

4.1. Noakes Boatyard - 6 John Street, McMahons Point

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ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS: Nil

PURPOSE:

To provide an update on planning and compliance matters relating to Noakes Boatyard at 6 John Street, McMahons Point.

EXECUTIVE SUMMARY:

The associated Confidential Report to this item addresses advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege. If the Committee wishes to discuss the report, the meeting should be closed to the public to do so in accordance with s10A(2)(g) of the Local Government Act (LGA).

RECOMMENDATION:

- 1. THAT** the meeting be closed to the public in accordance with Section 10A(2):
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.
- 2. THAT** the report be treated as confidential and remain confidential until Council determines otherwise.

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

BACKGROUND

On 16 September 1992, development consent No. 1164/90 (the Consent) was granted for the development and operation of a boatyard (the development) at 6 John Street, McMahons Point.

On 14 September 2018 Council Officers sought legal advice from Maddocks Lawyers with respect to condition D51 of the Consent.

On 28 September 2018, Council received legal advice from Maddocks Lawyers, specific to enforcing the terms of condition D51 of the Consent.

On 29 October 2018, Council considered Item CiS09: 6 John Street McMahons Point – Construction of Public Jetty and resolved (Min. No. 374) in part to:

3. THAT Council seek further legal advice from Counsel in relation to the enforcement of Condition D51 to inform any enforcement action.

On 20 December 2018, Council sought further advice from Matthews Folbigg Lawyers in relation to the enforcement of condition D51.

On 13 February 2019, Council received legal advice from Matthews Folbigg Lawyers, specific to enforcing the terms of condition D51 of the Consent.

On 27 May 2019, Council considered Notice of Motion No. 5/19 – Crs Baker, Carr and Beregi Re: Compliance with DA 1164/90 – Noakes: 6 John Street, McMahons Point and resolved (Min. No. 131):

1. THAT Council take all necessary action to ensure compliance with the conditions of consent of DA 1164/90 for redevelopment of the existing boat maintenance facility at 6 John Street, McMahons Point.

2. THAT, in particular, such action include all steps necessary to ensure the enforcement of 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”.

On 18 February 2020 Council issued a Penalty Notice on Noakes for spray painting not in accordance with the Consent.

On 30 March 2020 Council issued a Development Control Order (the DCO) on Noakes Group Pty Limited (Noakes).

On 24 April 2020 Noakes appealed the Order.

On 17 July 2020 the Proceedings were listed for a section 34 Conciliation Conference.

On 7 August 2020 the Proceedings were referred to mediation. The parties are currently negotiating the terms of a Settlement Agreement that will resolve the Proceedings.

On 1 September 2020 DA57/2019 for the use of a floating dry dock in association with the existing boat yard was refused by the Sydney North Planning Panel.