

MEMORANDUM

SWCPP Reference: PPSSWC-487

Council Reference: DA24/0703

Portal Reference: PAN-475021

To: Sydney Western City Planning Panel

From: Robert Walker, Senior Development Assessment Planner

Date: 3 August 2026

Subject: **Memorandum for Update Briefing on 10 August 2026, for Development Application No. DA24/0703, at No. 285 Aldington Road, Kemps Creek**

Reference is made to the above matter which is scheduled for a further briefing with the Sydney Western City Planning Panel on 10 August 2026. The further briefing is to discuss the status of the assessment process and concurrent appeal in the NSW Land and Environment Court.

(a) Background Information

The Development Application, which was lodged with Council on 30 September 2024, is subject to Land and Environment Court proceedings (Case No. 2025/150269). Council initially notified the Panel of the Proceedings by email on 2 May 2025. A summary of notable actions in the court appeal process is reiterated below:

- The Applicant was granted leave by the Court on 5 February 2026 to amend the Development Application and rely on amended plans and new material.
- An Amended Statement of Facts and Contentions was filed with the Court on 6 March 2026.
- A Town Planning, Urban Design and Landscaping Joint Expert Report was filed with the Court on 10 April 2026.

The most recent briefing to the Sydney Western City Planning Panel was on 18 May 2026, with Council assessment Staff and representatives of the Applicant present. The Panel noted that while progress has been made

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towards reaching an agreement, issues relating to Aboriginal Cultural Heritage remain unresolved.

In recognition of the remaining unresolved matters and noting that the applicant outlined intentions to provide additional information relating to Aboriginal Cultural Heritage in June or July, it was requested that a subsequent Panel briefing be arranged to update the Panel of the status of the DA assessment process and Court appeal.

(b) Update Since Previous Panel Briefing

On 2 July 2026, the Applicant amended the Development Application via the NSW Planning Portal by the uploading of material, including amended Architectural type drawings, amended Landscaping Plans and amended Civil Plans. The material uploaded to the NSW Planning Portal included documentation forming part of the Town Planning, Urban Design and Landscaping Joint Expert Report (filed with the Land and Environment Court on 10 April 2026).

On 13 July 2026, a set of Draft Conditions was provided by Council, on a Without Prejudice basis, to the Applicant's Legal Representative. At the time of preparing this Briefing Memorandum, a response from the Applicant has not been received.

On 31 July 2026, Council's Legal Representative, following engagement with the Applicant's Legal Representative, confirmed that Without Prejudice meetings had been undertaken between Experts and that Aboriginal Cultural Heritage related contentions are largely resolved. This position is subject to finalisation of amended information including revisions to recommendations related to reburial of artifacts collected from the site. It is anticipated that further details on the above revised information will be available to further update the Panel at the scheduled Briefing on 10 August 2026.

At this point in time, Council is confident that a Section 34 Agreement can be reached and within 2 weeks following receipt of the requested / revised information and confirmation of agreement from the Applicant on without prejudice draft conditions.

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(c) Request for Consent Authority Agreement to Reset DA Lodgement Date

In response to the upload of revised information to the NSW Planning Portal and the associated request to amend the development application on 2 July 2026 by the Applicant, Council also requests the Sydney Western City Planning Panel confirm acceptance of the amendment and agree to the resetting of the application lodgement date in the Portal.

The amendments lodged via the Portal, whilst supported by Council, are not considered to be minor in nature. Section 38 of the Environmental Planning and Assessment Act 1979 outlines that acceptance of the amendment allows for the application to be taken to be lodged on the date of the upload, which would alter the lodgement date of the Development Application to 2 July 2026.

Council has requested internal Legal Advice to confirm that the intended / requested change to the lodgement date would not impact the above court proceedings and advancement of the matter to a Section 34 Agreement. On the assumption that this is confirmed, verification of agreement to reset the lodgement date of the Development Application to 2 July 2026 is requested.

The requested change to the lodgement date should also apply to any separate application creation associated with the Sydney Western City Planning Panel case in the Portal.

For any further information or clarification relating to the request for update of the lodgement date through the Portal, please contact Gavin Cherry – Development Assessment Coordinator of Penrith City Council on (02) 4732 8125.

Robert Walker
Senior Development Assessment Planner