



AGENDA

An Extraordinary Meeting of Council
will be held on Cammeraygal Land
in Council Chambers, 200 Miller Street, North Sydney
at 7:30 PM on Tuesday 28 February 2023.

The agenda is as follows.

Therese Manns
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. Opening Meeting

Statement of ethical obligations

Councillors are reminded of the oath or affirmation taken upon commencement of office that they will undertake the duties of the office of councillor in the best interests of the people of North Sydney and the North Sydney Council and that they will faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the [Local Government Act 1993](#) or any other Act to the best of their ability and judgment.

Councillors are also reminded of their obligations under the Code of Conduct to disclose and appropriately manage conflicts of interest.

2. Acknowledgement of Country

RECOGNITION OF THE CAMMERAYGAL PEOPLE

We respectfully acknowledge the Traditional Custodians of the land and waters of North Sydney local government area, the Cammeraygal people.

3. Apologies and applications for leaves of absence or attendance by audio-visual link by councillors

4. Disclosures of Interest

5. Public Forum

6. Mayoral Minutes

Nil

7. Reports to Council

7.1. Bradfield Park - Legal Advice

AUTHOR: Shane Sullivan, Executive Manager Governance

ENDORSED BY: Therese Manns, General Manager

ATTACHMENTS:

1. Advice - Richard Lancaster SC finalised 24 February 2023 [7.1.1 - 11 pages]
2. Summary of advice Richard Lancaster SC [7.1.2 - 3 pages]
3. Letter from Tf NSW Bradfield Park South and Landowner's Consent 27 February 2023 [7.1.3 - 2 pages]
4. Letter to Tf NSW from General Manager on 24 February 2023 [7.1.4 - 2 pages]
5. CONFIDENTIAL REDACTED - Letter of advice - Proposed Compulsory Acquisition - Bradfield Park [7.1.5 - 19 pages]

PURPOSE:

This matter was deferred by resolution of Council on 27 February 2023 to this Extraordinary Meeting.

The purpose of this report is for Council to consider legal advice obtained with regard to Bradfield Park and a proposal by Transport for NSW to acquire and/or develop part of Bradfield Park North for the purpose of the *Sydney Harbour Bridge Cycleway Project*.

EXECUTIVE SUMMARY:

The most recent advice obtained by Council and a summary of that advice is provided as an attachment to this report.

On 27 February 2023, Council received a letter from Transport for NSW seeking land owners consent in relation to the Sydney Harbour Bridge Northern Cycleway Access project. A copy of this letter was circulated to Councillors on 27 February 2023 and is attached.

Transport for NSW had previously offered Council \$1.5m as a contribution towards Council's planned improvements to Bradfield Park South. In response, Council has outlined the considerable investment required to progress the Bradfield Park Masterplan. They have now advised that should Council provide land owners consent before the end of February 2023 they will be a position to make a further contribution of \$1m bringing their contribution to a total of \$2.5m.

Land owners consent is required for the purposes of lodging a section 60 application under the Heritage Act 1977. Transport for NSW note that should land owners consent not be

provided in a timely manner that these funds of \$2.5m would be expended on additional costs to the project due to the delay.

In accordance with Council's resolution of 14 November 2022, legal advice has been obtained and confirms the ability of the NSW Government to compulsorily acquire parcels of land within Bradfield Park.

Further, the advice provides that, in relation to Trust Land, the Council is the legal owner of the land and has full capacity, as a matter of property law, to give or withhold owners consent for the use of land for a specific purpose on the basis that it is acting consistently with its trust obligations.

The advice provides that there is a strong argument available that the development of a publicly accessible cycleway is consistent with the use of the Trust Land for the purposes of public parks and public recreation.

Should land owners consent not be provided, this would also result in the project being progressed via the State Significant Infrastructure pathway and compulsory acquisition of the land owned by Council. This process does not require Council's owners consent and Transport for NSW would lodge a Development Application with the NSW Department of Planning for the Minister for Planning to determine.

On the basis that TFNSW is adamant that the project will be progressed in its current form, albeit through a different approval process, it is recommended that Council accept the contribution towards improvements in Bradfield Park South and provide owners consent to allow the Section 60 application to progress.

The following documents are attached to this report:

1. Advice from Richard Lancaster SC finalised on 24 February 2023
2. Summary of the advice from Richard Lancaster
3. Letter from Transport for NSW dated 27 February 2023 seeking land owners consent
4. Letter to Transport for NSW dated 24 February 2023
5. Advice (CONFIDENTIAL) dated 22 March 2022 from Sparke Helmore

The attached legal advice dated 11 March 2022, in the schedule of lands (page 3 of 14) identifies the relevant interests in the lands associated with the Sydney Harbour Bridge Northern Cycleway Access project. This is provided as a confidential document.

Should Council wish to discuss this advice dated 11 March 2022 it is noted that the confidential document includes advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community. As such should this matter be discussed it should be considered in closed session.

FINANCIAL IMPLICATIONS:

TFNSW has offered \$2.5 million in funding towards Bradfield Park South improvements. Should they progress to compulsory acquisition of Council land, compensation would be applicable under the *Land Acquisition (Just Terms Compensation) Act 1991*.

RECOMMENDATION:

1. THAT the Council resolves to provide land owners consent as requested for those lands of which Council is the owner thus enabling the lodgement of an application under Section 60 of the Heritage Act 1977 for the Sydney Harbour Bridge Northern Cycleway Access project.

2. THAT Council resolves that the identified attachment to this report (11 March 2022 legal advice) is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

5. Our Civic Leadership

5.1 Lead North Sydney's strategic direction

BACKGROUND

At its meeting held 24 January 2022, Council resolved as follows:

1. **THAT** the provision of a rideable bike ramp is and remains a high priority for NSC.
2. **THAT** Council seek to urgently work with TfNSW to refine the design.
3. **THAT** any final concept must address the following:
 - a. The heritage advice from the NSW Heritage Council and other Heritage authorities that does not support the impacts on Bradfield Park North, the loss of open space and the disastrous impacts on the heritage item, that being the Sydney Harbour Bridge itself.
 - b. That TfNSW amend any winning design to avoid cyclists exiting the ramp in Bradfield Park North and address issues which funnel cyclist onto Middlemiss Street and into the roundabout at Lavender and Alfred Streets.
 - c. That TfNSW note that the Council is not seeking a delay but is seeking a solution which avoids the devastating impacts on the heritage items and on public open space.
 - d. That Council urge TfNSW that in addressing the solution consideration is given to the submissions made by members of the public which avoid the impacts on Bradfield Park North and the Sydney Harbour Bridge and outlines how this cycleway will link to existing cycle routes on the Pacific Highway and Warringah Freeway.

At its meeting held 23 May 2022 Council resolved the following:

1. **THAT** Council advise TfNSW that it is not prepared to consent to compulsory acquisition of land required at Bradfield Park for the construction of a cycle ramp in advance of the final form of the ramp being formally authorised with the necessary statutory approvals including but not limited to approvals under the Environmental Protection and Biodiversity Conservation Act 1999 (Cth).
2. **THAT** if compulsory acquisition is pursued by TfNSW subsequent to formal approval as per 1 above, it is Councils' preference that compensation be determined by negotiation under s29 of the Land Acquisition (Just Terms Compensation) Act 1991
3. **THAT** the report be treated as confidential and remain confidential until Council determines otherwise.

4. **THAT** Council continues to advocate for a dedicated lane for cycling and active transport on lane 8 of the Sydney Harbour Bridge and urges TFNSW to continue to pursue this option.

At its meeting held 14 November 2022, Council resolved as follows:

1. **THAT** Council resolves that the General Manager engage Senior Counsel on behalf of Council to advise:
 - a. Given the proclamation of the Governor of NSW dated 19 March 1939 (the Proclamation) vesting in North Sydney Council the lands now known as Bradfield Park, whether the titles to that land need to be the subject of an application to amend to bring them in line with that Proclamation.
 - b. Whether the land that comprises Bradfield Park or a part thereof can be compulsory acquired by the NSW Government either pursuant to the provisions of the Land Acquisition (Just Terms) Act 1991 or any other Act of the NSW Parliament.
 - c. Whether North Sydney Council can, without breaching the trust established by the Proclamation, agree to transfer any interest in or right to the land that comprises Bradfield Park or any part thereof to the NSW Government for the purpose of building ramp between the Sydney Harbour Bridge and a road contiguous with Bradfield Park.
2. **THAT** Council resolves to request the Premier of NSW to direct Transport for NSW to refrain from taking any action seeking to acquire an interest in or right to Bradfield Park or any part of it for any purpose until the advice being sought has been received and considered.

Advice was sought in accordance with the resolution and provided to Councillors on 5 December 2022.

Further advice was subsequently sought and provided on 22 February 2023. A copy of this advice is included as an attachment. Also provided as an attachment is a summary of that advice.

On 27 February 2023, Transport for NSW wrote to Council seeking land owners consent and a copy of that letter is attached.

Also attached as a confidential attachment is advice received by Council in relation to a proposed compulsory acquisition which noted from Sparke Helmore.

CONSULTATION REQUIREMENTS

Community engagement is not required.

8. Matters of Urgency

Nil

9. Confidential Matters

Nil

10. Closure