it is not meant to be, but because of the serious nature of the effect this could have especially if done wrong, I have sought legal advice on the matter and while I have their verbal response I will not quote it. However, I will include a copy of their written reply as part of this response if I receive it before I deliver this letter.

And as stated, the purpose of your notice to me is defined and highlighted in large bold type as a proposed LEP Listing and by its very meaning the word proposed means it is open to negotiation, agreement, change or rejection, i.e. it is by nature nearly a proposal.

Yours sincerely,

Lawrence O'Connell

A handwritten signature in cursive script that reads "L. O'Connell". The signature is written in black ink and is positioned to the right of the typed name.

McIntosh McPhillamy & Co.

Solicitors



6 August 2013

Our Ref: JHP:mst:130653

LEGAL

PRACTITIONER

DIRECTORS:

Michael Schwab

B.A., LL.B.

Acc Spec (Personal Injury)

Leigh Rivers

B.A., Dip. Ed., LL.B.

Christopher Nichols

B.A., LL.B.

CONSULTANTS:

Harvey Cole

SOLICITORS:

Elizabeth Pratley

B.Ec. LLB

Evan Dowd

Dip.Law (LPAB)

Acc Spec (Criminal)

Cindy Swan

LLB; BLJS

AssocDegLaw (Paralegal)

Jane Pike

BA (hons), Dip Law

Mr. Lawrence O'Connell
699 Curly Dick Road
TARANA NSW 2787

Dear Sir,

RE: PROPOSED LEP LISTING OF YOUR PROPERTY 2200 GREAT WESTERN HIGHWAY LITTLE HARTLEY NSW (YOUR PROPERTY) AS A LOCAL HERITAGE ITEM BY LITHGOW CITY COUNCIL (COUNCIL)

We refer to the above matter and previous discussions herein. We note that we currently do not have instructions to act for you however, you have asked us to review various documentation and provide you with our comments in relation to your prospects in rejecting or having a stay placed in respect to Council's proposal to list Your Property as a local heritage item on its LEP.

For this purpose, you have provided to us a copy of the letter dated 28 June 2013 from Council together with a copy of the Lithgow Heritage Inventory for the Victoria Stockade Site (**Inventory**), which you obtained from Council at your request.

From the documentation you have provided to us, we understand that Council proposes to include Your Property in the LEP as a local heritage item which is outlined in the Inventory.

Whilst we have not conducted any research into this issue, other than to read the documents you have provided to us, we believe that you have a good case to put to Council that Your Property not be included in the LEP as a local heritage item, at the very least until further investigations are conducted.

The reasons for this are as follows:

**CERTIFIED PRACTISING
CONVEYANCER:**

Cherelyn Chapman

Licence No. 1526722

McIntosh McPhillamy
Services Pty Limited
ABN 41 259 225 530

Level 1
Royal Hotel Building
108 William Street
Bathurst NSW 2795

Tel: (02) 6331 1533

Fax: (02) 6331 9279

info@mcmc.com.au
www.mcmc.com.au

Correspondence to:
PO Box 33
Bathurst NSW 2795
DX 3102 Bathurst



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under Professional
Standards Legislation

1. The heritage study is a tool designed to identify and assess the heritage item. According to the Inventory no plan has been located for the stockade and reliance has been placed on descriptions made by surveyors in the 1830's, aerial photographs from the RTA from 1940 to 1970's and descriptions by Mr O Leckbandt.
2. The Inventory states it has not been possible for anyone to verify the exact location or physical extent of the Stockade. Noting that the historical documents relied on by Council states that when the stockade was apparently moved in the 1830's most of the fence posts and the bark cladding for huts was removed and taken to the new stockade site.
3. There is no evidence that the relics such as coins or military buttons recovered were from Your Property. In addition, you have advised that you have not at any time given permission to anyone to take or remove any items from Your Property.
4. According to the Inventory there have been unverified reports by long term residents that the paddock in which the stockade site was apparently located was later used for market gardening. If so, this could have disturbed or altered the site. In addition, you have advised that as far as you can recollect, the paddock in question has remained unaltered since Your Property was purchased by yourself and your father in the late 1960's.

Given the lack of proper identification and assessment of the site and the lack of specific evidence and we are of the view that further investigation should be conducted before Your Property can be listed as a local heritage item on Council's LEP.

If we can be of further assistance, or you would like us to act on your behalf please let us know.

In the meantime, please find **enclosed** our tax invoice for our professional fees in advising you to date. We look forward to your early payment of same.

Yours faithfully,
MCINTOSH MCPHILLAMY & CO



Contact: Jane Pike
Legal Practitioner Director: C J Nichols

Encl.