



## MEMORANDUM

### BACKGROUND:

The Inner West Local Planning Panel (the Panel) operates under the terms of the Ministerial Direction dated 6 September 2023.

Over the last few years, to reduce the backlog of Development Applications awaiting a spot on the panel agenda, improve the efficiency of the Panel and reduce delays for applicants, the determination of the less complex and uncontroversial applications have been delegated back to Council staff to determine. These delegations occurred on three (3) occasions, being;

- 12 February 2019;
- 10 September 2019; and
- 8 November 2022.

Attached are those memorandums

Council is seeking to make some minor amendments in order to -

- (i) Provide clarity to the existing delegations into a single memorandum document (this memorandum)
- (ii) Update the delegations to reflect current applicable legislation and staff position titles
- (iii) Modifications to delete delegations superseded by Ministerial Directions; and
- (iv) Update an existing delegation of a minor non-controversial matter to enable Council staff to process the routine applications more quickly.

### PREVIOUS DELEGATIONS TO STAFF:

At its meeting on 12 February 2019, the Inner West Local Planning Panel considered a memorandum, material listed at Item No 1, IWLPP662/19, seeking that the Panel delegate back to Council minor development and modification applications involving tree pruning on heritage sites, limited section 4.55 modifications and Clause 4.6 variations for site coverage for the former Leichhardt Local Environmental Plan, back to senior staff.

The intent of this was to enable staff to determine the less complex and uncontroversial applications to ensure that the Panel dealt with genuinely complex and controversial matters.

The adoption of those matters as referenced are included in **Attachment B**.

Subsequent to this, at its meeting on 10 September 2019, the Inner West Local Planning Panel considered a further Memorandum, material listed at Item No 1 on the agenda, seeking that the Panel delegate back to Council other minor development and modification applications which included removal of trees on heritage sites, modification to development affected by SEPP 65 and licensed premises, and variations to development standards in the suburb of Haberfield.

The intent of this was the same as the adoption of the February delegation.

The adoption of those matters as referenced are included in **Attachment C**.

In response to gazettal of *Inner West Local Environmental Plan 2022 (IWLEP 2022)*, at its meeting on 8 November 2022, the Inner West Local Planning Panel considered a further Memorandum material listed at Item No 1 on the agenda, seeking to update the prior Memorandum (adopted 10 September 2019) to include reference to the newly adopted *IWLEP 2022*.

The adoption of those matters as referenced are included in **Attachment D**.

## PROPOSED CHANGES

Under section 2.20(8) of the Environmental Planning and Assessment Act 1979:

*A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council...*

Council is now seeking to make a number of minor amendments to the delegations as follows;

- (i) Update, consolidate and rationalise the delegations which sit as separate documents into a singular memorandum and delegation document.

There are currently three (3) memorandums, and it is considered that for ease of reference and application it is appropriate to consolidate the memorandums into a single document (this memorandum and the attached instrument).

- (ii) Delegations to reflect current applicable legislation and staff position titles

Since the adoption of the existing delegations, there have been a number of legislative changes to Council's local planning instruments. The consolidated document seeks to reflect the gazettal of the Inner West Local Environmental Plan 2022 as the relevant local instrument (deleting references to repealed local instruments Leichhardt Local Environmental Plan 2013 and Ashfield Local Environmental Plan 2013) and update applicable references to Clauses.

It is also proposed to update the consolidated document to reflect the job titles of senior staff which have changed since the original documents were adopted.

- (iii) Delete previous delegations which have been superseded by more recent Ministerial directions (i.e. modification applications)

Direction 2 of the Local Planning Panels Direction dated 6 September 2023 that took effect from 1 November 2023 identifies modification applications that are to be determined by local planning panels on behalf of Inner West Council which include:

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.*

The Panel's current delegations pre-date the two (2) most recent Ministerial Directions which take precedent in terms of the delegations of modification applications.

As the Ministerial Directions are clear having regard to determining modifications relating to SEPP 65 and licensed premises, it is considered relevant to delete reference to any delegations that are covered by the Ministerial Direction to avoid duplication. In this regard, it would also be prudent for Council to assess s4.56 Applications in the same manner having regard to Direction 2 of the Ministerial Direction whereby should the applicant seek to delete or amend conditions imposed by the Court then that application should be determined by the local planning panel.

- (iv) Applications which include landscape area variations within the former Leichhardt Council area to be delegated to Council staff

As part of the Memorandum on 12 February 2019, the Panel delegated to Council staff variations to the Site Coverage development standard within the former Leichhardt Council area. The Site Coverage development standard falls within Section 4.3C - Landscaped areas for residential accommodation in Zone R1 of *IWLEP 2022*.

This Section comprises a Landscaped Area development standard and a Site Coverage development standard. The development standard reads as follows -

- (1) *The objectives of this clause are as follows—*

- (a) *to provide landscaped areas for substantial tree planting and for the use and enjoyment of residents,*
- (b) *to maintain and encourage a landscaped corridor between adjoining properties,*
- (c) *to ensure that development promotes the desired character of the neighbourhood,*
- (d) *to encourage ecologically sustainable development,*
- (e) *to control site density,*
- (f) *to provide for landscaped areas and private open space.*

- (2) *This clause applies to development for the purposes of residential accommodation on land in Zone R1 General Residential and identified as "Area 1" on the [Key Sites Map](#).*

- (3) *Development consent must not be granted to development to which this clause applies unless—*
- (a) *the development will result in a landscaped area comprising at least—*
    - (i) *if the lot size is 235m<sup>2</sup> or less—15% of the site area, or*
    - (ii) *otherwise—20% of the site area, and*
  - (b) *the site coverage does not exceed 60% of the site area.*
- (4) *For subclause (3)—*
- (a) *the site area must be calculated in the way set out in clause 4.5, and*
  - (b) *the following areas must not be included as landscaped areas—*
    - (i) *a landscaped area with a length or width of less than 1m,*
    - (ii) *a landscaped area located more than 500mm above ground level (existing),*  
*and*
  - (c) *a deck, balcony or similar structure, whether enclosed or unenclosed, must not be included in calculating the site coverage if—*
    - (i) *the underside of the deck, balcony or structure is at least 2.4m above ground level (existing), and the area below the structure is able to be landscaped or used for recreational purposes, or*
    - (ii) *the finished floor level is 500mm or less above ground level (existing).*

Minor housing applications in the former Leichhardt local government area often exceed the Landscape Area development standard within the *IWLEP 2022*. This is symptomatic of small allotment sizes and a development pattern of row housing, in combination with a conservation-focused plan.

Council staff have continued to report variations to the Landscaped Area development standard, whereas variations to the Site Coverage component of this Section are able to be determined under delegation by Council Staff. It is unclear as to the omission of the delegation of Landscaped Area from the memorandum that delegated Site Coverage to Council staff, however the current delegations regarding Site Coverage (in the former Leichhardt Area) have enabled greater efficiencies in the determination of more minor applications.

The principle sought for the delegation of Landscaped Area is the same as the previous delegation granted to Site Coverage. The objectives of the development standard are also the same.

Ultimately, it is considered that in enabling Council staff to determine such variations will result in -

- processing more 'routine' applications more quickly for 'home owner' applicants;
- reduce the volume of minor Applications being reported to the Panel,
- reduce waiting times for applicants/owners; and
- Enable the Panel to concentrate on more complex and controversial matters.

As a result, it is requested that the Panel delegate to Council staff the ability to determine Applications which request a variation to the Landscape Area development standard within the *IWLEP 2022* applicable to the former Leichhardt Area.

The above changes have been incorporated at Attachment A.

Submitted for consideration.

Ruba Osman

Development Assessment Manager

Inner West Council

## Attachment A- Proposed Instrument of Delegation

Under section 2.20(8) of the Environmental Planning and Assessment Act 1979, the Inner West Local Planning Panel resolves to delegate its determining functions on the following development types to the Senior Manager Development Assessment and the Development Assessment Manager:

1. Minor alterations and additions to a heritage item, including:

- a) Maintenance of at least 90% of the significant fabric; or
- b) Little or no adverse impact on the significant fabric or setting of the item; and
- c) Where there is agreement by both the applicant's and Council's heritage expert that the development can proceed.

2. Minor works to trees that are

- a) Heritage listed; or
- b) On a heritage site; and that
  - a) Affects less than (or equal to) 10% of the tree canopy; and
  - b) Will not adversely impact upon the health of the tree; and
  - c) Will not adversely impact upon the heritage significance of the tree or place; and
  - d) Where there is agreement by both the applicant's and Council's experts that the development can proceed.

3. Landscape Area and Site Coverage in the former Leichhardt Local Government Area

Variations to the development standard for Landscape Area and/or Site Coverage set out in the Inner West Local Environmental Plan 2022 limited to Development Applications only for the following low density residential development types:

- a) dwelling houses

- b) semi detached dwellings
- c) attached dwelling

4. Applications for removal of trees on heritage sites, unless the tree itself is heritage listed or the gardens specifically form part of the heritage listing, subject to Inner West Council's ordinary tree removal assessment policies and conditions.

Note: The removal of a tree which is itself heritage listed, or is part of the heritage listing (for example, if the relevant LEP identifies "*House, and native garden setting*" in the Heritage inventory) would still need to be determined by the Panel as it would still technically be 'demolition' (ie. removal) of a heritage item and a development which requires special consideration.

5. For residential development in Haberfield:

- a) Applications which involve variations to the basement area or excavation development standards specific to Haberfield set out in Clause 6.20(3)(a)(ii) and 6.20(3)(b) of the Inner West Local Environmental Plan 2022.
- b) Applications which involve variation to the 50% landscaped area development standards specific to Haberfield set out in Clause 6.20(3)(d) of the Inner West Local Environmental Plan 2022, where the proposed variation is no more than that already existing on the site.

6. The Panel shall determine applications under section 4.56 of the Environmental Planning and Assessment Act 1979 for the modification of development consents granted by the Court that:

- Propose amendments to a design amendment condition of development consent that was added by the Court, or
- Meet the criteria for development applications set out in the Schedules to the Ministerial directions relating to conflict of interest, contentious development or departure from development standards.

### Caveats

- a) The delegations recommended above would only be of effect if a Development Application is required to go before the Panel solely for that reason. If a tree on a heritage site as discussed at point 4 above crossed another Local Planning Panel threshold 'trigger' – say, for example, 10 objections, or the property were Council-owned – then the application would still need to be reported for determination to the Planning Panel.

## Attachment B - Agenda Item 1 presented to Panel and Minutes - 12 February 2019



### MEMORANDUM

At present, the Inner West Local Planning Panel sometimes holds two meetings per month, with agendas of up to 10 items. Many of the matters considered by the Panel are minor and uncontroversial in nature. There is a significant backlog of Development Applications awaiting a spot on the Panel agenda. In order to improve the efficiency of the Panel and reduce delays for applicants, it is recommended that determination of some of the less complex and uncontroversial applications be delegated back to Council staff.

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*:

*A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council...*

It is recommended that the Panel exercise this power for three separate development types. These include minor heritage matters (including trees), limited modifications of previous Panel decisions, and site coverage within the former Leichhardt Council area. These are discussed in more detail below.

This will reduce the volume of minor Development Applications being reported to each Panel meeting, and in turn reduce waiting times for applicants, and improve the ability of the Inner West Local Planning Panel to deal with genuinely complex and controversial matters.

The draft delegation has been agreed to, in principle, by the Panel Chairs and Senior Council staff. A recommended instrument of delegation is attached at **Appendix A**.

#### **1. Works to heritage items**

Currently, all applications involving alterations or tree lopping on heritage listed sites are reported to the Panel. This follows a narrow interpretation of the term 'demolition' by the Department of Planning in the requirement for Panels to determine all Development Applications involving 'demolition of a heritage item'.

Often, the Development Applications which come before the Panel under this criterion are not controversial or the affected parts of the building may not be of heritage significance.

It is appropriate that the Inner West Local Planning Panel delegate to staff the power to determine Development Applications for heritage items where:

- All or most of the significant fabric is maintained;
- There is no adverse impact on the significant fabric or setting of the item; and
- It is agreed by both the applicant's heritage expert and Council's heritage officer that the development can proceed.

Further, it is appropriate that the Panel delegate to staff the power to determine Development Applications for minor works to trees that are either

- Heritage listed; or
- On or overhanging the site of a heritage item



that affect less than (or equal to) 10% of the tree canopy and the applicant's and Council's experts agree that the proposal

- Will not adversely affect the health of the tree; and
- Will not adversely affect the heritage significance of the tree or place.

## **2. Modifications to Panel-issued Development Consents**

It is appropriate that the Inner West Local Planning Panel delegate to staff certain modification applications to development consents which have been previously determined by the Panel.

The rationale for such an arrangement is to ensure that the Panel only sees those modification applications which have a wider public interest, to keep the volume of applications going to the Panel at manageable levels, to relieve the Panel of determining applications which have no real public interest (many of which are routine), and generally improve operational efficiencies.

The determination of modification applications to development consents previously granted by the Panel described in paragraphs 1, 2, and 5 below could be delegated to staff:

- a) Modification applications types ss4.55(1), 4.55(1A), and 4.56 except for:
  - (i) applications involving modification to development to which State Environmental Policy 65 applies;
  - (ii) applications involving modifications to a licensed premises;
  - (iii) applications involving modifications to development where the Council has a conflict of interest.
- b) In respect of all modification applications which propose a change to a development standard:
  - (i) if the original consent was granted with a variation to a development standard greater than 10% and the modification does not change that level of variation;
  - (ii) if the original consent was granted with a variation to a development standard of less than 10%, or no variation, and the application proposes to increase the variation by less than 10%.
- c) Where any proposed modification seeks to modify a non-standard condition imposed by a Panel, being in addition to those conditions included in Council's assessment report, the application must be referred to the Panel regardless of the number of submissions.
- d) In respect of all modification types, regardless of the number of submissions, where a deemed refusal appeal has been lodged in the Land and Environment Court, these can be determined by staff under delegation to enable time frames imposed by the Court to be met.

## **3. Site coverage in the former Leichhardt Local Government Area**

Minor housing applications in the Leichhardt local government area often exceed the site coverage development standard within the Leichhardt LEP.

This is symptomatic of small allotment sizes and a development pattern of row housing, in combination with a conservation-focussed plan which inhibits redevelopment of land.

As a result, many otherwise routine Development Applications for housing 'alterations and additions' come before the Panel. It is appropriate that the Inner West Local Planning Panel delegate to staff the ability to determine Development Applications which entail a variation to the site coverage development standard within the Leichhardt LEP.

4. Caveats

- a) This delegation would only be of effect if a Development Application is required to go before the Panel solely due to the matter being delegated back to Council. If a minor heritage item as discussed at point 1 above crossed another Local Planning Panel threshold 'trigger' – say, for example, 10 objections, or the property were Council-owned – then the application would still need to be reported for determination to the Planning Panel.
- b) If a Council Officer is uncertain as to the subjective elements of this delegation (terms such as 'significant fabric' or 'adverse impact'), a briefing may be held with the Panel to make sure a particular application falls within the reasonable limits of the delegation.

Submitted for Consideration

Luke Murtas  
Development Assessment Manager  
Inner West Council



# INNER WEST COUNCIL

## APPENDIX A

### INSTRUMENT OF DELEGATION

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Inner West Local Planning Panel resolves to delegate its determining functions on the following development types to the Group Manager Development Assessment and Regulatory Services and the Development Assessment Manager:

1. Minor alterations and additions to a heritage item, including:
  - a) Maintenance of at least 90% of the significant fabric; or
  - b) Little or no adverse impact on the significant fabric or setting of the item; and
  - c) Where there is agreement by both the applicant's and Council's heritage expert that the development can proceed.
2. Minor works to trees that are
  - a) Heritage listed; or
  - b) On a heritage site;and, that
  - a) Affect less than (or equal to) 10% of the tree canopy; and
  - b) Will not adversely impact upon the health of the tree; and
  - c) Will not adversely impact upon the heritage significance of the tree or place; and
  - d) Where there is agreement by both the applicant's and Council's experts that the development can proceed.
3. Modification applications types ss4.55(1), 4.55(1A), and 4.56 except for:
  - a) Applications involving modification to development to which State Environmental Planning Policy No. 65 applies;
  - b) Applications involving modifications to a licensed premises;
  - c) Applications involving modifications to development where the Council has a conflict of interest.
  - d) Where any proposed modification seeks to modify a non-standard condition imposed by a Panel, being in addition to those conditions included in Council's assessment report, the application must be referred to the Panel regardless of the number of submissions.

In addition, the following additional modification applications are delegated to staff:

- d) All modification applications which propose a change to a development standard:
  - (i) if the original consent was granted with a variation to a development standard greater than 10% and the modification does not change that level of variation;
  - (ii) if the original consent was granted with a variation to a development standard of less than 10%, or no variation, and the application proposes to increase the variation by less than 10%.
- e) In respect of all modification types, regardless of the number of submissions, where a deemed refusal appeal has been lodged in the Land and Environment Court, these can be determined by staff under delegation to enable time frames imposed by the Court to be met.

#### **4. Site Coverage in the former Leichhardt Local Government Area**

Variations to the development standard for site coverage set out in the Leichhardt Local Environmental Plan 2013 limited to Development Applications only for the following low density residential development types:

- a) *dwelling houses*
- b) *semi detached dwellings*
- c) *attached dwellings*

## Attachment C - Agenda Item 1 presented to Panel and Minutes -10 September 2019



# INNER WEST COUNCIL

## MEMORANDUM 19/08/19

At the start of 2019, the Inner West Local Planning Panel delegated minor works to heritage items, applications involving tree lopping on heritage sites, limited section 4.55 modifications and Clause 4.6 variations for site coverage in Leichhardt back to senior Council staff.

This has resulted in shorter Panel agendas with a closer focus on more complex and controversial applications, and allowed Council staff to process more routine applications much more quickly for 'mum and dad' applicants.

It has been Council's aim to maintain Local Planning Panel meetings at one per month and not call any extraordinary meetings. The ongoing workload of applications required to be reported to the panel is making this difficult.

A review of the delegations and ongoing discussion with Panel Chairs and panellists has revealed the potential for further delegations of minor, non-controversial matters which would again improve the efficiency of the Panel.

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*:

*A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council...*

It is recommended that the Panel exercise this power for four types of application in addition to the delegation granted at the start of 2019. These include:

- Removal of trees on heritage sites, unless the tree itself is heritage listed or the gardens specifically form part of the heritage listing;
- Modifications to SEPP 65 developments apart from those which materially increase the building envelope, unit yield, or affect the compliance with development standards or controls in a significant way;
- Minor modifications to licensed premises which do not affect neighbour's amenity or community safety;
- Variations to development standards within the footprint or extent of existing development in Haberfield.

This will reduce the volume of minor Development Applications being reported to each Panel meeting, and in turn reduce waiting times for applicants and improve the ability of the Inner West Local Planning Panel to concentrate on more complex and controversial matters.

These items are discussed in more detail below and a draft instrument of delegation is attached for your consideration at **Appendix A**.

### **1. Removal of trees on heritage sites**

Currently, all applications involving tree removal on sites which include heritage items are reported to the Panel. This follows a narrow interpretation of the term 'demolition' by the Department of Planning in the requirement for Panels to determine all Development Applications involving '*demolition of a heritage item*'.

On almost all occasions, the tree removal applications which come before the Panel under this criterion are not controversial and the trees to be removed are not heritage significant.

The Panel has already delegated to staff the power to determine development applications for heritage items where:

- *All or most of the significant fabric is maintained;*
- *There is no adverse impact on the significant fabric or setting of the item; and*
- *It is agreed by both the applicant's heritage expert and Council's heritage officer that the development can proceed.*

and

*for minor works to trees that are either heritage listed or on or overhanging the site of a heritage item that affect less than (or equal to) 10% of the tree canopy and the applicant's and Council's experts agree that the proposal*

- *Will not adversely affect the health of the tree; and*
- *Will not adversely affect the heritage significance of the tree or place.*

Since this delegation was conferred, at least one item (on some occasions as many as three) on each panel agenda has been for tree removal on a heritage site, although the trees themselves have not been heritage listed or integral to the heritage significance of the item. Applicants often do not even take the time to appear at the Panel meeting. It is often the case that the applications do not attract objections from neighbours or Council heritage officers.

Only one item has been decided against the recommendation of the staff. In that matter, the reason the Panel supported removal of a tree against the staff recommendation was that the applicant submitted an arborist's report and heritage statement late to the Panel secretary.

It is the view of Council's planners and heritage officers that these applications do not generally entail significant heritage or town planning impacts to be assessed. Further, it is not likely that the removal of a non-heritage listed, non-significant tree was within the Minister's contemplation when making out the original orders for the Panel to determine applications for "*demolition of a heritage item...*".

The removal of a tree which is in fact heritage listed, or is part of the heritage listing (say, if the relevant LEP identifies "House, and native garden setting" in the Heritage inventory) would still need to be determined by the Panel as it would still technically be 'demolition' (ie. removal) of a heritage item and requires special consideration.

As such, it is recommended that applications for removal of trees on heritage sites, unless the tree itself is heritage listed or the gardens specifically form part of the heritage listing are delegated to Council staff to determine, subject to Inner West Council's ordinary tree removal assessment policies and conditions.

## **2. Limited modifications to Development affected by SEPP 65 and licensed premises**

It is appropriate that the Inner West Local Planning Panel delegate to staff minor, immaterial modification applications for development which is governed by SEPP 65 (residential apartment buildings).

The Panel has already delegated to the following power to Council staff to determine the following modification applications:

*Modification applications types ss4.55(1), 4.55(1A), and 4.56 except for:*

- a) *Applications involving modification to development to which State Environmental Planning Policy No. 65 applies;*
- b) *Applications involving modifications to a licensed premises;*

- c) Applications involving modifications to development where the Council has a conflict of interest.
- d) Where any proposed modification seeks to modify a non-standard condition imposed by a Panel, being in addition to those conditions included in Council's assessment report, the application must be referred to the Panel regardless of the number of submissions.

In addition, the following additional modification applications are delegated to staff:

- d) All modification applications which propose a change to a development standard:
  - (i) if the original consent was granted with a variation to a development standard greater than 10% and the modification does not change that level of variation;
  - (ii) if the original consent was granted with a variation to a development standard of less than 10%, or no variation, and the application proposes to increase the variation by less than 10%.
- e) In respect of all modification types, regardless of the number of submissions, where a deemed refusal appeal has been lodged in the Land and Environment Court, these can be determined by staff under delegation to enable time frames imposed by the Court to be met.

In making this delegation, the Panel has made key progress in reducing the number of insignificant applications on each meeting agenda. However, it has been noted that a number of minor modifications for residential apartment buildings (and licensed premises) have appeared on the Panel's agenda recently and that the threshold set by the delegation is in fact quite broad.

For example, any slight change to window placement or treatment on any apartment building, even if it has no appreciable impact on neighbours, would still be required to be reported to the Panel under the current delegation. It is the submission of Council staff that only modifications which result in significant changes to the approved building envelope of residential apartment buildings or which involve new or significantly increased variations to development standards need to go back before the Panel. This is the system which applies to Regional Development assessed by City Planning Panels and JRPPs, where only s4.55(2) applications need to be re-appraised by the Panel.

Further, the Panel's recent delegation excluded all modifications to consents for licensed premises from determination by Council staff. Notwithstanding that the Panel only holds the power to determine (and therefore delegate) applications for '*new licensed premises*', this delegation is problematic for the same reason as for residential apartment buildings above: it will potentially result in the Panel considering minor insignificant applications for, say, changes to Pub signage or modifications to the internal configuration of a small bar.

It is Council's view that only modifications to new licensed premises which entail material or potential impacts to neighbour's amenity or community safety need to be considered by the Panel.

That is to say, it is recommended that modification applications to residential apartment buildings, apart from s4.55(2) applications which give rise to:

- appreciable changes to the building envelope which will result in impacts to neighbouring properties; or
- variations to development standards exceeding 10% or, if a variation exceeding 10% was already granted, further variations to the standard; or
- non-compliances with development controls of a significant nature; or
- significant changes to unit yield or the intensity of the development (say, by unit mix or the ratio of residential to non-residential floor space); and
- modifications to licensed premises which entail material or potential impacts to neighbour's amenity or community safety

should be delegated back to Council staff.

### 3. Inconsequential variations to development standards in the suburb of Haberfield

Minor housing applications in the former Ashfield local government area often exceed the development standards for basement area, landscaped area and excavation which are specific to the Haberfield suburb.

The development standards are set out in Clause 6.5(3)(a)(ii), (b) and (d) of the Ashfield LEP 2013:

*Development consent must not be granted to development for the purpose of a dwelling house on land to which this clause applies unless the consent authority is satisfied that:*

*(a) if the development involves an existing building:*

*...*

*(ii) the gross floor area below the existing ground floor level will not exceed 25% of the gross floor area of the existing ground floor...*

*(b) the development will not involve excavation in excess of 3 metres below ground level (existing)...*

*(d) at least 50% of the site will be landscaped area.*

This is a function of existing allotment and house sizes and the development pattern in Haberfield, in combination with conservation area controls which limit substantial redevelopment. As a result of the technical breaches, many otherwise routine Development Applications for 'alterations and additions' in Haberfield come before the Panel. Council staff advise that it is more desirable to resolve these applications in the one planning team Ashfield and Haberfield-focussed team than by an interchangeable Panel to ensure consistency in this important and highly intact conservation area.

Where the application involves a development which does not disrupt the existing and planned garden suburb character of Haberfield by:

- maintaining a variation either within the footprint of the existing building or
- not going beyond the extent of an existing landscaped area variation

then the matter can be adequately dealt with by Council's specialist staff.

It is appropriate that the Inner West Local Planning Panel delegate to staff the ability to determine Development Applications which entail a variation to the basement area and excavation development standards, as well as existing landscaped area variations within Haberfield.



**4. Caveats**

- a) The delegations recommended above would only be of effect if a Development Application is required to go before the Panel solely for that reason. If a tree on a heritage site as discussed at point 1 above crossed another Local Planning Panel threshold 'trigger' – say, for example, 10 objections, or the property were Council-owned – then the application would still need to be reported for determination to the Planning Panel.
- b) As for the previous instrument of delegation, if a Council Officer is uncertain as to the subjective elements of this delegation (terms such as 'significant fabric' or 'adverse impact'), a briefing may be held with the Panel to ensure a particular application falls within the reasonable limits of the delegation.

Submitted for Consideration



Luke Murtas  
Development Assessment Manager  
Inner West Council



# INNER WEST COUNCIL

## APPENDIX A

### INSTRUMENT OF DELEGATION

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Inner West Local Planning Panel resolves to delegate its determining functions on the following development types to the Group Manager Development Assessment and Regulatory Services and the Development Assessment Manager(s):

1. Applications for removal of trees on heritage sites, unless the tree itself is heritage listed or the gardens specifically form part of the heritage listing, subject to Inner West Council's ordinary tree removal assessment policies and conditions.

Note: The removal of a tree which is itself heritage listed, or is part of the heritage listing (for example, if the relevant LEP identifies "*House, and native garden setting*" in the Heritage inventory) would still need to be determined by the Panel as it would still technically be 'demolition' (ie. removal) of a heritage item and a development which requires special consideration.

2. All modifications to SEPP 65 affected development (residential apartment buildings) except for s4.55(2) applications which entail:
  - a) changes to the building envelope which have the potential to materially affect the amenity of neighbouring properties or impact upon the streetscape; or
  - b) variations to development standards exceeding 10% or, if a variation exceeding 10% was already granted, further variations to the standard; or
  - c) non-compliances with DCP development controls (for example, a variation to a parking requirement or a setback control) of a significant nature, or which have the potential to materially affect the amenity of neighbouring properties or impact upon the streetscape; or
  - d) changes to unit yield or the intensity of the development (say, by unit mix or the ratio of residential to non-residential floor space) which have the potential to materially affect the amenity of neighbouring properties.
3. All modifications to previously approved licensed premises except those which entail material or potential impacts to neighbour's amenity or community safety.
4. For residential development in Haberfield:
  - a) Applications which involve variations to the basement area or excavation development standards specific to Haberfield set out in Clause 6.5(3)(a)(ii) and 6.5(3)(b) of the Ashfield Local Environmental Plan 2013.
  - b) Applications which involve a variation to the 50% landscaped area development standard specific to Haberfield set out in Clause 6.5(3)(d) of the Ashfield Local Environmental Plan 2013, where the proposed variation is no more than that already existing on the site.

**Caveats**

- a) The delegations above would only be of effect if a Development Application is required to go before the Panel solely for that reason. If a tree on a heritage site as discussed at point 1 above crossed another Local Planning Panel threshold 'trigger' – say, for example, 10 objections, or the property were Council-owned – then the application would still need to be reported for determination to the Planning Panel.
- b) As for the previous instrument of delegation, if a Council Officer is uncertain as to the subjective elements of this delegation (terms such as 'significant', 'materially affect' or 'adverse impact'), a briefing may be held with the Panel to ensure a particular application falls within the reasonable limits of the delegation.
- c) A summary report regarding the number of applications subject to this delegation and their outcomes is to be provided to the Panel 12 months after its adoption.

**Note:** These delegations are intended to complement and not supersede the previous delegation of the Panel made on 12 February 2019.

## Attachment D - Agenda Item 2 presented to Panel and Minutes- 8 November 2022

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**Inner West Local Planning Panel****ITEM 2**

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### MEMORANDUM

At its meeting on 12 February 2019, the Inner West Local Planning Panel considered a Memorandum, material listed at Item No 1, IWLPP662/19, seeking that the Panel delegate back to Council minor development and modification applications.

This intent of this was to enable staff to determine the less complex and uncontroversial applications in order to reduce wait times for applicants and improve the ability of the Inner West Local Planning Panel to deal with genuinely complex and controversial matters.

The adoption of those matters as referenced are included in Attachment A.

Section 4 of the Instrument of Delegation addresses Site Coverage in the former Leichhardt Local Government Area as follows;

4. Site Coverage in the former Leichhardt Local Government Area

*Variations to the development standard for site coverage set out in the Leichhardt Local Environmental Plan 2013 limited to Development Applications only for the following low density residential development types:*

- a) dwelling houses*
- b) semi detached dwellings*
- c) attached dwelling*

With the recent gazettal of the Inner West LEP 2022 on 12 August 2022, the terms of the Instrument of Delegation would need to be updated to allow the Manager of Development Assessment to consider site coverage breaches that exceed 10% under the new LEP, as at this point in time, the existing document suggests that any applications lodged on or after 12 August 2022 with a site coverage breach that exceeds 10% will need to be reported to the Panel.

**Inner West Local Planning Panel****ITEM 2**

As such it is recommended that the wording for Section 4 of this document be amended to include reference to the new IWLEP 2022 as follows;

*Site Coverage in the former Leichhardt Local Government Area*

*Variations to the development standard for site coverage set out in the Leichhardt Local Environmental Plan 2013/ **Inner West Leichhardt Local Environmental Plan 2022** limited to Development Applications only for the following low density residential development types:*

- a) dwelling houses*
- b) semi detached dwellings*
- c) attached dwelling*

Submitted for consideration

Ruba Osman  
Acting Development Assessment Manager  
Inner West Council

Attachment A- Agenda Item 1 presented to Panel and Minutes - 12 February 2019



#### MEMORANDUM

At present, the Inner West Local Planning Panel sometimes holds two meetings per month, with agendas of up to 10 items. Many of the matters considered by the Panel are minor and uncontroversial in nature. There is a significant backlog of Development Applications awaiting a spot on the Panel agenda. In order to improve the efficiency of the Panel and reduce delays for applicants, it is recommended that determination of some of the less complex and uncontroversial applications be delegated back to Council staff.

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*:

*A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council...*

It is recommended that the Panel exercise this power for three separate development types. These include minor heritage matters (including trees), limited modifications of previous Panel decisions, and site coverage within the former Leichhardt Council area. These are discussed in more detail below.

This will reduce the volume of minor Development Applications being reported to each Panel meeting, and in turn reduce waiting times for applicants, and improve the ability of the Inner West Local Planning Panel to deal with genuinely complex and controversial matters.

The draft delegation has been agreed to, in principle, by the Panel Chairs and Senior Council staff. A recommended instrument of delegation is attached at **Appendix A**.

#### **1. Works to heritage items**

Currently, all applications involving alterations or tree lopping on heritage listed sites are reported to the Panel. This follows a narrow interpretation of the term 'demolition' by the Department of Planning in the requirement for Panels to determine all Development Applications involving 'demolition of a heritage item'.

Often, the Development Applications which come before the Panel under this criterion are not controversial or the affected parts of the building may not be of heritage significance.

It is appropriate that the Inner West Local Planning Panel delegate to staff the power to determine Development Applications for heritage items where:

- All or most of the significant fabric is maintained;
- There is no adverse impact on the significant fabric or setting of the item; and
- It is agreed by both the applicant's heritage expert and Council's heritage officer that the development can proceed.

Further, it is appropriate that the Panel delegate to staff the power to determine Development Applications for minor works to trees that are either

- Heritage listed; or
- On or overhanging the site of a heritage item

that affect less than (or equal to) 10% of the tree canopy and the applicant's and Council's experts agree that the proposal

- Will not adversely affect the health of the tree; and
- Will not adversely affect the heritage significance of the tree or place.

#### 2. Modifications to Panel-issued Development Consents

It is appropriate that the Inner West Local Planning Panel delegate to staff certain modification applications to development consents which have been previously determined by the Panel.

The rationale for such an arrangement is to ensure that the Panel only sees those modification applications which have a wider public interest, to keep the volume of applications going to the Panel at manageable levels, to relieve the Panel of determining applications which have no real public interest (many of which are routine), and generally improve operational efficiencies.

The determination of modification applications to development consents previously granted by the Panel described in paragraphs 1, 2, and 5 below could be delegated to staff:

- Modification applications types ss4.55(1), 4.55(1A), and 4.56 except for:
  - applications involving modification to development to which State Environmental Policy 65 applies;
  - applications involving modifications to a licensed premises;
  - applications involving modifications to development where the Council has a conflict of interest.
- In respect of all modification applications which propose a change to a development standard:
  - if the original consent was granted with a variation to a development standard greater than 10% and the modification does not change that level of variation;
  - if the original consent was granted with a variation to a development standard of less than 10%, or no variation, and the application proposes to increase the variation by less than 10%.
- Where any proposed modification seeks to modify a non-standard condition imposed by a Panel, being in addition to those conditions included in Council's assessment report, the application must be referred to the Panel regardless of the number of submissions.
- In respect of all modification types, regardless of the number of submissions, where a deemed refusal appeal has been lodged in the Land and Environment Court, these can be determined by staff under delegation to enable time frames imposed by the Court to be met.

#### 3. Site coverage in the former Leichhardt Local Government Area

Minor housing applications in the Leichhardt local government area often exceed the site coverage development standard within the Leichhardt LEP.

This is symptomatic of small allotment sizes and a development pattern of row housing, in combination with a conservation-focussed plan which inhibits redevelopment of land.

As a result, many otherwise routine Development Applications for housing 'alterations and additions' come before the Panel. It is appropriate that the Inner West Local Planning Panel delegate to staff the ability to determine Development Applications which entail a variation to the site coverage development standard within the Leichhardt LEP.

4. Caveats

- a) This delegation would only be of effect if a Development Application is required to go before the Panel solely due to the matter being delegated back to Council. If a minor heritage item as discussed at point 1 above crossed another Local Planning Panel threshold 'trigger' – say, for example, 10 objections, or the property were Council-owned – then the application would still need to be reported for determination to the Planning Panel.
- b) If a Council Officer is uncertain as to the subjective elements of this delegation (terms such as 'significant fabric' or 'adverse impact'), a briefing may be held with the Panel to make sure a particular application falls within the reasonable limits of the delegation.

Submitted for Consideration

Luke Murtas  
Development Assessment Manager  
Inner West Council



**APPENDIX A****INSTRUMENT OF DELEGATION**

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Inner West Local Planning Panel resolves to delegate its determining functions on the following development types to the Group Manager Development Assessment and Regulatory Services and the Development Assessment Manager:

1. Minor alterations and additions to a heritage item, including:
  - a) Maintenance of at least 90% of the significant fabric; or
  - b) Little or no adverse impact on the significant fabric or setting of the item; and
  - c) Where there is agreement by both the applicant's and Council's heritage expert that the development can proceed.
2. Minor works to trees that are
  - a) Heritage listed; or
  - b) On a heritage site;

and, that

  - a) Affect less than (or equal to) 10% of the tree canopy; and
  - b) Will not adversely impact upon the health of the tree; and
  - c) Will not adversely impact upon the heritage significance of the tree or place; and
  - d) Where there is agreement by both the applicant's and Council's experts that the development can proceed.
3. Modification applications types ss4.55(1), 4.55(1A), and 4.56 except for:
  - a) Applications involving modification to development to which State Environmental Planning Policy No. 65 applies;
  - b) Applications involving modifications to a licensed premises;
  - c) Applications involving modifications to development where the Council has a conflict of interest;
  - d) Where any proposed modification seeks to modify a non-standard condition imposed by a Panel, being in addition to those conditions included in Council's assessment report, the application must be referred to the Panel regardless of the number of submissions.

In addition, the following additional modification applications are delegated to staff:

  - d) All modification applications which propose a change to a development standard:
    - (i) if the original consent was granted with a variation to a development standard greater than 10% and the modification does not change that level of variation;
    - (ii) if the original consent was granted with a variation to a development standard of less than 10%, or no variation, and the application proposes to increase the variation by less than 10%.
  - e) In respect of all modification types, regardless of the number of submissions, where a deemed refusal appeal has been lodged in the Land and Environment Court, these can be determined by staff under delegation to enable time frames imposed by the Court to be met.

4. Site Coverage in the former Leichhardt Local Government Area

Variations to the development standard for site coverage set out in the Leichhardt Local Environmental Plan 2013 limited to Development Applications only for the following low density residential development types:

- a) *dwelling houses*
- b) *semi detached dwellings*
- c) *attached dwellings*

<b>IWLPP662/19</b> <b><i>Agenda Item 1</i></b>	<b>Delegation of function from the Inner West Planning Panel in relation to minor development and modification applications.</b>
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**DECISION OF THE PANEL**

This matter was decided at 12:05pm

The decision for approval is as per the recommendation with three changes to point 3 to correct typographical errors.

The decision of the panel was unanimous.

**IWLPP1056/22**  
**Agenda Item 2**

Memorandum: Amendment to Delegations to Council officers from the Inner West Planning Panel

The Panel supports the findings contained in the Memorandum with the amendment to the Delegation dated 12 February 2019 from the Panel to Council Officers to be amended to read as follows:

4. Site Coverage in the former Leichhardt Local Government Area

Variations to the development standard for site coverage set out in the Leichhardt Local Environmental Plan 2013 / Inner West Local Environmental Plan 2022 limited to Development Applications only for the following low density residential development types:

- a) dwelling houses
- b) semi detached dwellings
- c) attached dwelling

The decision of the Panel was unanimous

**INSTRUMENT OF DELEGATION**

Under section 2.20(8) of the Environmental Planning and Assessment Act 1979, the Inner West Local Planning Panel resolves to delegate its determining functions on the following development types to the Group Manager Development Assessment and Regulatory Services and the Development Assessment Manager:

1. Minor alterations and additions to a heritage item, including:
  - a) Maintenance of at least 90% of the significant fabric; or
  - b) Little or no adverse impact on the significant fabric or setting of the item;  
and
  - c) Where there is agreement by both the applicant's and Council's heritage expert that the development can proceed.
2. Minor works to trees that are
  - a) Heritage listed; or
  - b) On a heritage site;  
and, that
  - a) Affect less than (or equal to) 10% of the tree canopy; and
  - b) Will not adversely impact upon the health of the tree; and
  - c) Will not adversely impact upon the heritage significance of the tree or place;  
and
  - d) Where there is agreement by both the applicant's and Council's experts that the development can proceed.
3. Modification applications types ss4.55(1), 4.55(1A), and 4.56 except for:
  - a) Applications involving modification to development to which State Environmental Planning Policy No. 65 applies;
  - b) Applications involving modifications to a licensed premises;
  - c) Applications involving modifications to development where the Council has a conflict of interest.

- d) Where any proposed modification seeks to modify a non-standard condition imposed by a Panel, being in addition to those conditions included in Council's assessment report, the application must be referred to the Panel regardless of the number of submissions.

In addition, the following additional modification applications are delegated to staff:

- e) All modification applications which propose a change to a development standard:
  - (i) if the original consent was granted with a variation to a development standard greater than 10% and the modification does not change that level of variation;
  - (ii) if the original consent was granted with a variation to a development standard of less than 10%, or no variation, and the application proposes to increase the variation to less than 10%.
- f) In respect of all modification types, regardless of the number of submissions, where a deemed refusal appeal has been lodged in the Land and Environment Court, these can be determined by staff under delegation to enable time frames imposed by the Court to be met.

#### 4. Site Coverage in the former Leichhardt Local Government Area

Variations to the development standard for site coverage set out in the Leichhardt Local

Environmental Plan 2013 / Inner West Local Environmental Plan 2022 limited to Development Applications only for the following low density residential development types:

- a) dwelling houses
- b) semi detached dwellings
- c) attached dwelling