

## 4.1. Ministerial Order - Planning

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**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 implications. 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.



Planning,  
Industry &  
Environment

Office of the Secretary

15 December 2021

Dear General Manager

I am writing to advise you that the Hon. Rob Stokes, Minister for Planning and Public Spaces and Minister for Transport and Roads has recently made the Environmental Planning and Assessment (Statement of Expectations) Order 2021.

The Order sets out clear expectations as to what constitutes an efficient and effective planning system and one that business and the community can have confidence in. It sets benchmarks for council performance in the areas of development assessment, planning proposals and strategic planning. A copy of this Order is attached.

You will also be aware that the Government has placed similar performance expectations on the Department of Planning, Industry and Environment (the Department) and other agencies with approval roles in the planning system. There are also new requirements on industry to improve the timeliness and quality of development applications. More information about these performance expectations and recent planning system reforms is available at [www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Planning-Reform-Action-Plan](http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Planning-Reform-Action-Plan).

During the last two years, councils and government agencies have been working hard to ensure we have an efficient and effective planning system that is able to support the state in its economic recovery from the COVID-19 pandemic. It is the planning system that has allowed businesses to adapt and thrive, that has given people the confidence to invest in New South Wales and that has supported jobs across the economy.

I wish to acknowledge how hard councils have worked during the pandemic to ensure timely decision-making and in supporting the significant amount of planning reform that has occurred. New South Wales now has a planning system that is managed digitally through ePlanning, which makes consent authorities and Government agencies more accountable for their performance. We also have a planning system that is increasingly strategically led and where the community can have confidence in the planning decisions that are being made.

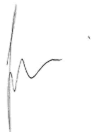
As you are aware, slow decision-making, whether by Government agencies or a council, is the enemy of public confidence in the planning system and leads to bad economic, social and environmental outcomes. The work that we have all done over the last two years has put the planning system in good stead and has allowed for new performance indicators to be set. The performance indicators outlined in the Minister's Order should not be seen as aspirational but as achievable and critical to the effective functioning of the planning system.



The Minister has decided to outline his clear expectations for the planning system in the attached Order so that incoming councillors are aware of the importance of an efficient and effective planning system in supporting a strong economy and delivering better places. It is also important to note that for the first time incoming councillors will be provided an induction on the planning and their role in ensuring the planning system as efficiently as possible. Accordingly, I would encourage you to table this letter and Order at your first available council meeting.

I look forward to continuing to work productively with you in meeting these performance indicators. As always, the Department is here to assist you if you feel you have any issues in meeting any of these expectations. As always, feel free to reach out to the Planning Delivery Unit or the Department's regional planning teams if your council needs further support or guidance. By continuing to work together, I am sure we will be able to build a stronger, more resilient economy and a planning system that meets the expectations of business and the community.

Yours sincerely

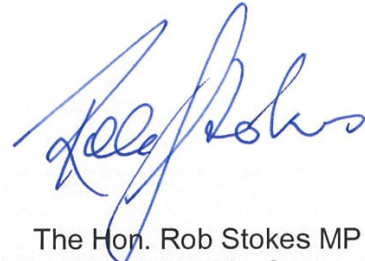


Kiersten Fishburn  
**Secretary**

*Encl. Environmental Planning and Assessment (Statement of Expectations) Order 2021*

## Environmental Planning and Assessment (Statement of Expectations) Order 2021

I, Rob Stokes, the Minister for Planning and Public Spaces, make this Order under section 9.6(9) of the *Environmental Planning and Assessment Act 1979*.



The Hon. Rob Stokes MP  
Minister for Planning and Public Spaces

Dated: 26<sup>th</sup> November, 2021.

### Explanatory note

The object of this Order is to set expectation for councils in relation to their performance of a range of planning and development functions under the *Environmental Planning and Assessment Act 1979*. 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 a council's functions. It is made under section 9.6(9) of the Act.

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## Environmental Planning and Assessment (Statement of Expectations) Order 2021

under the

Environmental Planning and Assessment Act 1979

### Part 1 Preliminary

#### 1 Name of Order

This Order is the *Environmental Planning and Assessment (Statement of Expectations) Order 2021*.

#### 2 Commencement

This Order commences on the day it is published on the NSW Planning Portal.

#### 3 Definitions

(1) In this Order—

***the Act*** means the *Environmental Planning and Assessment Act 1979*

***Department*** means the Department of Planning, Industry and Environment.

***Gateway determination*** means a determination made by the Minister (or delegate) under section 3.34 of the Act.

***LEP*** means a local environmental plan.

***LSPS*** means a local strategic planning statement.

***Minister*** means the Minister for Planning and Public Spaces.

***Minister's expectations*** means the expectations of the Minister in relation to the performance of a council in dealing with planning and development matters, as set out in clause 5 of this Order.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.

(2) Words used in this Order have the same meaning as words used in the Act.

(3) Notes included in this Order do not form part of this Order.

## Part 2 Planning and development matters

### 4 Heads of consideration

The heads of consideration to be taken into consideration in exercising the power under s.9.6(1)(b) of the Act are:

- (a) Whether or not the Council has failed to meet the Minister's expectations in relation to council performance.
- (b) The frequency and degree to which the council has performed, or failed to perform, in accordance with the Minister's expectations.
- (c) The range and type of planning and development matters in respect of which the council has performed, or failed to perform, in accordance with the Minister's expectations.
- (d) Whether or not an appointment under s.9.6(1)(b) should be made in relation to one or more of a particular class of planning and development matter, or all planning and development matters dealt with by the council.
- (e) The effect of any caretaker period preventing a council's performance in dealing with the planning and development matters (or any particular class of such matters) as set out in clause 5.
- (f) The public interest.

### 5 Minister's Expectations

#### (1) Development assessment

A council should:

- (a) prepare assessment reports for a regionally significant development application and refer it to the relevant Regional Panel as soon as practical and no longer than 250 days from lodgement.
- (b) determine a development application for which it is the consent authority as soon as practical and no longer than 180 days from lodgement.
- (c) report a development application for which its functions as a consent authority are exercisable by the local planning panel to the panel for determination within 4 weeks of a request from the panel chair.

#### (2) Planning proposals

A council should:

- (a) Make a decision as to whether to support or not a proponent led planning proposal (rezoning) as soon as practical and no longer than 90 days, or
- (b) submit a proponent led planning proposal for a Gateway determination as soon as practical and no longer than 90 days after having indicated its support for the planning proposal,
- (c) publicly exhibit a planning proposal or hold a public hearing in line with the conditions of a Gateway determination,

- (d) consider or respond to public submissions on a draft LEP in accordance with their community participation plan,
  - (e) make a LEP, which has been delegated to the Council, in the timeframes specified in a Gateway determination.
- (3) **Strategic planning obligations**  
A council should :
- (a) prepare a LSPS for its local government area that meets the requirements for these statements under the Act,
  - (b) undertake the required review of its LSPS,
  - (c) give effect to a regional and/or district strategic plan applying to the LGA, including carry out a review of the LEP under section 3.8(3) of the Act,
  - (d) give effect to an adopted local planning strategy (such as a Local Housing Strategy), and any approval requirements issued by the Department,
  - (e) consider State Environmental Planning Policies or other strategies and policies of the Government, the Minister or the Department concerning planning and development matters.