

NOTICE OF BURWOOD LOCAL PLANNING PANEL MEETING

Late Items

The meeting of the Burwood Local Planning Panel will be held in the Council Chamber, 2 Conder Street, Burwood on Tuesday 17 September 2024 at 6:00 PM

Tommaso Briscese
General Manager

Agenda

For an Notice of Burwood Local Planning Panel Meeting of Burwood Council to be held in the Conference Room, Level 1, 2 Conder Street, Burwood on Tuesday 17 September 2024.

1. General Business

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General Business

(Item GB4/24) Delegation of Functions from Burwood Local Planning Panel to Council Officers, Minor Heritage Works

File No: 24/35759

Report by Manager City Development

Report

Background

Since the introduction of Local Planning Panels under the *Environmental Planning and Assessment Act 1979* (the EPA Act), the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the EPA Act.

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 March 2024 (the Direction).

The Direction identifies at a minimum the type of development applications and modification applications that must be considered by Council's Local Planning Panel (LPP). A copy of the Direction is annexed at "**Attachment 1**".

Previous delegations to staff

At its meeting on 14 May 2024, the LPP considered two reports seeking:

- a) Delegation of Functions from LPP to Council Officers in Planning Appeals, and
- b) Delegation of Functions to the LPP from the General Manager.

The intent of these reports was to allow appeals to be dealt with in an efficient and timely manner and to allow additional applications to be considered and determined by the LPP if referred to it by the Director City Strategy or the Manager City Development. A copy of these reports are annexed at "**Attachment 2**".

Proposed Changes

In order to improve the efficiency of the LPP 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 EPA Act:

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 LPP exercise this power in relation to minor works to sites that are identified as heritage items (including trees). As examples this could relate to an application for an internal fitout to a modified tenancy within a locally listed heritage item or the replacement of an under awning sign. This is discussed in more detail below.

This will reduce the potential volume of minor Development Applications being reported to each LPP meeting, reduce waiting times for applicants, and improve the ability of the LPP to deal with genuinely complex and controversial matters.

1. Works to local heritage items

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

It is appropriate that the LPP delegate to staff the power to determine Development Applications for locally listed heritage sites where:

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

Further, it is appropriate that the LPP 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 where Council's experts confirm 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. Caveats

- a) This delegation would only be of effect if a Development Application is not required to go before the LPP for another reason. For example, if solely due to the matter being delegated back to Council. If a minor heritage item as discussed above met another LPP 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 LPP.
- b) If a Council Officer is uncertain as to the subjective elements of this delegation (terms such as 'adverse impact'), a briefing may be held with the LPP to make sure a particular application falls within the reasonable limits of the delegation.

Financial Implications

Additional applications considered by the LPP are covered in existing budgets and financial agreements with Panel Members.

Conclusion

Under the EPA Act the LPP is currently required to consider all applications for locally listed heritage items. It is appropriate for the LPP to delegate its functions under section 2.20(8) of the EPA Act, to the General Manager, Director City Strategy and Manager City Development. To avoid unnecessary delays and to ensure the LPP deal with genuinely complex and controversial matters.

Recommendation(s)

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Burwood Local Planning Panel resolves to delegate its determining functions on the following development types to the General Manager, Director City Development and Manager City Development:

1. Minor alterations and additions to a heritage item, being defined to include:

- a) Maintenance of at least 90% of the heritage significant fabric; or

- b) Little or no adverse impact on the heritage fabric or setting of the item; and
- c) Where there is agreement by Council's heritage expert that the development can proceed.

2. Works to trees that are

- a) Heritage listed; or
- b) On a heritage site;

and, that


- c) Affect less than (or equal to) 10% of the tree canopy; and
- d) Will not adversely impact upon the health of the tree; and
- e) Will not adversely impact upon the heritage significance of the tree or place; and
- f) Where there is agreement by Council's experts that the development can proceed.

Attachments

- 1 [↓](#) BLPP 10 September 2024 - Attachment A - LPP Direction
- 2 [↓](#) BLPP - 10 September 2024 - Attachment B - Reports of BLPP - 14 May 2024

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

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


The Hon. Paul Scully MP
Minister for Planning and Public Spaces

Dated: 6/5/24

Objective

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

Application

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

Interpretation

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

Direction

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

Table -

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

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

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

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

SCHEDULE 1

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes:

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

2. Contentious development

Development that:

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

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

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

3. Departure from development standards

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

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes which requires:

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

2. Contentious development

Development that:

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

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

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

3. Departure from development standards

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

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

SCHEDULE 3

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes which requires:

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

2. Contentious development

Development that:

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

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

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

3. Departure from development standards

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

For all other development, development that contravenes a development standard

imposed by an environmental planning instrument by 10% or non-numerical development standards.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

General Business

(Item GB1/24) Delegation of Functions from Burwood Local Planning Panel to Council Officers in Planning Appeals

File No: 24/12397

Report by Manager City Development

Report

Since the introduction of Local Planning Panels under the Environmental Planning and Assessment Act 1979 ('EPA Act'), the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the Environmental Planning and Assessment Act 1979 (**the EPA Act**).

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (**the Direction**).

The Direction identifies the type of development applications and modification applications that must be considered by Council's Local Planning Panel (**LPP**). A copy of the Direction is annexed at "**Attachment 1**".

Following the amendment to the EPA Act of 1 March 2018, the LPP has the control and direction section 8.15(4) of the EPA Act of the conduct of an appeal commenced pursuant to under Section 8.7, 8.8, 8.9 of the EPA Act and any subsequent appeal arising from a decision in those proceedings (**Planning Appeals**) that relates to an application that was determined by the LPP pursuant to the Direction.

Prior to the amendments to the EPA Act, senior Council staff were delegated with the authority to manage Planning Appeals and to give instructions with respect to resolving or defending matters. This report requests that the LPP delegate their functions of control and direction of Planning Appeals to senior Council staff of the Council to allow for the efficient and cost effective conduct of proceedings.

Section 8.15(4) of the EPA Act now provides that:

(4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.

Council's position is that section 8.15(4) of the EPA Act does not apply to deemed refusals because a Local Planning Panel is not defined as a consent authority under section 4.5 of the EPA Act.

Although Council is the respondent in any appeal to the Court, in Planning Appeals that relate to a determination of the LPP, Council's conduct of the class 1 proceedings is subject to the control and direction of the LPP. This means that appeals to which section 8.15(4) applies will need to be reported to and instructions obtained from the LPP. By reason of section 2.20(8) of the EPA Act, the LPP cannot delegate its functions to a single Panel member and therefore a decision of the full Panel is required before solicitors are provided with any instructions.

Such a process is cumbersome in practice. Furthermore, the provision makes it difficult for Council to comply with the Court's requirements that:

The parties are to participate, in good faith, in the conciliation conference (see s34(1A) of the Land and Environment Court Act 1979), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference (Paragraph 47 Practice Note – Class 1 Development Appeals).

In order to ensure that Council can most efficiently and expediently conduct and manage the Planning Appeals process, it is appropriate that the LPP delegate all its Planning Appeal functions under section 8.15(4) to the General Manager, Director City Strategy and Manager City Development with the condition that in the case of a Planning Appeal relating to a decision of the Panel that is contrary to an assessment report, the General Manager, Director City Strategy or Manager City Development will consult with the Chair of

Burwood Local Planning Panel Meeting**14 May 2024**

the Panel that made the relevant decision, as to the conduct of the Planning Appeal within fourteen (14) days of Council being served with the appeal.

Section 2.20(8) of the EPA Act allows Local Planning Panels to delegate any of their functions to the General Manager or other staff of the Council. Such a delegation does not require a resolution of the Council under section 381 of the Local Government Act 1993.

The requirement for the General Manager, Director City Strategy and Manager City Development to consult with the Chair of the Panel about the conduct of the appeal means that the Panel can be satisfied that Council will conduct the appeal with the LPP's decision in mind. If the LPP Chair was concerned that an appeal was not being conducted in a manner consistent with its determination, the LPP could resolve to revoke the delegation in that specific matter.

Any judicial review proceedings relating to a determination of the Panel are not the subject of section 8.15(4) of the EPA Act and Council will have the control and direction of such proceedings. Nevertheless, Council would intend to notify the LLP in the event that judicial review proceedings of an LLP decision are commenced.

Financial Implications

Should the delegation not be provided to the General Manager, Director City Strategy and Manager City Development, then there are likely to be additional legal costs associated with the management of legal proceedings.


Conclusion

Under the EPA Act the LPP currently has the control and direction of the conduct of the proceedings in any Planning Appeals relating to a determination of the LPP. In view of the practical realities of conciliation conferences and the need for instructions at short notice, together with the clear advantages of having an officer present at the conciliation with delegation to give instructions with respect to settlement or the defence of a Planning Appeal, it is appropriate for the LPP to delegate its functions under 8.15(4) of the EPA Act, to the General Manager, Director City Strategy and Manager City Development.

Recommendation(s)

That pursuant to Section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Burwood Local Planning Panel delegate its functions (i.e. all Planning Appeal functions) as referred to in Section 8.15(4) of the *Environmental Planning and Assessment Act 1979* to the General Manager, Director City Strategy and Manager City Development to independently manage all Planning Appeal functions subject to the requirement that, in the case of a Planning Appeal relating to a decision of the Burwood Local Planning Panel that is contrary to an assessment report, the General Manager, Director City Strategy or Manager City Development will consult with the Chairperson of the Burwood Local Planning Panel that made the relevant decision, as to the conduct of the Planning Appeal within fourteen (14) days of Council being served with the appeal.

Attachments

- 1  Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

Item Number GB4/24 - Attachment 1

Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

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

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

The Hon. Paul Scully MP
Minister for Planning and Public Spaces

Dated: 6/5/24

Objective

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

Application

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

Interpretation

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

Direction

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

Table -

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

Item Number GB4/24 - Attachment 1
Local Planning Panels Direction - Development Applications and Applications to Modify
Development Consents

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

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

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

SCHEDULE 1

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes:

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

2. Contentious development

Development that:

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

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

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

3. Departure from development standards

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

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes which requires:

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

2. Contentious development

Development that:

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

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3. Departure from development standards

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

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

SCHEDULE 3

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes which requires:

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

2. Contentious development

Development that:

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

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

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

3. Departure from development standards

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

For all other development, development that contravenes a development standard

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imposed by an environmental planning instrument by 10% or non-numerical development standards.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

(Item GB2/24) Delegation of Functions to Burwood Local Planning Panel from General Manager

File No: 24/12422

Report by Manager City Development

Report

Since the introduction of Local Planning Panels under the Environmental Planning and Assessment Act 1979 ('EPA Act') in 2018, the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the Environmental Planning and Assessment Act 1979 (**the EPA Act**).

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (**the Direction**).

The Direction identifies **at a minimum** the type of development applications and modification applications that must be considered by the Burwood Local Planning Panel (BLPP). A copy of the Direction is annexed at "**Attachment 1**".

All other development applications, modifications to consent and review of determination applications under the Part 4 of the Environmental Planning and Assessment Act 1979 are determined by the NSW Sydney District Planning Panel, the NSW Independent Planning Commission or under Council staff delegations.

At Burwood Council, the determination applications under the Part 4 of the Environmental Planning and Assessment Act 1979 are delegated to the General Manager via section 377 of the Local Government Act 1993. A copy of the Direction is annexed at "**Attachment 2**".

A sub-delegation of functions such as the determination of applications under Part 4 of the Environmental Planning and Assessment Act 1979 are permitted to be provided from the General Managers under s378 of the *Local Government Act 1993* "...to any person or **body** (including another employee of the council)."

The Burwood Local Planning Panel, is considered a '**body**' under the s378 of the *Local Government Act 1993* provision.

Accordingly, following an initial review of Council's delegations, it is considered that in some circumstances, additional matters to those detailed under the 9.1 Ministerial Direction would be in the public interest to be considered in a public forum, by an independent body and determined by the Burwood Local Planning Panel instead of under staff delegation.

As such, pursuant to s378 of the *Local Government Act 1993*, the General Manager of Burwood Council has issued two new separate delegations:

Firstly, that either the Director City Strategy or Manager City Development of Burwood Council are delegated to:

- 1) *Exercise the power under section 4.16 of the Environmental Planning and Assessment Act 1979 to determine development applications for development consent subject to the following limitations:*
 - a) *the delegate is satisfied that the concerns of any objectors identified in written objections received by Council have been considered by the assessment officer in the assessment report; and*
 - b) *the development is not one which has been specified by the Minister by direction or circular as requiring determination by the Burwood Local Planning Panel.*
 - c) *the development is not one which has been specified by the Minister by direction or circular, legislation or any other Environmental Planning Instrument as requiring determination by a NSW Sydney District Planning Panel or the NSW Independent Planning Commission.*
- 2) **Authority to refer any other Application made under Part 4 of the Environmental Planning and Assessment Act 1979 (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the Environmental Planning and Assessment Act 1979 (Building Information Certificate Applications) for determination which would ordinarily be delegated for determination to a**

Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.

A copy of this delegation is annexed at "Attachment 3".

Secondly, in the event the delegation under Part 2 above is exercised by either the Director City Strategy or Manager City Development of Burwood Council, the Burwood Local Planning Panel are delegated to:

- 1) ***Determination of any other Application made under Part 4 of the Environmental Planning and Assessment Act 1979 (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the Environmental Planning and Assessment Act 1979 (Building Information Certificate Applications) which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.***

A copy of this delegation is annexed at "Attachment 4".

Financial Implications

Additional applications considered by the BLPP are covered in existing budgets and financial agreements with Panel Members.

Conclusion

Under the EPA Act, the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 s9.1 Ministerial Direction identifies **the minimum** the types of development applications and modification applications that must be considered by Council's Local Planning Panel (LPP).

In this instance Burwood Council has identified that from time to time that in some circumstances, additional matters to those detailed under the 9.1 Ministerial Direction would be in the public interest to be considered in a public forum, by an independent body and determined by the Burwood Local Planning Panel instead of under staff delegation.

Accordingly, Council's General Manager has provided appropriate delegations under s378 of the Local Government Act 1993 firstly for the Director City Strategy or Manager City Development to refer additional matters to the BLPP for consideration and determination and secondly for the BLPP to have the delegated authority to determine those additional applications referred.

Recommendation(s)

That the Burwood Local Planning Panel receive and note that pursuant to s378 of the Local Government Act 1993 the delegations provided by the General Manager of Burwood Council under Attachments 3 and 4 of this report, which provide that:

- 1) The Director City Strategy or Manager City Development have the authority to refer applications to the BLPP where in their opinion it is in the public interest to do so which is in addition to those specified under the s9.1 Ministerial Direction *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (as amended); and
- 2) The Burwood Local Planning Panel to have the delegated authority to determine any additional applications referred to it from the Director City Strategy or Manager City Development.

Attachments

- 1 [Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents](#)
- 2 [Delegations from Council to the General Manager adopted by Council 18.10.2022](#)
- 3 [General Manager Delegation - Determination of any application referred to BLPP for Determination by Director or Manager 7.12.2023](#)

- 4 [↓](#) General Manager Delegation - Determination of Development Applications and ability to refer application to BLPP for determination 7.12.2023

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

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

The Hon. Paul Scully MP
Minister for Planning and Public Spaces

Dated: 6/5/24

Objective

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

Application

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

Interpretation

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

Direction

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

Table -

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

Item Number GB4/24 - Attachment 1
Local Planning Panels Direction - Development Applications and Applications to Modify
Directions

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

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

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

SCHEDULE 1

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes:

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

2. Contentious development

Development that:

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

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

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

3. Departure from development standards

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

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes which requires:

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

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3. Departure from development standards

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

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

SCHEDULE 3

1. Conflict of interest

Development for which the applicant or land owner is:

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

but not development for the following purposes which requires:

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

2. Contentious development

Development that:

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

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

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3. Departure from development standards

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

For all other development, development that contravenes a development standard

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D

imposed by an environmental planning instrument by 10% or non-numerical development standards.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.



DELEGATIONS FROM COUNCIL TO THE GENERAL MANAGER

2 Conder Street, BURWOOD NSW 2134
PO Box 240, BURWOOD NSW 1805
Phone: 9911-9911 - Fax: 9911-9900
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Public Document
Adopted by Council: 18 October 2022 (Min. no. 140/22)
Content Manager No.: 19/44296[v2]
Version No.: 7
Ownership: Governance & Risk

Item Number GB4/24 - Attachment 2
Delegations from Council to the General Manager adopted by Council 18.10.2022

Purpose

To delegate functions to the General Manager in accordance with section 377 of the *Local Government Act 1993* to facilitate the exercise of Burwood Council functions.

This instrument of delegation specifies the limits of authority, responsibility and accountability for decisions made under delegation.

Delegations

Council delegates to the General Manager (or to the person who acts in that position):

- a) all of the functions, powers, duties and authorities of Council that it may lawfully delegate under the *Local Government Act 1993* or any other Act, regulation, instrument, rule or the like
- b) any functions, powers, duties and authorities delegated to the Council by any authority, body, person or the like

other than the exceptions outlined in this instrument of delegation.

Exceptions

Expenditure

Prescribed Organisations

The General Manager cannot expend more than \$1,000,000 via a prescribed organisation i.e.: Local Government Procurement (LGP) and Procurement Australia (PA).

The General Manager has the discretion to refer any expenditure to Council for determination.

Council Resolved Projects

Where Council has approved the project, either through a Council resolution or the Operational and Capital Works Program, the General Manager cannot expend more than the resolved dollar value.

Other Matters

Writing Off Accounts

The General Manager does not have the delegation to approve the writing off of accounts greater than \$10,000. Write offs are reported to Council on an annual basis.

Writing Off Stores and Materials

The General Manager does not have the delegation to approve the writing off of stores and materials greater than \$10,000.

Item Number GB4/24 - Attachment 3
General Manager Delegation - Determination of any application referred to BLPP for
D



Burwood Council
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GENERAL MANAGER'S INSTRUMENT OF DELEGATION

With immediate effect and pursuant to s378 of the *Local Government Act 1993*, I, Tommaso Briscese, General Manager of Burwood Council, delegate the following functions to the persons identified in the Schedule 1 of this instrument of delegation ('Instrument'):

- 1) Determination of any Application made under Part 4 of the *Environmental Planning and Assessment Act 1979* (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the *Environmental Planning and Assessment Act 1979* (Building Information Certificate Applications) which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.

The exercise of any function pursuant to this Instrument is subject to the conditions and limitations set out in Schedule 2 of this Instrument.

Tommaso Briscese
General Manager

Dated: 7/12/2023

Schedule 1

For the purposes of this Instrument, a delegate includes each person or body holding the position within or on behalf Burwood Council set out below, together with any person appointed to act in that position:

1. 'Burwood Local Planning Panel' as appointed under Division 2.5 of the *Environmental Planning and Assessment Act 1979*.

Schedule 2

Conditions and Limitations Applying to Delegated Functions

The conditions and limitations set out in the General Manager's delegation apply, with the following further condition(s):

- 1 Nil.

Item Number GB4/24 - Attachment 4
General Manager Delegation - Determination of Development Applications and ability to refer
a)



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GENERAL MANAGER'S INSTRUMENT OF DELEGATION

With immediate effect and pursuant to s378 of the *Local Government Act 1993*, I, Tommaso Briscese, General Manager of Burwood Council, delegate the following functions to the persons identified in the Schedule 1 of this instrument of delegation ('Instrument'):

- 1) Exercise the power under section 4.16 of the *Environmental Planning and Assessment Act 1979* to determine development applications for development consent subject to the following limitations:
 - a) the delegate is satisfied that the concerns of any objectors identified in written objections received by Council have been considered by the assessment officer in the assessment report; and
 - b) the development is not one which has been specified by the Minister by direction or circular as requiring determination by the Burwood Local Planning Panel.
 - c) the development is not one which has been specified by the Minister by direction or circular, legislation or any other *Environmental Planning Instrument* as requiring determination by a NSW Sydney District Planning Panel or the NSW Independent Planning Commission.
- 2) Authority to refer any other Application made under Part 4 of the *Environmental Planning and Assessment Act 1979* (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the *Environmental Planning and Assessment Act 1979* (Building Information Certificate Applications) for determination which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.

The exercise of any function pursuant to this Instrument is subject to the conditions and limitations set out in Schedule 2 of this Instrument.

Tommaso Briscese
General Manager

Dated: 7/12/2023

Schedule 1

For the purposes of this Instrument, a delegate includes each person or body holding the position within or on behalf Burwood Council set out below, together with any person appointed to act in that position:

1. Director City Strategy - City Strategy Directorate. Burwood Council
2. Manager City Development - City Strategy Directorate. Burwood Council

Schedule 2

Conditions and Limitations Applying to Delegated Functions

The conditions and limitations set out in the General Manager's delegation apply, with the following further condition(s):

- 1 Nil.