

## **7.1. Legal and Planning Committee Minutes - 8 March 2021**

**AUTHOR:** Josh Jongma, Governance Coordinator

**ENDORSED BY:** Joseph Hill, Director City Strategy

### **ATTACHMENTS:**

1. Legal and Planning Committee 8 March 2021 - Minutes [7.1.1 - 9 pages]

### **PURPOSE:**

Council is required to consider the Minutes of this Committee under the Code of Meeting Practice.

### **EXECUTIVE SUMMARY:**

This report presents the recommendations of the last meeting of the Legal and Planning Committee held on 8 March 2021 for Council adoption. The minutes are attached for information.

### **FINANCIAL IMPLICATIONS:**

Nil.

### **RECOMMENDATION:**

1. **THAT** the Current Appeal and Results - March 2021 report be received. (3.8)
2. **THAT** Councillors are briefed immediately with the NCAT decision 136490/20 when it is handed down. (3.8)
3. **THAT** Council extend the current community and alternate representative appointments to the Sydney North Planning Panel until the March 2022 Ordinary Council Meeting, with recruitment to be commenced in November 2021. (3.1)
4. **THAT** Council write to the Minister for Planning and the Planning Secretary of the Department of Planning and Environment expressing its strong objection to the recent amendments to State Environmental Planning Policy (Affordable Rental Housing) 2009 to permit "Build-to rent" housing in the *B3 Commercial Core* zone based on the reasons outlined in this report. In particular, that this change undermines significant strategic planning work undertaken by Council in addressing the desired outcomes of the State Government's own Regional and District Strategic Plans. (3.2)
5. **THAT** the North Sydney Local Planning Panel Annual Report 2019/20 report be received. (3.3)
6. **THAT** the Development Applications Received 1 October 2020 - 31 December 2020 report be received. (3.4)

7. **THAT** the Development Applications Received 1 July 2020-30 September 2020 report be received. (3.5)
8. **THAT** the Variations to Development Standards - 2020/2021 Q1 Reporting Period report be received. (3.6)
9. **THAT** the Variations to Development Standards – 2020/21 Q2 Reporting Period report be received. (3.7)

## **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

### **5. Our Civic Leadership**

5.2 Council is well governed and customer focused

## **BACKGROUND**

In accordance with Council's Code of Meeting Practice:

*20.24 The minutes of meetings of each Committee of the Council must be confirmed at a subsequent meeting of the committee.*

The Charter of the Legal and Planning Committee states:

*11.3 The recommendations arising at Committee meetings are to be submitted to the next available Council meeting for adoption. Any Councillor, irrespective of whether that Councillor is a member that Committee may be the mover or seconder of such recommendations.*

## **CONSULTATION REQUIREMENTS**

Community engagement is not required.

## **DETAIL**

This report presents the recommendations of the last meeting of the Legal and Planning Committee held on 8 March 2021 for Council adoption. The minutes are attached for information.

**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 8 MARCH 2021 AT 6.00PM.**

**PRESENT**

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

**Staff:** Margaret Palmer, Acting General Manager  
Joseph Hill, Director City Strategy  
Ben Boyd, Executive Strategic Planner  
Craig Winn, Solicitor  
Ian Curry, Manager Governance & Committee Services  
Josh Jongma, Governance Co-ordinator (Minutes)

**Visitors:** Nil.

**Apologies** Councillors Barbour and Carr.

At the commencement of business (6:21pm) Councillors present in the room were: Councillor Gibson in the Chair, Councillors Brodie, Drummond, Keen and Mutton.

No Councillors were present remotely

**Declarations of Interest**

Nil.

**1. Minutes**

The Minutes of the previous meeting held on 12 October 2020, copies of which had been previously circulated, were taken as read and confirmed.

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

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Voting was as follows:

For/Against 5/0

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	Absent	

*Item 3.8 was brought forward in the Agenda to be the first item of business*

#### **Closed Session**

It was moved by Councillor Mutton and seconded by Councillor Gibson and **carried**, **THAT** the meeting be closed to the public to discuss the following matters for the reasons identified:

#### **3.8 Current Appeals and Results – March 2021.**

Reason: 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 grounds of legal professional privilege.

The recording was stopped, and the meeting recommenced in Closed Session at 6.25pm.

#### **Open Session**

The meeting was re-opened to the public at 6.50pm and the recording resumed. During the Closed Session, the Committee had recommended as follows:

2.

#### **Resolved to Recommend**

1. **THAT** the Current Appeal and Results - March 2021 report be received.
2. **THAT** Councillors are briefed immediately with the NCAT decision 136490/20 when it is handed down.

#### **3.1 Sydney North Planning Panel - Membership Nomination 2021**

Report of Stephen Beattie, Manager Development Services

To recommend that Council extend the current community representative appointments to the Sydney North Planning Panel until the first ordinary Council meeting in March 2022.

On 25 November 2019, Council considered a report on the nomination of members to the Sydney North Planning Panel (SNPP) for the 2019-20 reporting period. Council resolved:

1. *THAT Council nominate Kenneth Robinson and Virginia Waller as the community representatives to represent North Sydney Council on the Sydney North Planning Panel, with Councillor Barbour and Kevin Alker as alternates up to 31 March 2021.*
2. *THAT the Panel membership be reviewed following the Local Government elections in September 2020.*
3. *THAT community representatives continue to be paid \$750 per Panel meeting.*
4. *THAT Council write to Veronique Marchandreau and Michel Reymond expressing gratitude for their service to the Sydney North Planning Panel on behalf of our community.*

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Kenneth Robinson and Virginia Waller respectively accepted Council’s nomination and continue to serve as community representatives on the Sydney North Planning Panel, with Councillor Barbour and Kevin Alker as the alternate community representatives.

These appointments expire in March 2021 aligned with the original Local Government election date in September 2020. Given that the Local Government elections have been deferred from September 2020 to September 2021, this report seeks Council endorsement for extending the current community representative appointments to the Panel until the Ordinary Council meeting in March 2022 thus allowing the newly formed Council to select their representatives.

**Recommending:**

**1. THAT** Council extend the current community and alternate representative appointments to the Sydney North Planning Panel until the March 2022 Ordinary Council Meeting, with recruitment to be commenced in November 2021.

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

The Motion was put and **carried**

3.

**Resolved to Recommend:**

**1. THAT** Council extend the current community and alternate representative appointments to the Sydney North Planning Panel until the March 2022 Ordinary Council Meeting, with recruitment to be commenced in November 2021.

Voting was as follows:

For/Against 5/0

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		Absent

### 3.2 Build To Rent Planning Regime

Report of Ben Boyd, Executive Strategic Planner

To advise Council of recent changes to the planning system to allow the delivery of “Build to Rent” housing and its likely implications, particularly in the North Sydney CBD.

In 2018, the State Government commenced work on policy changes to make it easier to deliver social housing with a particular emphasis on delivering “build to rent” (BTR) dwellings. BTR development generally comprises the provision large-scale, purpose-built rental housing that is held in single ownership and professionally managed and offering the potential to provide more rental housing choice.

New tax incentives were legislated in mid-2020, giving a 50% concession on land tax for BTR housing up until 2040 where delivered by private consortia. This has been recently followed by amendments made to the planning system on 12 February 2021, to minimise impediments to the delivery of this form of development.

The new BTR housing provisions:

- allow for development of BTR housing containing more than 50 dwellings on any land where residential flat buildings, multi dwelling housing or shop top housing is permitted and within the *B3 Commercial Core*, *B4 Mixed Use* and *B8 Metropolitan Centre* zones;

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- prevent residential subdivision of BTR developments for a minimum of 15 years in all instances, except within the *B3 Commercial Core* zone where the entire development cannot be subdivided into separate lots in perpetuity;
- require a consent authority to be satisfied that a BTR housing development in the *B3 Commercial Core* zone will be readily capable of conversion to commercial premises;
- application of car parking rates;
- apply a council's height and FSR standards;
- support the flexible application of the Apartment Design Guide; and
- introduce a State Significant Development (SSD) pathway for BTR housing developments.

All forms of residential development are currently prohibited in the *B3 Commercial Core* zone, under North Sydney Local Environmental Plan (NSLEP) 2013. Council has prohibited residential development within the commercial core of the North Sydney CBD for approximately 20 years to preserve the economic integrity of the Centre and ensure its ongoing economic employment role. The introduction of residential development not only reduces the capacity to deliver employment floor space, but it introduces new constraints (i.e. privacy, views, overshadowing etc) to future commercial development and undermines the prestige of the CBD.

This change in policy position is also contrary to the objectives and outcomes of Direction 1.1 - Business and Industrial zones to the s.9.1 Ministerial Directions which seeks to preserve commercial floorspace and ensure viable centres. It is also contrary to some of the Objectives, Strategies, Actions of the Sydney Region and North District Plans. In particular, it does not “*grow jobs in the centre [North Sydney CBD] and maintain a commercial core*”. This in turn undermines the significant of level of work undertaken by Council in preparing its now endorsed Local Strategic Planning Statement, which aligns with the Regional and District Plans. Furthermore, this change is of such significance, it is also shared by neighbouring councils, Local Government NSW and the Planning Institute of Australia. In this context, the policy change is strongly opposed.

It is unknown what the potential financial implications for this policy change will be. However, it is likely to have some level of impact of future Council general rate revenue due to a change in land use.

**Recommending:**

**1. THAT** Council write to the Minister for Planning and the Planning Secretary of the Department of Planning and Environment expressing its strong objection to the recent amendments to State Environmental Planning Policy (Affordable Rental Housing) 2009 to permit “Build-to rent” housing in the *B3 Commercial Core* zone based on the reasons outlined in this report. In particular, that this change undermines significant strategic planning work undertaken by Council in addressing the desired outcomes of the State Government's own Regional and District Strategic Plans.

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

The Motion was put and **carried**

**4. Resolved to Recommend:**

**1. THAT** Council write to the Minister for Planning and the Planning Secretary of the Department of Planning and Environment expressing its strong objection to the recent amendments to State Environmental Planning Policy (Affordable Rental Housing) 2009 to permit “Build-to rent” housing in the *B3 Commercial Core* zone based on the reasons outlined in this report. In particular, that this change undermines significant

strategic planning work undertaken by Council in addressing the desired outcomes of the State Government’s own Regional and District Strategic Plans.

Voting was as follows:

For/Against 5/0

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		Absent

### 3.3 North Sydney Local Planning Panel Annual Report 2019/20

Report of Stephen Beattie, Manager Development Services

The purpose of this report is to explore the activities of the North Sydney Local Planning Panel within the 2019/20 financial year.

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.”*

Reports are provided annually based on the financial year.

The activities of the panel are budgeted for in an ongoing sense. There are no financial implications flowing from this report.

**Recommending:**

**1. THAT** the North Sydney Local Planning Panel Annual Report 2019/20 report be received.

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

The Motion was put and **carried**

**5. Resolved to Recommend:**

**1. THAT** the North Sydney Local Planning Panel Annual Report 2019/20 report be received.

Voting was as follows:

For/Against 5/0

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		Absent

### 3.4 Development Applications Received 1 October 2020 - 31 December 2020

Report of Stephen Beattie, Manager Development Services

This report provides a list of Development Applications received by Council between 1 October and 31 December 2020. 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.

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During this period 148 applications of all types were received, of those, 90 applications have already been determined as of 17 February 2021.

A total of 162 applications were determined in Q2 2020/21 with a mean processing time of 69 days.

**Recommending:**

**1. THAT** the Development Applications Received 1 October 2020 - 31 December 2020 report be received.

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

The Motion was put and **carried**

**6. Resolved to Recommend:**

**1. THAT** the Development Applications Received 1 October 2020 - 31 December 2020 report be received.

Voting was as follows:

For/Against 5/0

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		Absent

**3.5 Development Applications Received 1 July 2020-30 September 2020**

Report of Stephen Beattie, Manager Development Services

This report provides a list of Development Applications received by Council between 1 July and 30 September 2020. 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 of 1 July – 30 September 2020, 148 applications of all types were received, of those, all but two applications have already been determined as of 17 February 2021.

A total of 151 applications were determined in Q1 2020/21 with a mean processing time of 71 days.

**Recommending:**

**1. THAT** the Development Applications Received 1 July 2020-30 September 2020 report be received.

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

The Motion was put and **carried**

**7. Resolved to Recommend:**

**1. THAT** the Development Applications Received 1 July 2020-30 September 2020 report be received.

Voting was as follows:

For/Against 5/0

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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		Absent

### 3.6 Variations to Development Standards - 2020/2021 Q1 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. This report addresses those requirements for Q1 2020/2021.

Any variation to a development standard of greater than 10% in assessing a development application must be reported to the North Sydney Local Planning Panel for determination. Variations under 10% can be decided 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:

1. 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.
2. 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.
3. 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.
4. 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 Quarter 1 (Q1) of the financial year 2020/21. Of 151 applications determined in the quarter, 15 variations in total are reported, 8 by the North Sydney Local Planning Panel and 7 under delegated authority.

**Recommending:**

1. **THAT** the Variations to Development Standards - 2020/2021 Q1 Reporting Period report be received.

The Recommendation was moved by Councillor Mutton and seconded by Councillor Keen.

The Motion was put and **carried**

**8. Resolved to Recommend:**

1. **THAT** the Variations to Development Standards - 2020/2021 Q1 Reporting Period report be received.

Voting was as follows:

For/Against 5/0

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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		Absent

### 3.7 Variations to Development Standards - 2020/2021 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. This report addresses those requirements for Q1 2020/2021.

Any variation to a development standard of greater than 10% in assessing a development application must be reported to the North Sydney Local Planning Panel for determination. Variations under 10% can be decided 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:

1. 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.
2. 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.
3. 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.
4. 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 Quarter 2 (Q2) of the financial year 2020/21. Of 162 applications determined in the quarter, 12 variations in total are reported, 8 by the North Sydney Local Planning Panel and 4 under delegated authority.

**Recommending:**

1. **THAT** the Variations to Development Standards – 2020/21 Q2 Reporting Period report be received.

The Recommendation was moved by Councillor Mutton and seconded by Councillor Keen.

The Motion was put and **carried**

9. **Resolved to Recommend:**

1. **THAT** the Variations to Development Standards – 2020/21 Q2 Reporting Period report be received.

Voting was as follows:

For/Against 5/0

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		Absent

### 3.8 Current Appeals and Results – March 2021.

*(This item was considered in Closed Session, see Minute No.2)*

The meeting concluded at 7.06pm.

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CHAIRPERSON

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GENERAL MANAGER

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