

MINUTES

The Minutes of the Legal & Planning Committee held at the Council Chambers, North Sydney at 6:00PM on Tuesday 14 June 2022.

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1. Attendance

Chair:

The Mayor, Councillor Baker in the Chair.

Members:

Councillor Bourke
Councillor Drummond
Councillor Lamb
Councillor Mutton
Councillor Santer

Staff:

Rob Emerson, Acting General Manager
Joseph Hill, Director City Strategy
Duncan Mitchell, Director Engineering and Property Services
Shane Sullivan, Executive Manager Governance
Craig Winn, Solicitor
Stephen Beattie, Manager Development Services
Ian Curry, Manager Council and Committee Services

Apologies: Councillor Beregi, Councillor Gibson and Councillor Welch.

At the commencement of business at 6:08 pm those present were:

The Mayor, Councillor Baker
Councillor Bourke
Councillor Drummond (remote attendance, audio only)
Councillor Lamb
Councillor Mutton (remote attendance)
Councillor Santer

The meeting was opened by the Mayor.

2. Disclosures of Interest

There were no 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.

The Motion was moved by Councillor Santer and seconded by Councillor Bourke

The Motion was put and **Carried**.

Voting was as follows:

For/Against 6/0

For: The Mayor, Councillor Baker, Councillor Bourke, Councillor Drummond, Councillor Lamb, Councillor Mutton, Councillor Santer

Against: Nil

Absent: Councillors Beregi, Gibson, Spenceley and Welch

Resolved to Recommend

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.

5.1. Current Appeals and Results - June 2022

AUTHOR: Craig Winn, Solicitor

To report on current appeal and prosecution matters.

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.

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.

A Motion was moved by Councillor Lamb and seconded by Councillor Santer

1. THAT the Current Appeals and Results – June 2022 report be received.

2. THAT the report be treated as confidential and remain confidential until Council determines otherwise.

3. THAT Council receive a report regarding Council's approach to section 34 Conciliation Conferences and agreements including the particular example raised by the Committee at 20-24 Bray Street North Sydney.

The Motion was put and **Carried**.

Voting was as follows:

For/Against 6/0

For: The Mayor, Councillor Baker, Councillor Bourke, Councillor Drummond, Councillor Lamb, Councillor Mutton, Councillor Santer

Against: Nil

Absent: Councillors Beregi, Gibson, Spenceley and Welch

Resolved to Recommend

1. THAT the Current Appeals and Results – June 2022 report be received.

2. THAT the report be treated as confidential and remain confidential until Council determines otherwise.

3. THAT Council receive a report regarding Council's approach to section 34 Conciliation Conferences and agreements including the particular example raised by the Committee at 20-24 Bray Street North Sydney.

4. Committee Reports

4.1. Development Applications Received Q3 2021-22

AUTHOR: Leonard Vogel, Planning and Development Advisor

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.

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.

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.

The Motion was moved by Councillor Santer and seconded by Councillor Bourke

The Motion was put and **Carried**.

Voting was as follows:

For/Against 6/0

For: The Mayor, Councillor Baker, Councillor Bourke, Councillor Drummond, Councillor Lamb, Councillor Mutton, Councillor Santer

Against: Nil

Absent: Councillors Beregi, Gibson, Spenceley and Welch

Resolved to Recommend

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

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

AUTHOR: Stephen Beattie Manager Development Services

Planning Circular PS 18-003 sets out certain procedural and reporting requirements for the processing of CI4.6 and SEPP1 variations to development standards. This report addresses those requirements for Q1 2021/2022.

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.

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.

The Motion was moved by Councillor Bourke and seconded by Councillor Lamb

The Motion was put and **Carried**.

Voting was as follows:

For/Against 6/0

For: The Mayor, Councillor Baker, Councillor Bourke, Councillor Drummond, Councillor Lamb, Councillor Mutton, Councillor Santer

Against: Nil

Absent: Councillors Beregi, Gibson, Spenceley and Welch

Resolved to Recommend

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

5. Confidential Reports

5.1. Current Appeals and Results - June 2022

(This matter was considered earlier in the meeting, see page 4)

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

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.

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 9 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.

Councils 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 Councils entitlement to compensation.

A class 3 Application was filed with the Land and Environment Court on Friday 3 June by Councils 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 Governments 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.

The Motion was moved by Councillor Bourke and seconded by Councillor Santer

The Motion was put and **Carried**.

Voting was as follows:

For/Against 6/0

For: The Mayor, Councillor Baker, Councillor Bourke, Councillor Drummond, Councillor Lamb, Councillor Mutton, Councillor Santer

Against: Nil

Absent: Councillors Beregi, Gibson, Spenceley and Welch

Resolved to Recommend:

1.THAT Council notes a Class 3 application disputing the amount of compensation that Council has been offered by TfNSW on the parcels of land that have been compulsorily acquired from Council for the upgrade of the Warringah Freeway has been lodged with the Land and Environment Court on 3 June 2022 and the matter is listed for directions on 8 July 2022.

2.THAT Council notes the points of claim and revised quantum of compensation (in draft) that it is being recommended to pursue through the Class 3 Proceedings.

3.THAT a further Report be brought to Council at the conclusion of the directions hearing on 8 July 2022.

4. THAT the report be treated as confidential and remain confidential until Council determines otherwise.

6. Closure

The Meeting concluded at 6.23pm.