



AGENDA

Council Chambers
Date 9 June 2022

A **MEETING** of **Legal & Planning Committee** will be held on Cammeraygal lands at the Supper Room, 200 Miller Street, North Sydney at 6:00 PM on Tuesday 14 June 2022.
The agenda is as follows.

Robert Emerson
A/GENERAL MANAGER



North Sydney Council is an Open Government Council. The records of Council are available for public viewing in accordance with this policy, with the only exception being made for certain confidential documents such as legal advice, matters required by legislation not to be divulged, and staff matters.

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1. Attendance

2. Disclosures of Interest

3. Confirmation of Minutes

RECOMMENDATION:

1. THAT the Minutes of the previous meeting held on 14 March 2022, copies of which have been previously circulated, be taken as read and confirmed.

4. Committee Reports

4.1. Development Applications Received Q3 2021-22

AUTHOR: Leonard Vogel, Planning and Development Advisor

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. DAs received Q3 2021-22 [4.1.1 - 7 pages]

PURPOSE:

This report provides a list of Development Applications (DAs) received by Council in Q3 of financial year 2021/22. Its purpose is to provide Councillors and other interested persons with an understanding of the application types received and processed by the Development Services Department.

EXECUTIVE SUMMARY:

During Q3, 1 January 2022 to 31 March 2022, 132 applications of all types were received, of those 60 had already been determined as of 31 May 2022. A total of 111 applications were determined in Q3 (Quarter 3) 2021/22 with a mean processing time of 78 days.

This report is normally prepared quarterly to align with the Legal and Planning Committee and provides a monthly break down of application types as well as additional commentary.

An analysis of this quarter's performance in comparison to previous financial years performance has also been included. Notably determination times and median costs of DAs are significantly higher than previous years which suggests that DA complexity and scale is increasing and as a result processing times have also increased. Covid related absence and staff turnover and the difficulty in recruiting replacement staff in the current market also impacts on through put.

FINANCIAL IMPLICATIONS:

There are no financial implications arising directly from this report.

RECOMMENDATION:

1. THAT the Development Applications received in Q3 of financial year 2021/22 report be received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

5.2 Council is well governed and customer focused

BACKGROUND

Development application processing is of significant interest to the community. This report provides up to date information regarding application submission and trends.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

This report provides a list of the applications received by Council between 1 January 2022 and 31 March 2022 (Q3).

The purpose is to provide Councillors and other interested people with some understanding of the application types received and processed by the Development Services Department.

During Q3, 1 January 2022 to 31 March 2022, 132 applications of all types were received, of those 60 had already been determined as of 31 May 2022. A total of 111 applications were determined in Q3 (Quarter 3) 2021/22 with a mean processing time of 78 days.

The attached computer-generated report summarises the applications received by Council in Q3 2021/2022 fiscal year. Contained within the report is:

1. The application number expressed as year, sequential number, and modification number, if any; i.e., 2005/92/5 is modification 5 to an application originally received and determined in 2005;
2. The date received by Council;
3. The determination date if applicable;
4. A brief description of the proposal;
5. The property address;
6. The applicant's name;
7. The estimated cost for new works applications;
8. A brief description of the type of application.

Full details of each application including supporting documentation and submissions received are available through DA (Development Application) Tracking on Council's website.

Nature of applications received.

To provide a greater understanding of the work undertaken by assessment planners a summary of application type by month is provided:

Application Type	January 2022	February 2021	March 2021
Modifications.	7	14	20
Commercial Alts.	3	4	4
Demolition only.	0	0	0
Change of use.	2	1	2
Residential Alts.	14	22	15
Boarding House	0	0	0
New Mixed Use.	1	0	0
New Commercial.	1	2	0
School.	0	0	0
Multi Dwelling.	0	0	0
New RFB	1	2	0
Remediation.	0	0	1
New Dwellings	0	1	0
Sign.	1	2	2
Sub-division.	0	1	2
Pool.	1	0	0

Application Type	January 2022	February 2021	March 2021
Other	1	0	2
Total.	38	46	48

This information has been gleaned from monthly reports, which in conjunction with an outstanding application by officer report, are used for application management and work allocation purposes. Information regarding application type is enhanced from the raw data to give a better overall picture of the types of applications received.

It may be observed that up to a third of the application stream consists of modifications to applications. A modification is processed in a comparable way to a fresh DA and may, dependent on the nature of the modification, require significant work.

The proportion of modifications now making up the application stream has grown in recent years, perhaps due to the greater scrutiny placed on building certifiers and an increasing reluctance to use previous discretions.

Longer term trends.

To give some understanding of longer-term trends the following application received by quarter for each fiscal year is also provided below.

	2018-2019	2019-2020	2020-2021	2021-2022
Q1	173	176	145	146
Q2	178	171	148	164
Q3	122	108	125	132
Q4	142	124	146	142 (projected).
Total	615	579	564	c 584

As can be seen there is a common pattern of application lodgment, most strong in Q1, Q2 and Q4. These quarters have an elevated level of business activity. Q3 reflects the immediate period after the holiday season and as can be seen application submission is consistently slower into the new year. This up tic in application lodgment is seen with suspicion by some people who believe it is to take advantage of the nature of the holiday period. However, it is likely that it more honestly reflects the private sector trying to clear their books before the holiday season and this is reflected in the lower submission rate in Q3.

Some comment is appropriate on the significant impacts that Covid 19 had on application lodgment which can be seen most clearly in the Q3 2019-20 application numbers. For the first three quarters of 2020 calendar year application lodgment dropped by around 15% compared with the corresponding period of 2019. 2021 has seen a return of the application lodgment rate to be within 4% of the corresponding period in 2019. However, regardless of this application submission in Q3 were slightly higher than previous years, alluding to the

Covid recovery. If current trends continue, the total application submission rate for this financial year may be comparable to the pre pandemic years.

Below is a breakdown of DAs compared to modifications applications for every month over the last four financial years. This chart filters out any application that was determined in less than 14 days, generally assuming the application was rejected by DRP (Development Review Panel). While these applications receive significant attention and represent around a quarter of the application stream, they are not subject to the full DA assessment process.

The number of applications being accepted by Council is consistent with the past years;

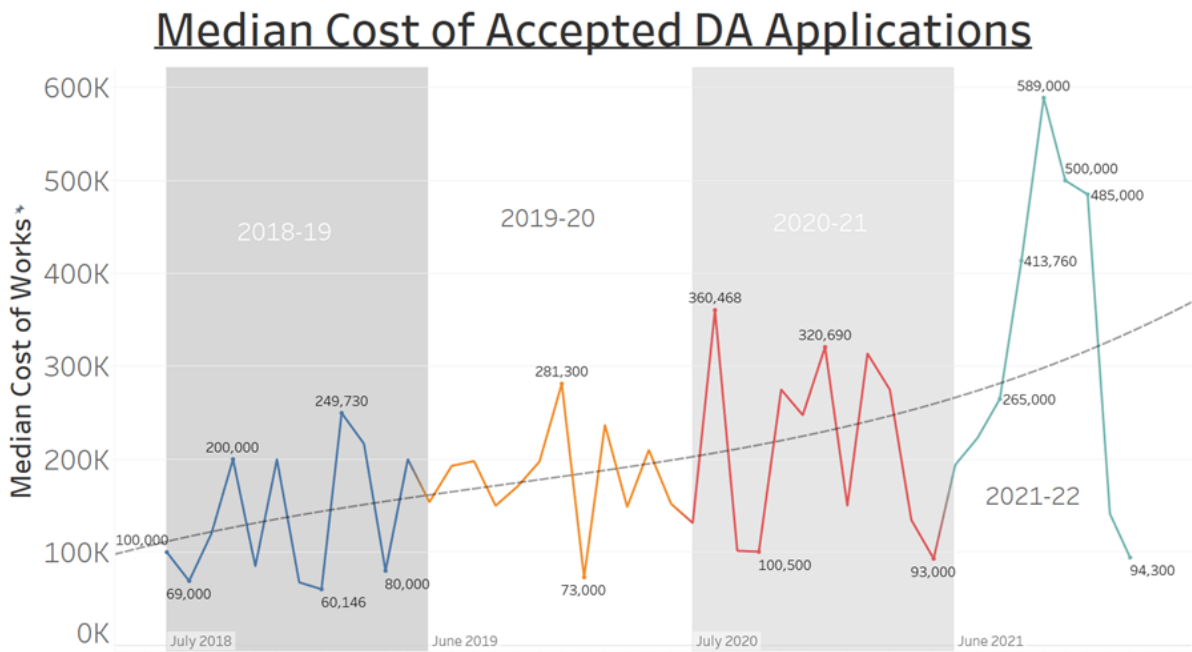
Month of ..	Financial Year			
	2018-19	2019-20	2020-21	2021-22
July	43	39	33	41
August	42	45	37	33
September	58	60	47	37
October	41	51	41	46
November	49	41	36	27
December	60	45	40	46
January	14	25	31	22
February	33	32	22	28
March	47	40	47	15
April	22	27	39	
May	45	39	44	
June	45	43	37	

This is the same information as above but split between DAs and modification applications;

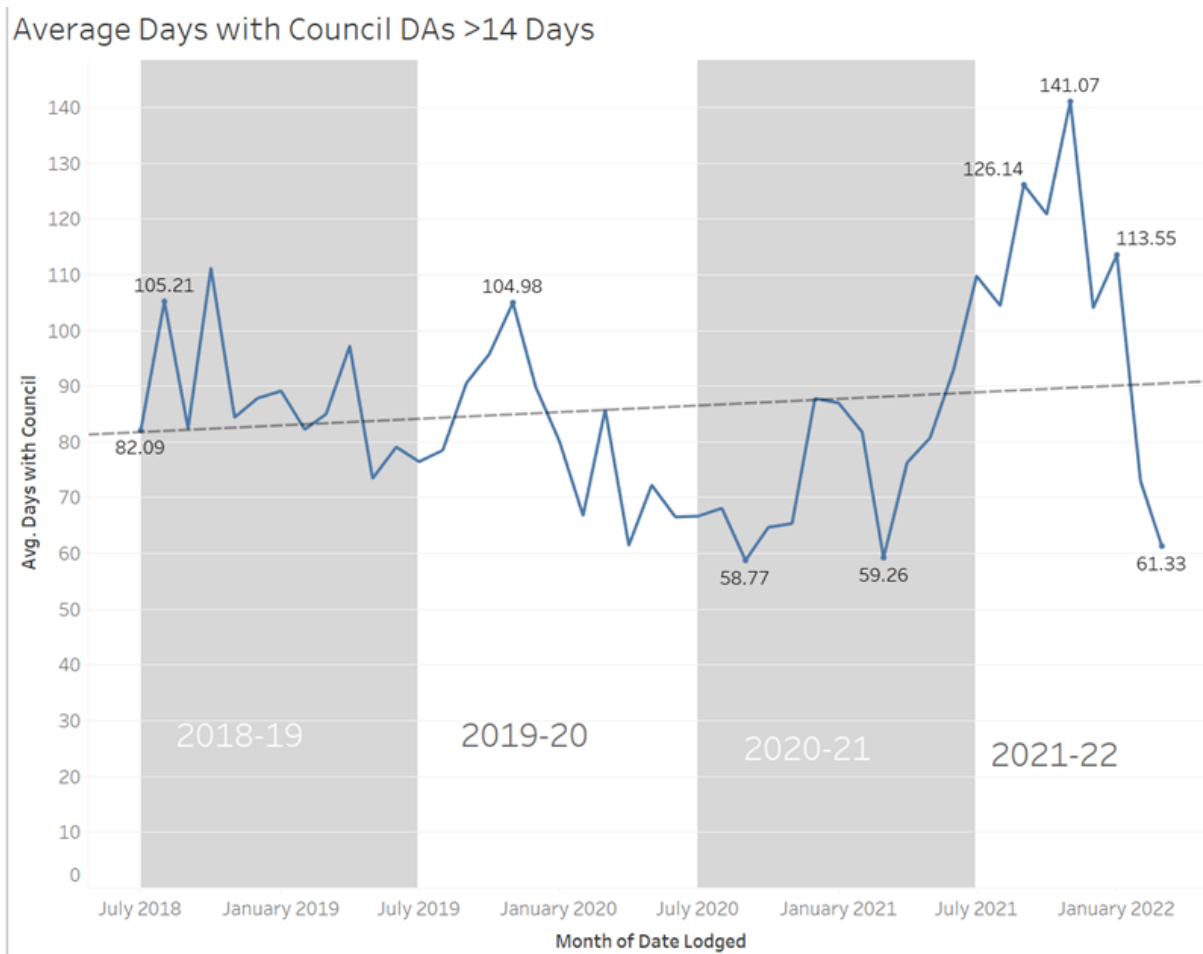
Month of ..	2018-19		2019-20		2020-21		2021-22	
	DA	Mod	DA	Mod	DA	Mod	DA	Mod
July	31	12	23	16	18	15	29	12
August	31	11	33	12	20	17	19	14
September	39	19	34	26	34	13	23	14
October	25	16	33	18	26	15	32	14
November	34	15	27	14	28	8	19	8
December	49	11	29	16	28	12	30	16
January	10	4	18	7	26	5	21	1
February	28	5	14	18	15	7	18	10
March	28	19	30	10	32	15	9	6
April	17	5	16	11	28	11		
May	31	14	22	17	31	13		
June	33	12	26	17	27	10		

Cost of works and processing times.

Below is a graph of the median cost of works for DA applications lodged with Council that were not rejected by DRP, modifications have been excluded.



Median DA cost of works have increased significantly through the Covid period. Median costs have accelerated significantly in FY 21-22. This increase in median cost of works implies that on average DAs lodged with Council are becoming more complex and costly seemingly responding to market forces. This increase in complexity of the average DA is reflected in the chart below:



The average processing times for applications fully processed by Council (not rejected by DRP) has also increased to around 141 days. It is of note that the later data points that show a decrease in processing times reflect that these applications lodged in these periods can only be a maximum of a few months old and are yet to be determined.

Concluding remarks

Overall, there is a trend to increasing processing times which is reflective of staff resignation often to take up roles with State Government Authorities, other Local Government Authorities or in at least one case, moving into retirement. Covid 19 remains an ongoing challenge and individual isolation and actual sickness impacts on staff availability and ability to do the work. While there has been some fluctuation in work load it has remained consistent with that observed in non-Covid effected years.

Recruitment efforts have been only moderately successful and reflect a highly competitive employment market with the applicant often having several options to pursue.

4.2. Variations to Development Standards - 2021/2022 Q3 Reporting Period

AUTHOR: Stephen Beattie Manager Development Services

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS: Q 3 variations to development standards [4.6.1 - 1 page]

PURPOSE:

Planning Circular PS 18-003 sets out certain procedural and reporting requirements for the processing of Cl4.6 and SEPP1 variations to development standards. This report addresses those requirements for Q1 2021/2022.

EXECUTIVE SUMMARY:

Any variation to a development standard of greater than 10% in assessing a development application must be reported to the North Sydney Local Planning Panel for determination. Variations under 10% can be decided by Assessment Staff under delegated authority.

The Planning Circular provides that to achieve transparency and integrity in the planning framework, the following monitoring and reporting measures must be followed:

1. Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
2. A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
3. A report of all variations approved (including under delegation) must be submitted to developmentstandards@planning.nsw.gov.au within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
4. A report of all variations approved under delegation from a council must be provided to a meeting of the council at least once each quarter.

Attached is the tabulated Development Standard variations approved for Quarter 3 (Q3) of the financial year 2021/22. Of 110 applications determined in the quarter, six variations in total are reported all by the North Sydney Local Planning Panel and none by the Sydney North Planning Panel or under delegated authority.

FINANCIAL IMPLICATIONS:

There are no financial implications associated with the report.

RECOMMENDATION:

1. THAT the Variations to Development Standards – 2021/22 Q3 Reporting Period report be received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

3. Our Future Planning

3.4 North Sydney is distinctive with a sense of place and quality design

3.5 North Sydney is regulatory compliant

5. Our Civic Leadership

5.2 Council is well governed and customer focused

BACKGROUND

This report is required to be presented to Council in accordance with Statutory requirements outlined in the EPA Act and Regulations

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

Planning Circular PS 18-003 sets out certain procedural and reporting requirements for the processing of variations to development standards under Clause 4.6 and State Environmental Planning Policy No 1- Development Standards. Such variations are required to be reported Quarterly to Council for its information.

Any variation to a development standard of greater than 10% must be reported to the North Sydney Local Planning Panel for determination. Variations under 10% can be decided by the Assessment Planners under delegated authority. The 10% threshold is set by the Minister for Planning.

The Planning Circular further provides that to ensure transparency and integrity in the planning framework, the monitoring and reporting measures outlined below must be followed when development standards are being varied:

1. Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
2. A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. The register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.

3. A report of all variations approved (including under delegation) must be submitted to developmentstandards@planning.nsw.gov.au within four weeks of the end of each quarter (i.e. March, June, September and December) in the form provided by the Department.
4. A report of all variations approved under delegation from a council must be provided to a meeting of the council at least once each quarter.

The table attached to this report addresses dot point 4 of the Planning Circular. It is of note, over the period, several variations allowed are purely technical in nature as they arise from new or altered work on buildings which already exceed the development standards set by the relevant Planning instruments.

It is a general practice that variations to development standards which result in a significantly greater yield than that envisaged by the planning controls are guided towards the Planning Proposal process.

Attached for Council's information are the variations to Development Standards for Quarter 3 2021/22 (1 January – 31 March 2022). Of 110 applications determined in the quarter, six variations in total are reported all of which were by the North Sydney Local Planning Panel none by the Sydney North Planning Panel or under delegated authority.

The report is enhanced in detail to that required by the Planning Circular, as it provides information regarding those approved by the North Sydney Local Planning Panel as well as those approved under delegation.

5. Confidential Reports

5.1. Current Appeals and Results - June 2022

AUTHOR: Craig Winn, Solicitor

ENDORSED BY: Shane Sullivan, Executive Manager Governance

ATTACHMENTS:

1. Current Matters List LEC June 2022 [5.1.1 - 2 pages]
2. Current Matters List NCAT June 2022 [5.1.2 - 1 page]

PURPOSE:

To report on current appeal and prosecution matters.

EXECUTIVE SUMMARY:

Attached is a list of current appeal and prosecution matters as at 30 May 2022 for Council's information.

A separate Confidential report is provided. The Confidential report includes additional detail on the legal nature of the appeal, status and legal issues relating to matter still afoot.

In order to discuss the ongoing legal matter with Council's Solicitor, it is recommended that the meeting be closed to the public in accordance with Section 10A(2) of the Local Government Act and the Local Government (General) Regulation 2005 for the reason listed below:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

Further, consideration of the matter in open Council would, on balance be contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the North Sydney community.

FINANCIAL IMPLICATIONS:

As at 30 May 2022, Council has incurred \$ 1,387,504 on legal fees for the 2021/22 financial year and recovered legal costs in the amount of \$ 85,299. The legal budget for 2022 financial year is \$ 1,500,000.

RECOMMENDATION:

1. THAT the meeting be closed to the public in accordance with Section 10A(2)(g) of the Local Government Act and the Local Government (General) Regulation 2005.

LINK TO COMMUNITY STRATEGIC PLAN

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5. Our Civic Leadership

5.2 Council is well governed and customer focused

BACKGROUND

The Current Appeals and Prosecutions list was last reported to the Legal and Planning Committee meeting of 14 March 2022.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

The defence of Land and Environment Court appeals and the prosecution of regulatory matters represents a major ongoing expense for Council. The attached list provides a summary of each current appeal(s) and prosecution(s) (including fees incurred) as at 30 May 2022.

5.2. Legal Matter - Class 3 Proceedings Land & Environment Court - Compensation Claim – land occupied by TfNSW for the Warringah Freeway Upgrade

AUTHOR: Duncan Mitchell, Director Engineering & Property Services

ENDORSED BY: Rob Emerson, A/General Manager

ATTACHMENTS: Nil

PURPOSE:

Due notice was given in this matter, in accordance with clause 3.6 of Council's Code of Meeting Practice on Thursday, 9 June 2022.

Clause 3.6 of Council's Code of Meeting Practice states:

3.6 The General Manager must send to each Councillor, at least three (3) calendar days before each meeting of the Council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

The report has been provided to the Committee as soon as practicable prior to the Committee Meeting following receipt and consideration of legal advice.

The purpose of this report is to update Council on the Class 3 application that has been made to the Land and Environment Court in relation to the outcome of the compensation claim for land that has been compulsorily acquired by Transport for NSW (TfNSW) for the Warringah Freeway upgrade.

EXECUTIVE SUMMARY:

In July 2021, a compensation claim for land that has been compulsorily acquired by TfNSW for the Warringah Freeway upgrade was submitted by Maddocks (Councils Lawyers) to the NSW Valuer General on behalf of Council. This was reported to Council at the July 21, Council meeting – Item 10.4 – Confidential Matters.

TfNSW who have now compulsorily acquired all four sites intend to occupy these sites for the duration of the Warringah Freeway upgrade works which is estimated at 4 years and 11 months. The sites will then be returned to Council in a condition determined under an Interface Agreement that Council is currently negotiating with TfNSW.

TfNSW also intend to compulsorily acquire on a permanent basis approximately 2.9Ha of the Cammeray Golf Course. This was reported to Council at its meeting 30 November 2020 – item 10.7

The NSW Valuer General got back to Council on 8 March 2022 with a final determination for compensation for the occupation of these parcels of land.

Subsequently on the 9th of March TfNSW issued to Council a compensation offer and Compensation Notice under the Land Acquisition - Just Terms compensation Act for the same amount as determined by the NSW Valuer General.

From that date Council had 90 days to appeal the decision which would take the deadline for the appeal to Monday 6 June 2022. Council would be required to commence proceedings by filing the appeal application on or before this date with the Land and Environment Court.

Council's Lawyers (Maddocks) and advice from Junior Counsel Clifford Ireland and Senior Counsel Adrian Galasso was that the NSW Valuer General had not dealt with or addressed Council's submissions in relation to the nature of the heads of compensation - sections 2.24(3)(b) and (d) of the Just Terms Compensation Act in any detail and that Council should appeal the decision and commence proceedings with a view to increase Council's entitlement to compensation.

A class 3 Application was filed with the Land and Environment Court on Friday 3 June by Council's Lawyers Allens as the original lawyers engaged by Council to deal with this matter (Maddocks) are now conflicted as they have been recently appointed to the State Government's Legal Services Panel and are acting for TfNSW on other unrelated property matters.

The matter is listed for directions on 8 July 2022 and will be a procedural listing, at which a timetable will be set up to and including the conciliation conference with TfNSW.

In order to discuss the subject of this report, it is recommended that the meeting be closed to the public in accordance with Section 10A(2) of the Local Government Act and the Local Government (General) Regulation 2005 for the reason listed below:

(d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and because consideration of the matter would, on balance be contrary to the public interest as publication of all tendered amounts would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services.

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to

the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

RECOMMENDATION:

1. THAT the meeting be closed to the public in accordance with Section 10A(2)(d)(i) and 10A(2)(g) of the Local Government Act and the Local Government (General) Regulation 2005.

6. Closure