

RECORD OF DEFERRAL

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	5 December 2022
DATE OF PANEL DECISION	2 December 2022
DATE OF PANEL MEETING	28 November 2022
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Brian Kirk, Mick Fell, Romola Hollywood
APOLOGIES	None
DECLARATIONS OF INTEREST	Louise Camenzuli declared that her firm acts for the Catholic Church, but not on this site

Papers circulated electronically on 22 November 2022.

MATTER DETERMINED

PPSSWC-227 – Blue Mountains – x/38/2022 - 168 HAWKESBURY ROAD SPRINGWOOD - Removal of 8 demountable blocks and construction of a 2 storey classroom building with sports court, including the removal of 12 trees, associated landscaping and stormwater works, and upgrades to existing roads.

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Two letters dated 10 and 22 November 2022 from the Applicant's heritage consultant Cracknell Lonergan which addressed compliance with the *National Parks and Wildlife Act 1974 (NSW)* and the Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW in relation to the exercise of due diligence concerning the potential presence of Aboriginal archaeological objects on the site of the proposed building work were not passed onto the Panel members until the final briefing of the Panel was largely complete. For that reason, this report has been the first opportunity to address them.

Development application

The panel determined to defer its consideration of the development application to allow for the proposed conditions to be considered by the Applicant, and for the Applicant to consider whether it wished to tender any further material in relation to the potential for Aboriginal objects.

The decision was unanimous.

REASONS FOR THE DECISION

The principal issue for consideration in the assessment of the DA is the potential for impacts on the seminary buildings that have been repurposed in association with St Columba's Catholic College. The site (described as item WL001 listed in Schedule 5 of the Blue Mountains LEP 2015 known as St Columba's College (Buildings; Grounds; Gates; Elmhurst)) is an item on Council's heritage list, and is identified in the DA heritage assessment and by Council as a worthy potential addition to the State Register.

In addition to the outstanding heritage values of the nineteenth century building in the Federation Romanesque style (noted in the heritage assessment to be in part derived from the Spanish Mission architectural style), the site is significant due to its close association with the education by the Catholic Church originally of aspiring priests, and now of high school students.

The Statement of Significance for the item in the listing includes:

“St Columba’s has state significance as evidence of the enthusiasm to enter the Catholic priesthood in the late nineteenth and first half of the twentieth century and of the confidence of the church hierarchy to house the aspirant seminarians in such awe-inspiring buildings. Its relationship as a junior college to the even more lordly St Patrick’s at Manly is of high significance in many aspects of the fabric and the education offered at Springwood. The impact of a large educational institution, first of 100 young men and then 1000 young persons, on the 500 hectares of bushland around has also been of high local significance. The Grotto tracks, constructed to allow religious devotional activity in the bushland setting, have historical significance at the State level.”

The Panel is advised by the Council assessment staff that it accepts that the DA has resolved all merit issues concerning the proposed construction including the potential impact on the State listed heritage item, and should be approved once issues concerning investigations in relation to the potential for the presence of Aboriginal archaeological objects is resolved.

Having reviewed the Heritage Assessment accompanying the DA, the Panel agrees that the proposed design will sufficiently protect the setting of the heritage item and preserve its heritage significance. In particular with the additional separation achieved during the DA process, the new work (which through respectful modern design will be appropriately distinct from the significant fabric) will sit well within the curtilage of the repurposed seminary buildings.

The Council has advised that it seeks to have the conservation management plan originally approved as part of earlier developments at the site updated to address changes to the built fabric on the site through new building work and destruction by fire. An update to the ‘conservation management plan’ has been prepared by the Applicant’s consultants, which addresses evolution in the site since the original conservation management plan by annexing the original plan, and commenting principally on the matters which have arisen since the adoption of that document. Council’s preference as the Panel understands it is to have a new conservation management plan prepared as a stand-alone document. While there would not seem to be anything in the statutory scheme which prevents an undated conservation management plan building on the work of others (noting that the present development affects only a very small portion of the overall site), the Panel does not need to finally resolve the matter because the Council and the Applicant have agreed that a requirement for the conservation management plan to be updated prior to occupation of the new building work.

The Panel is satisfied that given the extensive consideration of heritage impacts in the available material, that is an appropriate resolution of the issue. Indeed, both the Council and the Applicant are to be commended for extensive work to amend the DA to increase the separation between the proposed new building work and the main heritage building, while at the same time controlling bushfire risk. The result is that two important turpentine trees are now to be retained which will undoubtedly improve both the heritage and architectural outcomes.

The remaining matter for resolution is ensuring that adequate steps have been taken to address the potential for Aboriginal archaeological items of significance.

The issue of Aboriginal Heritage Impact is addressed at some length in Section 8.1 of the Heritage Assessment, noting the author of that assessment reports extensive experience with similar assessments. It is noted that a previous survey including the St Columba’s landholdings was carried out by Godden Mackay Logan to enable assessment and management of Aboriginal archaeology for current and future developments or activities that may take place across the study area. An Aboriginal Heritage Management Strategy Report, of St Columba’s Springwood was prepared in July 2013 by Godden Mackay Logan Pty Ltd following the site investigation. It was anticipated at that time that further investigative work would be carried out in relation to different parts of the site over time.

Importantly, the St Columba’s landholding presently extends to 234.8 hectares, and includes once defined walks into bushland. The site of the current proposal is however concise and involves rebuilding over a

highly disturbed portion of the immediate curtilage of the old seminary, as confirmed when Panel members inspected the site with representatives of both Council and the Applicant.

As it remains the sole issue remaining to be resolved, the following is extracted from the key recommendations of the Cracknell Lonergan assessment:

8.7 Recommendations and Findings

The Due Diligence assessment finds that there is evidence of numerous sites of cultural significance to the Aboriginal community on and within the curtilage of the site known as 168 Hawkesbury Road, Springwood.

Despite historic development having previously taken place on the subject site and at the location of the proposed development, it is not unlikely that during construction the presence of potential archaeological evidence of Aboriginal material culture may be uncovered. This assessment has been made by considering the following facts:

- high concentration of known objects and sites in the immediate vicinity,
- the subject site is located on a key historical trade route,
- the subject site has evidence of historical occupation and dwelling,
- the subject site is believed to be the boundary of different language groups and thus likely a place of tradition meeting, trade and ceremony,

However, immediate archaeological investigation is not required and Cracknell & Lonergan Architects agree to attend the site during the excavation stage to observe possible artefacts and in the event of found artefacts will notify heritage archaeologist consultants Godden Mackay Logan.

With this initial assurance, this report advises that appropriate consideration and implementation of the following two recommendations will help to ensure that the site construction works will be able to proceed smoothly without endangering potential archaeologically and socio-culturally significant Aboriginal artefacts.

The main concern of the Council as the Panel understands it from its email to the Applicant sent on 1 November 2022 is that a person with specific qualifications in Aboriginal archaeology conducts an on-site investigation before works are carried out.

The Applicant's response is principally to point to the flow chart contained in the "*Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*" (which is at Annexure A to this report for ease of reference). Notably that Code at 7.7 says:

"You can follow your own due diligence process and manage your own risk.

Due diligence amounts to taking reasonable and practicable steps to protect Aboriginal objects. This generic code provides one process for satisfying the due diligence requirements of the NPW Act.

It is not mandatory to follow this code. An individual or corporation can take other measures, provided that such measures are objectively reasonable and practicable and meet the ordinary meaning of exercising due diligence."

Given that Cracknell Lonergan accepts in the extract quoted above that "*it is not unlikely that during construction the presence of potential archaeological evidence of Aboriginal material culture may be uncovered*", the Council must be correct that a visual inspection of the site with attention to the potential for Aboriginal heritage items is advisable.

However, the Panel also accepts that the course advocated by Cracknell Lonergan has merit that the inspection would best occur during the excavation process when presumably it will be easier to detect and assess any item uncovered. Cracknell Lonergan proposes an unexpected finds protocol. Given the extensive (albeit incomplete) work already carried out by the firm Godden Mackay Logan who are well known to have



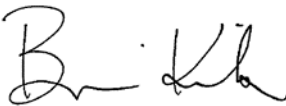
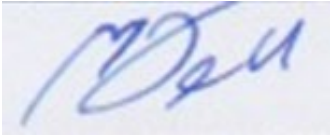

access to the relevant qualified persons, and the proposal by Cracknell Lonergan to involve that firm as is appropriate as the excavation, the Panel is confident that a mutually agreeable condition can be crafted to allow the determination to be made.

If the condition imposes a requirement for an unexpected finds protocol and the involvement of a visual inspection by (or as arranged in consultation with) Godden Mackay during construction, the Panel is of the opinion that the development application can be determined now without further work delaying the important works to the College to replace the demountable classrooms with a new purpose built quality educational facility.

The Panel otherwise accepts the Council's assessment of relevant matters under s 4.15 of the Act, and anticipates proposed conditions being supplied as soon as possible that have been agreed to by the Applicant for final determination, taking into account any response from the Applicant to the draft conditions prior to the 12 December 2022.

If any disagreement remains as to the wording of the conditions, then the competing positions of the Council and the Applicant should be supplied.

The Panel will reconvene if necessary on 12 December 2022 to determine this application finally.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Nicole Gurran
 Brian Kirk	 Mick Fell
 Romola Hollywood	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-227 – Blue Mountains – x/38/2022
2	PROPOSED DEVELOPMENT	Removal of 8 demountable blocks and construction of a 2 storey classroom building with sports court, including the removal of 12 trees, associated landscaping and stormwater works, and upgrades to existing roads
3	STREET ADDRESS	168 HAWKESBURY ROAD SPRINGWOOD
4	APPLICANT/OWNER	Applicant: Amy Cropley Owner: The Parramatta Diocese Catholic School System
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 <ul style="list-style-type: none"> ○ Chapter 4 - Koala habitat protection 2021 ○ Chapter 8 - Sydney drinking water catchment ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 <ul style="list-style-type: none"> ○ Chapter 3 - Educational establishments and child care facilities ○ State Environmental Planning Policy (Resilience and Hazards) 2021 <ul style="list-style-type: none"> ○ Chapter 4 Remediation of Land ○ Blue Mountains Local Environmental Plan 2015 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Blue Mountains Development Control Plan 2015 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 22 November 2022 • Clause 4.6 variation Blue Mountains LEP 2015, Clause 4.3 height of Buildings • Written submissions during public exhibition: 1 • Total number of unique submissions received by way of objection: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 18 July 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Romola Hollywood ○ <u>Council assessment staff</u>: Debbie Pinfold • Final briefing to discuss council's recommendation: 28 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Brian Kirk, Mick Fell, Romola Hollywood ○ <u>Council assessment staff</u>: Debbie Pinfold

9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A

