

Kogarah City Council

12 February 2016

PLANNING AND ENVIRONMENTAL SERVICES WORKING PARTY MEETING

Council will hold its next Planning and Environmental Services Working Party Meeting in the Council Chambers, 2 Belgrave Street, Kogarah on Monday, 15 February 2016, commencing at 7:30pm.

I enclose your Agenda for the Meeting.



Paul Woods
General Manager

AGENDA:

A. Apologies

B. Disclosures of Interest

C. Reports from Officers

- C1. Planning and Development Legal Costs 2014-20151
- C2. Development Application Statistics for January - June 2015.....4
- C3. Proposed Changes to Complying Development - Expanding Complying
Development to include low rise medium density housing types7

Members of the Working Party

Cr Sam Stratikopoulos (Chairperson)	Paul Woods (General Manager)
Cr Nick Katris	Rod Logan (Director Planning and Environmental Services)
Cr Kathryn Landsberry	
Cr Lachlan McLean	
Cr Jacinta Petroni	
Cr Michael Platt	
Cr Nathaniel Smith	
Cr Annie Tang (Deputy Mayor)	

Kogarah City Council

To attend as required

George Andonoski (Manager Planning and Development)

Rita Vella (Coordinator Strategic Planning)

Jason Kneipp (Manager Environmental Health and Regulatory Services)

Lynne Denham (Minute Secretary)

Item C1: Planning and Development Legal Costs 2014-2015

Author: Rod Logan - Director Planning and Environmental Services (GA)

Reason for report: To provide an update on the costs associated with legal matters for Planning and Development activities during the 2014-2015 financial year.

Recommendation:

That the report on the costs associated with legal matters for Planning and Development activities during 2014-2015 be received and noted.

Report

1. During the previous financial year there was only one Class 1 Appeal lodged in the Land & Environment Court relating to development applications that had been dealt with by Council. This appeal was withdrawn by the applicants following the on-site conciliation conference, which was held in early July, with the applicant contributing to some of Council's legal costs incurred.
2. Whilst matters relating to developments at No. 19 Elizabeth Street and No.'s 250-258 Railway Parade & No. 7A Blake Street, Kogarah had already been determined in the Courts, in both cases Council had been awarded some degree of costs. Before these can be claimed, a taxable cost assessment is to be prepared by a consultant and then lodged with the Supreme Courts to have a court appointed cost assessor make a determination of the costs to be awarded and issue a certificate for such costs.
3. The costs certificates have been issued in both cases. In relation to the matter involving No. 19 Elizabeth Street, the Certifier has paid the full amount awarded to Council. The costs certificates awarded to Council in relation to the Railway Parade and Blake Street developments have been added to the outstanding debt of Mrs Fokas in her dealings with Council and registered with the Bankruptcy Trustee.
4. The only other significant cost incurred was in obtaining legal advice in relation to a Section 96 Application for No.'s 143-145 Princes Hwy & No.'s 38-48 Chapel Street, Kogarah (DA No. 276/13), where the validity of Council's power to impose Section 94 Contributions to the development was questioned. Ultimately, Council's position was accepted and the application was refused and the Section 94 contributions were paid prior to works commencing.
5. The legal costs of the Planning and Development section have also been reduced as a result of the compliance component of Council being moved to the Environmental and Regulatory Services Unit.
6. The total legal costs over the 2014-2015 financial year was **\$18,808** which is a significant reduction compared to previous years:
 - 2013/14 **\$ 83,484**
 - 2012/13 **\$153,986**

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Item C1 (cont.)

- 2011/12 **\$183,556**

7. A breakdown of the legal proceedings and expenses accrued throughout the 2014-15 financial year are shown in the table below:

Legal Proceedings 2014-2015

Address	Type	Cost	Result
1 Neirbo Avenue, Hurstville	Legal Action to enforce an Order	\$1,500.00	Agreement reached before Order was enforced. Property stopped being used as boarding house and modification removed.
52 Waratah Street, Kyle Bay (DA 7/2014)	Legal Advice	\$471.24	Legal advice sought regarding development assessment and submissions.
20 Burgess Street, Beverley Park	Prosecution in Local Court	\$4,612.35	Defendant was convicted of the offence, fined \$5,000 & ordered to pay costs in the agreed sum of \$2,000.
260-262 railway Parade, Kogarah 7-9 Hampton Court Rd, Carlton 250-258 Railway Parade & 7A Blake Street, Kogarah	Recovery of costs from previous appeals.	\$471.24	Applicant declared vexatious litigant in August 2012. Applicant declared Bankrupt in November 2012 for outstanding costs to Council of \$28,890. Further costs assessed and to be filed with the Courts for a total amount of \$42,136.13. Cost assessment finalised and filed with Bankrupt Trustee. Matter now finalised.
19 Elizabeth Street, Allawah (DA 65/12, BC 10/12)	Stop Work Order & Class 4 Proceedings Class 1 Appeal	\$1,595.45	Stop Work Order & Class 4 proceedings in L&E Court for works outside consent. Class 1 Appeal lodged for refusal to grant consent to S96 and Building Certificate for unauthorised works. Appeal upheld with a number of conditions and extensive rectification works. Partial costs were awarded to Council for the Class 4 Appeal, to be assessed, with initial estimate at approximately \$50,000. Cary over of legal fees and cost assessor and judgement of costs. Costs to the value of \$40,883 paid to Council in December 2014. Matter now finalised.
143-145 Princes Hwy & 38-48 Chapel Street, Kogarah (DA 276/13)	Legal Advice	\$5,246.78	Legal Advice sought against the challenge of Section 94 Contributions.

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Item C1 (cont.)

Address	Type	Cost	Result
Class 1 Appeal – L&E Court		\$3,285.70	Appeal against refusal of Section 96 application to increase hours of first floor restaurant and ground floor courtyard. Conciliation hearing set for 9 July 2015.
Subdivision in E4 Zone	Legal Advice	\$250.80	Legal advice sought on the ability to determine subdivision in E4 zone subject to New City Plan
12-22 Woniara Road, Hurstville	Planning Agreement	\$1,374.45	Preparation and review of Planning Agreement, with costs to be reimbursed.

TOTAL \$ 18,808.00

Conclusion

8. From the above, it can be seen that there is a continuing trend in the reduction of legal expenses being incurred by Council. This is contributed to two factors. Firstly, through the work of the Council assessment officers in being able to negotiate with both applicants and objectors in relation to development applications to ensure a fair solution for all parties involved. This results in the application being determined by Council and not having the applicant or objector appeal the decision in the Land & Environment Court.
9. Secondly, through the strong position taken by Council in policing of compliance matters and successful prosecution of such cases in previous years, there seems to be a reduction in the amount of repeated non-compliance matters or a willingness to rectify these matters early and avoid the matter proceeding to Court.

Operational Plan Budget

10. Within budget allocation.

Attachments/Annexures

Nil.

End of Report

- Item C2:** **Development Application Statistics for January - June 2015**
- Author:** Rod Logan - Director Planning and Environmental Services (GA)
- Reason for report:** To provide an update on the number of Development Applications received, determined and processing times for 1 January to 30 June 2015.

Recommendation:

That the report on the number of Development Applications received, determined and processing times for 1 January to 30 June 2015 be received and noted.

Background

1. As part of Council's delivery and operation plans, a report is to be presented to Council, biannually, outlining the development assessment processing times for each period.
2. Previously these figures were summarised and included in the delivery and operation plan report presented to Council, and are now presented in a more detailed format, providing information on the number of applications received, determined and the assessment times.
3. The table below gives a month by month break-up of the number of applications received by Council, the number of applications determined and how many of those went to Ward Councillor Review or Council for determination. There is also a comparison with the total figures for the previous two periods.

January 2015 – July 2015

Monthly Statistics Report on Development Applications From January – July 2015			
DA's Determined	DA's Received	No. of Ward Reports sent	Council Reports
January:			
15	12	1	0
February:			
32	25	3	3
March:			
32	36	1	1
April:			
38	28	1	2
May:			
32	38	1	2
June:			
36	29	1	2
TOTAL January – June 2015			
185	168	8	10
TOTAL July – December 2014			
216	213	4	8
TOTAL January – June 2014			
184	189	10	6

Item C2 (cont.)

KPI Statistics for the period: 1/01/2015 - 30/06/2015

Development Applications

Applications Received	168
Applications Determined	180
Median Time to Determine (days)	32
Mean (Average) Time to Determine (days)	41.2
Applications Determined < 40 days	65.56 %
Applications Determined < 80 days	87.78 %

KPI Statistics for the period: 1/07/2014 - 31/12/2014

Development Applications

Applications Received	213
Applications Determined	216
Median Time to Determine (days)	26
Mean (Average) Time to Determine (days)	36.9
Applications Determined < 40 days	71.30 %
Applications Determined < 80 days	91.67 %

KPI Statistics for the period: 1/01/2014 - 30/06/2014

Development Applications

Applications Received	189
Applications Determined	184
Median Time to Determine (days)	33
Mean (Average) Time to Determine (days)	40.2
Applications Determined < 40 days	56.52 %
Applications Determined < 80 days	92.39 %

4. As can be seen from the above table, the workload has been managed where the number of applications determined was similar to the number of applications received. There has also been improvement in the percentage of applications completed within a net time of 40 business days compared to the same period last year.
5. There is a similar trend that appears to occur across the year, where following a slow start early in the year, due to holiday periods and leave, there is a gradual increase in the number of applications received by Council which also corresponds to an increase in the number of applications determined over the same period, with ongoing improvements in assessment times.

Item C2 (cont.)

6. At the end of July 2015, Council had 83 outstanding development applications (DA & S96), which was an improvement on that which was expected as there are generally about 100-110 outstanding applications. This is an improvement on the figure for the two previous periods of 100 and 101 outstanding applications respectively. This allows for applications that have just been lodged, are still on notification, waiting for additional information or being assessed.

7. During this period the average number of business days taken to determine an application was 41.2 business days, with a median time of 32 days. Of all the applications determined during the period, 120 applications (65%) were determined within 40 business days. These figures are similar, yet with a slight improvement, when compared to the same period the previous year.

Operational Plan Budget

8. No budget impact for this report.

Attachments/Annexures

Nil.

End of Report

- Item C3:** **Proposed Changes to Complying Development - Expanding Complying Development to include low rise medium density housing types**
- Author:** Rod Logan - Director Planning and Environmental Services (RV)
- Reason for report:** To seek endorsement of a submission to the Department of Planning and Environment (the Department) on the proposed amendments to the policy to expand complying development to include two storey medium density housing types.

Recommendation:

That the issues raised in this report be included in Council's submission to the exhibited *Discussion Paper – Options for Low Rise Medium Density Housing as Complying Development*.

Background

1. The NSW Government is currently seeking feedback on a proposal to expand the range of low-rise residential development that can be undertaken as complying development across NSW.
2. A Discussion Paper exploring options for additional forms of complying development was released on 30 November 2015 and a summary report was presented to the Planning and Environmental Services Working Party in December 2015. A copy of this report is attached.
3. The Discussion Paper proposes complying development rules for one and two storey townhouses, terraces, dual occupancies and manor houses, similar to existing rules for dwelling houses.
4. The Discussion Paper recommends that the following development options are considered for inclusion as complying development under the State Policy for exempt and complying development:
 - Development resulting in 2 dwellings (dual occupancies) on a single lot with a minimum lot size of 400m²;
 - Development resulting in 3-4 dwellings (manor homes) on a single lot with a minimum lot size of 500m²; and
 - Development resulting in 3-10 dwellings on a single lot with a minimum lot size of 600m² (townhouses/terraces and/or a combination of dwelling types resulting in 3-10 dwellings on a single lot).
5. It is suggested that the expansion of complying development to medium density housing would reduce approval processing times, reduce costs to homeowners and provide more efficient delivery of a diverse range of housing options.

Item C3 (cont.)**Feedback from Council**

6. The Discussion Paper asks for Council and community feedback on a specific set of questions. The questions are detailed in the body of the report and a response has been provided for each.
7. It is recommended that Council's response to the questions in the body of this report form the basis of Council's submission to the Department.

**Development resulting in 2 dwellings (dual occupancies) on a single lot
General Comments - Application of policy**

8. The paper states on page 1:

“Development resulting in 2 dwellings must be attached to be undertaken as complying development. The paper does not provide recommendations for 2 detached single dwellings houses to be carried out as complying development on a single lot.
9. The paper then proceeds to provide minimum frontage standards and illustrations on page 13 for two detached dwellings (where the second dwelling is in the rear yard of the existing dwelling).
10. The statement and the proposed standards are contradictory. It is requested that further clarification be provided as to the extent of the proposed changes and whether dual occupancy (detached) are proposed as part of these changes.
11. Further, Council considers that dual occupancy (detached) should not be permitted as complying development. Council only permits dual occupancy (detached) on corner sites or sites with two street frontages due to the significant impacts which may arise to adjoining properties.

Floor space ratio for dual occupancy development

12. The paper is silent on what floor space ratio would be applied to dual occupancy development. As site area requirements are minimums, it is likely that development on larger sites will also allow opportunities to construct attached dual occupancies. The proposed building envelope provisions (setbacks and building height) would promote very large and bulky buildings on large lots.
13. Council has a sliding scale floor space ratio, which decreases as the site area increases. It is requested that a similar approach be applied to dual occupancies under the draft policy to ensure that the size of buildings continues to have a close relationship to the site area.

Item C3 (cont.)

Response to Questions in the Discussion Paper

14. *Should the development of dual occupancies on a single lot as complying development be permitted in the R1, R2 and R3 zones?*
15. Yes
16. *Should the minimum frontage (for dual occupancies) be reduced to 14m so that the construction of two dwellings on a single lot can be carried out as complying development on more existing lots?*
17. A 15m frontage would facilitate each building having a width of 6.6m (taking into account side setback requirements). Reducing the frontage to 14m would reduce the width of each dwelling to 6.1m and reduce the functionality of internal spaces. It is considered for the purposes of complying development, the minimum frontage requirement should be 15m.
18. *Should the height be limited to 8.5m?*
19. Yes, an 8.5m height limit is consistent with the complying development requirements for dwelling houses.
20. *Should attic rooms be permitted?*
21. No, maintaining the scale at two storeys only is appropriate for this form of complying development. Also, attic rooms require careful design resolution and it is considered that they could not be adequately resolved through the complying development process.
22. *Should 2.7m floor to ceiling heights be imposed?*
23. Yes
24. *Should eaves and roof overhangs be required to comply with the envelope control?*
25. Eaves and roof overhangs provide a better design outcome for the dwellings and should be encouraged hence a limited encroachment of up to 600mm for eaves would promote this outcome.
26. *Would the application of a 1.2m setback and no building envelope be easier to implement?*
27. Yes
28. *Should Torrens title subdivision of 2 dwellings on a single lot be permitted as complying development?*
29. Yes, but only after both buildings have been fully completed and met all of the prescribed conditions.

Item C3 (cont.)

30. *Should subdivision be permitted only after the buildings are completed?*
31. Yes

Development resulting in 3-4 dwellings – manor homes

32. Manor homes are a new type of building form and are proposed to contain up to four dwellings and would appear as a large dwelling house, but would essentially be a residential flat building. They are proposed to be permitted in the R2 – Low Density Residential zone on blocks with a minimum lot size of 500m².
33. The proposed lot size is contrary to the minimum 600m² requirement in Sydney's Growth Centres and there is limited justification to clearly articulate why the site area should be reduced to 500m².
34. Council does not permit residential flat building development in the R2 – Low Density zone and if introduced as complying development would permit development that would not be permitted generally.
35. Council considers that Manor homes should only be permitted in the R3 – Medium Density zone and not the R2 – Low Density Residential zone.
36. *Should manor homes only be permitted on corner lots with dual street access?*
37. Yes
38. *Should manor homes on lots that do not have rear access be required to have a basement car park?*
39. No, basement car parking is not a desirable outcome to be encouraged on all allotments.
40. *Instead of council certification of on-site stormwater detention (OSD) and waste storage, could certification by appropriately qualified specialists be provided?*
41. Council certification should be required to ensure waste and recycling requirements, including bin enclosure areas and locations are based on the site specific character/geographical nature of the site.
42. Council certification of OSD systems should be required at the initial approval stage. This certification should include approval of the connection to Council's drainage system. The proposed changes to the Codes SEPP should also require a positive covenant on property titles to protect OSD systems after developments are completed and occupied.

Item C3 (cont.)

43. *How should the proposed car parking controls be designed to ensure that adverse impacts on the transport networks (including on-street parking) are minimized and active transport options are encouraged?*
44. Car parking should be met in accordance with local Council's requirements and not the Guide to Local Traffic Generating Developments document.
45. *Should subdivision only be permitted after the buildings have been completed?*
46. Yes, and should be limited to strata subdivision.

**Development resulting in 3-10 dwellings (residential flat buildings/townhouses/terraces)
Minimum Lot Sizes**

47. Kogarah LEP 2012 currently requires a minimum site area of 1000m² for residential flat buildings. The proposed 600m² is insufficient to accommodate development with over 3 dwellings that are strata subdivided. Better design outcomes are more readily achieved on large sites where bulk and scale, privacy and overshadowing and the provision of on-site car parking can be managed. The minimum lots size should therefore be increased to 1000m². There are also issues that may arise with lot consolidation and potential isolation of properties and a reduction in the development potential of adjacent sites.
48. *In which zones should the development of 3-10 dwellings be permitted?*
49. Provisions for 3-10 dwellings should be restricted to the R3 – Medium Density Residential zone.
50. *Instead of council certification of On-Site Stormwater Detention (OSD) and waste, could certification by appropriately qualified specialists be provided?*
51. Council certification should be required to ensure waste and recycling requirements, including bin enclosure areas and locations are based on the site specific character/geographical nature of the site.
52. Council certification of OSD systems should be required at the initial approval stage. This certification should include approval of the connection to Council's drainage system. The proposed changes to the Codes SEPP should also require a positive covenant on property titles to protect OSD systems after developments are completed and occupied.
53. *The proposed controls do not permit the use of attic rooms. Should attic rooms in the roof be permitted to be carried out as complying development?*
54. No, as outlined above, attic rooms should not be permitted.

Item C3 (cont.)

55. *Is the building envelope necessary in this instance? A minimum 2m setback already dictates a maximum height of 7.5m above ground level before the building envelope. As development is limited to 8.5m (2 storeys) is it necessary to also have an envelope control? Is the building envelope control as proposed easy to apply?*
56. Yes
57. *Should the proposed car parking controls be consistent with the requirements of the Guide to Traffic Generating Development or should the relevant council controls for parking apply?*
58. Car parking should be met in accordance with local Council's requirements and not the Guide to Local Traffic Generating Developments document.
59. *Is it appropriate to permit excavation for basement car parking as complying development? What provisions or controls should be in place and information required to accompany an application?*
60. No, basement car parking is not considered acceptable for this type of complying development. Basement parking brings with it significant problems such as acid sulphate soils, contaminated lands and potential impacts on adjoining properties.
61. *What proportion of new housing should be adaptable housing?*
62. The current rate in Kogarah Development Control Plan 2013 is 1 per 10 dwellings. Given the ageing population and the fact that as complying development this form of development will be more common, it is considered that a minimum 1 per 4 dwellings might be an appropriate rate. The provision of adaptable housing units should have a flexible design that complies with AS4299 Adaptable Housing. This assists in facilitating ageing in place and promoting "downsizing", providing access for residents to smaller dwellings in their local area.
63. *Should guidance on dwelling size be included?*
64. Yes. The minimum dwelling sizes provided in the *Apartment Design Guide (ADG)* should be included. This could be done by expanding the role of the *ADG* or the creation of a similar guide for medium density development.

Conclusion

65. Information on the Department's website states that the Department will review all comments received during the exhibition period and the comments/issues raised will be used to inform the development of any changes recommended in the Discussion Paper.
66. In summary, Council's submission objects to the introduction of complying development provisions for manor houses and residential flat buildings in the R2 – Low Density Residential zone as this development would be inconsistent with the existing development and character in this zone.

Item C3 (cont.)

67. It is not stated in the documentation provided by the Department what the timetable or next steps will be for further Council and community feedback, however further reports will be provided as consideration of this matter unfolds.

Operational Plan Budget

68. No budget impact for this report.

Attachments/Annexures

Nil.

End of Report