



AGENDA

Council Chambers

A **MEETING** of the **Legal & Planning Committee** will be held at the Council Chambers, 200 Miller Street, North Sydney at 6:00 PM on Monday 14 March 2022.

The agenda is as follows.

Ken Gouldthorp
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

The Minutes of the previous meeting held on 11 October 2021, copies of which had been previously circulated, were taken as read and confirmed.

4. Committee Reports

4.1. Ministerial Order - Planning

AUTHOR: Neal McCarry, Team Leader - Policy

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. DPIE Secretary - Notification of Environmental Planning and Assessment (Statement of Expectations) [4.1.1 - 7 pages]

PURPOSE:

To advise Council of a Ministerial Order issued to Council on 15 December 2021 regarding the Minister's expectations associated with Council's planning functions.

EXECUTIVE SUMMARY:

On 26 November 2021, the Minister for Planning, Mr. Rob Stokes, made the Environmental Planning and Assessment (Statement of Expectations) Order 2021 (attachment 1).

The Order sets benchmarks for Council's performance in areas of:

- development assessment;
- planning proposals; and
- strategic planning.

Specifically, the Order lists the Minister's expectations of Council relating to the meeting of various timeframes associated with these assessment and planning functions. The Order includes an explanatory note that states:

If a council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise Council's functions.

This report broadly outlines Council's current performance relating to these planning functions and describes the implications of meeting these Ministerial expectations. Council's development assessment and strategic planning functions are largely consistent with the Ministerial Order. The approach to the planning proposal assessment process, however, will be required to be significantly changed to a stricter "receive and determine" regime, with little opportunity for discussion, negotiation or lodgement of amended plans.

Whilst largely consistent with the Ministerial expectations, Council's development assessment process will also be required to be refined and may lead to a higher proportion of applications being refused in the long term.

FINANCIAL IMPLICATIONS:

There are no direct financial implications associated with the Ministerial Order. However, a greater focus on determining applications within specified timeframes, may require a shift resourcing and recalibration of priorities depending on the volume of development applications lodged at any one time.

RECOMMENDATION:

- 1.THAT** Council note this report and the Ministerial Order's stated expectations associated with Council's planning functions.
- 2.THAT** Council endorse Council staff's strict adherence to the 90-day planning proposal determination timeframe which will require a "receive and determine" approach with minimal opportunity for discussion, lodgment of amended plans and general resolution of issues with applicants.
- 3.THAT** Council write to regular applicants of planning proposals and advise of the new approach to the assessment process being conducted by Council in light of the Ministerial Order.
- 4.THAT** Council note that if the Ministerial Order is interpreted in such a way that all development applications are expected to meet the 180 and 250 day determination timeframes, this may result in an increase in refusals for those applications that for a myriad of reasons, may require more time and attention prior to being determined.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.2 North Sydney is sustainable and resilient

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

5.1 Council leads the strategic direction of North Sydney

5.2 Council is well governed and customer focused

5.3 Community is informed and consulted

BACKGROUND

On 26 November 2021, the (then) Minister for Planning, Mr. Rob Stokes, made the Environmental Planning and Assessment (Statement of Expectations) Order 2021 (attachment 1).

The Order sets benchmarks for Council's performance in areas of:

- development assessment;
- planning proposals; and
- strategic planning.

Specifically, the Order lists the Minister's expectations of Council relating to the meeting of various timeframes associated with these assessment and planning functions. The Order includes an explanatory note that states:

If a council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise Council's functions.

Under the Environmental Planning and Assessment Act, 1979 ("the Act), there are various timeframes associated with Council's planning functions as follows:

- Planning Proposals – 90 days to assess and determine after which a "rezoning review" may be lodged with the Department of Planning Infrastructure and Environment).
- Development Applications – 40 days to assess and determine "local" development applications after which the "deemed refusal" provisions apply affording applicants an opportunity of lodging an appeal with the Land and Environment Court. This period is 60 days ("designated" or "integrated" development or development which requires the concurrence of authorities) or 90 days (state significant development).

Importantly, these timeframes as outlined in the Regulation, afford applicants an opportunity of having their application considered by a third party by the Court (or the Regional Planning Panel in the case of planning proposals).

These timeframes do not constitute a basis for wider administrative consequences as outlined in the Order.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

1. The Order

Council was notified of the (Statement of Expectations) Order 2021 (attachment 1) by letter dated 15 December 2021.

The Order sets benchmarks for Council's performance in areas of:

- development assessment
- planning proposals
- strategic planning.

Specifically, the Order lists the Minister's expectations of Council's performance as follows:

a. Development Assessment

- i.* Preparation of assessment reports for regionally significant development for the Regional Panel no later than 250 days after lodgement
- ii.* Determination of development applications for which Council is the consent authority, no longer than 180 days after lodgement
- iii.* Reporting of development applications to the Local Planning Panel within 4 weeks of a request from the Panel chair.

b. Planning Proposals

- i.* Decision about support or otherwise for a planning proposal, within 90 days
- ii.* Submission of a Planning Proposal for a Gateway Determination within 90 days after Council has indicated its support for the proposal
- iii.* Exhibit or hold a public hearing consistent with the requirements of a Gateway determination
- iv.* Consider or respond to public submissions in accordance with Council's community participation plan
- v.* Make an LEP (Local Environmental Plan) in accordance with the timeframes specified in the Gateway determination.

c. Strategic Planning Obligations

- i.* Prepare a Local Strategic Planning Statement (LSPS) as required under the Act
- ii.* Undertake the required review of its LSPS

- iii. Give effect to regional and/or District Plans including review of the Council's LEP
- iv. Give effect to an adopted planning strategy (like the Local Housing Strategy)
- v. Consider State Environmental Planning Policies and other Government, Ministerial or Departmental strategies and policies concerning planning and development matters.

2. Council's Current Performance and Implications

2.1 Development Applications

Between 1 January 2021 and 31 December 2021, Council considered 493 development applications which were determined locally (either under delegated authority or by the Local Planning Panel). The mean processing time was 85 days (66 days if "stop the clock" provisions are taken into account). The requirement to determine development applications within 180 days should not present a challenge and reflects processing time expectations within Council's normal practice. It should be noted however, that at the beginning of this period, Council had 120 undetermined applications in the system compared with 220 as at 1 January 2022.

In the same period, only two development applications were considered by the Regional Planning Panel. The average processing time for these was 200 days (well below the 250 days outlined in the Order). Council however is limited in its ability to control referral turnaround times. For example, one of these applications (23-35 Atchison Street, St Leonards) was held up significantly by the Department of Planning, Industry and Environment's delayed response and determination of the state special infrastructure levy, an issues requiring to be resolved before Council could finalise the DA assessment report.

If, however, the development application processing timeframe expectations are extended to every application in the system, this will give rise to isolated issues for particularly difficult applications that many require more time for a myriad of reasons. Strict adherence to this timeframe will lead to such applications being refused rather than working through issues to seek to achieve an approval, particularly for residential applications. It will lead to serious consideration being given to limiting the number of opportunities applicants are afforded to lodge amended plans and stricter adherence to the quality of information submitted and various internal timeframes.

2.2 Planning Proposals

The Environmental Planning Assessment Act identifies that an applicant may request a "rezoning review" if the Council rejects the planning proposal, or 90 days has elapsed. This 90 day trigger has existed for some years, however, it is different from the Minister's benchmark which essentially threatens loss of planning powers should this and/or other expectations in the Order, not be complied with.

The planning proposal assessment process requires that a report to be prepared for consideration by the North Sydney Local Planning Panel which is followed by a referral to Council for its consideration and decision. This means that the reporting of a planning

proposal needs to be finalised by approximately day 60 of the 90 identified in the Ministerial Order, to enable these reporting requirements to be fulfilled.

Decisions regarding planning proposals are generally made well after the 90-day benchmark. This relates to the adequacy of information and/or the level of support that may be applied in response to the initial submission of a planning proposal. The process has generally been characterised by significant levels of negotiation and discussion between Council staff and applicants and their teams, which often lead to amended plans and/or additional supporting information being lodged. It should be noted that, unlike development applications, there are no “stop the clock” provisions for the assessment of planning proposals.

The expectations introduced in the Ministerial Order, have changed the way staff approach the assessment of planning proposals which require a much less constructive style in terms of discussing alternative approaches, design amendments and more consistent proposals with Council’s expectations. In any case, the requirement of the Order will necessitate a “receive and determine” approach and generally cut out any negotiations/discussions and amended plans as time will not permit such interactions to any meaningful extent. Applicants will be encouraged to invest more heavily in pre proposal discussions given these Ministerial assessment timeframe expectations.

The Order, which Council staff intend on complying fully with given the implications, will almost certainly lead to a higher number of withdrawn or refused planning proposals.

2.3 Strategic Planning

It is noted that the Local Strategic Planning Statement (LSPS) which was mandated under the Act, has been prepared by Council and endorsed by the Greater Sydney Commission in March 2020. The LSPS is required to be formally reviewed within seven years of being made. The obligations listed in this section of the Order are able to be conducted efficiently and as required. The Local Housing Strategy has also been adopted by Council (in 2019) and endorsed by DPIE (in 2021).

3. Conclusion

The Ministerial Order sets expectations regarding processing times relating to some of Council’s key planning functions. The explanatory note in the order explains that non-compliance with these expectations, may result in a planning administrator or regional panel being appointed to exercise Council’s functions.

The expectations listed in the Order are largely already being consistent with Council’s practices and processes regarding development assessment and strategic planning. The expected processing times for planning proposals, however, are very inconsistent with Council’s past practices of collaboration and negotiation with applicants. A distinct change in these practices will be necessary to satisfy the 90 day planning proposal processing expectation which will necessitate a “receive and determine”.

In addition, if the Ministerial Order is interpreted in such a way that all development applications are expected to meet the 180 and 250 day determination timeframes, this may result in an increase in refusals for those applications that for a myriad of reasons, may require more time and attention prior to being determined.

4.2. Department of Planning and Environment Discussion Paper: A new approach to rezonings

AUTHOR: Alice Brown, Senior Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. North Sydney Council Submission - Discussion Paper. A new approach to rezonings DP E. March 2022. Fi [4.2.1 - 6 pages]

PURPOSE:

To seek the Committee's endorsement of a submission to the Department of Planning and Environment (DPE) on proposed changes to the process of amending Local Environmental Plans (LEPs). The submission identifies key areas of concern with the proposed changes and outlines further considerations for DPE in approaching reform to this process.

EXECUTIVE SUMMARY:

In December 2021, DPE released the Discussion Paper: A new approach to rezonings, which outlines potential reform mechanisms to the existing process of amending an LEP. A copy of the Discussion Paper can be found at: <https://www.planning.nsw.gov.au/-/media/files/dpe/discussion-papers/policy-and-legislation/new-approach-to-rezonings-discussion-paper-december-2021.pdf>.

The Discussion Paper was exhibited from 15 December 2021 to 28 February 2022, with Council being granted an extension of time to enable Committee consideration. Council officers also attended an online briefing from DPE in February 2022.

The Discussion Paper contains a range of reforms which, on balance, do not enhance the current process. While power to determine LEP amendments is being given back to local governments in many cases, this is accompanied by measures which ultimately disadvantage Council and the community. Concepts such as strict timeframes for delivery, proponent-led exhibition periods, the option of refunds, and an appeals pathway for amendments will erode Council's ability to adequately assess and review LEP amendments in a way that leads to sound planning outcomes. The reforms as proposed are not supported, with refinements to the existing process preferred as the best outcome.

FINANCIAL IMPLICATIONS:

The submission identifies that there will be officer resourcing and cash flow and budgeting issues to Council should some of the reforms be adopted. Specifically, these relate to an

emphasis on pre-lodgement meetings where no fee is typically payable, and a “planning guarantee” where refunds may be issued if planning decisions are not issued in a timely manner.

RECOMMENDATION:

- 1. THAT** the Committee endorse the submission contained in Attachment 1.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

2. Our Built Infrastructure

- 2.1 Infrastructure and assets meet community needs
- 2.2 Vibrant centres, public domain, villages and streetscapes
- 2.3 Sustainable transport is encouraged
- 2.4 Improved traffic and parking management

3. Our Future Planning

- 3.1 Prosperous and vibrant economy
- 3.2 North Sydney CBD is one of NSW's pre-eminent commercial centres
- 3.4 North Sydney is distinctive with a sense of place and quality design
- 3.5 North Sydney is regulatory compliant

4. Our Social Vitality

- 4.1 North Sydney is connected, inclusive, healthy and safe

5. Our Civic Leadership

- 5.1 Council leads the strategic direction of North Sydney
- 5.2 Council is well governed and customer focused
- 5.3 Community is informed and consulted

BACKGROUND

Planning Proposals (PPs) are formal requests to amend the existing planning controls contained in North Sydney Council's Local Environmental Plan 2013 (LEP). These requests primarily relate to the setting of height and floor space ratio controls but also encompass land use permissibility. In recent years, North Sydney has received approximately ten (10) PPs each year, the majority of which are initiated by private landowners and developers with the remainder initiated by Council. PPs can range in application from an entire municipality, precincts such as a town centre, down to individual sites. Importantly, changes made to the LEP via a PP run with the land, and stay in place even if the land ownership changes, in a similar way to a development approval.

The Discussion Paper sets out the need to reform the current process of amending LEPs to reduce inefficiencies that have negative flow-on economic impacts on development. It states: "*A more streamlined and predictable process will help encourage investment, improve supply and create jobs.*" (p. 1). The intent behind the reform appears to be driven by COVID-recovery efforts and increased speed, rather than best-practice planning, with the majority of suggestions put forward lacking sufficient rigour or consideration of longer-term consequences and lacking detail on how they might realistically operate.

Before presenting detail on what changes are proposed, the following section outlines the current process as it is followed today.

Current situation

Typically, proponents approach Council's strategic planning team to undertake a pre-lodgement meeting ahead of formal submission of a PP. Such meetings attract a nominal fee. This approach provides an opportunity for officer-level comments to help guide a proponent and/or refine a proposal before it is lodged. However, not all proponents opt to undertake a pre-lodgement discussion, or make changes incorporating comments received.

A PP may also be accompanied by a Voluntary Planning Agreement (VPA) where public benefits are offered. VPA offers are considered separately from the merit of any PP. They are typically offered to help support the demands generated by new development on existing services and infrastructure. The delivery of identified public benefits via a VPA can be over and above that typically anticipated by local infrastructure contribution plans and may include the delivery of new facilities such as childcare or community centres, affordable housing, additional public domain works or public open space.

PPs are now lodged formally via the NSW Planning Portal operated by DPE. Proponents are required to provide justification for the changes sought that demonstrate strategic and site-specific merit, in line with the Local Environmental Plan Making Guideline (DPIE, December 2021). This includes answering questions such as:

- Is the PP consistent with a regional or district plan?
- Does the PP achieve consistency with the Local Strategic Planning Statement?
- Is the PP consistent with existing controls such as Ministerial Directions, State Environmental Planning Policies?

By Ministerial direction, all PPs are required to be referred to the North Sydney Local Planning Panel for advice before being reported to Council for determination. A proponent has the ability to request the DPE to undertake a Rezoning Review where Council has not made a determination within 90 days or where a council has determined not to support the progression of the PP to Gateway Determination. The Rezoning Review effectively places the planning decision-making into the hands of the relevant Regional Planning Panel. The proponent also has the option to request the review of a Gateway Decision by the Independent Planning Panel within 40 days of issue.

Under the Environmental Planning and Assessment Act 1979, Council has 90 days to assess the PP and refer it to DPE requesting that a Gateway Determination be issued. A Gateway Determination is a means of State Government oversight of the progression of PPs and ensures consistency in planning decision-making across councils. A Gateway Determination includes conditions which must be complied with when progressing the PP and may include:

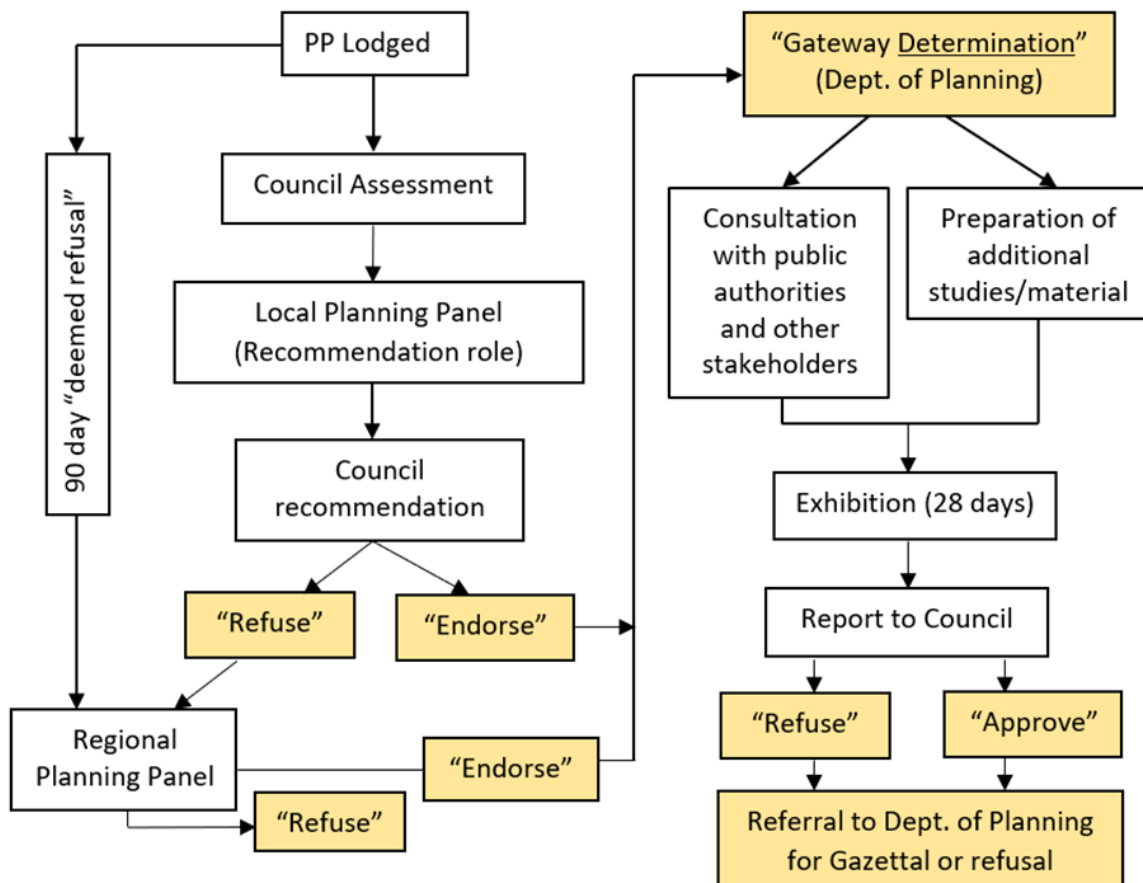
- Amendments to the PP prior to its public exhibition
- Requirements around public exhibition
- Whether a public hearing is required
- State Government agency referrals
- Whether the local government retains authority to progress the PP, and

- Timeframes to meet for each step.

DPE typically take six to twelve weeks to issue Gateway Determinations, depending on the level of complexity of the PP.

Following public exhibition, a post-exhibition report is prepared making a recommendation as to whether the PP should proceed in its current or amended form before a decision by Council (or other decision-making authority where applicable). If supported, it is then forwarded to the NSW Parliamentary Counsel’s Office to be made into legislation.

Depending on the complexity of a PP, and/or the level of public interest, a simple PP can take approximately nine months to complete with more complex PPs taking two years. The following diagram is a basic representation of the current process:



CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

The Discussion Paper proposes a new process for LEP amendments that is dramatically different in a number of areas to the current process. The key reform changes most relevant

to Council's operations are discussed in greater detail below, with issues of a more technical or administrative nature covered in the submission itself.

Increased role of private proponents

Currently local governments are responsible for advertising proposals, seeking referrals and assessing planning proposals. The proposed approach looks to enable private proponents to review and respond to submissions resulting from public exhibition periods, and to speak with referral authorities.

This increased role for private proponents is not supported in the submission. On the surface, giving private proponents increased responsibility would appear to have the effect of reducing the burden on local government resources. However, in reality, private proponents are not equipped to deal with planning issues on a precinct-wide basis, or have the motivation to objectively capture and respond to community aspirations above their own interests. It is likely that local governments will need to oversee this process to ensure it is balanced and transparent, which creates duplication of process that is counter to the reform objectives.

Instead, the submission recommends that proponents be given a "right of reply" to submissions that provides an avenue for proponents to respond to submissions in a formally recognised way, which will lead to improved planning proposals being lodged or suitable amendments made taking account of feedback received.

Introduction of a "planning guarantee" (refund)

Currently, proponents pay an assessment fee to local governments for PPs at the time of lodgement, with the amount dependent on whether a proposal is basic, standard or complex. Many local governments also request nominal fees for pre-lodgement meetings to cover staff time.

The proposed process enables proponents to request a refund of fees where strict assessment timeframes are not met. This approach, coupled with a greater emphasis on pre-lodgement meetings, means local governments run the risk of staff time and resources being expended with no certainty of financial recuperation. It also has the potential to invite purely speculative proposals to test a local government's willingness to adopt a set of planning controls that may be grossly inappropriate.

A better approach would be a system where the emphasis is on the progression of precinct-wide planning proposals that achieve greater coordination and reduce the amount of time assessing site-specific proposals that may not adequately relate to their surrounding context. For these reasons, the submission does not support the introduction of a planning guarantee.

Creation of an appeals pathway

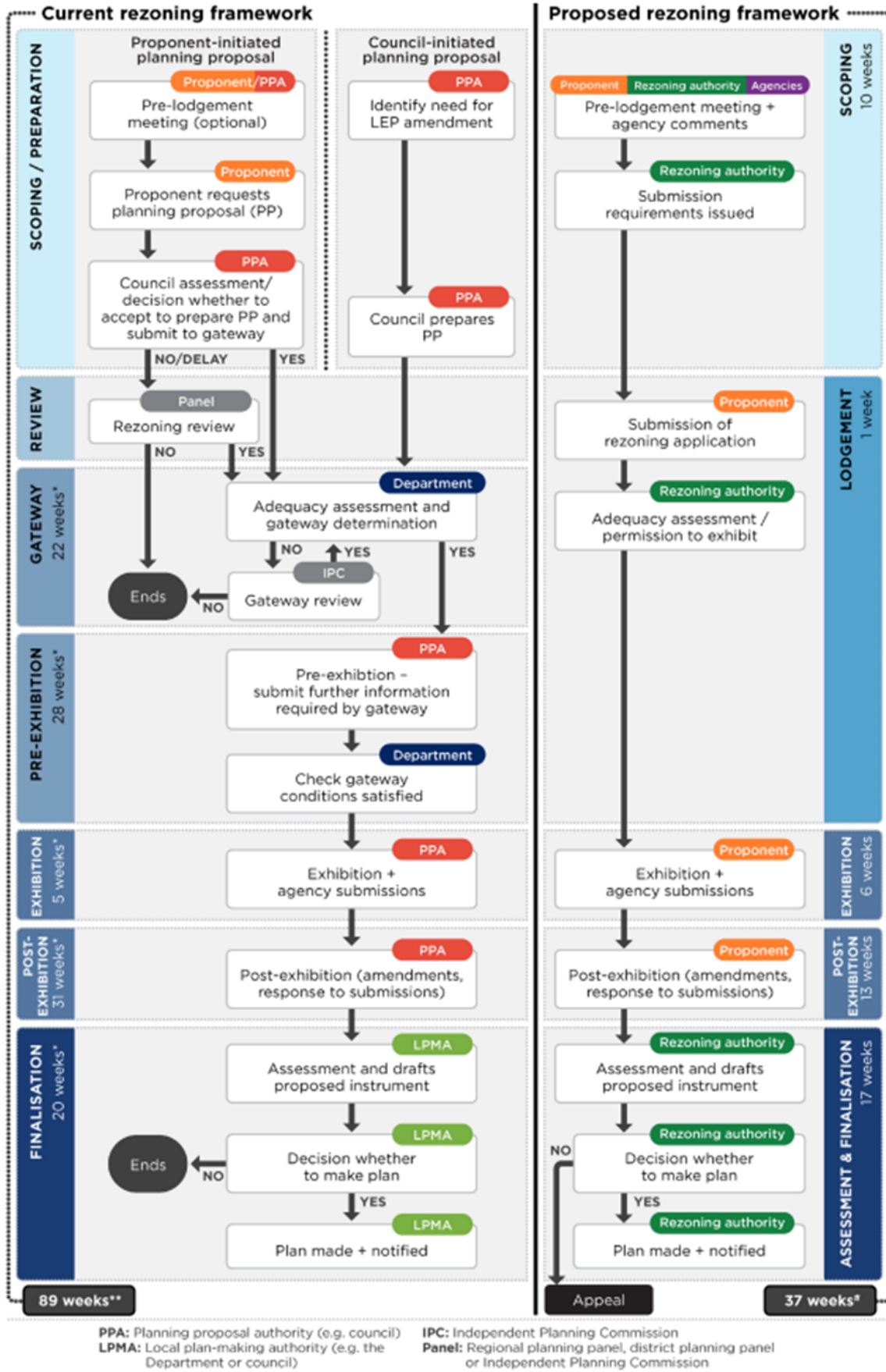
Currently, if a proponent is not satisfied with a planning decision, there are two key trigger points where reviews may occur. A proponent may request a rezoning review in order to enable a proposal to proceed to a Gateway Determination. This review involves an

independent regional planning panel which report to the Minister for Planning (or delegate) with a recommendation. Where a proponent is not satisfied with the outcome of the Gateway Determination, there is also the option of a Gateway Review, which is heard by the Independent Planning Commission who provides a recommendation and advice to the Minister for Planning (or delegate). There is no appeal pathway once a final decision on the planning proposal is made.

The Discussion Paper presents a new avenue to appeal a decision made on a planning proposal, whether that be a formal determination or the lapsing of a set deadline for a determination by way of a “deemed refusal”. The Discussion Paper contemplates either the Land and Environment Court or the Independent Planning Commission undertaking this role, and leaves it open to consider alternative entities, while also acknowledging the time and cost impost on local governments that may result.

The difficulty with establishing an appeals process for planning proposals lies in part with the lack of finality and confidence in a planning decision, and also the inability for traditional courts of law to adequately address the sometimes more grey areas and nuance in thought that local strategic planning challenges present. The attached submission recommends that a planning appeals pathway not proceed, as it will not address the objectives of reform relating to certainty of process or timely and efficient decision-making.

A flowchart is contained in the Discussion Paper comparing old and new processes (p. 13):



Summary

Local governments are the practitioners of the current process of amending LEPs. Councils take seriously their role in ensuring appropriate and well-considered development occurs within their municipalities achieves a suitable level of growth and urban regeneration and benefits the broader community.

This reform threatens this delicate balance, skewing it towards a developer-driven outcome that offers little in the way of community benefit and is likely to shift further cost and resourcing implications onto local government. While some elements of the reform are supported, the majority are over-reaching and will have negative long-term consequences on quality planning outcomes and the capacity of local governments to progress important strategic work.

It is recommended that the Committee endorse the submission at Attachment 1 for consideration by DPE. Further work on the reform package is required in order to achieve a system that better balances the need for jobs and economic growth with the delivery of quality development through more robust planning processes.

4.3. Holt Avenue Properties - Interim Heritage Order

AUTHOR: Jayden Perry, Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Signed Delegated Report - Holt Avenue IHO - 7 March 2022 [4.3.1 - 12 pages]
2. Signed Gazette Notice - Holt Avenue IHO - 7 March 2022 [4.3.2 - 2 pages]
3. GML Preliminary Assessment Report - Holt Avenue - 7 March 2022 [4.3.3 - 90 pages]

PURPOSE:

The purpose of this report is to advise Council of the progress in the issuing of an Interim Heritage Order (IHO) for several properties in Holt Avenue, Cremorne, in response to Council's resolution at its meeting on 24 January 2022.

EXECUTIVE SUMMARY:

In response to concerns raised in submissions relating to DA 239/21 at 131, 133, 135, 137 and 139 Holt Avenue, Cremorne and DA 243/21 at 115, 117 and 119 Holt Avenue, Cremorne, Council considered a Notice of Motion at its meeting on 24 January 2022, and resolved:

1. *THAT Council obtain urgent advice, including review of existing studies in relation to whether an Interim Heritage Order(s) can be supported in respect of a group of dwellings known as 115, 117, 119, 121, 123, 125 and 131, 133 Holt Avenue, Cremorne.*
2. *THAT Council prepare an urgent report, including review of existing studies to assess whether a new Heritage Conservation Area ought to be identified and adopted in relation to the area bounded by Spofforth Street, Military Road, Cranbrook Avenue and Cabramatta Road, Cremorne and that such review consider the inclusion of the group of dwellings at 115, 117, 119, 121, 123, 125 and 131, 133 Holt Avenue, Cremorne and be informed by the provisions relating to Mosman Council's Holt Estate Conservation Area.*
3. *THAT the review consider whether there are contributory items within any recommended conservation area.*

In accordance with this resolution, Council engaged heritage consultants GML to prepare a preliminary heritage assessment (Preliminary Assessment) to determine if the properties may potentially satisfy the criteria for heritage listing under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

Council received GML's finalised Preliminary Assessment in early March 2022, which identified that the sites have potential heritage significance and indicated that they are worthy of further investigation.

Under section s.25 of the Heritage Act 1977, local councils have the authorisation to make Interim Heritage Orders (IHOs). Furthermore, this authorisation to make an IHO was delegated to Council's General Manager by Council resolution on 17 March 2014.

Council must not make an Interim Heritage Order unless it has considered a preliminary heritage assessment of the item(s) prepared by an appropriately qualified person and considers that the item is or is likely to be found of local heritage significance, is likely to be harmed and is confined to the items under threat.

DA 239/21 and DA 243/21 are currently under assessment, with both likely to be determined in the coming months. Furthermore, the applicant at any time has the option of pursuing demolition of the properties through a complying development certificate. The properties at 115, 117, 119, 131 and 133 Holt Avenue, Cremorne are therefore under threat of being demolished and subsequently qualify for interim heritage protection under the Act.

The General Manager, under delegation, authorised Council on Monday 7 March 2022 to make an Interim Heritage Order at the properties at 115, 117, 119, 131 and 133 Holt Avenue, Cremorne. Council has since received confirmation that the gazette notice will be published on Friday 11 March 2022.

It should be noted that the properties at 121, 123 and 125 Holt Avenue are not considered to be under immediate threat. Therefore, an IHO cannot be prepared for these sites. Should the threat of demolition arise, Council Officers will reconsider this matter and may issue a separate IHO at these sites.

FINANCIAL IMPLICATIONS:

The costs of further engaging heritage consultants, circa \$10,000-\$15,000, can be accommodated under the current Local Environmental Plan Review budget allocation.

RECOMMENDATION:

- 1. THAT** Council note the report.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

2. Our Built Infrastructure

2.1 Infrastructure and assets meet community needs

3. Our Future Planning

3.5 North Sydney is regulatory compliant

4. Our Social Vitality

4.4 North Sydney's history is preserved and recognised

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

5.3 Community is informed and consulted

BACKGROUND

On 12 July 2013, a Ministerial Order was gazetted which granted authorisation to all local councils in NSW to make Interim Heritage Orders (IHOs) in accordance with s.25 of the Heritage Act 1977 and subject to meeting the conditions listed in Schedule 2 of the Order. An Interim Heritage Order is a temporary measure that prohibits demolition of a building or structure, to enable a detailed heritage assessment to be made as to whether or not the building or place should be listed under a local environmental plan. This authorisation to make an IHO was delegated to Council's General Manager by Council resolution on 17 March 2014.

During the assessment of:

- DA 239/21 at 131, 133, 135, 137 and 139 Holt Avenue, Cremorne for the demolition of the existing structures, excavation and construction of a five-storey mixed use development with basement parking and stratum subdivision, and
- DA 243/21 at 115, 117 and 119 Holt Avenue, Cremorne for the demolition of existing structures and construction of a residential flat building with basement parking,

a number of submissions to the public exhibition of both DAs raised potential heritage concerns.

In response to these concerns, Council considered a Notice of Motion at its meeting on 24 January 2022, and resolved:

1. *THAT Council obtain urgent advice, including review of existing studies in relation to whether an Interim Heritage Order(s) can be supported in respect of a group of dwellings known as 115, 117,119, 121, 123, 125 and 131, 133 Holt Avenue, Cremorne.*
2. *THAT Council prepare an urgent report, including review of existing studies to assess whether a new Heritage Conservation Area ought to be identified and adopted in relation to the area bounded by Spofforth Street, Military Road, Cranbrook Avenue and Cabramatta Road, Cremorne and that such review consider the inclusion of the group of dwellings at 115, 117,119, 121, 123, 125 and 131, 133 Holt Avenue, Cremorne and be informed by the provisions relating to Mosman Council's Holt Estate Conservation Area.*
3. *THAT the review consider whether there are contributory items within any recommended conservation area.*

In accordance with this resolution, Council engaged heritage consultants GML to prepare a preliminary heritage assessment (Preliminary Assessment) to determine if the properties may potentially satisfy the criteria for heritage listing under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

CONSULTATION REQUIREMENTS

The issuing of an IHO carries obligations with respect to notification of property owners and placement of notices on Council's website and newspaper. Any future wider community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

DETAIL

Council received GML's finalised Preliminary Assessment in early March 2022, which identified that the sites have potential heritage significance and indicated that they are worthy of further investigation:

As a group, 115-125 Holt Avenue have potential to meet the threshold for listing as a historically and aesthetically representative group, and potentially a rare group within the Cremorne Area. There is further potential for the properties to demonstrate connections with significant local builders and/or architects. As a pair, 131-133 Holt Avenue have the potential for listing for their historical, aesthetic and rarity significance. They are among the earliest surviving houses from the late Victorian period.

Broadly speaking, a Council must not make an Interim Heritage Order unless it has considered a preliminary heritage assessment of the item prepared by a person with appropriate heritage knowledge, skills and experience employed or retained by the council and considers that:

- the item is or is likely to be found, on further inquiry and investigation, to be of local heritage significance;
- the item is being or is likely to be harmed;
- the IHO is confined to the item determined as being under threat; and

It is noted that DA 239/21 and DA 243/21 are currently under assessment, with both likely to be determined in coming months. Furthermore, the applicant at any time has the option of pursuing demolition of the properties through a complying development certificate. The properties at 115, 117, 119, 131 and 133 Holt Avenue, Cremorne are therefore under threat of being demolished and subsequently qualify for interim heritage protection under the Act.

The properties at 121, 123 and 125 Holt Avenue are not considered to be under immediate threat. Therefore, an IHO cannot be prepared for these sites.

The General Manager, under delegation, authorised Council on Monday 7 March 2022 to make an Interim Heritage Order at the properties at 115, 117, 119, 131 and 133 Holt Avenue, Cremorne. Council has since received confirmation that the gazette notice will be published on Friday 11 March 2022.

The issue of an IHO will grant Council adequate time to fully investigate the properties and to prepare a Planning Proposal for listing as heritage items under NSLEP 2013, if the more detailed investigation finds it may be warranted. If unwarranted, then Council would need to consider revoking the IHO under this course of action. Further advice will be provided to Council on receipt of the additional work.

Should the threat of demolition or harm arise at the remaining properties identified by Council but not considered for IHO listing, Council Officers would revisit this matter and may, at that time, recommend the additional properties be listed under an IHO.

Notwithstanding this, their heritage significance will be assessed under the broader review in conjunction with the other properties mentioned above.

Further detail is provided in Attachment 1 to this report.

4.4. Interim Heritage Order - Northern Side of Parraween Street between Paling Street to Macpherson Street

AUTHOR: Jayden Perry, Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS: Nil

PURPOSE:

The purpose of this report is to respond to Council's resolution to commence a review of the creation of a Heritage Conservation Area.

Further, it also addresses the ability to establish an Interim Heritage Order for buildings along Parraween Street, Cremorne and to seek advice in relation to the heritage significance of the Cremorne Orpheum Cinema and its curtilage.

EXECUTIVE SUMMARY:

At its meeting of 10 January 2022, Council resolved:

- 1. THAT Council immediately commences a review of the creation of a Heritage Conservation Area, being the Parraween St Conservation Area to protect the characteristic buildings and history for the row of late 1800's and early 1900's federation detached and semi-detached cottages on the northern side of Parraween Street that extends from Paling Street to Macpherson Street.*
- 2. THAT Council urgently receives appropriate advice by a person with the required knowledge and skills to assess if Council can establish an Interim Heritage Order (IHO) for the above properties to cover the period while Council reviews the establishment of the Heritage Conservation Area.*

Following this, on 24 January 2022, Council resolved:

- 1. THAT Council seek urgent heritage advice in relation to the heritage significance of the Cremorne Orpheum Cinema and its curtilage, in particular, whether State heritage listing is appropriate to protect this important local heritage item.*
- 2. THAT such advice be sought as part of the heritage advice to be obtained in respect of the Parraween Street, Cremorne cottages and surrounds under the resolution of Council at the meeting held on 10 January 2022.*

In accordance with resolution 2 (10 January 2022), Council officers undertook a preliminary assessment of the matter to determine whether Council can establish an Interim Heritage Order (IHO) for the properties on the northern side of Parraween Street.

The preliminary assessment indicated that, notwithstanding the potential heritage significance of the properties, the sites did not meet the criteria under S25(2) of the Heritage Act 1977 NSW to establish an IHO as there is no immediate threat of harm. Were this to change in the future, Council may at such time seek to establish an IHO. This will be monitored in the coming weeks and months. This action could be taken without delay if immediate circumstances change.

In consideration of resolution 1 of 10 January 2022 and resolutions 1 and 2 of 24 January 2022, Council officers are in the process of preparing the appropriate procurement documentation to engage a suitably qualified and experienced heritage consultant to undertake a review of the properties along the northern side of Parraween Street and of the Cremorne Orpheum Cinema and its curtilage, to determine whether they merit the creation of a Heritage Conservation Area and/or state heritage listing in the case of the Cinema. The completed review will be reported to Council following its completion.

FINANCIAL IMPLICATIONS:

Council will engage the services of a suitably qualified and experienced heritage consultant to assess the heritage significance of the properties identified in Council's resolution. A funding allocation of \$35,000 was made at the 21 February 2022 Council meeting in the Quarterly Budget review report.

RECOMMENDATION:

1.THAT the Interim Heritage Order - Northern Side of Parraween Street between Paling Street to Macpherson Street 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

4. Our Social Vitality

4.4 North Sydney's history is preserved and recognised

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

BACKGROUND

Council considered a Notice of Motion at its meeting of 10 January 2022, wherein it resolved:

- 1. THAT Council immediately commences a review of the creation of a Heritage Conservation Area, being the Parraween St Conservation Area to protect the characteristic buildings and history for the row of late 1800's and early 1900's federation detached and semi-detached cottages on the northern side of Parraween Street that extends from Paling Street to Macpherson Street.*
- 2. THAT Council urgently receives appropriate advice by a person with the required knowledge and skills to assess if Council can establish an Interim Heritage Order (IHO) for the above properties to cover the period while Council reviews the establishment of the Heritage Conservation Area.*

Following this, Council considered a Notice of Motion at its meeting on 24 January 2022, wherein it resolved:

- 1. THAT Council seek urgent heritage advice in relation to the heritage significance of the Cremorne Orpheum Cinema and its curtilage, in particular, whether State heritage listing is appropriate to protect this important local heritage item.*
- 2. THAT such advice be sought as part of the heritage advice to be obtained in respect of the Parraween Street, Cremorne cottages and surrounds under the resolution of Council at the meeting held on 10 January 2022.*

This report has been prepared in response to these Council resolutions.

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

DETAIL

1. Interim Heritage Order

In response to Resolution No. 2 to the Notice of Motion considered on 10 January 2022, Council officers undertook preliminary assessment of the matter to determine whether Council can establish an Interim Heritage Order (IHO) for the properties along the northern side of Parraween Street.

Part 3 of the Heritage Act 1977 NSW relates to interim heritage orders for items of State or local heritage significance. Council was granted delegated authority from the Minister to exercise powers under Section 25 of the Heritage Act in 2013. Under S25(2) of the Act, in order for Council to make an IHO, there is a threshold test that must demonstrate that there is an imminent threat to the potential item(s) (emphasis added):

(2) A council authorised under this section may make an interim heritage order for a place, building, work, relic, moveable object or precinct in the council's area that the council considers may, on further inquiry or investigation, be found to be of local heritage significance, and that the council considers is being or is likely to be harmed.

It has been brought to Council's attention that a developer has acquired the majority of properties in the row and may seek to develop the sites in the future. However, there has been no lodgement of any formal application seeking development approval for these sites. Furthermore, no evidence has been presented to Council that would indicate the properties are under immediate threat.

As such, in accordance with S25(2) of the Act, Council is not considered to have the authority to implement an interim heritage order at the sites at this stage. Should an imminent threat arise to the properties, this matter will be revisited with haste.

A critical aspect of the IHO making process, is the understanding that a building or work, may have heritage significance. Council officers are in the process of preparing the appropriate procurement documentation to engage a suitably qualified and experienced heritage consultant to assess the heritage significance of the cottages on Parraween Street, that extends from Paling Street to Macpherson Street, as per Council's resolution.

2. Heritage Conservation Area

The outcomes of the comprehensive heritage assessment will be reported to Council once complete. It will serve two functions:

- To determine on heritage grounds, whether an IHO could be pursued assuming there is a likely threat of harm as discussed above. This can be triggered at any time once the heritage assessment is complete.
- To determine whether a Heritage Conservation Area (HCA) may be pursued as an amendment to the North Sydney Local Environmental Plan (LEP) 2013.

Once the heritage assessment is complete, a determination will be made regarding whether there are sufficient grounds to pursue the amendment of the North Sydney LEP 2013 to include a new HCA on the subject land in Parraween Street. If supported, the report will be accompanied by a planning proposal which will then be required to be referred to the Department of Planning, Industry and Environment to seek a Gateway Determination to enable its public exhibition.

Conversely, should the comprehensive heritage assessment recommend that the area does not meet the thresholds required for listing as a HCA, the matter will be reported back to Council.

Council should note that there exists an active development application currently under assessment at the building adjacent to the Cremorne Orpheum Cinema at 372 Military Road, Neutral Bay (DA 269/21). Section 13 – Heritage and Conservation, clause 13.4 of Council's Development Control Plan (DCP), contains provisions relating to the setting of heritage items. Council officers are having these 'heritage setting' conversations with the applicant regarding the setting of the Orpheum Cinema. Amended plans relating to the application were submitted to Council in January 2022 and were re-notified between 28 January 2022 and 11 February 2022.

4.5. 6 John Street, McMahons Point

AUTHOR: Long Huynh, Team Leader Building Compliance

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Attachments [4.5.1 - 38 pages]
1. Development Control Order dated 30 March 2020
2. Development Control Order dated 1 February 2022
3. Deed of Settlement
4. Fire Safety Upgrade Order dated 27 July 2021

PURPOSE:

The purpose of this report is to provide information in response to Council's resolution from its meeting held on 24 January 2022.

EXECUTIVE SUMMARY:

The property known as 6 John Street, McMahons Point operates as a boat maintenance facility. Since the lodgment and consideration of the Floating Dry Dock development (DA 57/19) application in 2019 there has been an escalation of concerns raised by the surrounding residents regarding the operation of the site under Development Consent No 1164/90.

Council, at its meeting on 24 January 2022, resolved the following:

1. *THAT Council be provided with an urgent report on the status of compliance issues, investigations and actions to enforce the conditions of consent of DA 1164/90 for redevelopment of the existing boat maintenance facility at 6 John Street, McMahons Point and compliance with the terms of the S34 agreement and subsequent Court Orders made by the Court in respect of Land and Environment Court Proceedings No. 2020/00122833, including, but not limited to, the enforcement of:*
 - (a) *the public benefit condition D51 which required the developer to "provide a public jetty extending from land below John Street, approximately in the location of the former sea baths, subject to the design and position being acceptable to Council";*
 - (b) *the numbers of boats to be permitted on the site at any time;*
 - (c) *the unauthorised caretaker's cottage and other unauthorised structures; and*
 - (d) *environmental and operational conditions including noise standards and industrial equipment.*

2. *THAT Council be provided with an urgent report on the status of compliance issues, investigations and actions relating to fire safety at 6 John Street, McMahons Point including issues relating to access to and egress from the site for fire trucks and emergency and the storage and use of flammable chemicals and materials.*

The purpose of this report is to provide information in response to the above Council resolution.

FINANCIAL IMPLICATIONS:

Expenditure in relation to legal advice and defending Council's Order 11, dated 30 March 2020 is \$115,034.96. Resulting from the Order 11 appeal, a further \$15,316 was spent on legal representations in relation to the Deed of Settlement. Therefore, the total amount spent for the period between 27 February 2019 and 24 December 2021 is \$130,350.96. The matter and costs are ongoing. Significant internal resources have also been applied to the matter in addition to the payments for external legal advice.

RECOMMENDATION:

1. **THAT** the 6 John Street, McMahons Point report be received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

3. Our Future Planning

3.5 North Sydney is regulatory compliant

BACKGROUND

On 2 May 1990, 6 John Street, McMahons Point (the “**Property**”) submitted an application 1164/90 to Council seeking to rebuild an existing boat maintenance facility. The proposal sought to demolish existing buildings and obsolete water front structures. In their place would be erected 9 workshops, 2 work sheds and a flammable goods store. Other onsite facilities included a hard-stand area for a wash bay and onsite car-parking of 40 vehicles.

The Property is situated within Berry’s Bay, surrounded by John Street, Munro Street and Dumbarton Street.

The 1990 application was advertised twice and attracted a large number of public submissions.

According to a memorandum, dated 22 March 1994, from Council’s Manager of Assessments to the Mayor at the time, the development works were to be completed in three (3) stages. As of the date of the memorandum, stage 1 had been completed. Stage 1 comprised of buildings known as Worksheds as presently seen onsite.

There has been no observations of any further physical works to the Development Consent D1164/90 since 1994.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

Regulatory Action

Development Control Order

On 30 March 2020, Council issued a Development Control Order (attached) requiring Noakes Group Pty Ltd to comply with the conditions of their Development Consent 1164/90, particularly the sand blasting, maximum number of boats and the removal of a storage shed

(Caretaker’s Unit). This Development Control Order was appealed within the Land & Environment Court, case number 2020/00122833, resulting in the Deed of Settlement.

On 1 February 2022, a Development Control Order was issued to Noakes Group to require them to:

1. Demolish the unauthorised mobile shed structure; and
2. Demolish the unauthorised Caretaker’s Unit;
3. Comply with condition D51 of Development Consent 1164/90 by constructing a public jetty from the land below John Street.

It should be noted that the recipient of the Order has a period of 28 days to appeal the Development Control Order.

Condition D51 – Construction of the Public Jetty

One of the main points of the contention during the assessment of the application number 1164/90 was the foreshore access. As such, conditions condition D51 was imposed which states:

“The developer shall at no cost to the Council provide a public jetty extending from land below John Street, approximately in the location of the former sea baths, subject to the design and position being acceptable to Council. This jetty shall be completed and available for use **prior to substantial completion of the approved building works.**”

The issued Development Control Order, dated 1 February 2022, includes requiring the construction of the Public Jetty in accordance with Condition D51 of Development Consent No 1164/90.

Deed of Settlement

As a result of legal proceedings (2020/00122833), North Sydney Council and Noakes Group Pty Ltd entered into a Deed of Settlement (DoS) on 23 December 2020.

The DoS (attached) in effect sets the operational standards from 23 December 2020 in accordance with its clause 2.2. Below is a table identifying the terms of agreement and commentary regarding compliance status to date:

Requirement of clause 2.2 of DoS	Compliance Investigation Status
The applicant (Noakes) agrees to lodge by 24 December 2020 an application for a Building Information Certificate (BIC) to the Respondent (Council), in relation to the Caretakers Unit.	The BIC application No C30/60 was submitted to Council on 24 December 2020 and was refused on 13 January 2022.

Requirement of clause 2.2 of DoS	Compliance Investigation Status
	A Development Control Order, dated 1 February 2022 has been issued requiring the Caretakers Unit to be demolished.
The applicant agrees to lodge by 24 December 2020 the Development Application to the Respondent, for the use of the Caretakers Unit.	<p>The Development Application No 13/21 was submitted on 7 January 2021 and was withdrawn on 29 June 2021. As such, the use of the Caretaker's Unit has not been regularised.</p> <p>A Development Control Order, dated 1 February 2022 has been issued requiring the Caretakers Unit to be demolished.</p>
To not use the Caretaker's Unit until and unless both a BIC has issued for the Caretakers Unit structure and a Development Consent for the use of the Caretakers Unit has been granted.	A Development Control Order, dated 1 February 2022 has been issued requiring the Caretakers Unit to be demolished.
To lodge by 24 December 2020, and application for a Building Information Certificate (BIC) to the respondent, in relation to the Mobile Structure.	<p>The BIC application No C29/30 was submitted on 24 December 2020 and refused on 9 June 2021.</p> <p>A Development Control Order, dated 1 February 2022 has been issued requiring the Mobile Structure to be demolished.</p>
To lodge by 24 December 2020, a Development Application to the respondent for the use of the Mobile Structure.	<p>The Development Application No 11/21 was submitted on 8 January 2021 and refused on 2 June 2021.</p> <p>A new Development Application No 456/21 was received by Council on 24 December 2021 and is currently under assessment.</p> <p>Any legal actions to enforce this Order will be subject to the determination of DA 456/21.</p>

Requirement of clause 2.2 of DoS	Compliance Investigation Status
Subject to clause 2j, to not use the Mobile Structure until and unless both a building information certificate (BIC) has been issued for the mobile structure and a development consent for the use of the mobile structure has been granted.	<p>A Development Control Order, dated 1 February 2022 has been issued requiring the Mobile Structure to be demolished.</p> <p>Any legal actions to enforce this Order will be subject to the determination of DA 456/21.</p>
To lodge by 1 February 2021, a development application seeking consent for the use of the site, consistent with the permitted by the EPL and any amendment to condition D50 of development consent 1164/90.	<p>According to Council's record, this requirement has not been satisfied.</p> <p>Staff are liaising with Council's solicitors to investigate options of enforcement.</p> <p>Please also refer to the discussion, EPA matters, for further details of actions regarding the EPL.</p>
To not keep or permit to be kept more than a maximum of 30 boats in total on the site during the interim period.	<p>To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be taken.</p> <p>Staff continues to commence investigations upon receipt of complaints.</p> <p>See discussion section, Number and size of boats for further detail.</p>
That during the interim period it will ensure that no more than 4 non-commercial boats will be kept on site.	As above.
That during the interim period it will keep the non-commercial boats in the locations identified on the plan at Annexure E to this deed.	As above.
That during the interim any spray painting or blasting activities must only occur in the worksheds with the exception of minor repair works which may be carried out on the site shown outlined on a map in Annexure F.	To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be taken.

Requirement of clause 2.2 of DoS	Compliance Investigation Status
	<p>Staff continues to commence investigations upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>
<p>That during the Interim Period it will ensure that the operations at the Site do not generate noise levels when measured at the boundary of any neighbouring residential developments, which exceed:</p> <ol style="list-style-type: none"> 1. At John Street L10 = 57 dBA 2. At Dumbarton Street L10 = 45 dBA 3. At Munro Street L10 = 49 dBA 	<p>The most recent Noise Impact Assessment, as required by the EPA to be undertaken at the site, is under review to determine if there is evidence of a breach under the Environmental Planning and Assessment Act which will allow formal regulatory actions to be commenced.</p> <p>See discussion section, EPA matters.</p>
<p>To not carry out Spray Painting or Blasting activities in the Northern Slipway during the Interim Period.</p>	<p>To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be commenced.</p> <p>Investigations continues to be undertaken upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>
<p>That during the Interim Period, to not cause or permit the application of anti foulant to boats outside of a work shed other than by roller, brush or airless spray technique and only when encapsulated/screened using shade cloth, plastic or the like.</p>	<p>To date, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be commenced.</p> <p>Investigations continues to be undertaken upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>
<p>To comply with Development Consent DA 1164/90, the Part 5 Approval and the terms of the EPL except where provided to the contrary for the matters set out in this deed.</p>	<p>Whilst this forms part of the Development Approval, Council are limited in their regulatory authority where EPL conditions apply. As such, liaisons with the EPA will</p>

Requirement of clause 2.2 of DoS	Compliance Investigation Status
	<p>continue, to commence investigations upon receipt of complaints.</p> <p>See discussion section, EPA matters.</p>

Ongoing Compliance Matters

Environmental Protection Authority (EPA)

The operation at 6 John Street requires an Environment Protection Licence (EPL) provided by the NSW Environment Protection Authority (EPA). Being EPL licensed, the EPA has jurisdiction over the site with regard to Protection of the Environment legislation (POEO Act).

Therefore, the EPA is the regulatory authority responding to community complaints about noise and odour, which includes the monitoring of activities and taking enforcement actions to require Noakes to improve, if required, environmental outcomes for the community. Council has been liaising with the EPA regarding their actions in relation to noise and odour at Noakes.

Following are the actions taken by the EPA thus far in relation to Noise and Odour at the site:-

Noise

- A Notice of Variation of License No. 10893 was issued by the EPA on 17 December 2020 which set out requirements for Noakes to undertake a Pollution Study and Reduction Program in relation to matters of noise impact, requiring the provision of a Noise Impact Assessment and Noise Management Plan.
- A second Notice of Variation of Licence No. 10893 was issued by the NSW EPA on 18 February 2021 which confirmed further dates for the noise impact assessment to be completed and, subsequent upon the provision of that assessment, a Noise Management Plan to be lodged with the NSW EPA.
- The Noise Impact Assessment and Noise Management Plan were lodged by Noakes on 23 April 2021. A Licence Variation was issued on 18 June 2021. It provides for implementation of the agreed Noise Mitigation Measures, to be carried out by 30 June 2022.
- These noise mitigation measures include staged upgrades to cladding, sealing roof vents, door seals, travel lift engine casing, ventilation ductwork and the use of a mobile acoustic tent or screening to mitigate any noisy works conducted in the direction of people's houses.
- The EPA has also required Noakes to conduct a study to evaluate the effectiveness of the new controls once implemented.

In addition to the above, Council staff are reviewing the submitted Noise Impact Assessment and will be liaising with the EPA to determine if there is evidence of a breach enabling staff to take regulatory actions under the provisions of the Environmental Planning and Assessment Act 1979 (EPA Act).

Odour

- A variation was issued by the NSW EPA requiring an Air Quality Risk Assessment to be provided to the NSW EPA to enable the EPA to better understand the risk of air quality impacts from Noakes' operations and whether existing pollution controls are sufficient.
- The air quality risk assessment dated November 2021 submitted to the EPA provides for the relocation of current exhausts and the implementation of an upgraded carbon filtration system. However, the installation of the carbon filtration system would require a Development Consent from Council.
- The submitted Development Application No D456/21, which seeks to regularize the use of the mobile shed structure, includes the installation of the proposed carbon filtration. This application is presently being considered by Council.

Number and size of boats

Several photographs have been submitted to Council, illustrating that the number of boats stored upon the site may at certain times exceed the maximum limit identified by clauses 2h and 2i of the DoS. To enable regulatory action, supporting evidence is required that all boats in the photographs are associated with Noakes operations.

The Noakes logbook of boats on site, provided to Council during its investigation in October 2021, demonstrated compliance with the agreement. Furthermore, advice provided to Council was that not all boats at the dock are associated with Noakes operations and some boats may not be there for maintenance.

Based on the available information, staff have not been able to ascertain categorical evidence of a breach which would allow formal regulatory actions to be commenced.

Council recently requested Noakes to submit a copy of its logbook for the period from November 2021 to end of January 2022 to review whether a breach of the DoS has occurred during the subject period.

Fire Safety Matters

Annual Fire Safety (AFSS)

An Annual Fire Safety Statement indicates that an accredited practitioner (fire safety) has assessed, inspected and verified the performance of each fire safety measure that applies to a building.

6 John Street, McMahons Point submitted an Annual Fire Safety Statement to Council in November 2021. The submission of the AFSS satisfies the requirement of clause 89 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Fire Safety Upgrade Order

The premises may have complied with fire safety requirements at the time of construction. However, it has been identified that previous standard of construction may no longer be suitable and would require upgrade works to be undertaken to ensure that the premises' fire services meet current standards.

On 27 July 2021, Council issued a Fire Safety Upgrade Order to 6 John Street, McMahons Point based upon a BCA Fire Safety Report prepared by Zac Wilkins and Andrew Brohier of McKenzie Group. The Fire Safety Order forms part of Council's fire safety upgrade program to bring older buildings to current standards (or the standards as adopted at the date of the Order).

The Order permits a period of 2 years to complete the upgrade works. The process in determining the required upgrades and timeframes followed Council's standard process for these type of fire safety concerns.

Until the 2 years period expires, Noakes Group is required to submit Annual Fire Safety Statements to certify that all installed existing measures are maintained and working to the standards that were applicable at the time of initial installation.

It should be noted that Council provided a copy of its Fire Safety Upgrade Order, and the Fire Safety Audit report, to Fire and Rescue NSW. To date Council has not received an objections or a request from Fire and Rescue NSW to modify the terms or period for compliance as set out in the Order.

Access and Egress from Site for Fire Trucks

It has been reported to Council that the size of boats stored at the property may impede upon Fire Trucks accessing the property, causing fire safety concerns.

The provisions of the Building Code of Australia (BCA) do not make reference or set a requirement for private properties to accommodate Fire Trucks. The BCA requires the building to maintain a 1m wide path of travel to ensure persons are able to reach an exit from within the building and into an open space or public road. In the case of 6 John Street, site inspections revealed a 1m wide path of travel, at the time of the inspection, to an exit from within the building/s.

As such, regulatory actions cannot be instigated under the EPA Act should a boat overhang onto a driveway within a private property, provided a 1m wide path of travel to the public road is maintained.

Storage and use of flammable chemicals and material

The BCA does not regulate materials (or chemicals) stored upon the site, provided the materials or chemicals stored are consistent with the approved use and would not alter the BCA classification of buildings.

In the case of 6 John Street, McMahons Point, the materials stored on site (as observed during the inspection) appear to be consistent with Development Consent 1164/90, being a boat maintenance facility.

The ongoing safe storage and use of chemicals on site may be governed by Safework NSW.

Ombudsman Complaint Investigation

On 27 October 2021 the NSW Ombudsman Office reviewed Council's actions in handling various issues raised in relation to alleged non-compliances from Noakes Group. This review was instigated by the community who were generally unsatisfied with the resolutions or lack thereof of their concerns.

Upon receiving Council's written response regarding its documented and comprehensive investigations, the NSW Ombudsman Office advised Council that the case have been closed with no further actions.

CONCLUSION

The compliance issues raised regarding 6 John Street to date are complex and resource intensive.

The complexity of the issues at the site are compounded by limitations of what can be regulated in terms of the Environmental Planning and Assessment Act 1979 and the provisions of the Protection of the Environment Operations Act 1997 as regulated by the EPA through the EPL.

The various departments of Council and external parties, that includes the EPA, continue to liaise on the matter in investigating the concerns raised.

4.6. Variations to Development Standards - 2021/2022 Q1 Reporting Period

AUTHOR: Stephen Beattie Manager Development Services

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Q 1 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 CI4.6 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 1 (Q1) of the financial year 2021/22. Of 111 applications determined in the quarter, 6 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 Q1 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 significant variations to development standards which result in a 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 1 2021/22 (1 July – September 2021). Of 111 applications determined in the quarter, 6 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.

4.7. Variations to Development Standards - 2021/2022 Q2 Reporting Period

AUTHOR: Stephen Beattie, Manager Development Services

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. CI 4.6 variations Q 2 2021/22 [4.7.1 - 2 pages]

PURPOSE:

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 Q2 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 2 (Q2) of the financial year 2021/22. Of 118 applications determined in the quarter, 9 variations in total are reported, 8 by the North Sydney Local Planning Panel, none by the Sydney North Planning Panel and 1 under delegated authority.

FINANCIAL IMPLICATIONS:

There are no financial implications associated with the report.

RECOMMENDATION:

1. THAT the Variations to Development Standards – 2021/22 Q2 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 significant variations to development standards which result in a 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 2 2021/22. Of 118 applications determined in the quarter, 9 variations in total are reported, 8 by the North Sydney Local Planning Panel, none by the Sydney North Planning Panel and 1 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.

4.8. North Sydney Local Planning Panel Report 2020/21

AUTHOR: Stephen Beattie, Manager Development Services

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. summary of panel activities [4.8.1 - 7 pages]

PURPOSE:

The purpose of this report is to explore the activities of the North Sydney Local Planning Panel within the 2020/21 financial year.

EXECUTIVE SUMMARY:

This report is provided in response to the provision contained within Section 2.20 (5) of the Environmental Planning and Assessment Act 1979; "MISCELLANEOUS PROVISIONS RELATING TO LOCAL PLANNING PANELS - (5) The council is to monitor the performance of local planning Panels constituted by the council."

Reports are provided annually based on the financial year.

FINANCIAL IMPLICATIONS:

The activities of the Panel are budgeted for in an ongoing sense. There are no financial implications flowing from this report.

RECOMMENDATION:

1. **THAT** the North Sydney Local Planning Panel Report 2020/21 report be received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

5. Our Civic Leadership

5.3 Community is informed and consulted

BACKGROUND

At present, while around 90% of development applications are determined under delegated authority, the remainder are determined by three different Panels which operate to determine Development Applications (DAs) within the North Sydney local government area. These are:

North Sydney Local Planning Panel (NSLPP)

This is Council's Local Planning Panel and determines all applications up to a value of \$30 million which cannot be determined under delegation in accordance with the Directive from the Minister for Planning. The current composition of NSLPP consists of the Minister-appointed Chair, Ms Jan Murrell (or an alternate chair), with two Panel members at each meeting selected by Council from the pool of experts approved by the Minister for Planning. The final member of the Panel is the community representative who is selected from a Panel of four.

Sydney North Planning Panel (SNPP)

The Sydney North Planning Panel (SNPP) is administered by the State Government and facilitated by the Department of Planning Industry and Environment (DPIE) and determines applications which exceed a certain value threshold. This is generally \$30 million but this can vary based on the type of development proposed. The Chair is Mr Peter Debnam, with the state-appointed members being Brian Kirk and Juliet Savet-Ward.

Council also has the opportunity to appoint two members to represent the Council and its community. These are currently drawn from a rotating pool comprising Virginia Waller, and Kenneth Robinson with the alternates being former Councillor Stephen Barbour and Kevin Alker.

Independent Planning Commission (IPP)

This Panel is operated by the State Government and determines applications which are of state significance and are assessed by staff of DPIE. There are no permanent members on this Panel which is called into being on a need basis.

Council's role in such applications is as a submitter and has little direct influence on the outcome of these applications. A Chair is appointed who selects a minimum of two other members from a Minister-approved list based on the issues presented by an individual

application. There is no provision for a Council based representative on this Panel. This Panel was previously known as the Planning Assessment Commission.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

Function of the North Sydney Local Planning Panel (NSLPP).

1.1 The NSLPP:

1. determines DAs and modification applications which are deemed by the Minister to be of local interest;
2. provides advice on planning proposals; and
3. directs the conduct of planning appeals as they relate to the Panel's activities. (Note: The Panel has delegated this function to certain council staff).

1.2 Types of Development Applications determined:

The Local Planning Panel determines applications including modifications to certain applications which are beyond the limits set by the Minister for the use of delegated authority by Council staff. These limits were set by the Minister for Planning by way of a Section 9.1 direction made under the provisions of the Environment Planning and Assessment Act and which took effect on 1 March 2018. The relevant applications are:

1. Conflict of interest: Development for which the applicant or landowner is:
 - a. the council,
 - b. a councillor,
 - c. a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979,
 - d. a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
 - e. a relative (within the meaning of the Local Government Act 1993) of a person referred to in (b) to (d) but not development for the following purposes:
 1. internal alterations and additions to any building that is not a heritage item
 2. advertising signage,
 3. maintenance and restoration of a heritage item, or

4. minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).
2. Contentious development that:
 - a. in the case of a council having an **approved submissions policy**- is the subject of the number of submissions set by that policy, or
 - b. in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning Panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

3. Departure from development standards
Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the Panel can delegate these applications to council staff to determine.

4. Sensitive development
 - a. Designated development.
 - b. Development to which State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development applies.
 - c. Development involving the demolition of a heritage item.
 - d. Development for the purposes of new licenced premises, that will require one of the following liquor licences:
 - i. a club licence under the Registered Clubs Act 1976,
 - ii. a hotel (general bar) licence under the Liquor Act 2007, or
 - iii. an on-premises licence for public entertainment venues under the Liquor Act 2007.
 - e. Development for the purpose of sex services premises and restricted premises.
 - f. Development applications for which the developer has offered to enter into a planning agreement.

1.3 A further direction dated 23 February 2018 was made by the Minister which relates to the referral of Planning Proposals;

A council to whom this direction applies is required to refer all planning proposals to be prepared after 1 June 2018 to the local planning Panel for advice, unless the council's General Manager determines that the planning proposal relates to:

- a. the correction of an obvious error in a local environmental plan,
- b. matters that are of a consequential, transitional, machinery or other minor nature, or
- c. matters that council's general manager considers will not have any significant adverse impact on the environment or adjoining land.

A proposal is referred to the local planning Panel before it is forwarded to the Minister under section 3.34 of the Environmental Planning and Assessment Act 1979.”

1.4 A further direction commencing 20 August 2020 was made to clarify and expedite the determination of modification applications;

Local planning Panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the Panel that:

- a. propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the Panel, or
- b. propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the Panel, or
- c. meets the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards. These criteria are the same as those that relate to the primary directive.

The determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, are made by council staff.

1.5 Relationship of the Council, Panel, Community and Council Officers.

The Council has no power to direct the activities of NSLPP nor the Council staff in the assessment, reporting and determination of Development Applications. The Council, individual Councillors and/or community can make a submission to an application which is reviewed and reported in accordance with well-established practice. They can also address the NSLPP during its determination of an application. The stated intent of the amendments to the Act was to depoliticised the assessment of local development applications to aid efficiency and to reduce corruption risk. Development Applications which do not meet the criteria for referral to this or any other Panel are dealt with under officer delegation.

Covid 19 impacts

Up to the Panels April 2020 meeting the Panel operated as it had done so for the two years since its establishment in March 2018. This included a physical site inspection done together by the Panel, a public meeting held in the Council Chambers and a confidential determination held in the supper

From its April 2020 meeting until its final meeting in the reporting period it operated by way of having the Panel members meet in an appropriate room to facilitate social distancing with applicants and submitters being heard by way of “zoom”. This process generally worked well with little concern being raised by participants and meetings being conducted in a highly efficient manner.

A Ministerial directive of August 2020 sought to have the functions of the local Panel align more closely with those of the regional Panel being the Sydney North Planning Panel. The most significant change is that public meetings are not to be held for applications which feature less than ten (10) submitters, and that applicants alone may be invited to brief the Panel in such cases. Where there are ten (10) submitters or more a public meeting is held by electronic means and both applicants and submitters may participate. In either case written submissions address the officers report are accepted and considered by the Panel up to the close of business the Monday before the Panel meeting.

While outside the reporting period since July 2021 the Panel in accordance with a further Ministerial directive has operated by remote means.

2. Panel Membership.

NSLPP composition during the reporting period

State Sanctioned, Chair and alternative chairs.

Jan Murrell	Chair
Grant Christmas	Alternate Chair / Expert Member
Jason Perica	Alternate Chair / Expert Member

State sanctioned; Council appointed experts:

Tony Caro	Expert Member
Grant Christmas	Expert Member
Lesley Finn	Expert Member
Deborah Laidlaw	Expert Member
Helen Lochhead	Expert Member
Ian Pickles	Expert Member
Caroline Piddock	Expert Member
Michael Reymond	Expert Member
Sandra Robinson	Expert Member
Annelise Tuor	Expert Member
David Logan	Expert Member
Peter Brennan	Expert Member
Jason Perica	Expert Member

Lloyd Graham	Expert Member
Garry Fielding	Expert Member
Peter Brennan	Expert Member
John McInerny	Expert Member
David Brigden	Expert Member
Jan Murrel	Expert Member

Current community representatives:

Veronique Marchandean	Community Member
Kenneth Robinson	Community Member
Jane van Hagen	Community Member
Virginia Waller	Community Member

2.1 The need for numerous Panellist.

Most minister approved experts are active in private consultancy or are academics. They are thus potentially conflicted in both time and interest. On occasion this rendered the formation of a Panel for any given meeting difficult leading to one meeting being formed based on the set quorum of 3 and led to the expansion of the expert Panel from 15 during the 2018/19 financial year to 19. This pool of expert Panelists has been maintained and was demonstrated to be adequate during the reporting period

2.2 Number of Meeting attended by Panel Members.

Panel members are selected by the Principal Chair in consultation with the Manager Development services. Offers are then made to the selected experts and final selection for any meeting is based on availability and lack of material conflict.

The role of Panel Chair was shared as follows;

Jan Murrell	9
Grant Christmas	2
Jason Picera (alternative)	1

The total number of meetings attended by Panel members was as follows;

Tony Caro	1
Grant Christmas	0
Lesley Finn	1
Deborah Laidlaw	0
Helen Lochhead	0

Ian Pickles	3
Carolyn Pidcock	2
Michel Reymond	1
Sandra Robinson	0
Annelise Tuor	0
David Logan	1
Peter Brennan	2
John McInerny	2
David Bridgen	1
Lloyd Graham	1
Garry Fielding	1
Michel Reymond	1
Jan Murrell	2
Virginia Waller *	3
Jane Van Hagen *	2
Veronique Marchandean *	4
Kenneth Robinson *	3
Jason Perica	0

Note: * indicates community member.

2.3 On the day Meeting procedure.

Post April 2020 and for the entire reporting period.

Having regard to the Covid 19 pandemic the Panel met in the supper room and otherwise has operated remotely using Zoom. Panel members are expected to do independent site inspections and to form a view on that basis. Applicants and members of the community attended meetings remotely.

Number of applications considered by the Panel.

During the period covered by this report 69 development applications and 6 planning proposals were reported to the Planning Panel.

It had been estimated prior to the commencement of the Panel that the workload of the Panel based on the Minsters draft 9.11 Direction would average around six applications a month. During the period covered by this report an average of 6 applications per month have been reported to the Panel.

Summaries of the agenda for each Panel meeting are attached to this report.

3.1 Recommendation v Outcome.

During the period covered by this report the Panel agreed with the Council Officer's recommendation in principle on 100% of occasions and accepted the officer's recommendation in unchanged form 80% of the time.

Two matters heard by the Panel were deferred to allow the applicant the opportunity to amend the application. Delegation was subsequently given to the Manager of Development Services to determine the application.

On no occasion was the recommendation of the officer not concurred with on the day.

3.2 Refusal of Consent.

Consent was refused on 12 occasions representing 17% of the applications referred to the Panel. All refusals were in accordance with the officer's recommendation. No refusal recommendation was overturned by the Panel.

3.3 Advice to Council regarding Planning Proposals.

The Planning Panel considered a total of 6 planning proposals, either in conjunction with regular Panel meetings on 6 May and 1 July 2021. A dedicated meeting was also held on 9 December 2020.

All planning proposals were from private interests and were therefore unsolicited. On all occasions the Panel agreed with the officer's review with one proposal being recommended to proceed to gateway, one being given partial support and four being given no support by the Panel.

The four-planning proposals not supported were proposed up zonings which were not supported by any current work undertaken by Strategic Planning and endorsed by Council.

4. Complaints against the Panel.

There were no direct formal complaints in relation to the on-day activities of the Panel. However, two matters did attract some criticism due to customer dissatisfaction arising from the process that led to the matter being determined.

In one case, related to 77 Holterman Street Da 297/20, determined by the Panel at its 7 April 2021 meeting. However, these concerns were found to be without foundation and related to the acceptance and processing of an application for alterations to a terrace house. The adjoining property owner was not acceptive of Council officers' recommendation that the application be approved. Both staff and the Panel attempted to address those concerns

including making Council facilities available so the resident could attend the Panel meeting electronically to present their view as they had no facility to attend the electronic meeting.

The other matter related to a matter heard by the Panel at its 3 February 2021 meeting, 11 Bennett Street Neutral Bay Da 308/20. The residents concerned were unaware of the matter being on the Panel agenda and therefore felt their concerns were not heard. While no process failure was determined to have occurred, additional measures were put in place to ensure wherever possible all submitters are advised by email when an application appears on the Panel's agenda.

5. Appeals Against the Panel's determinations.

Development applications can be subject of an appeal to the Land and Environment Court by an applicant. Appeals can be commenced based on a decision made by the Panel, by a Council officer under delegation or following the expiry of the deemed refusal period: typically, 40 days from the date of lodgment for a local development application.

Under the provisions of the EPA Act NSLPP is responsible for the control and direction of Planning appeals arising from its activities. However, at its meeting of 4 July 2019 NSLPP delegated their functions with regard to the control and direction of all development appeals against determinations (or deemed determinations) of the Local Planning Panel (as well as those determinations not captured by the Local Planning Direction) to the following Council Officers in the context of Council's current delegations concerning authority to deal with appeals and procedural matters concerning such appeals in the Land and Environment Court:

1. The General Manager;
2. The Chief Operating Officer;
3. The General Counsel;
4. The Director City Strategy;
5. The Manager Development Services;
6. The Manager Strategic Planning; and
7. The Manager Environment & Building Compliance.

The Courts practice directions dictate that residential appeals are to be resolved by was of the Section 34 Conference process which commences with an onsite view where the commissioner can view the site, hear from both the applicant and the Council and any submitters who may be present. The aim of the practice is to resolve as many of the issues as is possible without going to a formal hearing. This process may involve the submission of amended plans which may be advertised to submitters if the Court so directs. The Commissioner will refer to Councils notification policy's and take submissions before making this decision.

It is of note that in the reporting period all applications refused by the Panel were subject to a determinative Section 34 or consent orders process which included the submission of amended plans leading to a court approval being issued.

6. Outcome of appeals against decisions of the NSLPP

In the reporting period there were ten applications that were the subject of an appeal following determination by the Panel;

58 Cowdroy Avenue Cammeray

Meeting Date: 3 February 2021
Officer recommendation: Refusal
Panel Decision: Refusal
Court Determination: Appeal dismissed

Notes: This appeal related to the refusal of an application to demolish an existing dwelling and erect a new dwelling on the northern side of Cammeray Avenue adjoining Willoughby Bay. The application had been refused by the Panel, then subject to an S8.2 review process when it was refused again. The main issue was impacts on views caused by the exceedance of the building height control. The Court found that Councils concerns were well founded and again refused the proposal.

101 Blues Point Road Mc Mahons Point

Meeting Date: 7 April 2021
Officer recommendation: Refusal
Panel Decision: Refusal
Court Determination: Appeal upheld with considerable amendments.

Notes: This appeal related to the refusal of an application to extend a heritage listed single story corner shop by a second story addition and extension to the rear. Significantly amended plans were offered by the applicant during the appeal process which deleted the second storey and reduced the bulk and scale of the rear extensions. The appeal was settled on that basis.

13 Eden Street Crows Nest

Meeting Date: 5 May 2021
Officer recommendation: Refusal
Panel Decision: Refusal
Court Determination: Pending.

Notes: This appeal related to the refusal of an application to extend the hours of the ground floor business premises of a mixed-use building from normal business hours to 24/7.

6 John Street McMahons Point

Meeting Date: 2 June 2021
Officer recommendation: Refusal
Panel Decision: Refusal
Court Determination: Pending.

Notes: This appeal related to the refusal of an application to use a mobile shed within the boatyard located at the above address. The application was refused by the Panel. Resubmitted as a fresh and amended Da on the 23 December 2021 which is now the subject of a deemed refusal appeal.

7. Third Party Appeals against the Panel's decisions.

The Environmental Planning and Assessment Act 1979 provides no merit based right of appeal or review to a third party such as an aggrieved submitter. However, an appeal against a determination of a Development Application whether determined by the NSLPP or under delegation is possible if there is an error at law or proper procedure is not followed.

In the period covered by this report there have been no third party appeals against a decision whether made by the NSLPP or under delegation.

8. Additional delegation granted to Council Staff.

At its 4 November 2020 meeting The Panel considered a report requesting that delegation to determine certain applications that proposed limited demolition to Heritage Items to facilitate an otherwise supportable proposal and Cl4.6 variations of greater than 10% relating to minor alterations to existing non-compliant buildings be granted to Council staff. The request was made to speed up the determination of such applications which due to their nature did not result in material gain or benefit to the applicant. The request was granted.

9. Conclusion.

It can be concluded that the North Sydney Local Planning Panel has performed its functions with distinction over the period covered by this report and there have been no proved failures in terms of process or procedure in this period.

This report is submitted for the information and consideration of the elected Council.

10. Note by North Sydney Local Planning Panel Chair Ms Jan Murrell.

The members of the Panel carefully consider all submissions and endeavour to resolve issues where appropriate with the aim of achieving better outcomes. Council's planning framework: DCP's; strategic studies; and the LEP is most important to the decisions made by the Panel as it provides Council's vision for the future of its local government area.

The Panel is pleased to say it has been greatly assisted in its deliberations over the period by the excellent reports and professional way in which the Council's planning team has addressed the Panel.

4.9. Development Applications Received 1 July - 30 September 2021 and 1 October – 31 December 2021

AUTHOR: Stephen Beattie, Manager Development Services

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Applications received 1072021 to 30092021 [**4.9.1** - 4 pages]
2. Applications received 01102021 to 31122021 [**4.9.2** - 10 pages]

PURPOSE:

This report provides a list of Development Applications received by Council in Q1 and Q2 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 Q1, 1 July 2021 to 30 September 2021, 149 applications of all types were received, of those, 112 applications had already been determined as of 7 March 2022. A total of 111 applications were determined in Q1 (Quarter 1) 2021/22 with a mean processing time of 66 days.

During Q2, 1 October 2021 to 31 December 2021, 164 applications of all types were received, of those, 55 applications had been determined as of 7 March 2022. A total of 149 applications were determined in Q2 (Quarter 2) 2021/22 with a mean processing time of 64 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. Due to the break in Committee meetings over the Christmas period, two quarters are presented in this report.

FINANCIAL IMPLICATIONS:

There are no financial implications arising directly from this report.

RECOMMENDATION:

1. THAT the Development Applications received in Q1 and Q2 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 July and 30 September (Q1) and 1 October and 31 December 2021 (Q2).

Its 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 Q1, 149 applications were received and of those, 112 applications have been determined as of 7 March 2022. A total of 111 applications were determined in Q1 (Quarter 1) 2021/22 with a mean processing time of 66 days.

During Q2, 164 applications were received and of those, applications have been determined as of 7 March 2022. A total of 55 applications were determined in Q2 (Quarter 2) 2021/22 with a mean processing time of 64 days.

The attached computer-generated report summarises the applications received by Council in Q1 and Q2 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 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	July 2021	August 2021	September 2021
Modifications.	11	17	13
Commercial Alts.	2	3	3
Demolition only.	0	0	0
Change of use.	2	2	2
Residential Alts.	27	18	24
Boarding House	0	0	0
New Mixed Use.	2	0	2
New Commercial.	0	0	0
School.	0	0	1
Multi Dwelling.	2	0	1
New RFB	2	2	1
Remediation.	0	0	0
Boarding House	0	0	0
New Dwellings	1	3	0
Sign.	1	0	2
Sub-division.	3	0	2
Pool.	0	0	0
Total.	53	45	51

Application Type	October 2021	November 2021	December 2021
Modifications.	18	11	19
Commercial Alts.	1	3	4
Demolition only.	0	0	1
Change of use.	1	0	1
Residential Alts.	28	21	28
Boarding House	1	0	0
New Mixed Use.	0	0	0
New Commercial.	1	0	0
School.	0	0	0

Application Type	October 2021	November 2021	December 2021
Multi Dwelling.	1	0	1
New RFB	0	1	3
Remediation.	0	0	0
New Dwellings	4	0	4
Sign.	1	2	2
Sub-division.	1	2	0
Pool.	2	0	1
Other	0	1	1
Total.	59	41	64

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 by Management. 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 on average one quarter of the application stream relates to 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, due to the greater scrutiny place 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	122 (est)
Q4	142	124	146	
Total	615	579	564	

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 is consistently slower across the years.

Some comment is appropriate on the significant impacts that Covid 19 had on application lodgement which can be seen most clearly in the Q3 2019-20 application numbers. For the first three quarters of 2020 calendar year application lodgement dropped by around 15% compared with the corresponding period of 2019. 2021 has seen as return of the application

lodgement rate to be within 4% of the corresponding period in 2019. If current trends continue application submission rate for this financial year may be comparable to the pre pandemic years.

5. Confidential Reports

5.1. Current Appeals and Results - March 2022

AUTHOR: Craig Winn, Solicitor

ENDORSED BY: Shane Sullivan, Executive Manager Governance

ATTACHMENTS:

1. 4 Current Matters List LEC March 2022 (1) [5.1.1 - 2 pages]
2. 5 Current Matters List NCAT March 2022 (1) [5.1.2 - 1 page]

PURPOSE:

Report on current appeal and prosecution matters.

EXECUTIVE SUMMARY:

Attached is a list of current appeal and prosecution matters as at 4 March 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.

FINANCIAL IMPLICATIONS:

As at 4 March 2022, Council has incurred \$ 881,112 on legal fees for the 2021/22 financial year and recovered legal costs in the amount of \$ 42,848. 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

The relationship with the Community Strategic Plan is as follows:

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 11 October 2021.

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 4 March 2022.

6. Closure