

**NORTH SYDNEY COUNCIL**

**REPORT OF LEGAL AND PLANNING COMMITTEE**

**SUBJECT: PROCEEDINGS OF COMMITTEE AT MEETING HELD IN THE SUPPER ROOM AT THE COUNCIL CHAMBERS, NORTH SYDNEY, ON MONDAY, 9 MARCH 2020 AT 6.30PM.**

**PRESENT**

Councillor Gibson in the Chair, Councillors Baker, Brodie, Drummond, Keen and Mutton.

**Staff:** Ken Gouldthorp, General Manager  
Margaret Palmer, Director Corporate Services  
Joseph Hill, Director City Strategy  
Robert Emerson, Director Open Space & Environmental Services  
Craig Winn, Solicitor  
Stephen Beattie, Manager Development Services  
Marcelo Occhiuzzi, Manager Strategic Planning  
Melissa Dunlop, Governance Co-ordinator (Minutes)

**Visitors:** Nil

**Apologies** were received from Councillor Barbour and Councillor Carr.

At the commencement of business (6.41pm) Councillors present were:  
Councillor Gibson in the Chair, Councillors Baker, Brodie, Drummond, Keen and Mutton.

**Declarations of Interest**

Nil.

**1. Minutes**

The Minutes of the previous meeting held on 21 October 2019, copies of which had been previously circulated, were taken as read and confirmed.

The Motion was moved by Councillor Brodie and seconded by Councillor Keen.

Voting was as follows:

For/Against 6/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Absent	
Beregi	Absent		Drummond	Y	
Keen	Y		Gunning	Absent	
Brodie	Y		Mutton	Y	
Carr	Absent		Baker	Y	

## 2. LP01: Current Appeals and Results - March 2020

Report of Craig Winn, Solicitor

Attached is a list of current appeal and prosecution matters as at 28 February 2020 for Council's information.

As at 28 February 2020, Council has incurred \$859,711.72 on legal fees for the 2019/2020 financial year and recovered legal costs in the amount of \$156,987.61. The legal budget for 2020 financial year is \$ 1,500,000.00.

### Recommending:

1. **THAT** the Current Appeals and Results - March 2020 report be received.

The Motion was moved by Councillor Gibson and seconded by Councillor Mutton.

### Resolved to recommend:

1. **THAT** the Current Appeals and Results - March 2020 report be received.

Voting was as follows:

For/Against 6/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Absent	
Beregi	Absent		Drummond	Y	
Keen	Y		Gunning	Absent	
Brodie	Y		Mutton	Y	
Carr	Absent		Baker	Y	

## 3. LP02: 2019 Appeals Statistical Review

Report of Stephen Beattie, Manager Development Services

The management of planning appeals can be at considerable cost to Council. This report examines the reasons behind the commencement of appeals and the relevance of the 40-day "deemed refusal" period when considered in light of realistic processing times for complex Development Applications.

It is intended that an updated report will be provided to the Legal and Planning Committee at the conclusion of the 2020 calendar year, with a view to making a submission to the Department of Planning, Industry and Environment. The submission will request, if considered appropriate, that the current deemed refusal period of 40 days be reviewed.

Council's current total legal budget is \$1.5 million for the 2019/20 financial year. Much of this expenditure occurs in the defence of planning-based appeals and represents expenditure for the professional services of external legal services and technical consultants. Wherever possible, expert evidence is given by Council planners and this cost is not included in the expenditure mentioned above.

Council's total legal expenditure on planning matters for the 2018/19 financial year was \$1,672,000.

### Recommending:

1. **THAT** the 2019 Appeals Statistical Review be received.

The Motion was moved by Councillor Mutton and seconded by Councillor Brodie.

**Resolved to recommend:**

- 1. THAT** the 2019 Appeals Statistical Review be received.

Voting was as follows:

For/Against 6/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Absent	
Beregi	Absent		Drummond	Y	
Keen	Y		Gunning	Absent	
Brodie	Y		Mutton	Y	
Carr	Absent		Baker	Y	

**4. LP03: Development Applications Received Q2 2019**

Report of Stephen Beattie, Manager Development Services

This report provides a list of the applications received by Council between 1 October 2019 and 31 December 2019.

Its purpose is to provide Councillors and other interested persons with an understanding of the application types received and processed by the Development Services Department.

During this period some 171 applications of all types were received. Of those some 80 applications have already been determined as of 24 February 2020. A total of 154 applications were determined in Q2 of financial year 2019/20.

**Recommending:**

- 1. THAT** the Q2 2019 report of Development Applications lodged be received.

The Motion was moved by Councillor Keen and seconded by Councillor Drummond.

**Resolved to recommend:**

- 1. THAT** the Q2 2019 report of Development Applications lodged be received.

Voting was as follows:

For/Against 6/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Absent	
Beregi	Absent		Drummond	Y	
Keen	Y		Gunning	Absent	
Brodie	Y		Mutton	Y	
Carr	Absent		Baker	Y	

**5. LP04: North Sydney Local Planning Panel Annual Report 2018/19**

Report of Stephen Beattie, Manager Development Services

The purpose of this report is to explore the activities of the North Sydney Local Planning Panel from its first meeting on 7 March 2018 until its last meeting within the 2018/19 financial year on 5 June 2019. This represents 12 meetings over 16 months.

It 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.”*

Future reports will be provided annually based on the financial year.

The activities of the Panel are budgeted for in an ongoing sense. The current budget provision is \$87,000. Other costs are contained within existing staff and administration budget. There are no additional financial implications flowing from this report.

**Recommending:**

1. **THAT** the North Sydney Local Planning Panel Annual Report 2018/19 be received.

The Motion was moved by Councillor Mutton and seconded by Councillor Drummond.

**Resolved to recommend:**

1. **THAT** the North Sydney Local Planning Panel Annual Report 2018/19 be received.

Voting was as follows:

For/Against 6/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Absent	
Beregi	Absent		Drummond	Y	
Keen	Y		Gunning	Absent	
Brodie	Y		Mutton	Y	
Carr	Absent		Baker	Y	

6. **LP05: Variations to Development Standards - 2019/2020 Q2 Reporting Period**

Report of Stephen Beattie, Manager Development Services

Planning Circular PS 18-003 sets out certain procedural and reporting requirements for the processing of C14.6 and SEPP1 variations to development standards.

Essentially, 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 determined 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:

- 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.
- 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.
- A report of all variations approved (including under delegation) must be submitted to [developmentstandards@planning.nsw.gov.au](mailto: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.
- 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 Q2 of the financial year 2019/20.

**Recommending:**

1. **THAT** the Variations to Development Standards report be received.

The Motion was moved by Councillor Brodie and seconded by Councillor Drummond.

**Resolved to recommend:**

1. **THAT** the Variations to Development Standards report be received.

Voting was as follows:

For/Against 6/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour		Absent
Beregi		Absent	Drummond	Y	
Keen	Y		Gunning		Absent
Brodie	Y		Mutton	Y	
Carr		Absent	Baker	Y	

7. **LP06: Planning Proposal 3/19 – 173-179 Walker Street and 11-17 Hampden Street, North Sydney – Planning Proposal Authority**

Report of Marcelo Occhiuzzi, Manager Strategic Planning

On 22 March 2019, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land located at 173-179 Walker Street and 11-17 Hampden Street, North Sydney. The Planning Proposal seeks the following amendments to NSLEP 2013:

- Increase the maximum building height from 12m to RL133 (representing approximately 62-72m of additional height)
- Establish a minimum floor space ratio of 6.1:1
- Introduce a new special provision to establish controls for the site relating to overshadowing, community infrastructure and allowance for maximum height and FSR greater than the above associated with amalgamation of all lots within the site.

Council refused the Planning Proposal at its meeting on 26 August 2019. In response, the applicant lodged a request with the Department of Planning, Infrastructure and Environment on 2 September 2019 for a Rezoning Review.

On 12 February 2020, the Rezoning Review request was formally considered by the Sydney North Regional Planning Panel (SNRPP), which handed down its recommendation on 20 February 2020. The SNRPP recommended that the Planning Proposal should progress to Gateway Determination, subject to the following recommended conditions:

- *That prior to the making of any instrument, consideration be had of the outcome of Council’s Civic Planning Study*
- *Prior to finalisation of the planning proposal, there be consultation with RMS regarding cumulative impact of traffic matters in the CBD and any implications for the western harbour tunnel portal from Berry Street*
- *The additional height sought with the “Special Provisions Clause” is acceptable but the additional FSR sought is undesirable. By retaining the FSR of 6.1:1 with the additional height to RL148 would allow flexibility to remove or modify the podium built form and allow for substantial breaks in the building in both Walker and Hampden Streets.; and*
- *The site specific DCP needs to be amended to address the following:*
  - *Reconsideration of the podium solution to a built form which better reflects the residential zoning, in a heritage precinct;*
  - *Hampden Street frontage needs to mirror the bulk and rhythm of heritage items incorporating more vertical proportions with physical breaks in the building form;*
  - *Open space to be reworked – focus on providing better open space adjacent Hampden Street to also improve transition of built forms; and*
  - *Physical breaks between the built form in Walker Street to allow for views through the site from existing RFBs in the vicinity as well as public views and streetscape views.*

In its correspondence of 20 February 2020, the SNRPP also sought Council’s advice with regard to accepting the role of Planning Proposal Authority (PPA). The PPA is

responsible for progressing planning proposals through the plan making process, including ensuring the planning proposal is consistent with the gateway determination, the public exhibition process, consideration of submissions and the making of an amendment to Council's local environmental plan giving effect to the planning proposal.

Council has undertaken significant strategic work in the precinct but does not have a resolved position with respect to the strategic direction for its future development. Council is nearing completion of this work. This report recommends that the PPA role not be accepted as the completion of the wider planning study and the processing of the Proposal may represent conflicting positions and difficult to pursue with a reasonable level of integrity.

Should Council accept the role of PPA, the applicant of the Planning Proposal would be required to pay the Stage 2 Planning Proposal fees to cover the expenses of placing the Planning Proposal on public exhibition and the making of the plan. If Council does not accept the role of PPA, the applicant of the Planning Proposal would be required to pay a fee to the Department of Planning, Industry and Environment to cover the expenses of placing the Planning Proposal on public exhibition and the making of the plan.

**Recommending:**

1. **THAT** Council not accept the role of the Planning Proposal Authority for Planning Proposal 3/19 – 173-179 Walker Street and 11-17 Hampden Street, North Sydney.
2. **THAT** in not accepting the Planning Proposal Authority role, that Council advise the Department of Planning, Industry and Environment:
  - a. that the recommendations of the Sydney North Regional Planning Panel form conditions to any Gateway Determination issued;
  - b. that it consider the outcomes of Council's Civic Planning Study prior to the issue of Gateway Determination;
  - c. that the terms of any draft Voluntary Planning Agreement or public benefit associated with the Planning Proposal be determined prior to the public exhibition of the Planning Proposal in conjunction with Council;
  - d. that the Planning Proposal, any VPA and site specific DCP controls, be placed on public exhibition concurrently;
  - e. that Council retain the authority to amend North Sydney Development Control Plan 2013.
3. **THAT** Council advise the Sydney North Regional Planning Panel of its decision.
4. **THAT** should Council resolve to accept the role of Planning Proposal Authority, that upon receiving Gateway Determination, Council seek Stage 2 fees to progress the Planning Proposal prior to public exhibition.

A Motion was moved by Councillor Gibson and seconded by Councillor Brodie,

1. **THAT** Council not accept the role of the Planning Proposal Authority for Planning Proposal 3/19 – 173-179 Walker Street and 11-17 Hampden Street, North Sydney.
2. **THAT** in not accepting the Planning Proposal Authority role, that Council advise the Department of Planning, Industry and Environment:
  - a. that the recommendations of the Sydney North Regional Planning Panel form conditions to any Gateway Determination issued;
  - b. that it consider the outcomes of Council's Civic Planning Study prior to the issue of Gateway Determination;
  - c. that the terms of any draft Voluntary Planning Agreement or public benefit associated with the Planning Proposal be determined prior to the public exhibition of the Planning Proposal in conjunction with Council;
  - d. that the Planning Proposal, any VPA and site specific DCP controls, be placed on public exhibition concurrently;

- e. that Council retain the authority to amend North Sydney Development Control Plan 2013.
3. **THAT** Council advise the Sydney North Regional Planning Panel of its decision.

**Resolved to recommend:**

1. **THAT** Council not accept the role of the Planning Proposal Authority for Planning Proposal 3/19 – 173-179 Walker Street and 11-17 Hampden Street, North Sydney.
2. **THAT** in not accepting the Planning Proposal Authority role, that Council advise the Department of Planning, Industry and Environment:
- a. that the recommendations of the Sydney North Regional Planning Panel form conditions to any Gateway Determination issued;
- b. that it consider the outcomes of Council’s Civic Planning Study prior to the issue of Gateway Determination;
- c. that the terms of any draft Voluntary Planning Agreement or public benefit associated with the Planning Proposal be determined prior to the public exhibition of the Planning Proposal in conjunction with Council;
- d. that the Planning Proposal, any VPA and site specific DCP controls, be placed on public exhibition concurrently;
- e. that Council retain the authority to amend North Sydney Development Control Plan 2013.
3. **THAT** Council advise the Sydney North Regional Planning Panel of its decision.

Voting was as follows:

For/Against 6/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	<b>Absent</b>	
Beregi	<b>Absent</b>		Drummond	Y	
Keen	Y		Gunning	<b>Absent</b>	
Brodie	Y		Mutton	Y	
Carr	<b>Absent</b>		Baker	Y	

8. **LP07: Notice of Motion - Review of the Neutral Bay Heritage Conservation Area**

Report of Ian Curry, Manager Governance and Committee Services

At its meeting on 25 November 2019, Council considered a Notice of Motion from Councillors Baker, Beregi and Carr regarding a review of the Neutral Bay Heritage Conservation Area and resolved:

1. *THAT the matter be deferred to the Legal and Planning Committee to clarify potential conflicts of interest and discuss the concerns raised by the Director City Strategy.*

This matter is referred to the Committee in accordance with the Council resolution.

**Recommending:**

1. **THAT** the Notice of Motion - Review of the Neutral Bay Heritage Conservation Area report be received.

A Motion was moved by Councillor Gibson and seconded by Councillor Drummond,

1. **THAT** the Review of the Neutral Bay Heritage Conservation Area be deferred to the next Financial Year, 2020/21.

**Resolved to recommend:**

1. **THAT** the Review of the Neutral Bay Heritage Conservation Area be deferred to the next Financial Year, 2020/21.

Voting was as follows:

For/Against 5/1

<b>Councillor</b>	<b>Yes</b>	<b>No</b>	<b>Councillor</b>	<b>Yes</b>	<b>No</b>
Gibson	<b>Y</b>		Barbour		<b>Absent</b>
Beregi		<b>Absent</b>	Drummond	<b>Y</b>	
Keen	<b>Y</b>		Gunning		<b>Absent</b>
Brodie	<b>Y</b>		Mutton	<b>Y</b>	
Carr		<b>Absent</b>	Baker		<b>N</b>

The meeting concluded at 7.24pm.

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**CHAIRPERSON**

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**GENERAL MANAGER**