

PATON HOOKE

L A W Y E R S

James Paton B Com LLB. Notary Public
Paul Lewers Dip Law SAB. Notary Public
Tony Marshall BSc LLM

Our Ref: AJM:26129
Your Ref:

8 August 2013

Lithgow City Council
Po Box 19
LITHGOW NSW 2790

Attn: General Manager

By email council@lithgow.nsw.gov.au

Dear Sir/Madam

Proposed LEP Heritage Listing
Property: 1 Mutton Falls Road, TARANA NSW 2787
Owner: Ardrosi Pty Ltd

We act for Ardrosi Pty Ltd in its capacity as registered proprietor of the above property.

We have been provided with a copy of a letter from Council dated 28 June 2013 addressed to our client and indicating that our client's above property (**Subject Property**) has been recommended for heritage listing in Schedule 5 of the draft LEP 2013.

We have also been provided with copies of:

- (i) State Heritage Inventory 1960236 for the property;
- (ii) City of Lithgow Heritage Study 2000; and
- (ii) Council's heritage facts sheet (enclosed with Council's letter).

Although our client appreciates the importance of identifying legitimate items of cultural, social and historical value and protecting same pursuant to the *Heritage Act 1977* (the **Act**), the *Environmental Planning and Assessment Act 1979* and other relevant state and commonwealth laws, our client is extremely concerned that the recommendation, based on the statement of significance, does not satisfy or warrant a claim of *local heritage significance*.

Tarana

On review of the Heritage Study, we note that Tarana does not feature substantially and indeed reference is made only to link the study with the extension of the railway line from Lithgow to Bathurst in 1872.

The main feature of Tarana from an historical perspective appears to be based on the railway and in this regard we note that the old station and the station masters house have been preserved and we assume identified as heritage items.

Although our client acknowledges that Tarana has a part to play in preserving the history of the area, Council's Heritage Report and other on-line searches clearly identify Tarana for its basic rail link. We submit that the focus of Tarana's heritage significance should be on the rail link and the infrastructure associated therewith.

It is noted that the Tarana railway has already been identified by NSW Heritage as a railway precinct. The statement of significance dated November 2009 details the various structures of significance, including the station (1872); watershed, platform and signs (1915); station residence (1872); overbridge (1907); waiting shed (1915); and signal box (1916).

The assessment of significance for Tarana clearly focused on the development of the railways in the late 19th century stating:

The place has aesthetic significance as a railway station that demonstrates railway design in the 1870's. The 1872 station building is a fine example of a Victorian railway building. . . ."

" . . . combined office/residence is one of only five similar structures remaining in NSW.."

"The place has representative significance for its collection of railway structures. . . . that collectively demonstrate widespread 19th and early 20th century railway customs, activities and designs in NSW. . . ."

Proposed Listing

It is noted that the original house on the Subject Property was demolished in 1926. The store and the current dwelling were constructed in 1926 by Mr Mansingh who operated the store. Mr Mansingh moved to a new store residence in Tarana Quarries in 1933.

Although it is accepted that the store played a role in supporting the Tarana community during the period from 1926 to 1975, it is respectfully submitted that the building itself is not significant in the context of and by reference to the *local heritage significance*.

The local heritage significance is clearly focused on the railway and associated infrastructure during the period 1872 to 1915/16 (the **Heritage Period**).

The dwelling built adjacent to the store is a relatively modern looking building in comparison to the station residence and in our opinion not in keeping with the typical design or construction materials used during the Heritage Period.



Statutory Submissions

In addition to the above, we are instructed to make the following submissions in objection to the proposed listing of the Subject Property.

Not of State Heritage Significance

Clearly the Subject Property does not satisfy the criteria for recognition as an item of state heritage significance. The age of the Subject Property and the relevance of the Subject Property to the Heritage Period for Tarana and the region do not justify such a finding.

Long-term conservation is not necessary

As noted above, the store and the residence were constructed in 1926 after the original dwelling located on the site was demolished. While the original dwelling, we assume constructed in the late 19th century, would have undoubtedly had heritage significance given its association with the Heritage Period and significance to the construction of the railway, it is submitted that the new store and dwelling do not have that nexus.

The store itself currently serves no purpose to the community and the owner of the Subject Property is in the process of trying to sell the property with a view that a new owner would renovate both the store and the dwelling. The current proposal for listing in Schedule 5 of the draft LEP 2013 is impacting on our clients ability to market and sell the property.

Based on a review of the above mentioned documents and the existing Tarana Railway Precinct listing it is submitted that there is no justification for listing the Subject Property for the purpose of long term conservation of either the store or adjacent dwelling.

Incapable of reasonable or economic use

Although our client is not currently using the Subject Property for commercial purposes, subject to selling the property, our client is considering options for the future use of the Subject Property which under the RU5 Zoning would permit, with consent, uses such as bed & breakfast, motel, business premises, dual occupancies and convenience stores.

Given the Subject Properties location in the centre of the village, across from the Tarana Hotel and close to the train station, it is strategically located to take advantage of the continuing growth of the Tarana village and surrounding rural area.

Listing the Subject Property would have a substantial impact on the ability of our client, or any subsequent owner, to develop the property for commercial purposes which is not only contemplated by the objectives of the zone but necessary for the future growth and sustainability of Tarana and the surrounding area.

Undue financial hardship

We are instructed that our client purchased the Subject Property for investment purposes and contemplated, at that time, the future development of the site to take advantage of its strategic position and broad nature of potential commercial uses.

If the Subject Property is listed pursuant to the recommendation, our client will certainly be financially compromised in the context of its ability to obtain a return from a long term financial investment either via development of the Subject Property or its ability sell the Subject Property to an investor or small business operator.

Negative impact on the community

Taking into consideration our submissions in relation to the Heritage Period, the focus on the railway as the most important item of heritage significance and the future growth and sustainability of Tarana and the surrounding area, we respectfully submit that placing the Subject Property on Council's heritage list will not only place significant constraints on our clients use of the Subject Property but it will also unreasonably prejudice the community.

Much has been said and reported in recent years about the challenges facing small communities and in particular their ability to grow and sustain growth. Attracting new enterprise to small regional communities and allowing flexibility for diversity in such enterprise is essential to overcoming such challenges.

Based on the information available to us, it is submitted that the heritage infrastructure of real importance to Tarana has already been protected, namely the railway and associated buildings, and what Council should now focus on is allowing the Tarana community to take advantage of the heritage via tourism and associated small business.

Listing additional properties on Council's heritage list, particularly properties such as the Subject Property located in the heart of the village, will have a negative impact on the community in so far as it will restrict the ability of the community to take advantage of new commercial opportunities.

Options

Given the significant implications of the recommendation on our client and the community, we are instructed to request that the recommendation be withdrawn or rejected by Council.

In the event that Council is inclined to accept the recommendation, we request that Council provide our client with an extension of time in relation to further submissions during which our client intends to engage the services of a heritage expert.

Notwithstanding the above, our client is willing to compromise in order to avoid further costs on experts and, if necessary appeals, and in this regard we are instructed put forward the following proposal:

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- (i) the main dwelling located on the Subject Property be rejected or removed from the recommendation for listing; and
 - (ii) the stand-alone store be accepted for listing but only in relation to the front façade of the building with flexibility to allow the future development of the remainder of the building both internally and externally.

The above compromise would allow the objectives of the recommendation to be substantially satisfied, namely the protection of the aesthetic significance of the store shop front, while allowing the dwelling and balance of the store building to be developed to highest and best use for the benefit of the owner and the community.

We look forward to receiving a positive response to the submissions set out herein. Please do not hesitate to contact the writer directly to discuss any aspect of the submissions. We have enclosed a copy of a google earth photo of the Subject Property for ease of reference.

Yours faithfully

PATON HOOKE LAWYERS

Per 

Tony Marshall

