



Council Chambers
12 May 2023

The **3782nd MEETING** of **COUNCIL** will be held on Cammeraygal lands at the Council Chambers, North Sydney at **6.30pm** on Monday 22 May 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 of Meeting**
 - 2. Acknowledgement of Country**
 - 3. Apologies and applications for leaves of absence or attendance by audio-visual link by councillors**
 - 4. Confirmation of Minutes**
 - 5. Disclosures of Interests**
 - 6. Public Forum**
 - 7. Items by Exception**
 - 8. Mayoral Minutes**
Nil
 - 9. Reports of Committees**
 - 9.1 Traffic Committee Minutes – 21 April 2023
 - 9.2 Audit, Risk and Improvement Minutes – 28 April 2023
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10. Reports to Council

- 10.1 Matters Outstanding May 2023
- 10.2 Q3 Review of the Delivery Program/Operational Plan 2022/23
- 10.3 Quarterly Budget Review - March 2023
- 10.4 Investment and Loan Borrowings Report as at 30 April 2023
- 10.5 Planning Proposal 1/23 - 1-7 Rangers Road & 50 Yeo Street, Neutral Bay
- 10.6 Planning Proposal 8/22 - Post Exhibition Report - 15 Allister Street, Cremorne
- 10.7 Sydney Coastal Councils Group - Council Representative
- 10.8 Current Appeals and Results - May 2023

11. Notices of Motion/Questions with Notice

- 11.1 Notice of Motion 8/23 - Vaping in North Sydney LGA - Cr Santer

12. Matters of Urgency

Nil

13 Closure of Meeting

In the spirit of open, accessible and transparent government, the Council meetings of North Sydney Council will be streamed live via Council's website. By speaking at a Council meeting, members of the public agree to being recorded and must ensure their speech to the Council is respectful and use appropriate language. A person who uses defamatory, discriminatory or offensive language may be exposed to liability for which Council takes no responsibility. Any part of the meeting that is held in Closed Session will not be recorded.

TO: The Mayor, Zoë Baker and Councillors Beregi, Bourke, Gibson, Lamb, Lepouris, Mutton, Santer, Spenceley, and Welch

3781st MEETING OF COUNCIL TO BE HELD ON MONDAY 8 MAY 2023

1. OPENING MEETING

2. ACKNOWLEDGEMENT OF COUNTRY

3. APOLOGIES AND APPLICATIONS FOR LEAVES OF ABSENCE OR ATTENDANCE BY AUDIO-VISUAL LINK BY COUNCILLORS

4. CONFIRMATION OF MINUTES

THAT THE MINUTES of the previous 3781st Council Meeting held on Monday 8 May 2023 be taken as read and confirmed.

5. DISCLOSURES OF INTEREST

6. PUBLIC FORUM

7. ITEMS BY EXCEPTION

8. MINUTES OF THE MAYOR

Nil

9. REPORTS OF COMMITTEES

9.1 Traffic Committee Minutes - 21 April 2023

Report of Peita Rose, Governance Officer

Council is required to consider the Minutes of this Committee. Section 5.3.2 of the RMS Delegation to Council for the Regulation of Traffic states that: *All proposals recommended by the LTC must still be formally approved by the elected Council (or their sub-delegate), subject to certain limitations.*

This report presents the Minutes of the last meeting of the Traffic Committee held on 21 April 2023 for Council adoption. The Minutes are attached for information.

There are no matters referred from the Traffic Committee Meeting of 21 April 2023 to Council for adoption

The full reports to the Traffic Committee can be viewed at

<https://www.northsydney.nsw.gov.au/homepage/82/traffic-committee>.

Recommending:

1. THAT the Minutes of the Traffic Committee dated 21 April 2023 be received.

9.2. Audit Risk and Improvement Committee Minutes - 28 April 2023

Report of Ian Curry, Manager Council & Committee Services

The purpose of this report is to enable Council to consider the Minutes of this Committee as required under the Audit, Risk and Improvement Committee Charter.

This report presents the recommendations of the last meeting of the Audit, Risk and Improvement Committee held on 28 April 2023 for Council adoption. The minutes are attached for information.

There are no items from the meeting for Council determination.

Recommending:

1. THAT the Minutes of the Audit, Risk and Improvement Committee meeting held on 28 April 2023 be adopted in accordance with the Audit, Risk and Improvement Committee Charter.

10. REPORTS TO COUNCIL

10.1 Matters Outstanding May 2023

Report of Ian Curry, Manager Council & Committee Services

The purpose of this report is to report to Council on the status of resolutions arising from Mayoral Minutes, Notices of Motion, and Questions Without Notice.

Each month, a report is presented to Council on the status of resolutions arising from Mayoral Minutes, Notices of Motion, and Questions Without Notice.

The attached table has been updated to include resolutions up to the 26 April 2023 Ordinary Meeting of Council.

Recommending:

1. **THAT** the report be received.

10.2 Q3 Review of the Delivery Program/Operational Plan 2022/23

Report of Jenny Gleeson, Manager Corporate Planning

The purpose of this report is to present a progress update against the Delivery Program/Operational Plan 2022/23 for the third quarter (Q3), 1 January to 31 March 2023 with project status. The report also proposes amendments to the Delivery Program/Operational Plan.

The Operational Plan 2022/23 (Year 1 of the Delivery Program 2022-2026) was originally adopted by Council on 27 June 2022 and commenced 1 July 2022.

The Q3 Review presents a status update for projects scheduled to commence, or that were in progress from 1 January to 31 March 2023.

Of the total 220 projects in Q3 2022/23:

- 85% (188) of projects were completed/on track (blue and green status);
- 8% (17) of projects are delayed/not progress (red and amber status); and
- 7% (15) of projects are unfunded or discontinued.

The number of projects marked as unfunded or discontinued increased by 5.6% compared to the previous quarter. Nine of the 15 were duplicate projects or services or subsets of other projects or services.

Five amendments to the Delivery Program/Operational Plan have been identified, including four scheduling changes and one change to the project description.

Recommending:

1. **THAT** the Quarterly Review (January - March 2023) of the Operational Plan be received.

2. **THAT** the Council notes the remedial action for the projects that were not on track for period ending 31 March 2023.

3. **THAT** the Council adopts the identified amendments to the Delivery Program 2022-2026 and the Operational Plan 2022/23 as outlined in this report.

10.3 Quarterly Budget Review - March 2023

Report of Christian Menday, Manager Financial Services

The purpose of this reports is to review the budget for quarter ended 31 March 2022.

It highlights and tracks variances from the original budget. It also seeks approval to

adjust the 2022/23 budget accordingly. This report should be read in conjunction with Item 10.3 Q3 Review of the Operational Plan 2022/23.

- Decrease in Operating Deficit before Capital Grants and Contributions of \$368 thousand to \$2.06 million
- Increase in Operating Surplus including Capital Grants and Contributions of \$8.12 million to \$25.47 million due to increase Capital Grants and Contributions received.
- A reduction of Capital Works program of \$30.51 million due mostly due to deferral of works to 2023/24 as advised in Draft 2023/24 budget.

Recommending:

1. **THAT** Council adopts the Quarterly Budget Review Statement – March 2023 report in accordance with clause 203 of the Local Government (General) Regulation 2021
2. **THAT** Council acknowledges the budget amendments in this report.

10.4 Investment and Loan Borrowings Report as at 30 April 2023

Report of Christian Menday, Manager Financial Services

The purpose of this report is to provide Council with the details of the performance of Council's investments and details of loans for the month of April 2023.

This report outlines Council's investment portfolio and performance to 30 April 2023.

All investments have been made in accordance with the Act, Regulations, Council's Investment Policy and the specific conditions of the TCorp Loan Agreement.

For the month of April, the total portfolio (Term Deposits, Floating Rate Notes, and Bonds) provided a return of +0.22% (actual) or +2.67% p.a. (annualised), marginally under-performing the benchmark AusBond Bank Bill Index return of +0.30% (actual) or +3.77% p.a. (annualised). Council's investment adviser considers this underperformance to be temporary.

Returns on investments exceed original YTD budget by \$1.8 million due to higher than expect cash balances and higher than expected interest rates.

Recommending:

1. **THAT** the report on Investments held on 31 April 2023, prepared in accordance with clause 212 of the Local Government (General) Regulation 2021 and information on Loan Borrowings, be received.

10.5 Planning Proposal 1/23 - 1-7 Rangers Road & 50 Yeo Street, Neutral Bay

Report of Katerina Papas, Senior Strategic Planner

The purpose of this report is to present to Council the assessment report of Planning Proposal No. 1/23 for 1-7 Rangers Road and 50 Yeo Street Neutral Bay which seeks to amend North Sydney Local Environmental Plan 2013, following its review by the North Sydney Local Planning Panel on 19 April 2023.

On 11 January 2023, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to 1-7 Rangers Road and 50 Yeo Street Neutral Bay.

The Planning Proposal seeks to increase the increase the maximum building height control for the site from 16m to part 27m and part 33m; and increase the non-

residential floor space ratio control from 0.5:1 to 1.8:1.

The Planning Proposal includes a part six-storey and part eight-storey mixed-use indicative building comprising a supermarket in the subterranean level, retail and commercial floorspace in the podium, and approximately 63 residential apartments located above. A basement car park comprising 350 car spaces is proposed.

The Planning Proposal is accompanied by a non-binding letter of offer to enter into a Voluntary Planning Agreement (VPA) with Council to deliver a publicly accessible square and pedestrian through-site link connecting Rangers Road to Yeo Street, public wi-fi, and 88 basement car parking spaces for public use, in perpetuity. The Planning Proposal is also accompanied by a draft site-specific Development Control Plan (DCP) to guide the assessment of any future Development Application on the site.

On 19 April 2023, the North Sydney Local Planning Panel (NSLPP) considered the Planning Proposal and agreed that the proposal should not be supported for the following reasons:

- the Planning Proposal challenges Actions L1.5 and L3.2 of the North Sydney Local Strategic Planning Statement (LSPS), which requires Planning Proposals to be underpinned by an endorsed placed-based strategy;
- the Planning Proposal is inconsistent with Council's rescinded MRCPS and the objectives of Council's renewed Study for the Neutral Bay Town Centre, as it would facilitate an overly intense and visually dominant built form in its context and prevent the delivery of identified high-quality public open space by limiting the capacity of the adjacent site (183-185 Military Road) from contributing to the public domain;
- the height sought by the proposal is excessive given its stated objectives of achieving a part six-storey and part eight-storey building, and would result in unacceptable overshadowing impacts to residential dwellings to the south;
- the bulk, scale, and massing of the proposed built form is excessive in its context and does not provide an appropriate interface and transition to the low-scale residential areas immediately to the south of the site;
- the proposed publicly accessible plaza and pedestrian through-site link is of compromised amenity and reduced public benefit; and
- the quantum of proposed on-site parking is excessive and not justified in the context of the site's highly accessible location and cumulative impacts to the surrounding area.
- The Panel also noted in its recommendations that if a Planning Proposal were to progress for the subject site, an amended site-specific DCP would be appropriate to better guide and manage the bulk and scale, massing, open space, solar access, and pedestrian amenity of any future development on the site.

Recommending:

1. THAT Council resolves to not support the Planning Proposal proceeding to Gateway Determination, for the following reasons:

- the Planning Proposal challenges Actions L1.5 and L3.2 of the North Sydney Local Strategic Planning Statement (LSPS), which requires Planning Proposals to be underpinned by an endorsed placed-based strategy;
 - the Planning Proposal is inconsistent with Council's rescinded MRCPS and the objectives of Council's renewed Study for the Neutral Bay Town Centre, as it would facilitate an overly intense and visually dominant built form in its context
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and prevent the delivery of identified high-quality public open space by limiting the capacity of the adjacent site (183-185 Military Road) from contributing to the public domain;

- the height sought by the proposal is excessive given its stated objectives of achieving a part six-storey and part eight-storey building and would result in unacceptable overshadowing impacts to residential dwellings to the south;
- the bulk, scale and massing of the proposed built form is excessive in its context and does not provide an appropriate interface and transition to the low-scale residential areas immediately to the south of the site;
- the proposed publicly accessible plaza and pedestrian through-site link is of compromised amenity and reduced public benefit; and
- the quantum of proposed on-site parking is excessive and not justified in the context of the site's highly accessible location and cumulative impacts to the surrounding area.

2. THAT Council notifies the applicant of Council's determination in accordance with section 9 of the Environmental Planning and Assessment Regulation 2021.

3. THAT if a Planning Proposal were to progress for the subject site via an alternate approval pathway, that an amended site-specific Development Control Plan be prepared addressing the matters of concern identified in the Council Officer's assessment report and NSLPP recommendations. This includes:

- reduction of podium height and overall building height;
- removal of two-storey retail structure;
- demonstration of adjacent site integration;
- reconsideration of plaza design;
- provision of through-site link open-to-sky;
- reduction of on-site parking provision;
- maintaining the proposed 1.8:1 non-residential FSR; and
- provision of key worker and affordable housing components.

10.6 Planning Proposal 8/22 - Post Exhibition Report - 15 Allister Street, Cremorne

Report of Amita Maharjan, Strategic Planner

The purpose of this report is to outline the results of the public exhibition of a Council-initiated Planning Proposal (PP 8/22) to amend the North Sydney Local Environmental Plan (NSLEP) 2013 to list 15 Allister Street, Cremorne as a heritage item of local significance.

At its meeting of 10 October 2022, Council resolved to forward the Planning Proposal to the Department of Planning and Environment (DPE) for identification and listing of 15 Allister Street Cremorne as a local heritage item.

The Planning Proposal is supported by a detailed heritage assessment which demonstrates that the site meets the threshold for local heritage listing.

On 19 December 2022, the DPE issued a Gateway Determination permitting public exhibition of the Planning Proposal to commence after amending the Planning Proposal as required by the Gateway Determination.

The Planning Proposal was exhibited for a period of 43 calendar days (31 working days) from 6 March to 17 April 2023 in accordance with the Gateway Determination and Council's Community Engagement Protocol.

13 submissions were received during the exhibition period, including two received from government agencies. The 11 community submissions all supported the proposed heritage listing.

The submissions received from the government agencies (Heritage Council of NSW and North Shore Historical Trust) did not object to the proposal.

No objections were received from the owner(s) of the subject site at the time of preparation of this report.

Recommending:

1. **THAT** Council note the submissions made.
2. **THAT** Council endorse the Planning Proposal, as exhibited, forming Attachment 1 to this report.
3. **THAT** Council as a delegated Local Plan Making Authority make the Plan in accordance with section 3.36 of the Environmental Planning and Assessment Act 1979, consistent with the Gateway Determination.
4. **THAT** Council forward a copy of Council resolution and the Planning Proposal, as exhibited to the Parliamentary Counsel's Office and the DPE for the legal drafting of the instrument, to give effect to the Planning Proposal.
5. **THAT** Council notify all submitters of Council's decision.

10.7 Sydney Coastal Councils Group - Council Representative

Report of Ian Curry, Manager Council & Committee Services

The purpose of this report is for Council to determine a Councillor representative on the Sydney Coastal Council Group following the resignation of Councillor Bourke from the role.

Council is a member of the Sydney Coastal Councils Group Inc.

Councillor Bourke, who is Council's delegate has resigned.

Council may appoint an individual as its Delegate to represent the Member Council and exercise its rights at general meetings and an individual to sit on the Executive Committee. These cannot be the same individual.

Although delegates do not have to be from the elected body, most Member Councils send Councillors as their delegates.

Council originally resolved to nominate both Councillor Bourke and Councillor Santer however only one nominee was permitted. For this reason it is now recommended that Councillor Santer be appointed as Council's Annual General Meeting delegate.

Council is still required to nominate a Council representative to sit on the Sydney Coastal Councils Group Executive Committee noting it cannot be the same as Council's Annual General Meeting delegate.

Recommending:

1. **THAT** Council appoint Councillor Santer to the Sydney Coastal Councils Group for this term of Council, to replace Councillor William Bourke.
 2. **THAT** Council consider appointing a representative to sit on the Sydney Coastal Councils Group Executive Committee.
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3.THAT Council write to the Sydney Coastal Councils Group to inform them of Council's representative/s.

10.8 Current Appeals and Results - May 2023

Report of Simone Brew, Legal Services

The purpose of this report is to provide Council with information on current appeal and prosecution matters.

Attached is a list of current appeal and prosecution matters as at 30 April 2023 for Council's information.

Six attachments are provided, including a public listing and a separate Confidential report. The Confidential report includes additional detail (as highlighted) on the legal nature of the appeal, status update and legal issues relating to matters still afoot.

The most significant matter listed is IOF Custodian Pty Limited atf the 105 Miller Street North Sydney Trust v Special Minister of State [2022] NSWLEC 86 which delivered a decision in favour of Council. This was considered by Council at its meeting of 8 May 2023, where Council resolved to the Minister for Heritage, The Hon Penny Sharpe, MLC urging her to urgently act to take all steps necessary to direct the listing of the MLC Building on the State Heritage Register pursuant to s 34(2) of the Heritage Act 1979.

Should Council wish to discuss this report it is noted that the attached 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 report be discussed it should be considered in closed session.

Recommending:

1. THAT the report be noted.

2. THAT should Council resolve to debate or discuss this matter that the meeting be closed to the public in accordance with Section 10A(2) of the Local Government Act and the Local Government (General) Regulation 2005 for the reason listed below:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds 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.

11. NOTICES OF MOTION

11.1 11.1. Notice of Motion 8/23 - Vaping in North Sydney LGA - Cr Santer

1. **THAT** in its Smoke-Free Environment-Declared Public Areas Policy (D3-08), Council add the words: “*cigarettes, vaping and any future yet to be determined smoking methods*” to sections 1.2, 1.3, 4.1, 4.4, 4.6,4.7, 4.8, 4.9 and 4.10 of the Policy.

2. **THAT** a new paragraph be inserted in the policy, noting the following:

Guidelines on E-cigarettes and smoke free laws issued by the NSW Department of Health state that: “People cannot use e-cigarettes in smoke-free areas under the *Smoke-free Environment Act 2000*...Individual establishments and workplaces such as businesses, councils...may develop their own smoke-free policies to ban the use of e-cigarettes within the premises”.

3. **THAT** the amended Smoke-Free Environment-Declared Public Areas Policy be endorsed for public exhibition for a minimum period of 42 days.

4. **THAT** a further report be provided to Council following the conclusion of the public exhibition period for the purpose of considering any submissions received and adopting the amended Smoke-Free Environment-Declared Public Areas Policy.

BACKGROUND (*submitted by the proposer*)

This amendment would complement and be in line with policies adopted by the Federal and NSW State governments.

The Federal Government has recently announced policies to address the problem of vaping, including:

- stopping the import of non-prescription vapes;
- increasing the minimum quality standards for vapes, including restricting flavours, colours and other ingredients;
- requiring pharmaceutical-like packaging;
- reducing allowed nicotine concentrations and volumes; and
- banning all single use vapes.

In particular, it identified the problem of youth vaping and promised, alongside cooperative State governments, to implement measures to stamp out the growing black market in illegal vaping products and prevent young people from trading their vapes for cigarettes.

The NSW Department of Health points out that E-cigarettes are not risk-free. They may expose users, bystanders, and passers-by to chemicals and toxins, such as propylene glycol, glycerol or ethylene glycol that cause health effects; and may increase the risk of developing cardiovascular, cancer and respiratory diseases. E-liquids or vapour may also contain potentially harmful chemicals not present in smoke from cigarettes.

NSW has therefore introduced a ban on use of cigarettes in smoke-free areas under the *Smoke-free Environment Act 2000*. The smoke-free areas include:

- All enclosed public spaces
- Outdoor public places:
 - within 10 metres of children’s play equipment in outdoor public
 - public swimming pools
 - spectator areas at sports grounds
 - public transport stops and platforms

- - within 4 metres of a pedestrian access to a public building
- - commercial outdoor dining areas
- - in a car with a child under 16 years of age in the vehicle.

It states that “The NSW Government has introduced these laws to protect the public from second-hand vapour in areas where it is difficult to avoid.”

On enforcement, it states that “NSW Health inspectors conduct regular compliance monitoring and enforcement activity. Inspectors will enforce the ban on using e-cigarettes where smoking is banned. They can issue cautions or on the spot fines of \$300 to people who break the law”.

Arguments against Council issuing complementary controls on vaping include that it is a legitimate tool for smokers to transition out of smoking. A number of consumer studies have, however, shown that, while this may be a legitimate argument for enabling vaping under GP prescription in these cases, allowing unrestricted vaping is having the opposite effect - it is introducing children and young adults to dangerous nicotine addiction, and is providing a pathway for these people to uptake smoking. It may also be argued that, if Council adopts these vaping controls it would be attempting to restrict the use of a legally available product. However, it should be pointed out that these controls are already in place to restrict cigarette smoking in public; and cigarettes, have fewer legal restrictions on their sale than vapes.

12. Matters of Urgency

Nil

13. CLOSURE
