

**Item: NM099-22 Glenlee, 80 Boronia Parade, Lugarno.**

**Councillor:** Councillor Mahoney

**MOTION:**

- (a) That Council notes the advice provided by the Hon. Tanya Plibersek, MP, Minister for Environment and Water in her letter dated 23rd September 2022 to the Hon. Linda Burney MP, Minister for Indigenous Australians, to the effect that funding for the purchase of Glenlee is not currently available as the property is not on the National Heritage List.
- (b) That Council investigates the possibility of making an application for Glenlee to be placed on the National Heritage List by the Australian Heritage Council.
- (c) That Council investigates what safeguards may be available to protect the Indigenous heritage of Glenlee under Commonwealth legislation, i.e., the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act); the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*; and the *Protection of Movable Cultural Heritage (PMCH) Act 1996*; and
- (d) That the General Manager refer the matter of the site's Aboriginal cultural heritage values and the possibility of Aboriginal objects held within the house to Council's Aboriginal Reference Group or a Bidjigal Elder.
- (e) That Council continues to urgently seek funding towards the purchase, restoration, embellishment and future maintenance of Glenlee from the relevant state and federal ministers and members.

NM099-22

**DIRECTOR'S COMMENT:**

At the Council meeting held on 2nd August 2022, Part (iii) of the Resolution of Agenda item no. NM066-22 was as follows:

*"That Council urgently seeks funding commitments for the acquisition of "Glenlee" from:*

- (a) Mr James Griffin MP, Minister for Environment and Heritage, and Mr Anthony Roberts MP, Minister for Planning and Minister for Homes, and*
- (b) Ms Tanya Plibersek MP, Minister for the Environment and Water, and Ms Linda Burney MP, Minister for Indigenous Australians"*

Council sent letters requesting funding to purchase 'Glenlee' to the following ministers on 18 August 2022:

- a) Mr Anthony Roberts MP, Minister for Planning and Minister for Homes.
- b) Mr James Griffin MP, Minister for Environment and Heritage.
- c) Ms Tanya Plibersek MP, Minister for the Environment and Water; and
- d) Ms Linda Burney MP, Minister for Indigenous Australians.

Responses have been received as follows:

- a) Letter dated 11 October 2022 from the NP&WS advising that it has undertaken an initial review of the "Glenlee" property and found that while the property has values worthy of protection, it is not considered a high acquisition priority compared to other land across

NSW currently on offer. The letter states that the Glenlee property is relatively small, situated in an urban landscape, and isolated from the existing national parks estate with no realistic opportunity for connection to nearby NP&WS reserves.

- b) Letter dated 9 December 2022 from Mr James Griffin MP, Minister for Environment and Heritage which states that no suitable funding sources have been identified at this time to purchase Glenlee and that ongoing consideration will be given to funding options. The letter also notes that the listing of Glenlee in the Georges River LEP 2021 will provide strong protections for the site under the Environmental Planning and Assessment Act 1979.
- c) Letter dated 31 August 2022 from the Deputy Director Department of Planning and Environment (on behalf of the Minister for Planning and Minister for Homes) which states in summary there is no funding available to acquire Glenlee under any of the Department's current programs.
- d) Letter dated 23 November 2022 from Ms Linda Burney MP, Minister for Indigenous Australians dated 23 November 2022 which encloses letters:
  - a. dated 8 July 2022 from Ms Burney to Ms Tanya Plibersek asking if there is any Commonwealth funding available to assist the community in the acquisition of Glenlee; and
  - b. dated 23 November 2022 from Ms Tanya Plibersek to Ms Burney which indicates that Glenlee is not eligible for funding under the Australian Heritage Grants program. Nor does the program currently support the acquisition of property, nor are there any other Commonwealth programs that support such property purchases.

#### Funding under the Australian Heritage Grants program

The Australian Heritage Grants Program aims to improve recognition, conservation, preservation and access to the National Heritage Values of National Heritage Listed places. The program also aims to increase community engagement and raise awareness of listed places.

Only places on Australia's National Heritage List are eligible for funding. However as indicated by the letter dated 23 November 2022 from Ms Tanya Plibersek to Ms Burney, the program currently does not support the acquisition of property, nor are there any other Commonwealth programs that support such property purchases.

#### National Heritage List Criteria

The National Heritage List is a list of places with outstanding natural, Indigenous or historic heritage value to the nation. The Australian Heritage Council assesses if a National Heritage List-nominated place is considered to have heritage value and is required to advise the Minister for the Environment if the place meets one or more of nine National Heritage List criteria.

The National Heritage criteria against which the heritage values of a place are assessed are:

- a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history
- b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history
- c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history
- d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
  - a. a class of Australia's natural or cultural places; or

- b. a class of Australia's natural or cultural environments.
- e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group
- f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period
- g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons
- h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history
- i) the place has outstanding heritage value to the nation because of the place's importance as part of Indigenous tradition.

Note: The cultural aspect of a criterion means the Indigenous cultural aspect, the non-Indigenous cultural aspect, or both.

As well as assessing a place against criteria for its heritage value, the Australian Heritage Council is also required to apply a 'significance threshold'. To reach the threshold for the National Heritage List, a place must have 'outstanding' heritage value to the nation. This means that it must be important to the Australian community as a whole.

Once a place has been nominated, the Australian Heritage Council will determine whether the place meets the National Heritage List criteria. The Heritage Council must consult owners, occupiers and Indigenous people with rights or interests in the nominated area and must invite public comments on the nomination. Council is to note that the GML Heritage Assessment for Glenlee did not address the National Heritage Listing criteria.

### Commonwealth Protection of Indigenous Heritage of Glenlee

There are a number of methods of protecting Aboriginal culture and heritage. One is through the National Heritage List (which is covered in the section above); the others are:

- Protection under the Commonwealth Heritage List for land under Federal Government control.

Comment: The above protection would not apply to Glenlee as it is not in Federal Government control.

- Protection under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984. The Act protects areas and objects in Australia or Australian waters that are significant to Indigenous people in accordance with Aboriginal or Torres Strait Islander tradition from injury or desecration. An Aboriginal or Torres Strait Islander person, or a person on their behalf, can apply to the Minister for Aboriginal Affairs verbally or in writing for protection of a specified area or object. The Minister may make an emergency declaration protecting areas and objects that are at immediate risk of injury or are at risk of being used in a manner that is inconsistent with Aboriginal tradition.

Comment: The Heritage Council of NSW in considering the State Heritage Listing of Glenlee reaffirmed its position that *the item known as Glenlee at 80 Boronia Parade, Lugarno, is likely to be of State heritage significance; however, considers that further assessment of the ... Aboriginal cultural heritage values of the site .... are required.*

Council wrote to the owners on 8 September 2022 requesting access to inspect the Aboriginal objects within the house. Council has been denied access to the site. At present Council does not have adequate evidence that the site and objects are at immediate risk of injury or are at risk of being used in a manner that is inconsistent with Aboriginal tradition.

- Protection under Native Title - If you are a Native Title holder, you have the right to negotiate for the protection of the places over which Native Title applies. The things that are considered when the government is deciding whether certain activities should go ahead in places subject to Native Title rights include: the cultural significance of the place, economic considerations and the public interest.

Comment: As stated above, further assessment of the Aboriginal cultural heritage values of the site is required. Council has been denied access to inspect the Aboriginal objects within the house and access to the site. In this case it may be more appropriate to refer the matter to the Aboriginal Reference Group and a Bidjigal Elder through the Local Aboriginal Land Council.

- Protection under the Environment Protection and Biodiversity Conservation Act 1999. This Act protects Indigenous heritage by making it an offence to take an action that will have a significant impact on the Indigenous heritage values of a place that is recognised in the National Heritage List.

Comment: As stated above the GML Heritage Assessment for Glenlee did not address the National Heritage Listing criteria. Furthermore, the Heritage Council of NSW in considering the State Heritage Listing of Glenlee reaffirmed its position that the item known as Glenlee at 80 Boronia Parade, Lugarno, *is likely to be of State heritage significance; however, considers that further assessment of the ... Aboriginal cultural heritage values of the site .... are required.* Access to the site and the house has been denied.

Council is to note that investigations into issues on privately owned land such as vegetation, contamination, stormwater and heritage do not usually occur outside the development assessment, planning proposal and regulatory framework.

To date a new DA has not been lodged for the site.

## **FINANCIAL IMPLICATIONS**

If Council endorses this recommendation the costs to undertake the required research and studies for lodgement with the Federal Government would be in the vicinity of \$100,000 to \$150,000.

Council is to note that there are no funds available within the Strategic Planning budget to fund these works.

Council is also to note that to date the owners of the property have not supported Council having access to the site to undertake the investigations as resolved by Council into the site's natural and Aboriginal cultural heritage values.

## **FILE REFERENCE**

21/1236 & D22/274084