



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



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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.