



HUNTER HERITAGE NETWORK

A PROFESSIONAL FORUM FOR HERITAGE ISSUES

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Heritage Council of NSW
Locked Bag 5020
PARRAMATTA NSW 2124

attn: Cameron White

Dear Sir/Madam

OBJECTION TO THE DE-LISTING OF WAMBO HOMESTEAD COMPLEX UNDER SECTION 38 OF THE NSW HERITAGE ACT

The Hunter Heritage Network is an incorporated body that supports the ongoing development of heritage industry professionals in the Hunter region. Administered by an elected board, the Network was established with the financial support of the Heritage Branch in 1999. It was incorporated in New South Wales by the Department of Fair Trading in 2006. The objectives of the Network are to provide a professional forum for heritage issues; to improve the expertise of members through seminars and training; and to empower members to improve the outcomes for cultural heritage in the Hunter region.

The Board of the Hunter Heritage Network voices its strong objection to the proposed removal of Wambo Homestead from the State Heritage Register, pursuant to Section 38 of the NSW Heritage Act, proposed by Wambo Coal Pty Ltd (hereafter referred to as WCPL).

WCPL offer two reasons for de-listing – that long-term conservation is not necessary; and listing poses significant financial and economic impacts on Wambo Coal and the broader community. We have considered all of the documentation supporting this request and we have concluded that the removal of Wambo Homestead from the SHR is not sufficiently justified and should be rejected by the Heritage Council.

We make the point that the Wambo complex has been subject to a Permanent Conservation Order since 1981 and included on the SHR in 1999. The various coal mine owners (currently Wambo Coal Propriety Limited) have operated and expanded the mine over this time with the PCO and the subsequent SHR listing. There have been numerous Section 60 consents for works in the curtilage of the property, which indicates that the owner has worked with the heritage listing over time. Further, the property was occupied by people and maintained until only 10 years ago. We make further note that the owner sought approval for mining of 'Longwall 7', involving the exclusion zone in which Wambo complex

is located, in September 2007. We point out that WCPL has been fully aware of the statutory heritage obligations for a lengthy period, and have entered legal agreements to own and exploit the site in the full knowledge of the heritage obligations. At the time they acquired the property, they did so with an understanding that Wambo complex might limit the extent of their mining.

In addition, WCPL do not dispute the heritage significance of the complex, as noted in the SHR citation:

Wambo Homestead is highly significant in the context of Australian pastoral activities and horse breeding in New South Wales. The use of Wambo relates directly to the economic climate and resource based needs of the Colony and State. It is an important group of homestead buildings which remain substantially intact and display the progressive architectural development of a typical Australian homestead.

In terms of its condition, the NSW Heritage Branch noted in December 2001;

As a group of buildings, Wambo Homestead is rare in New South Wales in that many outbuildings still remain substantially intact allowing easy understanding of the development of a homestead complex. Date Condition Updated: 11 Dec 01

We found no evidence in the WCPL's application to suggest that this significance has been degraded to an unacceptable level. We conclude therefore that the Wambo Homestead complex retains its intrinsic value for the state of New South Wales and that nearby mining activity has not materially affected its heritage significance to render it now insignificant. On the contrary, Page 5 of the WCPL application reveals that non-heritage parameters are driving the s38 application "*magnitude of contribution to Hunter Heritage fund will be determined in consultation with Department of Planning at time of consideration of DA for expanded coal mining operations*". We found this to be a most disturbing statement.

Looking at WCPL's submission in detail, numerous arguments are put forward including an undisclosed financial report, that do not prove the case. We discuss each of these separately below:

1. *Comparative items are situated in the Hunter region.* This is unsubstantiated, based as it is on untested assumption. As far as we are aware, comparative examples have not been assessed at this stage. Gooden Mackay Logan assert that '11 homesteads are already listed in SHR in the Hunter'. None of these are identified by name or location and the Heritage Council has in fact requested further investigation. Until these similar items are assessed, there is no case to be made that long term conservation is unnecessary on the basis of other examples with comparable or stronger heritage values. The Heritage Council at its 10 July 2010 meeting stated that a decision cannot be made until the 'impact of coal mining on NSW heritage' is better understood.

The methodology used by heritage consultants Gooden Mackay Logan to find comparable Homestead complexes is also questionable. As a desk top study it lacks rigour, and draws on old heritage lists and pre-SHR values criteria. It identifies 554 19th century farm complexes across NSW, refined to 215 homesteads in the Hunter Region. They point to the limitations of the study, calling it a preliminary database, acknowledging "*the essential need for 'ground truthing' to be carried out to verify the desktop data*". We note the absence of the qualifying study. Of the 215 homesteads in the Hunter, 78 were assessed as pre-1850 with outbuildings - 11 of which are already in the SHR. A group of 7 homesteads was identified as 'outstanding' - one of the 7 is Wambo House. Furthermore, historians from GML have only in recent weeks contacted our members for information on regional items, and even then, no site inspections will be carried out. As heritage professionals we question the validity of both the initial GML study and the more recent study prepared at the request of the Heritage Council.

2. *Affect on heritage values.* WCPL argue that the heritage values of Wambo Homestead have been affected due to loss of original function as a pastoral property, and lack of habitation. This is a spurious argument given the countless examples of places that do not function as originally intended and have **not** lost heritage significance – Hyde Park Barracks, Sydney Customs House, Old Maitland Gaol to name a few. Wambo Homestead is identified as one of seven highly significant examples of early 19th century rural complexes despite it not being used for this purpose currently. There is sufficient remaining fabric such that the function of the complex is readily understood.

We disagree that the complex cannot be inhabited. Recent photos of the c1847 building indicate a new roof and a well maintained exterior. Interior photos contained in Godden Mackay Logan's Heritage Strategy proves the interior of Wambo New House is in a reasonable condition – and certainly not to the extent that it is incapable of re-use or significance removed.

It is also argued that the setting has been compromised, again a spurious argument as crucially, there has been no mining within the SHR curtilage of Wambo Homestead. In addition, mining lessees are required by law to remediate mining sites when coal has been extracted – and therefore some could be filled within a few years, in part restoring some of the wider visual context. The Heritage Council might consider that there are many colonial buildings in Sydney that are located adjacent to modern high rise buildings – one only has to think of the Colonial Secretary's building in Macquarie Street - adjacent to numerous modern high rise buildings - to appreciate the weakness in WCPL's argument.

WCPL argue that Wambo Homestead will continue to remain surrounded by active coal mining operations until 2025. Relative to the age of the complex, this is a short period of time (14 years) and we contend that removing the item from the SHR is unnecessary given mining will cease in 2025. Furthermore, open cut mines are generally to the northern edge of Wambo, and in any case, being 'surrounded' by such activity is not sufficient to prove the case that heritage significance has been diminished.

3. *Lack of public access limiting the public benefit of the heritage item.* Aerial photos indicate that mining has not occurred to the south of Wambo Homestead so there is an opportunity for a road to be constructed to permit access from the south. Safety considerations could be managed with appropriate fencing and site provisions.
4. *Financial hardship - s38b(ii)* - This clause can only allowed where the Heritage Council accepts that long term conservation is not necessary.

Peabody Coal claim that the continued conservation of the item is causing 'undue financial hardship'. Undue financial hardship is not defined in the Heritage Act. WCPL cites the Macquarie Dictionary definition that financial hardship includes circumstances where listing causes a significant financial penalty. In our view, the intent of s38b (ii) is to allow for considerations of 'financial hardship' that relate to the inability of the individual to cover costs associated with owing the heritage item, to pay for upkeep, bills etc. It is not about lost development or mining opportunities. The Productivity Commission found in their Enquiry into the conservation of the built environment that conservation should not be achieved 'by imposing unreasonable costs on the private owners'. In this context financial hardship implies that conservation costs should not be onerous – however – our point is that this does not extend to foregone development opportunities. There is no legal precedent to support the de-listing of an item pursuant to Section 38 on the basis of perceived loss of development opportunities.

In addition, the provision cannot be used in its own right and the Heritage Council must be satisfied that all three parts of Section 38 have been met. WCPL note that the potential use of

Wambo as a pastoral property is not viable while open cut mining continues. We would agree with this except that WCPL always have the option of ceasing mining, remediating the site and using Wambo Homestead as a pastoral operation. They also argue that the sole economic use of the item and the land is for the minerals to be mined. What other extractive methods have been considered - could extraction not be achieved through underground mining at the site?

The Hunter Heritage Network is concerned about the precedent that this application poses. Potentially many owners of SHR listed items could run the argument relating to economic hardship. Suppose for example that the owner of the Newcastle Post Office argued for removal and demolition on the grounds that conservation denied economic potential by preventing the erection of a multi level apartment tower – to achieve the highest and best use that planning instruments allow. Economic hardship to an owner in the present context, and future loss of economic potential (development rights) are two very separate considerations.

The relevance of Section 38 is that the owner must prove the listing causes undue financial hardship. The WCPL has not provided convincing or thorough documentation to support this assertion.

5. Financial analysis by Gillespie Economics - this annexure C is not provided to the public. It is claimed that the 'costs' include an additional \$34M for additional underground and open-cut mining if Wambo Homestead is retained. Monitoring costs are also mentioned. The biggest 'cost' is for 'sterilisation of coal'. Overall, WCPL estimate the foregone total cost of \$291M 'with a portion of these costs flowing to WCPL'. This 'portion' is never quantified. If we are to accept the argument that WCPL is experiencing financial hardship, how is the company able to offer \$2M for interpretation strategies?

It is claimed that \$1.2 Billion annually will be lost to the region through sterilisation of coal resources as a result of the continued listing of Wambo Homestead on the SHR. This figure includes "1,078 regional jobs affected by this heritage constraint", household disposable incomes lost, lost business turnover etc. This is a serious claim to be made with no supporting evidence available for the public to scrutinise. We are surprised that WCPL generates directly or indirectly a sum of \$1bn annually from coal mining near this site (after costs of mining deducted, including environmental costs). It is equally perplexing given the relatively small area below the Wambo Homestead curtilage.

Conclusion

WCPL has not demonstrated why long-term conservation of Wambo Homestead is not necessary under s38 of Heritage Act. There has been mining in the vicinity of Wambo Homestead for over 20 years, supported by environmental assessment under EPA processes. None of this encroachment has yet gone beyond the Wambo SHR curtilage.

Finally, we note that on 13 May 2009 Premier Keneally, as Minister for Planning, stated in relation to the amendments to the Heritage Act, "*government will not support frivolous or unjustified requests for the removal of an item from the register*". We therefore urge the Heritage Council to decisively reject WCPL's application.

Should you wish to clarify any aspects of this submission please do not hesitate to contact me on (02) 4974 2785.

Yours sincerely,

Sarah Cameron

PRESIDENT HUNTER HERITAGE NETWORK INC