

8.6. Community Education Officer Planning

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ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS: Nil

PURPOSE:

Council at its meeting of 23 May 2022 considered Notice of Motion 32/22 and called for a report outlining how Council could better support community understanding of the planning process. This report is in response to that resolution.

EXECUTIVE SUMMARY:

Notice of Motion 32/22 as adopted by Council recognised the significant and growing community concern about the extent of apparent overdevelopment in the North Sydney Council local government area. The NoM further recognised that community members find it difficult to understand the New South Wales (NSW) planning system and their rights against often well-resourced property developers.

This report responds to Council's request that Council establish a 'Community Education Officer – Planning' (or similar) role within the organisation, independent of the City Strategy Division, dedicated to educating our community on planning issues. As outlined in this report many of the intended functions of this role exist within established positions within the City Strategy Division. The report explores the appropriateness of augmentation or expansion of these existing roles.

FINANCIAL IMPLICATIONS:

A potential additional role of this nature is not funded in the adopted 2022/23 budget. It is anticipated that if an additional position is established expenditure including on costs would be around \$130,000 per annum.

RECOMMENDATION:

1. **THAT** 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

5.3 Community is informed and consulted

BACKGROUND

At its meeting of 23 May 2022 Council considered and adopted a Notice of Motion by Councillor Bourke;

1. THAT Council recognises there is a significant and growing community concern about the extent of overdevelopment in the North Sydney Council local government area and that this overdevelopment is changing the nature of our natural and built environments for the worse and steadily destroying the heritage values and amenity that makes the North Sydney Council local government area unique.

2. THAT Council recognises many community members find it difficult to understand the New South Wales (NSW) planning system and stand up for their rights against often well-resourced property developers.

3. THAT, as soon as practicably possible, Council is provided with a report to consider North Sydney Council establishing a 'Community Education Officer – Planning' (or similar) role within the organisation, independent of the City Strategy Division, dedicated to educating our community on planning issues and whose role includes:

a) Explaining to residents how the NSW planning system works including State Environmental Planning Policies, Local Environmental Plans, Development Control Plans, as well as approval processes through bodies including the Local Planning Panel, Sydney North Planning Panel, Independent Planning Commission and the Land and Environment Court.

b) Explaining how residents can lodge submissions relating to development applications, planning proposals and other related planning issues.

c) Developing an online resource for the community to better understand the planning system.

d) Running regular public events and webinars on North Sydney Council local government area planning matters.

e) Developing a comprehensive picture of the cumulative impact of development on our local infrastructure and services, including community feedback on development and its impacts

f) Reporting to North Sydney Council and our community on a regular basis

g) Other planning education matters as determined by North Sydney Council from time to time."

This report examines the relationship between established roles and the proposed new position, it being noted that no funding exists for a new position.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

Council planning staff are acutely aware of the concern and stress that development causes North Sydney Council residents.

Experience has shown that the North Sydney community are reasonably aware of their ability to make submissions to both planning proposals and development applications. Averaged across the application stream around 6 submissions are received for each application lodged.

However, the planning process is continuously evolving, and this report attempts to explain an increasingly complex system, the current support to the community that is provided and opportunities to increase the communities understanding of the process, particularly their ability to influence the outcome of applications and their rights should the ultimate determination not be to their liking. The following explanation of the planning system is provided to add context to this report.

CURRENT PLANNING PROCESS

Development in any Council area in New South Wales is guided by the provision of the Environmental Planning and Assessment Act 1979. This Act was last significantly overhauled in 2000 with further amendments being made in an ongoing sense. The Act is supported by the Environmental Planning and Assessment Regulation 2020. There are numerous other Acts and Regulations which impact on development processes. However, to maintain appropriate context this discussion will deal with the main processes that often directly affect the community of North Sydney.

There are three primary documents of references which effect development outcomes in North Sydney. These are:

The North Sydney Local Strategic Planning Statement (LSPS).

The LSPS sets out Councils' land use vision, planning principles, priorities and actions for the next 20 years. It outlines the desired future direction for housing, employment, transport, recreation, environment and infrastructure for the North Sydney LGA.

The LSPS guides the content of Councils LEP and DCP. It is supported by the Local Housing Strategy. Extensive Community consultation occurs in the lead up to the establishment of an LSPS.

The North Sydney Local Environmental Plan 2013 (LEP).

This sets the statutory controls for development in North Sydney and has the status of a state regulation. The current LEP is a document based on a template set by the State and mandated for adoption by all NSW local government bodies. Extensive Community consultation occurs in the lead up to the making of an LEP.

The North Sydney Development Control Plan 2013 (DCP).

This is a policy level document which seeks to guide development outcomes at a local level. The current DCP is a Council developed format and is not based on a mandated template. However, it has been foreshadowed that a universal template may be mandated in the future. Extensive Community consultation occurs in the lead up to the making of an DCP.

It is important to note that changes made in legislation in recent years at state level have empathized the strategic plan and policy making process over the site-by-site development application process as being the appropriate point of greatest community influence in the planning process. The LEP is required to be revised every five years.

Other Environmental Planning Instruments and regulations;

Numerous other Environmental Planning related Instruments and Regulations exist, which have the potential effect the assessment of development applications. While not a complete list, these include:

- ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
- ROADS ACT 1993
- LOCAL GOVERNMENT ACT 1993
- CONTAMINATED LAND MANAGEMENT ACT 1997
- PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997
- FOOD ACT 2003
- SWIMMING POOLS ACT 1992
- LAND AND ENVIRONMENT COURT ACT 1979
- BUILDING AND DEVELOPMENT CERTIFIERS ACT 2018
- ENVIRONMENTAL PLANNING AND ASSESSMENT (DEVELOPMENT CERTIFICATION AND FIRE SAFETY) REGULATION 2021
- ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000
- ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021
- STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009
- STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004
- STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017
- STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

- STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004
- STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007
- STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011
- STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017
- STATE ENVIRONMENTAL PLANNING POLICY NO 33--HAZARDOUS AND OFFENSIVE DEVELOPMENT
- STATE ENVIRONMENTAL PLANNING POLICY NO 55--REMEDICATION OF LAND
- STATE ENVIRONMENTAL PLANNING POLICY NO 56--SYDNEY HARBOUR FORESHORES AND TRIBUTARIES
- STATE ENVIRONMENTAL PLANNING POLICY NO 64--ADVERTISING AND SIGNAGE
- STATE ENVIRONMENTAL PLANNING POLICY NO 65-DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT
- STATE ENVIRONMENTAL PLANNING POLICY NO 70-AFFORDABLE HOUSING (REVISED SCHEMES)

PLANNING PROPOSALS, DEVELOPMENT APPLICATIONS, COMPLYING AND EXEMPT DEVELOPMENT.

The following represents an overview of current planning process which compliment or implement existing plans and polices which comprises Planning Proposals, Development applications, Complying and exempt development and the ongoing certification and compliance regime.

Planning Proposals (PP)

A Planning Proposal (PP) typically seeks either a change to a site zoning, or a significant change to the development standards that may apply which are contained within a Councils LEP. The addition of a site as a heritage item is also included in this process. The planning proposal process is a formalisation of the former spot rezoning process.

Typically, these applications are made to Council, are subject to review by Councils planning staff with input from the North Sydney Local Planning Panel (NSLPP) before being reported to Council. The Council considers whether the proposed amendment should be made or not. If the proposal is supported, it is then forwarded to the Department of Planning for gateway determination. If the application is supported by the Department, it is given a gateway determination and then advertised by Council to the community.

Following notification, the Proposal is then reported back to the Council including review of the submissions made and other relevant issues. Council may resolve to support the proposal; in which case the Proposal is again referred to the Department for the making of the amendment and subsequent gazettal. Alternatively, the Council can decide not to make the amendment and advise the Department of this outcome.

The applicant for a Planning Proposal who is aggrieved by its outcome has a right of review which is made to the Department. The Department will consult the Sydney North Planning Panel before making a decision of whether to allow the plan to proceed or agree with the Councils determination.

There is currently no Court based right of appeal on a determination of a Planning Proposal.

The process followed in the determination of a planning proposal mirrors the process followed all be it on a much larger scale in the making of an area wide Local Environmental Plan. A site specific DCP often accompanies a Planning Proposal, with the amendments being made concurrently.

Councils LSPS discourages the lodgment and consideration of planning proposals for sites which have not been the subject of an earlier master planning exercise.

Development Applications (DA)

Development Applications (DA) are made in response to provisions contained within the LEP and DCP and other relevant regulations. A development application can be made concurrently with or subsequently to a Planning Proposal. Due to the increased cost and uncertainty if the Planning Proposal has not been adopted it is rare for concurrent applications to be made.

DAs are made through the New South Wales Planning Portal and forwarded to Council for processing. Applications are processed in accordance with the provisions of the Act and Regulations and are notified as required by the Councils Community Consultation Protocol.

DAs are assessed by Council Planners against the relevant controls with input from other technical experts including engineers, heritage planners, landscape architects and this input may extend beyond the CIS division. Of particular note is the input and assistance received from both the Open Space and Environment Services and Engineering and Property Services Divisions. This cooperation is invaluable when development applications impact on core Council infrastructure, open space or the tree canopy.

An aggrieved applicant can appeal a development application determination to the Land and Environment Court. There is no merit based right of appeal given to a third party with appeals right limited to a failure of process or law.

Construction Certificates (CC)

Construction certificates are issued after the determination of a development application. These certificates give the effective go ahead to construct what was approved by the development application.

Construction certificates are assessed by State certified Building Surveyors who may be from the private sector or Council. Around 95% of construction certificates are issued within North

Sydney and the subsequent inspection and certification service is provided by private sector building surveyors.

Complying Development Certificates (CDC)

Complying Development Certificates combine both development approval and construction certification in one document. These certificates give the effective go-ahead to construct what was approved without the need for a further stage in the process.

Complying Development must fit the standards outlined in the *STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008* or Councils own LEP.

There is no merit-based assessment involved in the issuance of a CDC with the proposed works being required to fit within a highly prescribed “box”. Adjoining owner notification is required but there is no provision for making submissions.

Complying Development applications are assessed by State certified Building Surveyors who may be from the private sector or Council. Around 95% of Complying development certificates issued within North Sydney and the subsequent inspection and certification process are provided by private sector building surveyors.

Exempt Development

Exempt development covers those works which do not require formal approval by any authority. These works fit within the requirements outlined in *STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008* or in some cases Councils own LEP.

The maintenance of Heritage Items can be a form of exempt development but needs to be reviewed and agreed to by Council planners in accordance with the provisions of CI5.10.3 of NSLEP2013.

Building Information Certificates (BIC)

The issue of a BIC effectively prevents Council from taking any action that involves the issuance of a Compliance Order for a period of seven years. These certificates are often applied for to regularise unauthorised work by seeking confirmation that no demolition order will be served by Council. They can also be applied for a number of other reasons including property purchase or refinancing.

A BIC can only be issued by Council.

Compliance investigations

Associated with development and certification processes is the compliance work undertaken by Council Environmental Health and Building Compliance and Ranger Services Departments.

Their role includes:

- Investigation of unauthorised use and works;
- Investigation of complaints arising for development and other activities including pollution and traffic and parking concerns.
- Investigation of works not in conformity with a consent;
- Fire safety inspections, orders and follow up;
- Environmental Health inspection including food shops, skin penetration and cooling towers.

The policing function provided by these areas is invaluable in ensuring that development complies with approvals and to the greatest extent possible, development does not impact on resident's amenity.

The Role of the Planning Portal

The State Planning Portal was introduced by the Department of Planning around two (2) years ago to serve as a conduit of communication between applicants and Councils.

All applications are made, and subsequent communication occurs through the planning portal. What was once a two-way communication process now involves a third party being the Planning Portal. The seamless integration between the portal and Councils own systems remains a priority to be achieved. Participation in the portal is mandatory for applicants and Councils. To date there has been no move to require the lodgment of submissions through the portal,

Determination Authorities

At present, 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 the 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 be basis.

The 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.

The role of the Land and Environment Court.

The Land and Environment Court was established in 1980 as the first superior environmental court in the world. The court hears environmental, development, building and planning disputes.

The functions of the court, its processes and the ability of residents to become involved in its decision making will be covered by a separate report currently in development. Residents are most likely to be involved in development appeals. It is fair to say that significant concern is raised by the community regarding the courts relatively closed and outcome driven processes.

Current Community Engagement and Education

Covid 19 significantly impacted on the way Council Staff interacted with the Community. The introduction of compulsory local planning panels four years ago also changed the way Councillors, Council staff and the Panels as decision makers approached their various roles.

The shift to compulsory planning panels is likely one of the most significant changes to occur in planning since the introduction of the 1989 Environmental Planning and Assessment Act, with its aim to depoliticize the assessment process. It has been largely successful in doing this and in North Sydney case no doubt aided by Councils earlier voluntary adoption of Planning Panels.

The response to the change of procedures around DA's led to revision information available on Councils website. It also saw proactive education of community members particularly through the precinct system. This review is ongoing.

The Planning Advisor Role

An inherent part of the established planning advisor's role is to provide community education and advice.

The planning advisor role was created some 18 years ago to supplant the previous duty officer roster system that was previously in place. The objective was to have a dedicated resource that would assist both applicants and residents through the planning process, The service was seen as innovative at the time with presentations being given at conferences and other Councils adopting similar models.

Pre-Covid, education and support was done proactively through the precinct system and others, including addresses to individual precincts, combined precincts and industry groups. The planning process is also included in Precinct Member induction training and is one item that is always anticipated and well received. Both these services have restarted with the lessening of Covid restrictions.

This service also involved both the Managers of Strategic Planning and the Development Services.

Common points of interest expressed by community groups over the last few years has included the issue of existing use rights, heritage identification and management, the role of the various Panels, the role of the Councillors in the Planning process and the processes of the Land and Environment Court.

Increasingly community concern has turned to the rate of uptake of the development potential in the residential zones that has been largely there since the gazettal of the 1989 North Sydney LEP. The surge development of the North Sydney CDB, St Leonards and Crow's Nest have also caused significant concern.

With the lessening of Covid restrictions this service is returning with face-to-face appearances as illustrated by the Manager Development Services recent attendance at the Precincts induction training and Willoughby Bay Precinct. While the nature of the strategic and assessment functions is different, they are quite intertwined with both Managers being able

to speak with some authority on both areas. The Planning Advisors also perform this function and are sufficiently versed to answer most questions and refer on those which are specific or complex in nature for latter response.

All planning staff also understand the Compliance Process and can refer on those matters to the Environmental Health and Compliance team for a timely response if dictated by the nature of the enquiry.

Council Planners and interaction with potential submitters

Council assessment staff are available to discuss individual applications both with applicants and residents. Inherently the Assessor is required to take a neutral position in assessing and application and does so having regard to the controls and the submissions made. This requirement to act professionally is required by the Local Government Act 1993.

Typically, once an application is notified a neighbor will make use of the WWW to access Councils website or visit our customer service centre to make use of the facilities available there. Submissions are encouraged to be made by using the form available on Councils website. Email and postal submissions are also accepted but not preferred.

Requests for extensions of time in which to make submissions are almost always given and any submission received up to the reporting stage will be considered as a matter of practice.

Potential submitters will often ask what they should be objecting to. A typical response from officers will outline potential impacts such as view loss, overshadowing, privacy impacts, impacts on areas character, traffic and parking. These are all quite common elements of submission and subsequent assessment.

It is important to note that the most useful input into the development process by a resident is to clearly state how a development will impact on their amenity and the local environment. Code compliance issues are matters that will be identified in the assessment process.

Council's Customer Service Centre.

The Council's customer service staff provide considerable valuable assistance to property owners, applicants and residents in responding to development and planning concerns.

Customer Service is also the site of the first interaction with the planning portal in downloading, registering and accepting applications into Councils systems. Their assistance of less knowledgeable residents with planning enquiries needs is recognised and acknowledged.

The role of all Council staff.

It is a fundamental element of service at the local level that the individual be prepared to assist the community and other customers that they serve. This has informed Councils approach to customer service for many years.

Information available on the world wide web.

Information regarding the planning system available on the Council website is currently being reviewed for completeness and accuracy given recent amendments to the planning system. Much relevant information is available on the Department of Planning, Infrastructure and Environments website. The Land and Environment Court website also provides a valuable resource for those who wish to learn about the planning system.

But it is conceded that this information might be somewhat daunting to those without some familiarity with the planning system and basic overviews such as the one earlier in this document might assist the interested lay person understand how to assess detailed information. Part of our intended work over the next few months is to review the information on Councils website to ensure that it is accurate and user friendly.

Establishment Of A Planning Community Education Role

It can be seen from the above that many of the functions of the intended role are covered to a degree in Councils staff current interactions with residents. However, the focus of an individual staff resource to provide this desirable service has not been funded to date.

At various times enhancements to the current planning advisor roles, including the creation of an additional position have been flagged as a possible improvement to what is in many ways an industry leading service.

A focus by an individual staff resource to educate and respond to resident enquiries is not without merit and would be a best practice enhancement to what is a well resource service. If such a position was contemplated it would be best located within the City Strategy Team where it could be supported by expert staff who are already involved in the process.

If the Council were minded to support such an enhancement to the existing service it would be best accommodated in the 2023/24 budget process.

Conclusion

The NoM introduces the notion of adding further resources to assist in the community in understanding the planning system. Whilst it is seen as a desired enhancement to the current provision of information and support provided by Council officers to the community, it is currently unfunded and would be a significant undertaking in Councils current financial environment.

It is suggested the planning advisory team should focus on the return to proactive education of the community and funding considerations for a dedicated position be included in discussions for the 2023/24 financial year.