



# *Government Gazette*

of the State of

New South Wales

**Number 103–Planning and Heritage**

**Friday, 22 March 2024**

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**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**Order under clause 6 of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017***

Under delegation from the Minister for Planning and Public Spaces, I declare the development specified in column 1 of the table in Schedule 1 to this Order, on the land specified in the corresponding row in column 2 of the table in Schedule 1 to this Order, to be State significant development under clause 6 of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, for the purposes of the *Environmental Planning and Assessment Act 1979* (the Act).

This Order takes effect upon publication in the *New South Wales Government Gazette*.

Dated: 18 March 2024

A handwritten signature in blue ink, appearing to read 'K T' followed by a long horizontal stroke.

Keiran Thomas

Director, Regional Assessments

Planning

## SCHEDULE 1

| Column 1   | Column 2  |
|--|---|
| Development  | Land  |
| Development known as the “Residential Subdivision ‘Rosarii’ (MP 05_0058)”, approved by the then Minister, Department of Planning under section 75J of the Act on 12 December 2007. | All land identified by Lot and DP references in <b>Schedule 1</b> of the project approval to carry out the development known as “Residential Subdivision ‘Rosarii’ (MP 05_0058)” as in force on the date of this Order. |

**To:** John Ajaka, Chief Executive Officer  
**CC:** Noelle Warwar, A/Director Planning and Compliance  
**From:** Mark Hannan, Manager City Planning  
**Date:** 7 March 2024  
**Subject:** Interim Heritage Order Approval – Mount Omei, Casula  
**Reference:** 068391.2024

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**Purpose**

To seek CEO approval for the enactment of an Interim Heritage Order (IHO) for the property known as Mount Omei, situated at Lot 17 Leacock’s Lane, Casula (Lot 17, DP554086).

**Background**

Mount Omei is a property on Leacocks Lane, Casula, located within Leacock Regional Park. Wolf Klaphake, a German-born scientist and inventor who emigrated to Australia, was the patriarch of the family. He constructed a laboratory on the land, along with a homestead and outbuildings in 1946.

In 1976, several years after Wolf’s passing, his wife, prominent local artist Alice Klaphake, established South-West Sydney’s first private modern art gallery in the former laboratory. The property was bequeathed to the NSW Government by Alice Klaphake, and is currently managed by the National Parks and Wildlife Service (NPWS).

In 2016, the NPWS commissioned Ashley Built Heritage to prepare a Heritage Assessment Report (**Attachment 2**) for Mount Omei. The Report:

- outlines the history of the property and considers its condition and location;
- concludes that the property is of local significance to the Liverpool LGA and should be retained;
- advocates against the demolition and clearance of the site and the installation of heritage interpretation;
- recommends the allocation of funding for the conservation and maintenance of the buildings located on the property; and
- advocates for the identification of an appropriate tenant, either a NPWS staff member, a member of the local art community, or a general residential tenant.

To date, there has been no response to the recommendations of this Report.

Despite the findings of the Heritage Assessment, NPWS has initiated proceedings with the NSW Civil and Administrative Tribunal to evict the tenant of the property. The eviction will leave

the property vacant, and due to its isolated location, will likely become the target of vandalism and potentially arson.

### **Analysis**

When considering risk, recent Land and Environment Court of New South Wales rulings of Interim Heritage Orders (*Beaches Capital Ventures Pty Limited v Wingecarribee Shire Council* [2022] NSWLEC 1504 and *The Trustees of the Roman Catholic Church for the Diocese of Broken Bay v Willoughby City Council* [2024] NSWLEC 1010), found that the absence of a valid Development Consent or Development Application does not preclude the presence of risk of harm or loss. In particular, where a complying development certificate, exempt development or a Review of Environmental Factors (REF) could be undertaken to demolish a structure at any time without Council's knowledge.

Therefore, based on the significance assessment and the legal precedent for risk of harm, the imposition of an Interim Heritage Order to enable a consideration of whether the property should be listed is valid.

The next matter for consideration is whether Council:

- (a) needs time to further investigate the property; and/or
- (b) has sufficient information to make the decision to list or not.

The Report prepared for NPWS (**Attachment 2**) identified the property as being of potential local heritage significance, however it did not recommend the property be locally listed. The Report was primarily focused on the long-term maintenance, conservation and management of the item.

Furthermore, given the age of the Report (2016), it is recommended that further investigation be undertaken to validate whether the Report conclusions still stand.

### **Recommendation**

Council is authorised to make Interim Heritage Orders (IHOs) by Ministerial Order as published in the Government Gazette No. 90 of 12 July 2013. Delegations to administer Councils functions under the Heritage Act 1977 (including the making of Interim Heritage Orders) are held by the Chief Executive Officer (CEO) under Section 378 and sub-delegated to both the Director City Futures and Director Planning and Compliance.

To address the Motion of Urgency (MOU 01) endorsed by Council at the Ordinary Meeting of Council on 28 February 2024, it is recommended the CEO approve the following recommendations:

1. That an Interim Heritage Order (IHO) be issued for the property known as Mount Omei (Lot 17, DP554086);
2. A Consultant be engaged to undertake a peer review of the Heritage Assessment prepared by Ashley Built Heritage in 2016, and provide recommendations to Council as

to whether the property is to be included in Schedule 5 of the *Liverpool Local Environmental Plan 2008*; and

3. Write to NPWS to inform them of the Interim Heritage Order once imposed and seek a response to Council's correspondence of 12 January 2023 relating to a Notice of Motion (NOM 03) carried at the Ordinary Meeting of Council on 14 December 2022.



**Mark Hannan**  
Manager City Planning

**Attachments**

Attachment 1 – Draft Instrument authorising Interim Heritage Order

Attachment 2 – Heritage Assessment – Mount Omei, Leacock Regional Park, Ashley Built Heritage (2016)

*Approved .*  
*John Ajaka*  
*13/3/24 .*

The Hon John Ajaka  
Chief Executive Officer  
Liverpool City Council

Note

*forward the  
Order with the  
date being date  
Signed by CEO .*

**HERITAGE ACT 1977**  
**INTERIM HERITAGE ORDER NO. 8**

Under Section 25 of the Heritage Act 1977 Liverpool City Council does by this order:

- i. make an interim heritage order to cover the item of the environmental heritage specified or described in Schedule "A"; and
- ii. declare that the Interim Heritage Order shall apply to the curtilage or site of such item, being the land described in Schedule "B".

This Interim Heritage Order will lapse six months from the date that it is made unless the local Council has passed a resolution before that date; and

- (i) in the case of an item which, in the council's opinion, is of local significance, the resolution seeks to place the item on the heritage schedule of a local environmental plan with appropriate provisions for protecting and managing the item; or
- (ii) In the case of an item which, in the Council's opinion, is of State heritage significance, the resolution requests the Heritage Council to make a recommendation to the Minister for Heritage under section 32(2) of the Heritage Act to include the item on the State Heritage Register.

The Hon. John Ajaka  
Chief Executive Officer  
Liverpool City Council

~~Sydney, 28 October 2020~~

*Re date*

Commented [MH1]: Does this date need to be updated to reflect the date the CEO approves the IHO?

**Schedule "A"**

The property known as Mount Omei, situated at Lot 17 Leacock's Lane, Casula on land described in Schedule B.

**Schedule "B"**

All those pieces or parcels of land known as (Lot 17, DP554086) in Parish of St Luke's, County of Cumberland.

*approved*  
*John Ajaka*  
*13/3/24*

The Hon John Ajaka  
Chief Executive Officer  
Liverpool City Council