

Briefing Committee Meeting



DATE: Tuesday 16 April 2024

TIME: 6.00pm

VENUE: Council Chambers
Level 1, City Administration Centre
12 Stewart Avenue
Newcastle West NSW 2302

9 April 2024

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Agenda

1. ATTENDANCE
2. ACKNOWLEDGEMENT OF COUNTRY
3. PRAYER
4. APOLOGIES / LEAVE OF ABSENCE / REQUEST TO ATTEND BY AUDIO VISUAL LINK
5. DISCLOSURES OF INTEREST
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 - 6.1. URBAN DESIGN REVIEW PANEL (UDRP) - ANNUAL REPORT 2023 3
 - 6.2. COMMUNITY CARRIAGEWAY BETWEEN CALDWELL AND LLEWELLYN STREETS, MEREWETHER 5

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Note: Items may not necessarily be dealt with in numerical order

6. REPORTS

6.1. URBAN DESIGN REVIEW PANEL (UDRP) - ANNUAL REPORT 2023

REPORT BY: PLANNING AND ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING AND ENVIRONMENT
/ INTERIM EXECUTIVE MANAGER PLANNING AND DEVELOPMENT

PURPOSE

The purpose of this briefing is to provide details of the *Urban Design Review Panel Annual Report 2023* which will be reported to Council at the Ordinary Council Meeting to be held on 23 April 2024.

BACKGROUND

The Urban Design Review Panel (UDRP) operates as an independent advisory panel to City of Newcastle (CN) and provides advice to CN and applicants about the quality of urban design and amenity provided in development proposals.

The UDRP operates in accordance with CN's *Urban Design Panel Charter 2020* (UDRP Charter) and is recognised by the NSW Minister for Planning and Public Spaces as a design review panel established under *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*.

CN has a rich tradition of establishing and maintaining a design review panel. Contributing to this tradition during 2023 are the UDRP members, who comprise a specialist group of design professionals with extensive industry experience across a diverse range of fields including architecture, landscape architecture, urban design, sustainability, heritage, and safer by design. The UDRP members for 2023 were as follows:

Chairperson: Phillip Pollard (AMENITY Urban & Natural Environments Pty Ltd)
Member: Kerry Hunter (Hill Thalys Architecture and Urban Projects)
Member: Kristy Cianci (The Design Partnership)
Member: Justin Hamilton (SHAC Pty Ltd)
Alternate Member: Colin Brady (Colin Brady Architecture and Planning)
Alternate Member: David Moir (Moir Landscape Architecture)

CN's UDRP enjoy an excellent reputation and maintains a positive working relationship with the Government Architect NSW. The focus of the UDRP in 2023 was to evaluate and critique the urban design aspects of major commercial, industrial, residential, community and civic developments.

The *Urban Design Review Panel Annual Report 2023* documents the activities of the UDRP since established under the UDRP Charter with a focus on the activities during the 2023 calendar year.

Throughout 2023, the UDRP convened for 13 meetings, undertaking a total of 63 individual design review sessions. These sessions offered guidance to CN staff and applicants on 48 different development proposals valued at over \$1.5 billion, as well as providing input on strategic projects including the Draft Newcastle Development Control Plan 2023.

The UDRP continues to enhance the City's understanding of good design. This has contributed to delivery of high quality outcomes across the local government area, and ultimately setting positive benchmarks for future development.

In 2023, UDRP Chairperson Dr Philip Pollard continued the role of CN's Jury Representative as part of the post-competition design integrity process for the design competitions held in 2022.

REFERENCES

Nil

ATTACHMENTS

Nil

6.2. COMMUNITY CARRIAGEWAY BETWEEN CALDWELL AND LLEWELLYN STREETS, MEREWETHER

REPORT BY: PLANNING & ENVIRONMENT
CONTACT: EXECUTIVE DIRECTOR PLANNING & ENVIRONMENT /
INTERIM EXECUTIVE MANAGER - PLANNING &
DEVELOPMENT

PURPOSE

The purpose of this briefing is to provide a member of the public with an opportunity to address Council on an issue that is relevant to City of Newcastle's (CN's) functions.

BACKGROUND

The issue to be discussed in this public briefing was the subject of a report (the Report) (see **Attachment A**) to the Ordinary Council Meeting of 28 March 2023. The adopted motion arising from the report was:

That Council:

- 1. Receive this report presenting the investigation into the ROW at 37 Llewellyn Street, Merewether.*
- 2. Notes the investigation is continuing and possible regulatory action against the Developer and Certifier may be considered.*
- 3. Notes that the Interim Executive Director of Planning & Environment has issued written correspondence to the Minister for Emergency Services and Resilience Hon. Steph Cooke MP, the State Member for Newcastle, Tim Crakanthorp MP, and Crown Lands, Department of Planning and Environment, seeking support for a public access to be created through the Merewether Fire and Rescue Station, known as 39 Llewellyn Street Merewether.*
- 4. Notes that a formal complaint has been lodged with NSW Fair Trading about the professional conduct of the Private Certifier and that the Interim Executive Director of Planning & Environment has issued written correspondence to the Minister for Fair Trading, Hon. Victor Dominello MP, asking that he investigate the circumstances surrounding the private certifier who provided an occupation certificate contrary to the Development Consent (DA2016/01411 as modified) for the property located at 37 Llewellyn Street Merewether despite it not complying with CN's condition that a right of carriageway be created over the property.*
- 5. That the correspondence sent to the former Ministers also be sent to the newly sworn in Ministers once known.*

Since the adoption of the above motion, the following has occurred:

1. CN has been involved in ongoing without prejudice discussions with the developer's legal representatives, with the principal goal of having a new right-of-carriageway (ROW) established, generally as per the terms of the Development Consent (DA2016/01411 as modified). The discussions are ongoing.

The Report contained comments on the potential to enforce rights associated with the existing ROW, including reference to the potential for substantial cost to ratepayers and uncertainty about the prospects of success. Further commentary on CN's enforcement prospects is provided at point 4, below.

An issue that has been a significant contributing factor to the current situation remains the 1995 failure of NSW Land Registry Services (LRS) to include the existing ROW (created in 1982) on the title of the land, when they converted the land from Old System title to Torrens title.

While this error was ultimately corrected by LRS in July 2022, after CN advised LRS of the error, it caused the developer and others involved in the development process to believe that the land was not encumbered by a ROW, until late in the development process.

2. Formal representations were made to the relevant State Ministers and Member for Newcastle, as well as to Fire and Rescue NSW, seeking support for public access to be created through a site that adjoins 37 Llewellyn Street, being Merewether Fire and Rescue Station site.

A letter of 2 June 2023 (see **Attachment B**), from the Hon Jihad Dib MP, Minister for Emergency Services, advised that the establishment of an easement through the Merewether Fire and Rescue Station property was not supported, as it would have a detrimental effect on the operations of the fire station and their ability to assist the community by responding swiftly to an emergency. Clarity on how the easement would have a detrimental effect was not provided in the letter.

The rejection of the representations was consistent with the original response from NSW Fire and Rescue, dated 7 October 2022, as described in the Report.

3. On 6 July 2023, an officer of the NSW Fair Trading Certifier Integrity Unit contacted CN to advise that the investigation of CN's complaint, about the conduct of the Private Certifier who issued the occupation certificate for the development, had been suspended. This was due to the Certifier having had his registration cancelled and being permanently disqualified from registration, due to a prior, unrelated matter.

After the Council meeting of 28 March 2023, CN staff became aware that the occupation certificate for the development, dated 9 December 2022, had been registered in the NSW Planning Portal on 20 March 2023, being well outside of the legislated requirement for the Certifier to give a copy of the certificate and associated documents to CN within two days after determining the application. This was despite the fact that CN staff sought a copy of the certificate directly from the Certifier, on 10 January 2023, and received no response, after previously raising concerns with the Certifier about compliance with Condition 69 of the Development Consent, which requires the establishment of a ROW through the site.

While additional issues relating to the lawfulness of the occupation certificate were identified when CN staff were able to access the associated documents, as detailed in the Report (Attachment A), there is no legal mechanism under State legislation for challenging the validity of an occupation certificate, once issued. Further commentary was provided to and acknowledged by NSW Fair Trading, in connection with the complaint about the Certifier. However, given the Certifier has been permanently disqualified from registration effectively ends the matter.

4. Further advice has been obtained regarding CN's prospects for commencing proceedings in relation to the ROW.

The existing ROW may be enforced by seeking an injunction and/or compensation in the NSW Supreme Court for substantial interference with CN's rights under the existing ROW, which also confers a right for anyone authorised by CN to traverse the site through the existing ROW.

Whilst CN and the public have a legal right to utilise the existing ROW, the prospects of enforcing this right through litigation has a range of serious legal difficulties and remains unknown due to the variable nature of court matters and the likely requirement that part of the building would have to be demolished. If such enforcement action is taken, this would be complex, involving a lengthy lead time of several years, a hearing and costs likely to be more than \$1 million, with significant uncertainty of success given the impact on those that have bought into the building since its construction.

There is a substantial cost and time associated with such action and the result may not be desirable from a public safety perspective or community expectation. Additionally, the court has discretion to withhold equitable remedy in such a case, balancing CN's rights against the safety and practicality of using the ROW, due to factors such as the physical and usage constraints imposed by the existing building and the availability of alternative access options.

Further, as the site has been strata subdivided and is under the control/ownership of an Owners Corporation, the Owners Corporation would become the defendant in such proceedings, rather than the developer.

5. It is considered that it is not in the public interest to further pursue enforcement through court proceedings. The existing ROW remains on the land title of the site. CN staff will continue to pursue any opportunities with the NSW Government to provide a ROW through the adjoining government land and reinstate public access in this location, who, through their error of not identifying the existing ROW on the land title, contributed to the loss of this access.

REFERENCES

Nil

ATTACHMENTS

Attachment A: Report to the Ordinary Council Meeting of 28 March 2023 – *Llewellyn Street, Merewether – Right Of Way Review*

Attachment B: Letter from the Hon Jihad Dib MP, Minister for Emergency Services

Attachment A-B - Distributed under separate cover