

**13 October 2021**

At 5.00 pm

## **Local Planning Panel**



**Agenda**

- 1. Disclosures of Interest**
- 2. Confirmation of Minutes**
- 3. Development Application: 15 O'Riordan Street and 44-54 Bourke Road, Alexandria - D/2021/672**
- 4. Local Planning Panel - Delegations**
- 5. Proposed Schedule of Local Planning Panel Meetings for 2022**



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2. Check the recommendation in the LPP report before speaking, as it may address your concerns so that you just need to indicate your support for the recommendation.
3. Note that there is a three minute time limit for each speaker and prepare your presentation to cover your major points within that time.
4. Avoid repeating what previous speakers have said and focus on issues and information that the LPP may not already know.
5. If there is a large number of people interested in the same item as you, try to nominate three representatives to speak on your behalf and to indicate how many people they are representing.

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## **Item 1.**

### **Disclosures of Interest**

In accordance with section 4.9 of the Code of Conduct for Local Planning Panel Members, all Panel members are required to sign a declaration of interest in relation to each matter on the agenda.

Pursuant to the provisions of Clause 15 of Schedule 4B of the Environmental Planning and Assessment Act 1979, members of the Local Planning Panel are required to disclose pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

Panel members are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting of the Local Planning Panel.

In both cases, the nature of the interest must be disclosed.

## **Item 2.**

### **Confirmation of Minutes**

Minutes of the following meeting of the Local Planning Panel, which have been endorsed by the Chair of that meeting, are submitted for noting:

Meeting of 22 September 2021

**Item 3.**

**Development Application: 15 O'Riordan Street and 44-54 Bourke Road,  
Alexandria - D/2021/672**

**File No.:** D/2021/672

**Summary**

**Date of Submission:** 18 June 2021

**Applicant:** City of Sydney

**Owners:** City of Sydney and Alpha Distribution Ministerial Holding Corporation

**Planning Consultant:** AECOM

**Cost of Works:** \$0

**Zoning:** B7 - Business Park. The proposal is defined as subdivision and is permissible.

**Proposal Summary:** The application seeks consent for the subdivision of two existing lots into six lots. The subdivision will facilitate the delivery of a new east/west connector road that extends from Geddes Avenue in Green Square Town Centre to Bourke Road in Alexandria. It forms part of a Council project known as the 'Green Square to Ashmore Connector Road'. The subdivision will assist in creating a section of the road between O'Riordan Street and Bourke Road.

Proposed Lots 2 and 5 will establish land for the future road. The remaining parcels are residual and will be consolidated with adjacent properties. No works or dedication are proposed with this DA.

The application was notified for a 21-day period between 2 July 2021 and 26 July 2021. No submissions were received.

The application has been assessed as being generally consistent with the relevant provisions of the Sydney LEP 2012 and Sydney DCP 2012.

The application has been referred to the LPP as the City of Sydney is the applicant and land owner of one of the existing lots.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:** Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)

Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

State Environmental Planning Policy No 55 - Remediation of Land

State Environmental Planning Policy (Infrastructure) 2007

**Attachments:** A - Recommended Conditions of Consent

B - Plan of Proposed Subdivision

**Recommendation**

It is resolved that consent be granted to Development Application No. D/2021/672 subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development satisfies the relevant strategy, objectives and provisions of both the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (B) The proposal creates the required allotment to allow for the future delivery and dedication of a public road to form part of the Green Square to Ashmore Connector Road project.



## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 37 in DP 817055 (land in the ownership of Council) and Lot 7 in DP 818246, known as 44-54 Bourke Road and 15 O'Riordan Street, Alexandria. It is irregular in shape with area of approximately 7.736 hectares.
2. The site has a street frontage of 68.9 metres to Bourke Road and 45 metres to O'Riordan Street. The site is located close to the intersection of O'Riordan Street and Wyndham Street. The land is fairly level from the O'Riordan St frontage, then dropping approximately 3 metres down an embankment along the common rear boundary between the two subject lots. The land is then fairly level to its Bourke Road frontage.
3. Existing Lot 7 is affected by an existing stratum easement for railway transit located from 12m to 19m below ground.
4. The site is vacant, with storage of some items, empty rubbish skips and trucks parking on the 44-54 Bourke Road property.
5. The surrounding area is characterised by a mixture of land uses, primarily being industrial and commercial. Adjoining to the south-west of the O'Riordan St frontage is a 25 year old high clearance warehouse with two levels of offices above, formerly occupied by the Red Cross.
6. Adjoining to the north-east is a warehouse and office building occupied by '13Cabs'. On the opposite side of O'Riordan street is vacant land, approved and soon to be constructed as the eastern section of the Green Square to Ashmore Connector.
7. Adjoining to the south of the Bourke Road frontage is the Ausgrid Network Management Facility, a two level office building. To the north is the Alexandria Events Depot, a two storey commercial building. On the opposite side of the Bourke Road frontage is Bowden Street, which the Connector will feed in to.
8. The site is vacant, and not within a heritage conservation area.
9. A site visit was carried out on 26 August 2021. Photos of the site and surrounds are provided on the following pages.



Figure 1: Aerial view of site and surrounds flown 6 August 2021





Figure 2: Site viewed looking north-west from O'Riordan Street



Figure 3: Site viewed looking south-east from the intersection of Bourke Road and Bowden Street

## History Relevant to the Development Application

10. The Green Square to Ashmore Connector road was originally considered in the Green Square Street Structural Masterplan 1997 where a preliminary route alignment was proposed. The Green Square Transport Management and Accessibility Plan further identified the proposed Connector Road in 2008, to improve vehicular access to the Green Square Town Centre. The Green Square to Ashmore Connector Road is currently identified in the Sydney Development Control Plan 2012.
11. On 20 November 2017 a Review of Environmental Factors (REF) was undertaken. An REF is an environmental assessment undertaken to assist in meeting the requirements of Part 5 of the Environmental Planning and Assessment Act 1979 (EP&A Act). It examines the likely environmental impacts of a proposal and identifies measures required to mitigate adverse impacts to the environment. It is completed before a council undertakes a defined activity, or grants approval allowing an external party to undertake an activity.
12. Relevant environmental planning legislation was considered by the REF including State Environmental Planning Policy (Infrastructure 2007) and Commonwealth and State environmental and planning legislation. The REF considered the proposed Connector Road to be consistent with Sustainable Sydney 2030 which aims to improve road and transport access to the Green Square Town Centre, which is a planned Town Centre.
13. In addition to legislative requirements, the REF assessed the integral engineering, planning and environmental issues such as traffic, transport and access, flooding and hydrology, landscape and visual and geotechnical and contamination. The REF recommended mitigation measures to minimise the impacts of construction. The project was approved by the City under Part 5 of the EP&A Act on 20 November 2017.
14. A review of the REF has now been undertaken, and the 28 day public consultation period closed on 17 May 2021. The revised proposal allows for the road to be used by local and emergency vehicles as well as public transport, pedestrians and cyclists. In order to prioritise walking, riding and public transport, other private vehicles will not be able to use this street. The revised REF is yet to be authorised and executed. As it only affects internal bus lanes and pedestrian routes, and does not change the proposed boundaries of the Connector, it has no impact on this DA.

## Development Applications

15. The following development application is relevant to the current proposal:
  - (a) **D/2019/732** – 15 O’Riordan Street - Lot 7
    - Deferred development consent under section 4.16(3) of the EP&A Act was granted on 11 March 2020 for demolition, subdivision, remediation and construction of Ausgrid network management facility. The consent has not yet been activated.
    - The new construction under this consent includes a three storey office building, 47sqm food and drink premises and a heavy vehicle driveway on the Bourke Road frontage, and a depot building and 241sqm shop on the O’Riordan Street frontage.

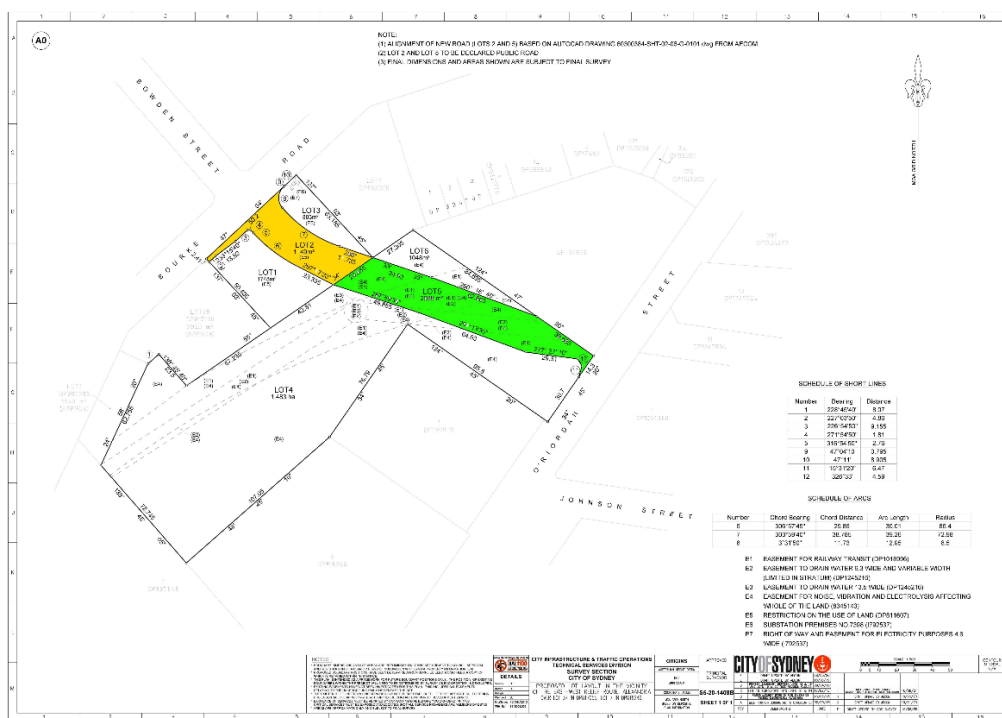
- The approved subdivision plan stamped under this consent provides for a proposed Lot 5 for future road purposes. Lot 5 on this particular stamped plan has essentially the same dimensions as Lot 5 in the current proposal, other than very minor insignificant differences. Civil works for road construction was not included in this DA.

### Amendments

- Following a preliminary assessment of the proposed development by Council Officers, a request for amendments to the plan of proposed subdivision was sent to the applicant. The plan of proposed subdivision included two additional lots which were not intended to be subdivided under this application. The applicant was asked to remove these from the plan.
- The applicant responded to the request on 19 August 2021, and submitted an amended plan with 6 lots and the easement for railway transit shown.

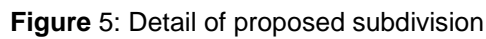
### Proposed Development

- The application seeks consent for the following:
  - Six lot Torrens title land subdivision to provide lots for the Green Square to Ashmore Collector road to be delivered by the City.
  - The proposal is for subdivision only - no works are proposed, and no dedication will occur.
- Plans of the proposed development are provided below.



**Figure 4:** Plan of Proposed Subdivision. Lots 2 and 5 will make up the new road and the remaining residual lots will be consolidated into adjacent properties.





## Assessment

20. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## State Environmental Planning Policies

### State Environmental Planning Policy No 55 - Remediation of Land

21. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
22. The subject application does not propose any works or formal change of use of the lots. As such, further consideration of SEPP 55 is not required as part of the assessment of the subdivision application.
23. The remediation of the sites to make them suitable for their future intended use will need to occur as part of the relevant approval process for both the road construction and the change of use of residual lots.

### State Environmental Planning Policy (Infrastructure) 2007

24. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.
25. The future construction of the road has been the subject of a separate Part 5 assessment under the Environmental Planning and Assessment Act 1979 (the REF). This separate assessment has examined and fully taken into account all relevant matters.
26. The DA the subject of this report is only for subdivision of the land with no works proposed. All relevant works were considered under the REF. Nevertheless, in considering the provisions of the SEPP, the following matters are noted:
  - The site is above the airport link rail corridor, located from 12 to 19 metres below ground level.
  - As no works are proposed under this consent, there will be no immediate impact on O'Riordan Street, which is a classified road. It is noted that the REF proposes that both intersections of the road will be signalised when constructed.
  - As part of the REF, consultation with Transport for NSW, the Roads and Maritime Services and Sydney Water has occurred and will be addressed.

## Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

### Clause 85 – Development adjacent to rail corridors

27. The application lies above the subterranean Mascot to Green Square rail corridor and was subsequently referred to Transport for NSW (TfNSW) for comment. TfNSW will recommend conditions with the next stage of development consent, being the subdivision of the adjoining site.

## **Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations**

### **Clause 101 – Development with frontage to classified road**

28. The application is subject to Clause 101 of the SEPP as the site has frontage to O'Riordan Street which is a classified road.
29. The proposed development satisfies the provisions of Clause 101 subject to conditions of consent. No works are approved as part of this land subdivision.
30. 'Agreement in Principle' has been provided by Transport for NSW for the intersection traffic signals and cycleways.
31. An issue with the angle of the intersection with O'Riordan Street was noted in comments in the Transport for NSW response. It is noted that concurrence will be sought from TfNSW under Section 138 of the Roads Act 1994 at the stage where the adjoining "13cabs" site is subdivided after negotiations for acquisition are concluded. Further subdivision will provide land necessary to achieve the full 22 metre width of the Connector road.

## **Local Environmental Plans**

### **Sydney Local Environmental Plan 2012**

32. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

### **Part 2 Permitted or prohibited development**

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B7 Business Park zone. The proposed development is defined as subdivision and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

### **Part 5 Miscellaneous provisions**

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is not located within a heritage conservation area and contains no heritage items. No demolition or other works are proposed with this application.



**Part 6 Local provisions – height and floor space**

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	N/A	Clause 6.21(2) excludes this application, as it does not involve the erection of a new building or amendment to an existing one.

**Part 7 Local provisions – general**

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.15 Flood planning	Yes	Flooding issues were considered with the REF and will be the subject of further detailed design for the future road
7.19 Demolition must not result in long term adverse visual impact	Yes	No demolition works are proposed as part of the subject application.
7.20 Development requiring or authorising preparation of a development control plan	Yes	The proposal is consistent with the route identified in the Sydney DCP 2012.

**Development Control Plans****Sydney Development Control Plan 2012**

33. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

**Section 2 – Locality Statements**

34. The site is located within the 2.10.4 East Alexandria locality. The proposed development is in keeping with the unique character and the design principles of the East Alexandria locality, in that it facilitates the introduction of an east-west street linking Bowden Street and the Green Square Town Centre, and improves pedestrian amenity between O’Riordan Street and Bourke Road through widened footpaths and public domain improvements.

**Section 3 – General Provisions**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
3.1 Public Domain Elements  5.2.4 Local infrastructure  5.8.3.2 Proposed streets and through-site links	N/A	The DCP identifies a new 22 metre wide collector road running in an east/west direction across the site, connecting O’Riordan Street and Bourke Road.  The proposed subdivision is integral to the delivery of this road through the creation of new lots for the proposed road corridor.
3.1.6 Sites greater than 5,000sqm	Yes	The site has an area in excess of 5,000sqm. The proposed subdivision provides lots for the delivery of the future road dissecting the site, which achieves the aim of this section of the DCP to improve connectivity across the site by improving pedestrian, bike and vehicular access.
3.7 Water and Flood Management  5.2.7 Stormwater management and waterways  5.8.7.1 Stormwater management and waterways	Yes	The site is identified as being partly on flood prone land. The proposal will provide lots for future road use, providing an opportunity for conveyance of stormwater through the project site via the Green Square Stormwater Drain from Link Road Rosebery to the Alexandra Canal.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposed future road allotments are sufficiently orderly in shape and alignment to facilitate the development of the new future road connecting O’Riordan Street with Bourke Road and Bowden Street. The remaining lots are acceptable with regard to lot size, orientation and street frontage length, given that residue lots 1, 3 & 6 will be transferred and consolidated with adjoining parcels.
3.9 Heritage	Yes	No demolition or works are proposed with this application.
3.10 Significant Architectural Building Types	Yes	No demolition or works are proposed with this application.

**Section 5 – Specific Areas**

Provision	Compliance	Comment
Green Square	Yes	The proposal accords with the objective of the Green Square area by providing lots that will facilitate additional walking routes and cycleways that are well connected to regional green corridors.

**Other Impacts of the Development**

35. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

**Suitability of the Site for the Development**

36. The proposal is consistent with the strategic vision for the Green Square urban renewal area and is suitable for the site.

**Consultation****Internal Referrals**

37. The application was discussed Council's Transport and Access Unit who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

**External Referrals****Ausgrid**

38. Pursuant to Section 45 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment.
39. A response was received raising no objections to the proposed development.

**Transport for NSW**

40. Pursuant to Section 101 of the SEPP (Infrastructure) 2007, the application was referred to Transport for NSW (TfNSW) for comment.
41. Comments were received on 21 July 2021. Conditions of consent will be recommended at the next DA stage, where the adjoining 13cabs site will be subdivided. Further subdivision of the adjoining site will occur once negotiations for acquisition are complete, to provide land for the full 22m Connector width.

**Sydney Water**

42. Pursuant to Section 78 of the Sydney Water Act 1994, the application was referred to Sydney Water for comment.
43. Comments were issued by Water NSW on 16 July 2021 advising that a 150mm water main was available, and that a sewer main extension would be required to service the lots.

**Advertising and Notification**

44. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 21 days between 2 July 2021 and 26 July 2021. A total of 54 properties were notified and no submissions were received.

**Public Interest**

45. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

**Financial Contributions****Contribution under Section 7.11 of the EP&A Act 1979**

46. This development application is excluded from the need to pay a contribution under the Section 1.3 of the City of Sydney Development Contributions Plan 2015 as the development is subdivision that does not involve building works and as the development is undertaken by Council. It is further noted that the development in itself does not result in a net population increase.

**Relevant Legislation**

47. Environmental Planning and Assessment Act 1979.

## **Conclusion**

48. The proposed development application seeks consent for the subdivision of two existing lots into six new Torrens title allotments for the purposes of future delivery of a new road and provision of residue lots to be consolidated into future adjoining developments.
49. The proposal has been assessed as being generally consistent with the objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012.
50. The proposal has been assessed as being acceptable and is recommended for approval subject to the imposition of conditions.

## **ANDREW THOMAS**

Executive Manager Planning and Development

Michael Parkinson, Specialist Surveyor

# **Attachment A**

<b>Recommended Conditions of Consent</b>
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## **RECOMMENDED CONDITIONS OF CONSENT**

### **SCHEDULE 1**

#### **APPROVED DEVELOPMENT/DESIGN MODIFICATIONS/COVENANTS AND CONTRIBUTIONS/USE AND OPERATION**

##### **(1) APPROVED DEVELOPMENT**

- (a) Development must be in accordance with Development Application No. D/2021/672 dated 13 October 2021, and the proposed lot layout plan prepared by registered surveyor Don Urquhart of the City of Sydney revision I dated 18 August 2021, consisting of 1 sheet, reference S5-20-1408B,

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

##### **(2) LAND SUBDIVISION – SUBDIVISION CERTIFICATE**

A separate application must be made to Council to obtain the approval of the plan of subdivision and issue of a Subdivision Certificate under Section 6.15 of the *Environmental Planning and Assessment Act 1979*, for the subdivision approved under this consent.

##### **(3) SYDNEY WATER CERTIFICATE - SUBDIVISION**

Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section on the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to Council prior to a Subdivision Certificate being issued.

**(4) RECIPROCAL EASEMENTS**

Reciprocal easements for services, drainage, and rights of carriageway, if necessary, and affecting the whole of each lot if so desired, shall be created over the lots in the subdivision, pursuant to Section 88B of the *Conveyancing Act 1919*, and to Council's satisfaction.

A right of carriageway, an easement to drain water, and an easement for services shall be created burdening Lots 2 and 5, and benefiting Lots 1, 3, 4, 6 and Council, with a sunset clause extinguishing the easements and right of carriageway upon dedication of Lots 2 and 5 as public road.

**(5) EASEMENT FOR ACCESS, STORAGE AND SITE SHEDS FOR ROAD CONSTRUCTION PURPOSES**

A whole of lot easement for access, storage, and site sheds for road construction purposes shall be created burdening the Lots 1, 3, 4, and 6 in the subdivision and benefiting Council, pursuant to Section 88B of the *Conveyancing Act 1919*, and to Council's satisfaction. The easement shall include a sunset clause, where the easement shall be extinguished upon dedication of Lots 2 and 5 as public road.

**(6) STREET ADDRESSES OF LOTS**

In accordance with Clause 60(c) of the Surveying and Spatial Information Regulation 2012, the street addresses for each lot must be shown on the final plan of subdivision. An application should be made to Council's Land Information Officer to obtain the correct street address for each lot.

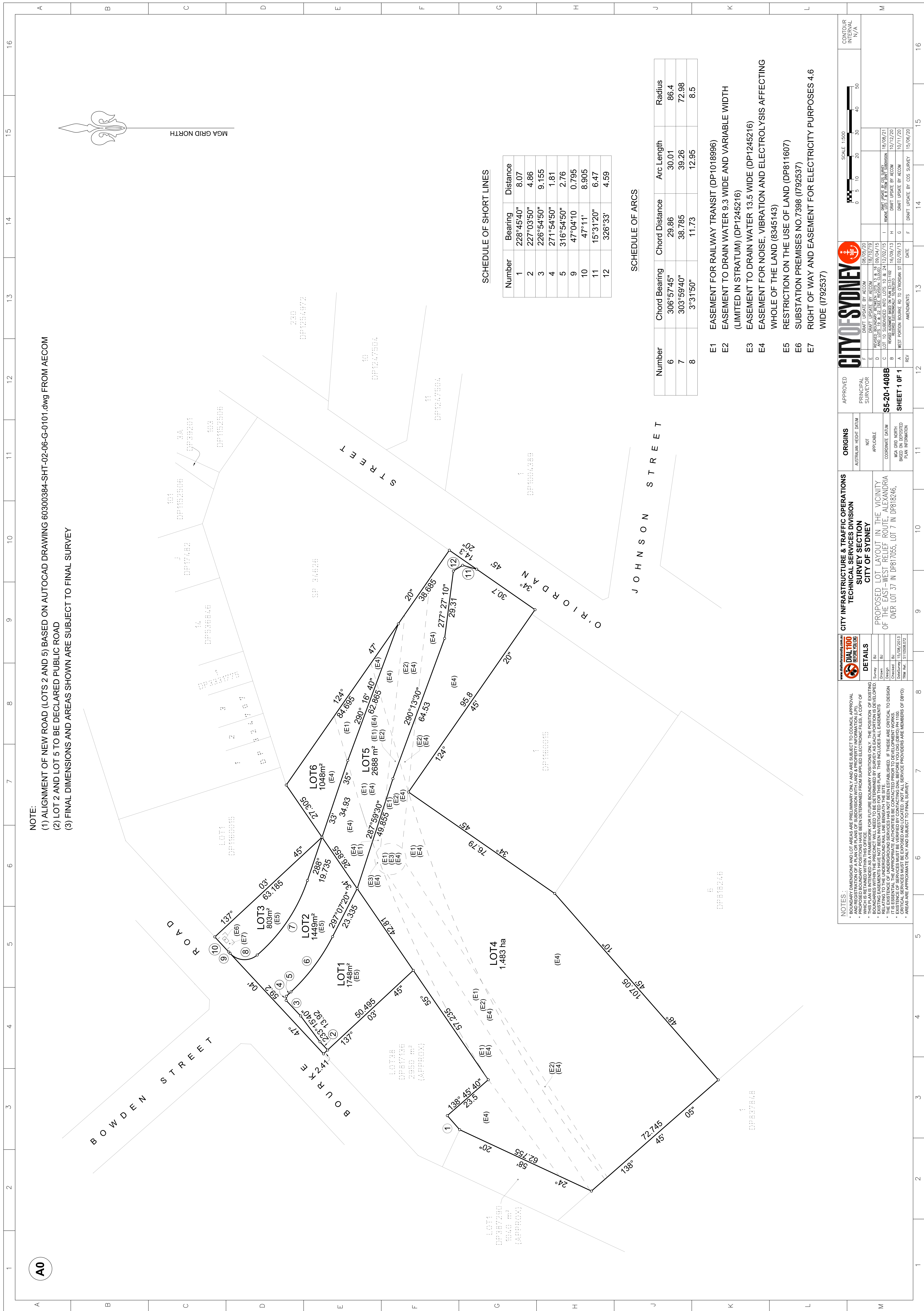
**(7) SURVEY INFRASTRUCTURE**

Prior to the issue of the subdivision certificate, sufficient survey infrastructure, including reference marks and permanent marks, must remain in place in order to satisfy the requirements of the Surveying and Spatial Information Regulation 2012, and to the satisfaction of Council.



# **Attachment B**

<b>Plan of Proposed Subdivision</b>
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## **Item 4.**

### **Local Planning Panel - Delegations**

**File No: X079022**

#### **Summary**

This report recommends that the Local Planning Panel reconfirm delegations of its consent authority functions to Council officers that it has previously made in relation to legal proceedings and the determination of a number of application types.

In addition this report recommends that the Local Planning Panel delegate its consent authority functions to Council officers in relation to some additional applications for small scale/low impact development associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure and some section 4.56 modification applications.

#### **Recommendation**

It is resolved that:

- (A) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegate its functions as a consent authority in relation to legal proceedings arising from a decision of the Local Planning Panel (or a decision that would have ordinarily been required to be dealt with by the Local Planning Panel) to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport;
- (B) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority in relation to development for which Council is the applicant or landowner and the application proposes:
  - (i) internal alterations and additions to a building that is a heritage item; or
  - (ii) temporary installation of public art; or
  - (iii) a temporary event;

to the positions of Area Planning Manager and Manager Planning Assessments;

- (C) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority, where there have been no more than one objection received, in relation to development for which Council is the applicant or land owner and the application proposes:

- (i) outdoor seating;
- (ii) works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
- (iii) the placement or relocation of kiosks and other minor structures within the public domain;
- (iv) the installation of shade structures and play equipment;
- (v) the installation of solar panels; (vi) small scale alterations and additions to existing facilities; and
- (vi) other small-scale development with a development cost of no more than \$100,000;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport;

- (D) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority regarding development applications that fall into the following categories:

- (i) development applications for the removal of existing pedestrian bridges/overpasses in King Street, Pitt Street and Castlereagh Street and making good of adjacent buildings, where the sole reason for reporting the application to the Local Planning Panel for determination is that Council is the applicant and/or landowner; and
- (ii) development applications for a boarding house development where the sole reason for reporting the application to the Local Planning Panel for determination is the proposal's non-compliance with the motorcycle parking standard contained in Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport;

- (E) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority regarding development applications that fall into the following category:
- (i) variations over 10% associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure, where the existing building or structure already exceeds the relevant development standard;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport; and

- (F) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Local Planning Panel delegates its functions as a consent authority regarding section 4.56 applications for modification of a development consent issued by the Land and Environment Court, in respect of an application determined by the Local Planning Panel (or an application that would have ordinarily been required to be dealt with by the Local Planning Panel) that fall into the following categories;
- (i) applications under section 4.56 of the Environmental Planning and Assessment Act 1979 for modification of a development which meet the criteria for development applications set out in the Schedules to the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020 relating to conflict of interest, contentious development or departure from development standards;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport.

## **Attachments**

- |                      |   |
|----------------------|---|
| <b>Attachment A.</b> | Local Planning Panels Direction - Development Applications - 23 February 2018   |
| <b>Attachment B.</b> | Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents - 30 June 2020 |
| <b>Attachment C.</b> | Resolution of and Report to the Local Planning Panel - 23 May 2018  |
| <b>Attachment D.</b> | Resolution of and Report to the Local Planning Panel - 15 April 2020  |
| <b>Attachment E.</b> | Resolution of and Report to the Local Planning Panel - 19 May 2021  |
| <b>Attachment F.</b> | Assumed Concurrence Letter - 1 September 2020   |

## Background

### Local Planning Panels Directions

1. The City of Sydney Local Planning Panel was established by resolution of Council on 19 February 2018.
2. The then Minister for Planning issued a Direction under section 9.1 of the Environmental Planning and Assessment Act 1979 (the Act) on 23 February 2018 prescribing the development applications that are to be determined by Local Planning Panels on behalf of Councils in the Greater Sydney Region and Wollongong. The referral criteria for the City of Sydney were identified in Schedule 3 of the Direction.
3. A copy of the Direction is contained in Attachment A.
4. This Direction related to development applications and contained the following note with regard to applications for the modification of development consents:

*Note: Councils can make arrangements for the determination of applications for the modification of development consents by either the local planning panel or Council staff.*
5. On 23 May 2018 the Local Planning Panel resolved, amongst other matters referred to below, to delegate its consent authority functions in relation to modification applications made under sections 4.55 and 4.56 to Council officers.
6. The delegation relating to modification applications has been somewhat superseded by the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020, and which took effect on 1 August 2020.
7. A copy of this Direction is contained in Attachment B.
8. Other than capturing some section 4.55 (2) modification applications, the criteria for referring development applications to the Local Planning Panel remained unchanged.
9. The updated Direction identifies that certain section 4.55 (2) modification applications are to be reported to the Local Planning Panel for determination but contains the following note with regard to modification applications;

*Note: Councils in areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of Section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55 (2), as well as sections 4.55 (1) and (1A) of the act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.*



**Delegations by the Local Planning Panel**

10. Since its inception the Local Planning Panel have delegated a number of matters to Council officers. These matters are detailed in:
  - Attachment C - Resolution of Local Planning Panel 23 May 2018 - Item 11
  - Attachment D - Resolution of Local Planning Panel 15 April 2020 - Item 5
  - Attachment E - Resolution of Local Planning Panel 19 May 2021 - Item 6
11. At its meeting of 23 May 2018, the Local Planning Panel delegated the following matters to Council officers:
  - (a) its functions as a consent authority in relation to legal proceedings arising from a decision of the Local Planning Panel (or a decision that would have ordinarily been required to be dealt with by the Local Planning Panel)
  - (b) its functions as a consent authority in relation to modification applications under sections 4.55 and 4.56 (refer above - superseded by the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020)
  - (c) development for which Council is the applicant or landowner and the application proposes:
  - (d) internal alterations and additions to a building that is a heritage item; or
  - (e) temporary installation of public art; or
  - (f) a temporary event.
12. At its meeting of 15 April 2020, the Local Planning Panel delegated the following matters, being applications for which Council is the applicant or landowner, and where there has been no more than one objection received, to Council officers:
  - (a) outdoor seating;
  - (b) works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
  - (c) the placement or relocation of kiosks and other minor structures within the public domain;
  - (d) the installation of shade structures and play equipment;
  - (e) the installation of solar panels;
  - (f) small scale alterations and additions to existing facilities;
  - (g) other small-scale development with a development cost of no more than \$100,000;

13. At its meeting of 19 May 2021, the Local Planning Panel delegated the following matters to Council officers:
  - (a) development applications for the removal of existing pedestrian bridges/overpasses in King Street, Pitt Street and Castlereagh Street and making good of adjacent buildings, where the sole reason for reporting the application to the Local Planning Panel for determination is that Council is the applicant and/or landowner; and
  - (b) development applications for a boarding house development where the sole reason for reporting the application to the Local Planning Panel for determination is the proposals non-compliance with the motorcycle parking standard contained in Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
14. The above delegations generally cover small scale/non contentious development. It is recommended that, with the exception of the delegation of 23 May 2018 relating to applications made under sections 4.55 or S4.56 for the modification of consent, these delegations be reconfirmed by the Local Planning Panel.

### **Departure from Development Standards**

15. In addition to the above delegations the Secretary of the Department of Planning, Industry and Environment has provided an assumed concurrence for certain development applications the subject of a Clause 4.6 variation request relating to non-compliance with a development standard. Such concurrence has been granted on a rolling 12-month basis.
16. The most recent concurrence lapsed on 1 September 2021. A copy of the letter granting assumed concurrence is provided in Attachment F.
17. The consequence of the concurrence was to effectively amend Section 3 Departure from development standards of Schedule 3 of the Local Planning Panels Direction.
18. The assumed concurrence provided that Council is exempted from reporting variations over 10% to the Local Planning Panel for determinations associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure, where the existing building or structure already exceeds the relevant development standard.
19. The above assumed concurrence has previously been applied to a small number of generally small scale/uncontentious applications.
20. In lieu of obtaining a further assumed concurrence it is recommended that the Local Planning Panel delegate the determination of applications subject to variations over 10% associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure, where the existing building or structure already exceeds the relevant development standard, to Council officers.



## Modification Applications

21. The Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020 identifies which section 4.55 modification applications are to be reported to the Local Planning Panel for determination.
22. In this regard:
- (a) Section 4.55 (1) applications, being modifications to correct a minor error, misdescription or miscalculation, are not reported to the Local Planning Panel for determination and are to be determined by Council officers;
  - (b) Section 4.55 (1A) applications, being modifications involving minimal environmental impact, not reported to the Local Planning Panel for determination and are to be determined by Council officers; and
  - (c) Section 4.55 (2) applications that meet the following criteria are to be determined by the Local Planning Panel;
    - applications that propose amendments to a condition of development consent recommended in the Council assessment report but which was amended by the panel; or
    - applications that propose amendments to a condition of development consent that was not included in the Council assessment report but which was added by the panel; or
    - applications that meet the criteria for development applications set out in the Schedules to the Direction relating to conflict of interest, contentious development or departure from development standards.
23. With regard to section 4.56 modification applications, being applications to modify a consent issued by the Land and Environment Court, the Direction contains the following note (as referred to above):
- Note: ..... Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.*
24. In this regard it is recommended, as with section 4.55 (2) applications, that section 4.56 applications to modify a consent issued by the Land and Environment Court, in respect of an application determined by the Local Planning Panel (or an application that would have ordinarily been required to be dealt with by the Local Planning Panel), that meet the criteria for development applications set out in the Schedules to the Direction relating to conflict of interest, contentious development or departure from development standards be reported to the Local Planning Panel for determination.

## Relevant Legislation

25. Environmental Planning and Assessment Act 1979.

## Conclusion

26. The subject report proposes:

- (a) reconfirmation of the previous delegations from the Local Planning Panel;
- (b) adoption of the proposed delegation relating to certain small scale/uncontentious applications that depart from a development standard (previously subject of an assumed concurrence); and
- (c) adoption of the proposed delegation relating to section 4.56 applications to modify a consent issued by the Land and Environment Court;

which will provide clarity around the matters to be reported to the Local Planning Panel for determination whilst assisting the efficient assessment and determination of applications.

27. It should be noted that the matters to be delegated to Council officers for determination are considered to be smaller scale/uncontentious development and that the matters will only be delegated if they meet the requirements of the individual delegations and are not otherwise captured by the relevant provisions of the Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents dated 30 June 2020 and which took effect on 1 August 2020.

## ANDREW THOMAS

Executive Manager Planning and Development

Bill Mackay, Manager Planning Assessments

# **Attachment A**

**Local Planning Panels Direction –  
Development Applications –  
23 February 2018**

## LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS

I, the Minister for Planning, give the following direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*.



Minister for Planning

Dated: 23/2/2011

### Objective

The objective of this direction is to identify the development applications that are to be determined by local planning panels on behalf of councils in the Greater Sydney Region and Wollongong.

### Application

This direction applies to councils in the Greater Sydney Region and Wollongong. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979*.

### Interpretation

A word or expression used in this direction has the same meaning as it has in the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

### Direction

Local planning panels of councils in the areas identified in the Table below are to determine development applications involving development of a kind specified in the Schedule to this direction that is identified in the Table below.

Note: Councils can make arrangements for the determination of applications for the modification of development consents by either the local planning panel or council staff.

Table

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel constituted under the EP&A Act	Schedule 1
Blacktown, Canterbury-Bankstown, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

This direction takes effect on 1 March 2018 and applies to development applications made but not determined before 1 March 2018.

If a council to which this direction applies has not delegated the function of determining a development application to an officer or employee of the council, then the local planning panel is to determine the development application.

## SCHEDULE 1

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

### **3. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

### **4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## SCHEDULE 2

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

### 3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

### 4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.

- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.



## SCHEDULE 3

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

### 3. Departure from development standards

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard imposed by an environmental planning instrument by 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

#### 4. Sensitive development

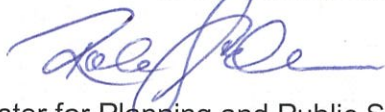
- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

# **Attachment B**

**Local Planning Panels Direction –  
Development Applications and Applications  
to Modify Development Consents –  
30 June 2020**

## LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

I, the Minister for Planning and Public Spaces, give the following direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*.



Minister for Planning and Public Spaces

Dated: 30-06-2020.

### Objective

The objective of this direction is to identify the development applications and applications to modify development consents that are to be determined by local planning panels on behalf of councils.

### Application

This direction applies to councils in the Greater Sydney Region, Wollongong and Central Coast. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979* (Act).

### Interpretation

A word or expression used in this direction has the same meaning as it has in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

### Direction

1. Local planning panels of councils in the areas identified in the Table below are to determine development applications for development of a kind specified in the corresponding Schedule to this direction.

Table

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the EP&A Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
- propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on 1 August 2020 and applies to development applications and applications to modify development consents made but not determined before 1 August 2020.

## **SCHEDULE 1**

### **1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### **2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Industry and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

### 3. **Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

### 4. **Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## SCHEDULE 2

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Industry and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

### 3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

#### 4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.



## SCHEDULE 3

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Industry and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

### 3. Departure from development standards

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard imposed by an environmental planning instrument by 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

#### **4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## **Attachment C**

**Resolution of and Report to the Local  
Planning Panel – 23 May 2018**

## Resolution of Local Planning Panel

**23 May 2018**

### **Item 11**

#### **Local Planning Panel - Delegations**

The Panel decided to:

- (A) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegate its functions as a consent authority in relation to legal proceedings arising from a decision of the Local Planning Panel (or a decision that would have ordinarily been required to be dealt with by the Local Planning Panel) to the positions of Director City Planning, Development and Transport, Executive Manager Development and Manager Planning Assessments.
- (B) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegate its functions as a consent authority in relation to modification applications under sections 4.55 and 4.56 (former section 96 applications) to the positions of Director City Planning, Development and Transport, Executive Manager Development and Manager Planning Assessments.
- (C) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegate its functions as a consent authority in relation to development for which council is the applicant or land owner and the application proposes:
  - internal alterations and additions to a building that is a heritage item; or
  - temporary installation of public art; or
  - a temporary event;
 to the positions of Area Planning Manager and Manager Planning Assessments.

Carried unanimously.

S083226.006

**Item 11.****Local Planning Panel - Delegations****File No: S083226.006****Summary**

This report recommends that the Local Planning Panel delegate its consent authority functions in relation to legal proceedings and section 4.55 and 4.56 applications to the positions of Director City Planning, Development and Transport, Executive Manager Development and Manager Planning Assessments. It is noted that this would represent an amendment to the delegation that was issued by the Local Planning Panel at the meeting of 28 March 2018.

In addition to this, this report recommends that the Local Planning Panel delegate its consent authority functions in relation to development where council is the applicant or land owner and the application proposes internal alterations and additions to a building that is a heritage item; where council is the applicant or land owner and the application proposes the temporary installation of public art or a temporary event to the positions of Area Planning Manager and Manager Planning Assessments.

## Recommendation

It is resolved that the Local Planning Panel:

- (A) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegates its functions as a consent authority in relation to legal proceedings arising from a decision of the Local Planning Panel (or a decision that would have ordinarily been required to be dealt with by the Local Planning Panel) to the positions of Director City Planning, Development and Transport, Executive Manager Development and Manager Planning Assessments.
- (B) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegates its functions as a consent authority in relation to modification applications under sections 4.55 and 4.56 (former section 96 applications) to the positions of Director City Planning, Development and Transport, Executive Manager Development and Manager Planning Assessments.
- (C) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegates its functions as a consent authority in relation to development for which council is the applicant or land owner and the application proposes:
  - internal alterations and additions to a building that is a heritage item; or
  - temporary installation of public art; or
  - a temporary event;to the positions of Area Planning Manager and Manager Planning Assessments.

## Attachments

**Attachment A.** Local Planning Panels Direction - Development Applications

## Background

1. The City of Sydney Local Planning Panel was established by resolution of Council on 19 February 2018.
2. The Minister for Planning issued a direction under section 9.1 of the Environmental Planning and Assessment Act 1979 (the Act) on 23 February 2018 prescribing the development applications that are to be determined by Local Planning Panels on behalf of Councils in the Greater Sydney Region and Wollongong. The referral criteria for the City of Sydney are identified in Schedule 3 of the Direction. The Ministerial Direction can be found in Attachment A.
3. The first meeting of the City of Sydney Local Planning Panel was held on Wednesday 28 March 2018.

4. At the meeting of 28 March 2018 the Local Planning Panel resolved to delegate its functions as a consent authority to the Chief Executive Officer in relation to legal proceedings and in relation to modification applications under section 4.55 and 4.56 of the Act.

### **Delegations and Referral Criteria for Local Planning Panel**

5. Section 2.20(8) of the Environmental Planning and Assessment act 1979 enables a Local Planning Panel to delegate any function of the Panel (other than the power of delegation) to the general manager or other staff of the council. Section 381 of the Local Government Act does not apply to any such delegation.
6. At the meeting of 28 March 2018 the Local Planning Panel resolved to delegate its functions as a consent authority in relation to legal proceedings arising from a decision of the Local Planning Panel (or a decision that would have ordinarily been required to be dealt with by the Local Planning Panel) and its functions as a consent authority in relation to modification applications under sections 4.55 and 4.56 to the Chief Executive Officer.
7. At the time of this decision it was expected that the Chief Executive Officer would be able to sub-delegate these functions to appropriate staff in the City Planning, Development and Transport Division who are responsible for the management of development applications and legal appeals. However advice has been received that the consent authority functions of the Local Planning Panel cannot be sub-delegated.
8. To ensure that the most appropriate position within Council is delegated authority to exercise the functions related to legal proceedings and the determination of section 4.55 and 4.56 applications it is recommended that the Local Planning Panel delegates these functions to the positions of Director City Planning, Development and Transport, Executive Manager Development and Manager Planning Assessments, rather than the Chief Executive Officer. This would be consistent with delegations prior to the formation of the Local Planning Panel.
9. As stated in the report presented to the 28 March 2018 Local Planning Panel meeting, the authority related to legal proceedings would include the exercise of powers, authorities, duties and functions of the Local Planning Panel during the course of legal proceedings involving development applications that have been determined, or would otherwise have been determined, by the Local Planning Panel. This would also include the authority to bind Council in any agreements as to the resolution of a planning appeal, notwithstanding that the outcome may be contrary to a decision made by the Local Planning Panel. In instances where these powers are exercised, the Local Planning Panel will be advised.

10. The Panel Chair has also suggested that the Local Planning Panel consider delegating its consent authority functions to staff in circumstances where council is the applicant or land owner and the application proposes internal alterations and additions to a building that is a heritage item. It is noted that the section 9.1 Ministerial Direction only requires the referral of a development application where council is the applicant or land owner for internal alterations to a building where the building is a heritage item, it does not require referral of these applications if the building is not a heritage item. The City of Sydney owns a substantial number of buildings some of which are heritage items. This means that each time an application (often made by a building tenant) is lodged to carry out internal alterations to a building the application must be referred to the Local Planning Panel. Recent examples of where this has occurred is the State Heritage Listed Queen Victoria Building. The QVB is owned by the City of Sydney but the property is managed by an organisation independent of the City. Since the commencement of the Local Planning Panel five development applications for small internal alterations to retail tenancies in the QVB have been referred to the Local Planning Panel for determination. This adds significant time to the determination of these applications, which if not for the building being heritage listed would be exempt development and would not require any form of development consent. These administrative procedures ultimately add to the cost of development for the retailer and are not necessary or appropriate for these small scale and minor applications. On average the City of Sydney would receive approximately 30 such applications on an annual basis.
11. This report also recommends that the Local Planning Panel delegate its consent authority functions to staff for other minor council related applications such as temporary events and the temporary installation of public art. This would be consistent with delegations prior to the formation of the Local Planning Panel. Council encourages the use of the public domain for a range of temporary community and civic events and this can often include the installation of public art associated with these events. Often these types of temporary events or art installations are exempt from requiring development consent, but where they are not exempt they are required to be referred to the Local Planning Panel for determination. Due to the nature of these applications, the request for approval is often made close to the date of the event which will often preclude the application from being reported to a Local Planning Panel meeting prior to the event occurring. There are a significant number of issues which arise if an application has not been determined before the event takes place and this situation should be avoided. These application types represent minor temporary works or uses, generally have minor 'environmental impacts' and are generally provided for community benefit and not for profit. For these reasons, it is recommended that the Local Planning Panel delegate its consent authority functions to the positions of Area Planning Manager, Executive Manager Development and Manager Planning Assessments for the following applications where the applicant or land owner is council and the application proposed:
- internal alterations and additions to a building that is a heritage item; or
  - temporary installation of public art; or
  - a temporary event.

### Relevant Legislation

12. Environmental Planning and Assessment Act 1979.



### **Critical Dates / Time Frames**

13. Local Planning Panels commenced operations from 1 March 2018.
14. The first meeting of the City of Sydney Local Planning Panel was held on Wednesday 28 March 2018.

### **GRAHAM JAHN AM**

Director City Planning, Development and Transport

Louise Kerr, Executive Manager Development

## **Attachment D**

**Resolution of and Report to the Local  
Planning Panel – 15 April 2021**

## Resolution of Local Planning Panel

**15 April 2020**

### **Item 5**

#### **Local Planning Panel - Delegations**

It is resolved that the Local Planning Panel in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegates its functions as a consent authority, where there has been no more than one objection received, in relation to development for which Council is the applicant or land owner and the application proposes:

- (i) outdoor seating;
- (ii) works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
- (iii) the placement or relocation of kiosks and other minor structures within the public domain;
- (iv) the installation of shade structures and play equipment;
- (v) the installation of solar panels;
- (vi) small scale alterations and additions to existing facilities;
- (vii) other small scale development with a development cost of no more than \$100,000;

to the positions of Manager Planning Assessments, Executive Manager Development, and Director City Planning, Development and Transport.

#### **Reasons for Decision**

The Delegation will enable low risk applications to be processed more expeditiously. The Panel amended the number of objections triggering referral of applications to the LPP to require that all applications with multiple objections be referred to the LPP for determination.

Carried unanimously.

2020/095110

**Item 5.****Local Planning Panel - Delegations**

**File No:** 2020/095110

**Summary**

This report recommends that the Local Planning Panel delegate its consent authority functions in relation to small scale developments for which Council is the applicant or custodian land owner to the positions of Manager Planning Assessments Unit, Executive Manager Development, and Director City Planning Development and Transport.

**Recommendation**

It is resolved that the Local Planning Panel in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegates its functions as a consent authority, where there have been no more than three objections received, in relation to development for which Council is the applicant or land owner and the application proposes:

- (i) outdoor seating;
- (ii) works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
- (iii) the placement or relocation of kiosks and other minor structures within the public domain;
- (iv) the installation of shade structures and play equipment;
- (v) the installation of solar panels;
- (vi) small scale alterations and additions to existing facilities;
- (vii) other small scale development with a development cost of no more than \$100,000;

to the positions of Manager Planning Assessments, Executive Manager Development, and Director City Planning, Development and Transport.

**Attachments**

**Attachment A.** Matters to be Referred to the Local Planning Panel

## Background

1. The City of Sydney Local Planning Panel was established by resolution of Council on 19 February 2018.
2. The Minister for Planning and Public Spaces issued a Direction under s 9.1 of the Environmental Planning and Assessment Act 1979 (the Act) on 23 February 2018 prescribing the development applications that are to be determined by Local Planning Panels on behalf of Councils in the Greater Sydney Region and Wollongong. The referral criteria for the City of Sydney are identified in Schedule 3 of the Direction.
3. The Ministerial Direction requires that development falling within the following categories are required to be reported to the Local Planning Panel for determination;
  - Conflict of interest
  - Contentious development
  - Departure from development standards; and
  - Sensitive development.
4. The category 'conflict of interest' captures (with some exceptions) applications where Council is the applicant or land owner with a commercial interest (such as the redevelopment or upgrade of Council owned sites) and land where it has a more passive custodianship such as giving owner's consent for third party outdoor dining or placing bollards.
5. The first meeting of the City of Sydney Local Planning Panel was held on Wednesday 28 March 2018.
6. At its meeting of 23 May 2018 the Local Planning Panel resolved to delegate its functions as a consent authority in relation to:
  - legal proceedings;
  - modification applications under section 4.55 and 4.56 of the Act; and
  - development for which Council is the applicant or land owner and the application proposes:
    - (i) internal alterations and additions to a building that is a heritage item; or
    - (ii) temporary installation of public art; or
    - (iii) a temporary event.
7. The matters to be referred to the Local Planning Panel for determination (Schedule 3 of the s 9.1 Ministerial Direction and delegations) can be found in Attachment A.

**Delegations and Referral Criteria for Local Planning Panel**

8. Section 2.20(8) of the Environmental Planning and Assessment Act 1979 enables a Local Planning Panel to delegate any function of the Panel (other than the power of delegation) to the general manager or other staff of the council.
9. Section 1 of Schedule 3 of the s 9.1 Ministerial Direction requires that applications that constitute a 'conflict of Interest' are reported to the Local Planning Panel for determination.
10. Applications where the applicant or land owner is the council are considered to constitute a conflict of interest. This does not include development for the following purposes:
  - Internal alterations and additions to any building that is not a heritage item,
  - Advertising signage,
  - Maintenance and restoration of a heritage item,
  - Development for the purpose of end of journey facilities, or
  - Minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).
11. In addition, as mentioned above, at its meeting of 23 May 2018 the Local Planning Panel resolved to delegate its functions as a consent authority in relation to:
  - development for which Council is the applicant or land owner and the application proposes:
    - (i) internal alterations and additions to a building that is a heritage item; or
    - (ii) temporary installation of public art; or
    - (iii) a temporary event.

**Operation of the Local Planning Panel**

12. Notwithstanding the exceptions to the conflict of interest criteria contained in the s 9.1 Ministerial Direction, and the delegations adopted on 23 May 2018, a significant number of small scale development applications with minor environmental impact have been required to be reported to the Local Planning Panel for determination.
13. Since its commencement 131 applications have been reported to the Local Planning Panel for determination.
14. Of these, 41 applications (31%) were reported to the Local Planning Panel for determination under the category of 'conflict of interest' on the basis that Council was the applicant or land owner.

15. Of these approximately 90% are considered to have been for small scale development with minor environmental impacts including developments such as applications for:
  - footway seating;
  - a chicken coop;
  - alterations to a toilet facility building (reported as the alterations included a new window);
  - installation of a roller door at a depot;
  - the construction of a shade umbrella;
  - the installation of solar panels; and
  - change of use of an existing commercial premises.
16. These developments are considered small scale in nature with minor environmental impacts and the applications did not generate significant numbers of submissions. Following assessment they were reported to the Local Planning Panel and recommended for approval. All recommendations were adopted by the Local Planning Panel.
17. In terms of numbers of submissions received for the small scale development:
  - 19 applications received no submissions
  - 9 applications received 1 submission
  - 4 applications received 2 submissions
  - 1 application received 3 submissions
  - 3 applications received 4 submissions; and
  - 1 application received 7 submissions.
18. It is considered that such small scale development applications do not pose a significant conflict of interest provided they are not contentious development with more than 25 unique submissions per the *Local Planning Panels Direction – Development Applications*. For outdoor seating there is another approval process (refer below) and for the others, they are not considered to be significantly different in substance to the exemptions contained within the s 9.1 Direction or the May 2018 delegations.
19. Reporting these small scale development applications to the Local Planning Panel for determination increases the determination timeframes for these applications (generally resulting in a delay of up to four to six weeks).

20. Council encourages the use of the public domain for a range of functions including the provision of outdoor seating related to food and drink premises. Outdoor seating on council land (generally the footpath) also requires approval under the Roads Act 1993, Local Government Act 1993 or Crown Lands Act 1989 (dependent on the land in question). Before an operator can operate outdoor seating on council land they must apply for an approval from Council. The applications are assessed against Council's adopted outdoor dining guidelines and approvals include conditions for the use of the land.
21. Given the small scale nature of these development applications their limited environmental impacts, delays resulting in determination time frames and that they do not pose a significant conflict of interest, it is recommended that the Local Planning Panel delegate its consent authority functions for the following developments, where there have been more than 3 objections received, and for which Council is the applicant or land owner and the application proposes;
- outdoor seating;
  - works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
  - the placement or relocation of kiosks and other minor structures within the public domain;
  - the installation of shade structures and play equipment;
  - the installation of solar panels;
  - small scale alterations and additions to established facilities;
  - other small scale development with a development cost of no more than \$100,000;
- to the positions of Manager Planning Assessments, Executive Manager Development, and Director City Planning Development and Transport.
22. Delegating determination of this category of development applications would be consistent with delegations prior to the formation of the Local Planning Panel.
23. The above proposed delegation does not affect the requirement for matters to be referred to the Local Planning Panel for determination that are captured by the other categories contained within the s 9.1 Ministerial Direction.



### **Relevant Legislation**

24. Environmental Planning and Assessment Act 1979.

### **GRAHAM JAHN AM**

Director City Planning, Development and Transport

Bill McKay, Manager Planning Assessments

# **Attachment E**

**Resolution of and Report to the Local  
Planning Panel – 19 May 2021**

## Resolution of Local Planning Panel

**19 May 2021**

### **Item 6**

#### **Local Planning Panel - Delegations**

In accordance with the requirements of the Environmental Planning and Assessment Act 1979, the Panel delegated its functions as a consent authority regarding development applications that fall into the following categories:

- (A) development applications for the removal of existing pedestrian bridges/overpasses in King Street, Pitt Street and Castlereagh Street and making good of adjacent buildings, where the sole reason for reporting the application to the Local Planning Panel for determination is that Council is the applicant and/or landowner; and
- (B) development applications for a boarding house development where the sole reason for reporting the application to the Local Planning Panel for determination is the proposal's non-compliance with the motorcycle parking standard contained in Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009,

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport.

Carried unanimously.

X079022

## Item 6.

### Local Planning Panel - Delegations

**File No: X079022**

#### Summary

This report recommends that the Local Planning Panel delegate its consent authority functions in relation to the following:

- (a) Development applications for the removal of pedestrian bridges/overpasses in King Street, Pitt Street and Castlereagh Street; and
- (b) Development applications for certain boarding house developments;

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning Development and Transport.

#### Recommendation

It is resolved that the Local Planning Panel, in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegate its functions as a consent authority, regarding development applications that fall into the following categories:

- (A) Development applications for the removal of existing pedestrian bridges/overpasses in King Street, Pitt Street and Castlereagh Street and making good of adjacent buildings, where the sole reason for reporting the application to the Local Planning Panel for determination is that council is the applicant and/or landowner; and
- (B) Development applications for a boarding house development where the sole reason for reporting the application to the Local Planning Panel for determination is the proposals non-compliance with the motorcycle parking standard contained in Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009,

to the positions of Manager Planning Assessments, Executive Manager Planning and Development, and Director City Planning, Development and Transport.

#### Attachments

**Attachment A.** Boarding House Applications Previously Reported to the Local Planning Panel for determination where the sole reason for reporting the application to the panel was the proposals non-compliance with the motorcycle parking standard contained in Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing)

## Background

1. The City of Sydney Local Planning Panel was established by resolution of Council on 19 February 2018.
2. The Minister for Planning and Public Spaces issued a Direction under section 9.1 of the Environmental Planning and Assessment Act 1979 (the Act) on 23 February 2018 prescribing the development applications that are to be determined by Local Planning Panels on behalf of Councils in the Greater Sydney Region and Wollongong. The referral criteria for the City of Sydney are identified in Schedule 3 of the Direction.
3. The Ministerial Direction requires that development falling within the following categories are required to be reported to the Local Planning Panel for determination;
  - (a) Conflict of interest
  - (b) Contentious development
  - (c) Departure from development standards; and
  - (d) Sensitive development.
4. Section 2.20(8) of the Environmental Planning and Assessment Act 1979 enables a Local Planning Panel to delegate any function of the Panel (other than the power of delegation) to the general manager or other staff of the council.
5. At its meeting of 23 May 2018, the Local Planning Panel resolved to delegate its functions as a consent authority in relation to:
  - (a) legal proceedings;
  - (b) modification applications under section 4.55 and 4.56 of the Act; and
  - (c) development for which Council is the applicant or landowner and the application proposes:
    - (i) internal alterations and additions to a building that is a heritage item; or
    - (ii) temporary installation of public art; or
    - (iii) a temporary event.
6. At its meeting of 15 April 2020, the Local Planning Panel resolved to delegate its functions as a consent authority, where no more than one objection has been received, in relation to development for which Council is the applicant or landowner and the application proposes:
  - (a) outdoor seating;
  - (b) works within the public domain such as the placement of security bollards, upgrade of the public domain, construction of driveways, landscaping and the like;
  - (c) the placement or relocation of kiosks and other minor structures within the public domain;

- (d) the installation of shade structures and play equipment;
- (e) the installation of solar panels;
- (f) small scale alterations and additions to existing facilities;
- (g) other small-scale development with a development cost of no more than \$100,000;

### **Conflict of Interest - Removal of Pedestrian Bridges/Overpasses**

7. Amongst other matters the category '*Conflict of Interest*' contained in the section 9.1 Ministerial Direction requires that developments for which the applicant or landowner is the council are to be reported to the Local Planning Panel for determination, except for the following:
  - (a) Internal alterations and additions to any building that is not a heritage item;
  - (b) Advertising signage;
  - (c) Maintenance and restoration of a heritage item;
  - (d) development for the purpose of end of journey facilities; or
  - (e) Minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).
8. This section has been supplemented by the delegations of 23 May 2018 and 15 April 2020 referred to above.
9. The above exceptions and the matters subject of the delegations of 23 May 2018 and 15 April 2020 are generally restricted to relatively small-scale development / development with a low development cost.
10. There are currently three unused pedestrian bridges/overpasses in the CBD. These bridges/overpasses are located on King Street, Pitt Street and Castlereagh Street. Refer to Figures 1, 2 and 3 below.



Figure 1: King Street looking east

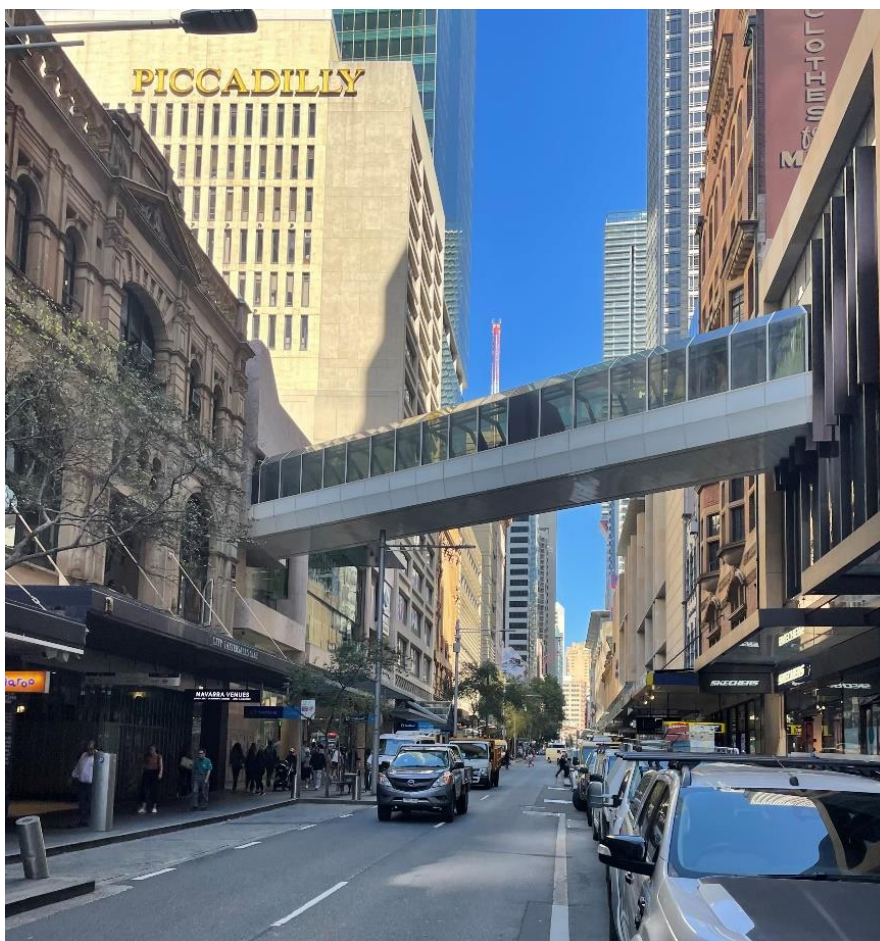


Figure 2: Pitt Street looking south





Figure 3: Castlereagh Street looking south

11. The structures, which span the roadway, are owned by Council and connect to private land. The bridges are subject to lease arrangements with the properties that they connect (note that the northern part of the King Street Bridge is on private land).
12. The King Street bridge/overpass connects the MLC site, at 19 to 29 Martin Place, on the north side of King Street with the Glasshouse development, at 135 King Street, on the south side of King Street.
13. The Pitt Street bridge/overpass connects the Stockland Piccadilly Shopping Centre, at 133-145 Castlereagh Street, on the east side of Pitt Street to the Citycentre development, at 55 Market Street, on the west side of Pitt Street.
14. The Castlereagh Street bridge/overpass connects the Stockland Piccadilly Shopping Centre, at 133-145 Castlereagh Street, on the west side of Castlereagh Street to the Sheraton Hotel, at 161 Elizabeth Street, on the east side of Castlereagh Street.
15. Section 3.1.3 of the Sydney Development Control Plan provides that:

"Pedestrian overpasses are discouraged because they enclose public space and affect views along streets".
16. All three pedestrian bridges/overpass are currently not in use.



17. An opportunity has arisen for the King Street bridge/overpass to be removed in the short term as part of the work program currently being undertaken at the MLC site. The bridge would need to be removed prior to the reopening of the Theatre Royal which is scheduled for later in 2021.
18. The Stockland Piccadilly Shopping Centre site at 133-145 Castlereagh Street is currently subject of a planning proposal. This proposal includes the removal of the Pitt Street and Castlereagh Street pedestrian bridges/overpass. Development consent has previously been granted for the removal of the Castlereagh Street structure in 2011 (D/2011/802). This consent lapsed in 2016.
19. Removal of the structures involves numerous approvals being obtained under the Environmental Planning and Assessment Act 1979, the Local Government Act 1993 and the Roads Act 1993. This includes the following:
  - (a) a development consent;
  - (b) construction certificate(s);
  - (c) hoarding approval(s);
  - (d) approval to use a crane/hoist goods or materials over roadway; and
  - (e) a road closure approval.
20. In order to assist in streamlining this approval process it is requested that development applications for the removal of existing structures in King Street, Pitt Street and Castlereagh Street and making good of adjacent buildings, where the sole reason for reporting the application to the Local Planning Panel for determination is that council is the applicant and/or land owner, be delegated to council officers.
21. The proposed delegation does not affect the requirement for development applications for the removal of these structures that are captured by the other categories contained within the section 9.1 Ministerial Direction, such as the proposal being contentious development due to the receipt of more than 25 unique submissions, from being referred to the Local Planning Panel for determination.

### **Departure from Development Standards - Boarding Houses**

22. The category '*Departure from development standard*' contained in the section 9.1 Ministerial Direction requires that developments that contravene a development standard imposed by an environmental planning instrument are, subject to certain criteria, to be reported to the Local Planning Panel for determination.
23. Except for development for the purposes of dwelling houses, dual occupancies and attached dwellings all other development that contravenes a development standard by more than 10% is required to be reported to the Local Planning Panel for determination.
24. Outside of the contravention of a development standard by more than 10% or as a result of the proposal being contentious development due to the receipt of more than 25 unique submissions, boarding houses are generally not required to be reported to the Local Planning Panel for determination under the terms of the section 9.1 Ministerial Direction.

25. State Environmental Planning Policy (Affordable Rental Housing) 2009 contains provisions relating to boarding houses.
26. Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 contains the following development standard:

*"(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms."*
27. Non-compliance with this standard requires the submission of a Clause 4.6 variation request. A development that does not comply by more than 10% is required to be reported to the Local Planning Panel under the terms of the section 9.1 Ministerial Direction.
28. Since the commencement of the Local Planning Panel:
  - (a) 28 applications for boarding house developments have been reported to the panel for determination;
  - (b) 25 of the 28 applications have included a Clause 4.6 variation request relating to non-compliance with the motorcycle parking standard;
  - (c) 23 of the 28 applications (61.5%) have been referred to the panel for the sole reason of non-compliance with the motorcycle parking standard.
29. With regard to (c) above, in all but three instances the Clause 4.6 variation requests were supported by council officers and the applications were recommended for approval. In three instances applications were recommended for refusal. These applications were recommended for refusal for numerous reasons and not just non-compliance with the motorcycle parking standard. In all instances the Local Planning Panel concurred with council officers' recommendations.
30. Clause 4.6 variation requests relating to the non-compliance with the motorcycle parking standard have been generally supported on the basis that:
  - (a) the development satisfies the aims of Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 notwithstanding the non-compliance;
  - (b) the development is consistent with the objectives of the zone;
  - (c) the development is located in an accessible area in close proximity to public transport; and
  - (d) provision of no motorcycle parking results in a more desirable ground level streetscape presentation.
31. In addition, most applications have generally provided more than the minimum bicycle parking spaces required under Clause 30 Standards for Boarding Houses (1) (h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
32. A list of the applications reported to the Local Planning Panel for a boarding house development, where the sole reason for reporting the application to the Local Planning Panel for determination was the proposals non-compliance with the motorcycle parking standard, is provided in Attachment A.

33. Delegating determination of this category of development applications will help reduce the determination times for these applications.
34. The proposed delegation does not affect the requirement for development applications for boarding house development that are captured by the other categories contained within the section 9.1 Ministerial Direction, such as the contravention of a development standard by more than 10% or as a result of the proposal being contentious development due to the receipt of more than 25 unique submissions, from being referred to the Local Planning Panel for determination.

**Relevant Legislation**

35. Environmental Planning and Assessment Act 1979.

**ANDREW THOMAS**

Executive Manager Planning and Development

Bill Mackay, Manager Planning Assessments

## **Attachment F**

**Assumed Concurrence Letter –  
1 September 2020**

Ms Monica Barone  
Chief Executive Officer  
City of Sydney  
PO Box 1591  
SYDNEY NSW 2001

Attention: Mr Graham Jahn

*Monica*  
Dear Ms Barone

I am writing in relation to Council's letter of 7 July 2020 to Mr Jim Betts, Secretary of the Department of Planning, Industry and Environment, requesting the 12-month extension to the assumed concurrence for clause 4.6 variations granted on 7 July 2019 be extended to an on ongoing basis.

I have considered Council's request and agree there is merit to extend the assumed concurrence for a further 12 months but not for an ongoing basis. I note that this assumed concurrence will ensure that the determination of these applications will not be delayed as a result of the need to be reported to the Local Planning Panel.

From the date of this letter, Council are exempted for a further 12 months from reporting variations over 10% to the local planning panel for determinations associated with additions or works that do not significantly impact on the height, bulk or setbacks of an existing building or structure, where the existing building or structure already exceeds the relevant development standard. These applications may be dealt with by Council staff under delegation in accordance with any relevant governance mechanisms.

Over this period, I request Council review its height of buildings and floor space ratio controls to achieve a more permanent solution for these variations, so Council does not need to rely on clause 4.6 delegations of more than 10% as often.

Council must continue to maintain a publicly available register of development variations and provide quarterly reports to the Department of Planning, Industry and Environment, Council and the Central Sydney Planning Committee.

If you have any more questions, please contact David McNamara, Director, Eastern District at the Department of Planning, Industry and Environment on 9383 2101.

Yours sincerely



**Brett Whitworth**  
**Deputy Secretary**  
**Greater Sydney, Place and Infrastructure**

*1 September 2020*

**Item 5.****Proposed Schedule of Local Planning Panel Meetings for 2022**

**File No:** X079022

**Summary**

In accordance with Division 2.5 Local Planning Panels of the Environmental Planning and Assessment Act 1979, in March 2018 the City of Sydney established a Local Planning Panel to determine development applications not determined under delegation by City staff or by the Central Sydney Planning Committee.

This report requests the Local Planning Panel adopt the draft schedule of Local Planning Panel meetings for 2022.

**Recommendation**

It is resolved that the Local Planning Panel adopt the draft Schedule of Local Planning Panel Meetings for 2022, as shown at Attachment A to the subject report.

**Attachments**

**Attachment A.** Draft Schedule of Local Planning Panel Meetings for 2022

## Background

1. In accordance with Division 2.5 Local Planning Panels of the Environmental Planning and Assessment Act 1979, in March 2018 the City of Sydney established a Local Planning Panel to determine development applications not determined under delegation by City staff or by the Central Sydney Planning Committee.
2. The then Minister for Planning issued a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979 on 23 February 2018 setting operational procedures to ensure local planning panels meet their obligations in the most efficient and effective manner.
3. Operational Procedures specific to the City of Sydney Local Planning Panel were last endorsed by the Panel on 1 September 2021.
4. The Operational Procedures permit the use of audio visual links to facilitate Local Planning Panel meetings, in accordance with Public Health Orders restricting public movements and assembly.
5. Section 294 of the Environmental Planning and Assessment Regulation 2000 introduced temporary planning measures which included the requirement that Local Planning Panels must meet by audio or audio visual link during the Covid-19 pandemic.
6. In accordance with clause 15 of the Operational Procedures, the Local Planning Panel is required to adopt an annual schedule of dates for Local Planning Panel meetings.
7. The draft Schedule of Local Planning Panel Meetings for 2022 (Attachment A) has been prepared on the basis of a three-week meeting cycle.
8. The draft schedule proposes 16 meetings for the calendar year 2022.
9. A three-week meeting cycle is considered appropriate following a review of the number of development applications considered at each meeting in 2020 and 2021.

## Relevant Legislation

10. Environmental Planning and Assessment Act 1979.
11. Environmental Planning and Assessment Regulation 2000.
12. City of Sydney Local Planning Panel Operational Procedures.

## Critical Dates / Time Frames

13. The Local Planning Panel will adopt an annual schedule of dates for Local Planning Panel meetings in 2022.
14. The commencement time for the public meeting of the Local Planning Panel will be 5.00pm.

15. Until 31 March 2022 meetings of the Local Planning Panel must take place via audio-visual links.
16. The 2022 Local Planning Panel meeting dates will be available on the City's website once endorsed.

**ANDREW THOMAS**

Executive Manager Planning and Development

Eileen Leather, Committee Secretary



# **Attachment A**

<p><b>Draft Schedule of Local Planning Panel Meetings for 2022</b></p>
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<b>PROPOSED SCHEDULE OF LOCAL PLANNING PANEL MEETINGS FOR 2022</b>
<b>DATE</b>
WEDNESDAY 2 FEBRUARY
WEDNESDAY 23 FEBRUARY
WEDNESDAY 16 MARCH
WEDNESDAY 6 APRIL
WEDNESDAY 27 APRIL
WEDNESDAY 18 MAY
WEDNESDAY 8 JUNE
WEDNESDAY 29 JUNE
WEDNESDAY 20 JULY
WEDNESDAY 10 AUGUST
WEDNESDAY 31 AUGUST
WEDNESDAY 21 SEPTEMBER
WEDNESDAY 12 OCTOBER
WEDNESDAY 2 NOVEMBER
WEDNESDAY 23 NOVEMBER
WEDNESDAY 14 DECEMBER