

Extra Ordinary Meeting

Meeting Date: Tuesday, 20 September, 2022

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Time: 5.30pm

Membership (Quorum - 7)

All Councillors

Addendum Agenda

Mayoral Minute

Mayoral Minute

MM22.20 Mayoral Minute - Heritage Listing Former Anglican Church Huskisson1

MM22.20 Mayoral Minute - Heritage Listing Former Anglican Church Huskisson

HPERM Ref: D22/398698

Attachments: 1. (Redacted) s140 Excavation Permit issued by Heritage NSW dated 31 August 2022 [↓](#)

Recommendation

That Council

1. Commence the process to immediately list the Former Anglican Church, Huskisson and any associated items on the site (including Lots 7 and 8 Section 3 DP 758530) as a 'Heritage Item' of local significance in Schedule 5 of the Shoalhaven Local Environment Plan 2014, including the preparation of an updated statement of heritage significance and any other required supporting information
2. As part of the Gateway determination submitted to the NSW Department of Planning and Environment, note that although a development consent for the relocation of the church has been issued and commenced, that this is not the will of the current Council elected in December 2021.
3. Report back to Council as soon as possible on additional measures that Council can take to immediately protect the site while its heritage listing is being pursued.
4. Confirm 29 September 2022 as the date for a comprehensive briefing on the matter with Councillors and stakeholders.

MM22.20

Details

The Huskisson Church and the surrounding land are historically significant to local Aboriginal people and to local people of the region. A campaign to recognize this significance has been ongoing for a number of years.

With a change in Council in December 2021, many of the elected members have made it clear that they support the heritage listing of the Church as a locally significant heritage item. A cautious approach has been taken to include, in the first instance, discussion with the community and the developer to understand what the future of the site could be. Significantly the Planning Proposal initiated by the owner to change the zoning of the land was withdrawn on 11 July 2022. The withdrawal of the Planning Proposal came as a surprise and there was no accompanying explanation. It is now understood that the proponent is preparing to lodge a new Planning Proposal.

Given that almost two thirds of the newly elected Council have little to no experience in planning matters, it was resolved on 11 April 2022 that the broader matter be the subject of a Councillor Briefing. Understanding the nuance of how the planning system recognises historically significant items, how to undertake a listing successfully and what steps need to be taken to set up for a successful application are important knowledge points for the elected body to understand. Understandably many Councillors believed it would be a straightforward process that could happen quickly.

Following the resolution of 11 April 2022, the Council commenced a number of actions (and associated work) that needed to be undertaken/investigated prior to or in the lead up to the

requested briefing to assist the discussion. The resolution did not resolve to proceed immediately to heritage list the church, rather sought a briefing on the process, and did not set a timeframe associated with the briefing. The 11 April 2022 Council resolution is as follows:

That Council:

1. *Reaffirms MIN21.303, that requires Council to “Continue to liaise with key stakeholders including the Jerrinja LALC, Council’s Aboriginal Advisory Committee, and the Huskisson Heritage Association (HHA)”.*
2. *Notes all the above-mentioned parties have raised with Council their objections to the proposed scraping; and notes none of the above-mentioned were consulted by Heritage NSW prior to issuing the s140 archaeological permit for scraping.*
3. *Does not proceed with any scraping of the grounds of Huskisson Anglican Church Site to verify graves.*
4. *Defers the matter to enable Councillors to receive a detailed briefing to include:*
 - a. *The process, requirements, timelines for heritage listing of the church and grounds, as recommended in the Shoalhaven Heritage reports 2005.*
 - b. *The potential for the retention of the SP2 special zoning for the site, including legal advice.*
 - c. *An outline of an approach for Council to work with the community and developer to undertake a community led process to determine future options for use of the site.*
 - d. *Inclusion of the perspective of key stakeholders including the Jerrinja LALC, Council’s Aboriginal Advisory Committee, and the Huskisson Heritage Association. That they be allowed to present to Council as part of the briefing.*

In working toward the briefing, Council staff have acted in good faith in attempting to progress the arrangements and required supporting work, whilst trying to navigate the complexities of this significant matter. One thing however that Council cannot control amongst these complexities is the actions of the proponent.

In preparing this Mayoral Minute for urgent consideration, the CEO has advised that the work undertaken by Council staff towards the resolved briefing has included, but is not limited to, the following activities.

- Obtaining early feedback/input – Early feedback sought from Councillors and the stakeholders in regard to Part 4(c) of the resolution and any other specifically related questions to be covered in the briefing.
- Consideration by the Aboriginal Advisory Committee (AAC) - Suitable date found for the AAC to meet and a report prepared. The AAC met on 26 July 2022 and resolved to provide feedback at the briefing meeting.
- Legal advice – Obtained the advice requested under Part 4(b) of the recommendation.
- Arranging the Briefing – Briefing is currently set for 29 September 2022 and stakeholder have been advised and invitations sent.

CEO Comment:

Council has received requests for information applications and enquiries with respect to the detail of the s140 Excavation Permit for the Huskisson Church site. In response to an enquiry about the public status of the document, Heritage NSW has provided Council with the attached, being a redacted version of the Excavation Permit issued by Heritage NSW to Jervis Bay Town Planning on 31 August 2022.



Heritage NSW

HMS Application ID: 1253

[REDACTED]
Jervis Bay Town Planning
4 DIADEM AV
VINCENTIA NSW 2540

Dear [REDACTED]

Re: s140 Excavation Permit – ID 1253 for Huskisson Church Graveyard topsoil stripping excavation at Lot 7 and Lot 8, Sec. 3, DP758530 Huskisson NSW (Shoalhaven LGA)

Reference is made to your application under Section 140 of the *Heritage Act 1977* (the Act), to undertake archaeological work at the above property.

Under delegated authority, approval is given for the S140 application for an archaeological excavation permit. Please note this permit is subject to the conditions attached. Acceptance of these statutory conditions by the Applicant and Excavation Director is a requirement of this permit. It should be noted that as the Applicant, this Approval (and the fulfilment of all subsequent conditions) rests with you and not the Land which is the subject of the works.

You are reminded that it is a condition of this permit that the Applicant is responsible for the safe keeping of 'relics' (including artefacts) recovered from this site. You are required to nominate a repository for archaeologically excavated material, as well as referencing the final location in the excavation report as per section 146(b) of the Act. This is to enable a record to be kept of the location of all archaeologically excavated material.

It should be noted that an approval for an archaeological permit under the Act covers only those archaeological works described in the application. Any additional archaeological investigations will require a further approval. It should also be noted that an approval for an archaeological permit under the Act is additional to those which may be required from other local, State or Commonwealth Government authorities. Inquiries about any other approvals needed should, in the first instance, be directed to the local council, State and Commonwealth Government where appropriate.

This permit, issued by the Heritage Council of NSW, does not give approval to harm Aboriginal objects. Aboriginal objects and Aboriginal places in NSW are protected under the *National Parks and Wildlife Act 1974* (NPW Act). It is an offence to do any of the following without an exemption or defence (penalties apply):

- knowingly harm or desecrate an Aboriginal object (the 'knowing' offence)
- harm or desecrate an Aboriginal object or Aboriginal place (the 'strict liability' offence)

The NPW Act provides a number of exemptions and defences to these offences and also excludes certain acts and omissions from the definition of harm. For more information about the regulation of Aboriginal cultural heritage, go to the Heritage NSW website:

<https://www.heritage.nsw.gov.au/permits-and-assessments/aboriginal-heritage-impact-permits/>



Heritage NSW

This permit is issued to the applicant on the condition that the nominated Excavation Director is present at the site supervising all archaeological fieldwork activity likely to expose significant relics. Permits are not transferable without the written consent of the Heritage Council of New South Wales. Your attention is drawn to the right of appeal against these conditions in accordance with section 142 of the *Heritage Act, 1977*.

NOTIFICATION OF START AND END OF ARCHEOLOGICAL PROGRAM

The Approved Excavation Director shall write to advise HNSW 5 days before start of the archaeological program and 5 days following the end of the archaeological program. Communication should be made to: HERITAGEMAILBOX@environment.nsw.gov.au With a reference to the relevant Application No. (ie. HMS Id 1253). The Heritage Council and staff of Heritage NSW, Department of Premier & Cabinet authorised under section 148(1) of the Heritage Act, 1977, reserve the right to inspect the site and records at all times and to access any relics recovered from the site.

ADVICE

Your attention is drawn towards the powers of entry and inspection under s.148 of the Heritage Act 1977 for authorised persons. If entry and inspection are required, reasonable notice will be provided as per the Act. The owner could voluntarily agree to allow non-authorised persons, such as Heritage NSW (Department of Premier & Cabinet) staff who are acting in a supporting role to the authorised persons, to enter their property for the purpose of inspection. Owners may also voluntarily grant permission to take photograph, take samples or request records.

Inquiries on this matter may be directed to [REDACTED] on [REDACTED] or via email at [REDACTED]@environment.nsw.gov.au.

Yours sincerely

[REDACTED]

[REDACTED]
Manager, Assessments
Heritage NSW
Department of Planning & Environment
As Delegate of the Heritage Council of NSW
31 August 2022

Enclosure: Approval Conditions for S140 Permit

CC: Shoalhaven City Council: council@shoalhaven.nsw.gov.au
Excavation Director: [REDACTED]@australarch.com.au



Heritage NSW

Huskisson Church Graveyard topsoil stripping excavation
Lot 7 and Lot 8, Sec. 3
DP758530 Huskisson NSW
Conditions of Approval: HMS ID 1253

Approved Archaeological Works

01. All works shall be in accordance with the approved research design and methodology outlined in 's140 Excavation Permit –Huskisson Church Graveyard scrape excavation at Lot 7 and Lot 8, Sec. 3, DP758530 Huskisson NSW (Shoalhaven)' (August 2022) prepared by [REDACTED] (Jervis Bay Town Planning) and 'Archaeological Research Design For 17 Hawke Street, Huskisson, New South Wales' (August 2022) prepared by [REDACTED] (Austral Archaeology)

except as amended by the following conditions:

02. This permit covers excavation of humic topsoil (to a depth of 300mm) to expose the tops of potential grave cuts, only. No relics of State significance are affected/allowed to be removed. No relics of Local significance are affected/allowed to be removed below 300mm. Grave cuts can only be exposed and must not be excavated.
03. If human skeletal remains are uncovered during the testing works, all work must stop on site and the remains protected. Heritage NSW must be notified within 5-days, as additional permit and/or variation may be required. Human remain must not be removed from the site.
04. This archaeological approval is valid for five (5) years from the date of approval. Requests for extensions beyond this time must be made in writing prior to expiry of the permit and should be lodged as a S144 variation.

Fieldwork:

05. The Applicant must ensure that if substantial intact archaeological deposits and/or State significant relics not identified in 'Archaeological Research Design For 17 Hawke Street, Huskisson, New South Wales' (August 2022) prepared by [REDACTED] (Austral Archaeology), are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. To address this discovery, you need to lodge a s146 notification to the Heritage Council of NSW. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery. Advice would be provided in response to the lodged s146 notification.
06. Should any Aboriginal objects be uncovered by the work, excavation or disturbance of the area is to stop immediately and Heritage NSW (Enviroline 131 555) is to be notified in accordance with Section 89A of the *National Parks and Wildlife Act, 1974* (NPW Act). Aboriginal objects in NSW are protected under the NPW Act. Unless the objects are subject to a valid Aboriginal Heritage Impact Permit, work must not recommence until approval to do so has been provided by Heritage NSW.
07. The Primary Excavation Director nominated in the section 140 application 1253, [REDACTED] must consult with the local Aboriginal Community before commencing and throughout all archaeological works to help identify if there are Aboriginal burials within the study area.
08. The Heritage Council of NSW must approve any substantial deviations from the approved research design outlined in 'Archaeological Research Design For 17 Hawke Street, Huskisson, New South Wales' (August 2022) prepared by [REDACTED]

Locked Bag 5020 Parramatta NSW 2124
P: 02 9873 8500 n E: heritagemailbox@environment.nsw.gov.au

MM22:20 - Attachment 1



Heritage NSW

(Austral Archaeology), including extent and techniques of excavations, as an application for the variation or revocation of a permit under section 144 of the *Heritage Act, 1977*.

09. The Applicant must ensure that the approved Excavation Director nominated in the section 140 application 1253, [REDACTED] is present at the site supervising all archaeological fieldwork activity likely to expose significant relics.
10. The Applicant must ensure that the approved Excavation Director nominated in the section 140 application 1253, [REDACTED], takes adequate steps to record in detail relics, structures and features discovered on the site during the archaeological works in accordance with current best practice. This work must be undertaken in accordance with relevant Heritage Council guidelines.
11. The Applicant must ensure that the nominated Excavation Director briefs all personnel involved in the project about the requirements of the NSW *Heritage Act, 1977* in relation to the proposed archaeological program. This briefing should be undertaken prior to the commencement of on-site excavation works.
12. The Applicant must ensure that the nominated Excavation Director and the excavation team is given adequate resources to allow full and detailed recording to be undertaken to the satisfaction of the Heritage Council.
13. The Applicant must ensure that the site under archaeological investigation is made secure and that the unexcavated artefacts, structures and features are not subject to deterioration, damage, destruction or theft during fieldwork.
14. The Applicant is responsible for the safe-keeping of all relics recovered from the site.

Archaeological site recording to include:

15. The Applicant must ensure that the Excavation Director oversee the taking and recording of survey levels on site, which will be reduced to Australian Height Datum (AHD), for all archaeological and topographical strata encountered as well as relevant modern ground levels (i.e. next to trenches, open area limits etc).

Analysis and Reporting

16. The Applicant must ensure that the approved Excavation Director or an appropriate specialist, cleans, stabilises, labels, analyses, catalogues and stores any artefacts recovered from the site in a way that allows them to be retrieved according to both type and provenance.

Final Reporting:

17. Reporting is required in accordance with section 146(b) of the *Heritage Act, 1977*. The Applicant must ensure that a final excavation report is written to publication standard, within one (1) year of the completion of the field based archaeological activity. It must be prepared in accordance with any Heritage Council of NSW Guidance or advice on the Heritage NSW website as issued from time to time. Any application to extend the due date for the final excavation report must be made before it is due, and lodged under s144 of the Act.
18. All digital resources (including reports, context and artefact data, scanned field notes, other datasets and documentation) should be lodged with a sustainable, online and open-access repository.



Heritage NSW

Compliance

19. If requested, the Applicant and nominated Heritage Consultant may be required to participate in audits of Heritage Council approvals to confirm compliance with conditions of consent.

Site Specific Conditions:

20. The Applicant must ensure that a summary of the results of the field work, up to 500 words in length, is prepared by the approved Excavation Director, [REDACTED], and submitted to the Heritage Council of NSW within one (1) month of completion of archaeological field work. This information is required in accordance with section 146(b) of the Heritage Act, 1977.

MM22:20 - Attachment 1