

10.3. 6 John Street, McMahons Point

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ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS: Nil

PURPOSE:

The purpose of this report is to provide Council with recommendations regarding Stannards Pty Ltd appeal against Council's Development Control Order, dated 1 February 2022.

EXECUTIVE SUMMARY:

On 1 February 2022, Council issued a Development Control Order (DCO) to Stannards Marine Pty Ltd, under Schedule 5 of the Environmental Planning and Assessment Act 1979 requiring the following:

1. Demolish the unauthorised Caretakers Unit; and
2. Demolish the unauthorised Relocatable Shed; and
3. Comply with Condition D51 of Development Consent 1164/90.

Staff have confirmed that the unauthorised Caretakers Unit has been demolished to comply with one of the DCO terms.

Although complying with one of the Terms of the Order, Stannards appealed the remaining two (2) items of the DCO and the first directions hearing is set for 29 March 2022.

The associated Confidential Report to this item addresses the confidential legal advice received by Council. If the Council wishes to discuss the report, the meeting should be closed to the public to do so in accordance with s10A(2)(g) of the Local Government Act (LGA).

RECOMMENDATION:

- 1. THAT** the meeting be closed to the public in accordance with Section 10A(2) (g) 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.
- 2. THAT** the report be treated as confidential and remain confidential unless Council determines otherwise.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

3. Our Future Planning

3.5 North Sydney is regulatory compliant

BACKGROUND

Since the lodgement and consideration of the Floating Dry Dock development application in 2019 there has been an escalation of concerns raised by the surrounding residents regarding the operations of the site under Development Consent 1164/90. The concerns raised triggered a number of compliance investigations consuming significant internal resources and numerous external legal advice.

At the Council meeting held on 27 May 2019, Council resolved the following:

- 1. THAT Council take all necessary action to ensure compliance with the conditions of consent of DA 1164/90 for redevelopment of the existing boat maintenance facility at 6 John Street, McMahons Point.*
- 2. THAT, in particular, such action include all steps necessary to ensure the enforcement of the public benefit condition D51 which required the developer to "provide a public jetty extending from land below John Street, approximately in the location of the former sea baths, subject to the design and position being acceptable to Council."*

Since this resolution, staff have issued a number of Development Control Orders. One DCO issued in March 2020 was the subject of an appeal to the Land and Environment Court. In 2021 the parties engaged in mediation and conciliation of these proceedings. The process gave rise to a Deed of Settlement and sec. 34 agreement which became effective on 23 December 2021.

Council, at its meeting on 24 January 2022, resolved the following:

1. THAT Council be provided with an urgent report on the status of compliance issues, investigations and actions to enforce the conditions of consent of DA 1164/90 for redevelopment of the existing boat maintenance facility at 6 John Street, McMahons Point and compliance with the terms of the S34 agreement and subsequent Court Orders made by the Court in respect of Land and Environment Court Proceedings No.2020/00122833, including, but not limited to, the enforcement of:

(a) the public benefit condition D51 which required the developer to "provide a public jetty extending from land below John Street, approximately in the location of the former sea baths, subject to the design and position being acceptable to Council";

(b) the numbers of boats to be permitted on the site at any time;

(c) the unauthorised caretaker's cottage and other unauthorised structures; and

(d) environmental and operational conditions including noise standards and industrial equipment.

A progress report was provided to Council at the 14 March 2022 Legal and Planning Committee meeting.

Council is now in the position to determine the next course of action in relation to the February 2022 Order appeal.