

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