

# ORDINARY COUNCIL MEETING

## SUPPLEMENTARY AGENDA

Notice is hereby given that an Ordinary Council Meeting will be held at the:

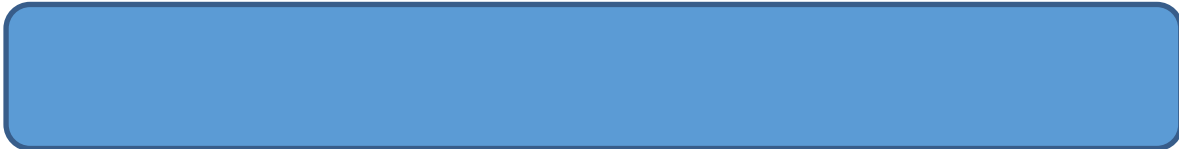
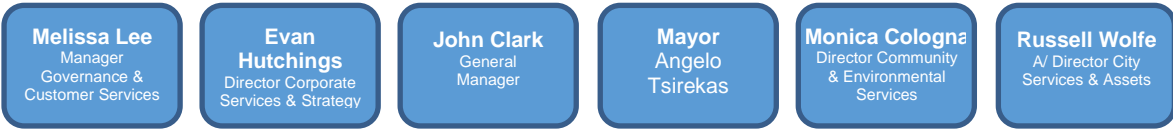
Council Chambers, City of Canada Bay Civic Centre, Drummoyne

**Tuesday, 20 September 2022**

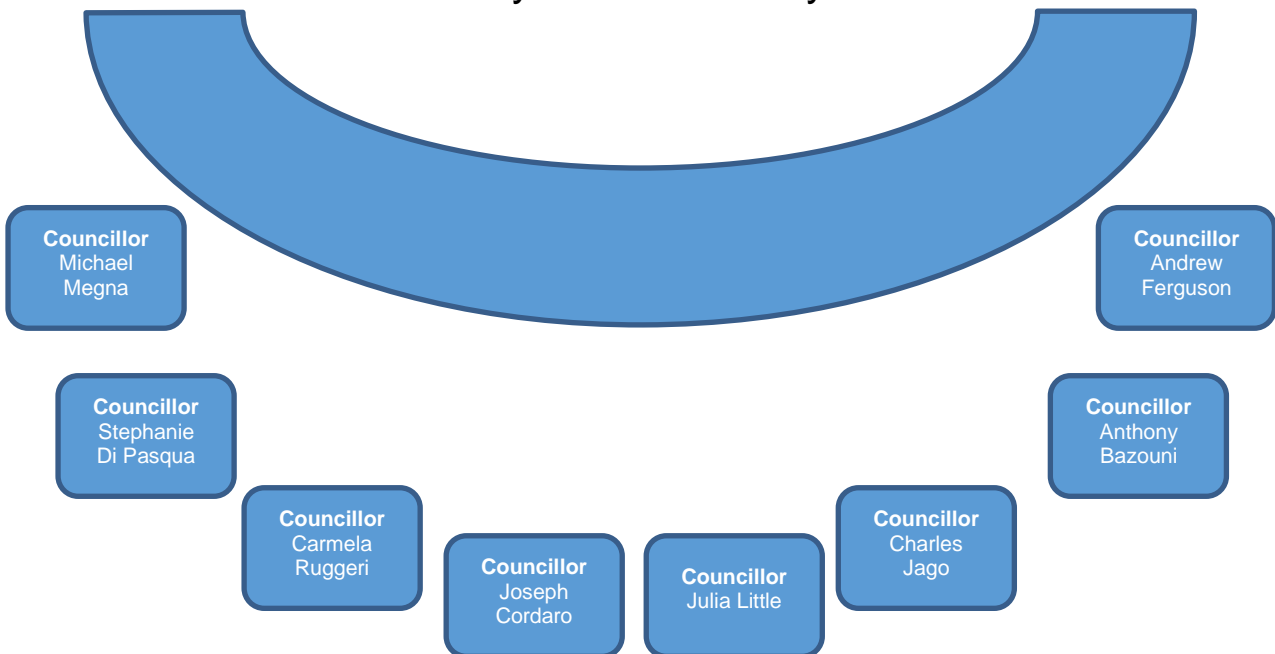
Beginning at 6.00pm for the purpose of considering and determining matters included in this agenda.



**John Clark**  
**General Manager**



**Councillors**  
**City of Canada Bay**



**Statement of Ethical Obligations**

The Mayor and Councillors are bound by the Oath/ Affirmation of Office made at the start of the Council term to undertake their civic duties in the best interests of the people of the City of Canada Bay and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act or any other Act, to the best of their skill and judgement.

It is also a requirement that the Mayor and Councillors disclose conflicts of interest in relation to items listed for consideration on the Agenda or which are considered at this meeting in accordance with Council's Code of Conduct and Code of Meeting Practice.

**Supplementary Agenda for an Ordinary Council Meeting  
to be held on Tuesday 20 September 2022  
at the Council Chambers, City of Canada Bay Civic Centre, Drummoyne  
Commencing at 6.00pm**

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## 9 COMMUNITY AND ENVIRONMENTAL PLANNING DIRECTORATE REPORTS

### ITEM 9.8 PLANNING PROPOSAL - LOCAL CHARACTER AREAS

**Reporting Manager** Director Community and Environmental Planning

**Attachments:**

1. **DPE Letter to Council - Planning Proposal (PP-2022-564) - Local Character Areas** [↓](#)
2. **Gateway Determination - Planning Proposal (PP-2022-564) Local Character Areas** [↓](#)

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### RECOMMENDATION OF DIRECTOR COMMUNITY AND ENVIRONMENTAL PLANNING

That:

1. Council note the Department of Planning and Environment's Gateway determination for the Local Character Areas Planning Proposal (PP-2022-564) that the proposal should not proceed, attached to the report.
  2. Council not request a review of the Gateway determination for the Local Character Areas Planning Proposal (PP-2022-564).
  3. A report on alternative options available to protect local character be prepared for consideration at a future Council meeting.
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### PURPOSE

This report outlines the Department of Planning and Environment's (DPE) recent Gateway determination that Council's Local Character Areas Planning Proposal should not proceed (ie refusal). It also outlines the options available following this decision.

### EXECUTIVE SUMMARY

In October 2020, Council submitted a Planning Proposal to introduce Local Character Areas (LCAs) into the *Canada Bay Local Environmental Plan 2013* (LEP) to DPE for a Gateway determination. The intent of the planning proposal was to introduce planning controls into the LEP that would protect and maintain the existing local character of eleven draft LCAs across the City of Canada Bay. These 11 areas were areas in which the existing character had been previously recognised as unique or special and worth maintaining.

It is noted that this Planning Proposal is unrelated to the local character area work which Council is undertaking around the three metro stations within the City of Canada Bay, which is progressing as a separate matter.

In December 2020, DPE subsequently advised Council that, as DPE were exhibiting a standardised approach to local character areas in LEPs, Council's Planning Proposal could not be accepted at that time, or alternatively, Council undertake additional work and submit a revised planning proposal. Council undertook the additional work required by DPE and submitted a revised Planning Proposal to DPE in early 2021.

DPE has now advised Council via a Gateway determination (Attachment 1 and 2) that this Planning Proposal should not proceed (ie refusal), as there is no longer a DPE-endorsed statutory pathway or policy to include local character areas in LEPs. This current position of DPE represents a reversal of DPE's position on this matter between 2017 and 2021, whereby the value and importance of local character areas was widely promoted to councils across metropolitan Sydney and supported by guidelines.

## STRATEGIC DIRECTION

This report supports Our Future 2036 outcome area:

Direction 3: Vibrant Urban Living

Goal VUL 4: Ensure the built environment respect the unique neighbourhood character and responds deftly to evolving community needs

## BACKGROUND/DISCUSSION

### Overview

DPE has been working towards supporting councils to introduce local character areas since 2017 in return for facilitating housing delivery. City of Canada Bay is delivering significant housing supply in Rhodes and along the Parramatta Road Corridor.

The summary of events (below) provides an overview of Council's Local Character Areas Planning Proposal from 2017 to date.

- In June 2017, the Department of Planning and Environment (DPE) commenced a process to assist Councils to protect areas with unique local character.
- In October 2020, Council submitted a planning proposal to introduce Local Character Areas into the *Canada Bay Local Environmental Plan 2013* (LEP) to the DPE for a Gateway determination in accordance with the Department's Guideline.
- In November 2020, DPE exhibited an Explanation of Intended Effects (EIE) for a standardised two-stage approach to local character in Local Environmental Plans.
- In December 2020, DPE advised that Council should submit a revised planning proposal, with the request for the exemption from Complying Development removed and with a revised comprehensive local character assessment included.
- On 15 February 2021, Council resolved to submit a revised planning proposal to DPE. The planning proposal was supported by a revised and expanded assessment of local character in the LGA.
- On 24 August 2022, DPE determined that the planning proposal should not proceed as *consensus could not be reached [by DPE] on the introduction of a model clause into the standard instrument LEP. As such, the best way forward is for each council to use its Development Control Plan (DCP) to ensure local character is considered in development applications* (Attachment 1).

### Detailed History

Since June 2017, when the NSW State Government announced the *NSW Housing Affordability Strategy*, it has been Council's intention to seek to re-introduce the previous development control plan (DCP) Local Character Areas into Council's planning framework. The Strategy cited Government policy that councils would be assisted to protect the character of important local areas while supporting housing supply. The City of Canada Bay LGA has long been identified as an area for significant new housing supply under State Government's Parramatta Road Corridor Urban Transformation Strategy (November 2016), and the Rhodes Planned Precinct (May 2017).

In February 2019, following an awareness campaign of the importance of local character, the DPE (at that time known as Department of Planning, Industry and Environment (DPIE)) published the *Local Character and Place Guideline*. Council then commenced the process to introduce Local Character Areas into the LEP via Council's Local Strategic Planning Statement (LSPS) Planning Proposal. Council undertook:

- a community engagement program for the LSPS that included tailored consultation about local character and draft local character areas (the previous LCAs);

- detailed assessment of the draft local character areas consistent with the Guideline; and
- development of stand-alone Local Character Statements and planning controls, consistent with the Guideline.

The (then) DPIE's promotion of local character areas was consistently reinforced by State Government policy and publications, including:

- the *Eastern City District Plan*, which required councils to comply with principles for housing strategies, including *Local character: recognising the distinctive and valued combination of characteristics that contribute to local identity*.
- *Planning Circular PS 18-001 Respecting and enhancing local character in the planning system* (16 January 2018), which stated that local housing strategies should:

*.... aim to identify areas of exceptional local character .... find a balance between respecting and enhancing the local character of an area and identifying and accommodating the community's future housing, infrastructure and social needs ... Character can be reflected in a LEP ... through additional local provisions.*

- *Local Housing Strategy Guideline* (October 2018), which requires councils to consider areas to be conserved and establishing future local character:

*Opportunities to identify existing and desired future local character will be important considerations for the delivery of housing needs. .... In association with this, councils will need to demonstrate an overall capacity to deliver enough and the right types of homes in the right locations.*

- The *Low Rise Medium Density Housing Code Independent Review Report* (prepared for the Minister for Planning, July 2019) which recommended that:

*the application of the Code be further deferred until 1 July 2020. Areas identified as being of Special Local Character can be excluded from the Code.*

*This aligns with the current directions of the planning system as articulated in the Planning Circular PS 18-001 emphasising the importance of respecting and enhancing local character, and the mechanisms to achieve this are outlined in the Discussion Paper – Local Character Overlays, Feb 2019.*

Despite DPE's demonstrated consistent commitment to local character areas since 2017, their policy position has recently changed, and DPE is no longer supportive of inclusion of local character area planning controls in LEPs. This change in policy position has resulted in DPE's Gateway determination that Council's Local Character Area Planning Proposal should not proceed (ie refusal).

The timing and legislative implications of this determination, and the options available to Council are outlined in the sections below.

### **TIMING CONSIDERATIONS**

Council may accept DPE's Gateway determination (refusal); or Council may decide to request a review of this Gateway determination (refusal) of the Planning Proposal. If Council wishes to seek a review of the planning proposal, it must notify DPE by 5 October 2022. The risks associated with both options are discussed in the "Legislative and Policy Considerations" section below.

### **FINANCIAL CONSIDERATIONS**

There are no financial considerations associated with this report.

## LEGISLATIVE AND POLICY CONSIDERATIONS

DPE has issued a Gateway determination (Attachment 2) that the planning proposal should not proceed (refusal). This determination has been made under the *Environmental Planning and Assessment Act 1979*.

Council may decide to seek a review of this decision. Such a review would be undertaken by the Independent Planning Commission. Whilst Council's planning officers are supportive of the inclusion of local character areas in Council's LEP, a review of DPE's Gateway determination (refusal) is not recommended in this instance, based on the reasons cited within the determination (Attachment 2), including that there is no DPE-endorsed statutory pathway or policy to include local character in LEPs, and that the Independent Planning Commission has previously concurred with DPE's current position on local character areas and lack of current statutory pathway to include them in LEPs. A precedent has been set by the recent refusal of the local character area component of Randwick City Council's comprehensive LEP, by both DPE and the Independent Planning Commission. Should Council wish to request a review of DPE's decision, it is unlikely that a different outcome would result.

Should Council wish to accept DPE's determination (refusal), a report on alternative options available to Council to incorporate local character area provisions into Council's planning framework (DCP) would be provided for Council's consideration at a future Council meeting. Whilst inclusion of local character areas provisions in a DCP has less statutory weight than LEP controls, they are still required to be considered in the assessment of development applications. DCP controls also do not apply to complying development applications, which are a key contributor to the erosion of local character within the City of Canada Bay.

Given the anticipated unlikely success of a review of DPE's decision, it is recommended that Council not request a review of the Gateway determination and pursue alternative pathways to protecting local character, including inclusion of local character area provisions in the DCP.



Department of Planning and Environment

IRF22/2666

Mr John Clark  
General Manager  
City of Canada Bay Council  
Locked Bag 1470  
Drummoyne NSW 1470  
Via email: [council@canadabay.nsw.gov.au](mailto:council@canadabay.nsw.gov.au)

Dear Mr Clark,

**Planning proposal PP-2022-564 to amend Canada Bay Local Environmental Plan 2013**

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) received on 23 February 2022 in respect of the planning proposal to introduce a local character areas clause and associated maps.

As delegate of the Minister for Planning and Homes, I have determined that the planning proposal should not proceed, consistent with correspondence dated 10 June 2022 from Marcus Ray, Deputy Secretary NSW Planning. The correspondence advised that consensus could not be reached on the introduction of a model clause into the standard instrument LEP. As such, the best way forward is for each council to use its Development Control Plan (DCP) to ensure local character is considered in development applications.

I acknowledge the detailed work that has gone into the development of the planning proposal. As one of the leading exponents of local character, the Department would be pleased to work with Council to pilot how the inter-play between the public and private domain in the local character areas that council has identified could be incorporated into council's DCP.

Should you have any enquiries about this matter or wish to commence discussions on how the Department can assist council in the preparation of a DCP, I have arranged for Laura Locke, Director Eastern and South Districts, to assist you. Ms Locke can be contacted on (02) 9875 1307.

Yours sincerely



**Amanda Harvey**  
**Executive Director**  
**Metro East and South**  
24 August 2022

Encl: Gateway determination





Department of Planning and Environment

## Gateway Determination

***Planning proposal (Department Ref: PP-2022-564): to introduce a local character areas clause and associated maps***

I, the Executive Director Metro East and South at the Department of Planning and Environment, as delegate of the Minister for Planning and Homes, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the *Canada Bay Local Environmental Plan 2013* to introduce a local character areas clause and associated maps should not proceed for the following reasons:

1. There is no Department-endorsed statutory pathway or policy to include local character in LEPs.
2. The Independent Planning Commission has previously concurred with the Department's position that there is no Department-endorsed statutory pathway or policy to include local character in LEPs.
3. Issuing a Gateway determination would be inconsistent with the Department's endorsement of the Canada Bay Local Housing Strategy.
4. Council is seeking to introduce the LCAs into the LEP with the intention of applying for an exemption from the Low Rise Housing Diversity Code in the future. The Department does not support local character as a basis for any future exclusion of areas from the application of the Codes SEPP.
5. A Development Control Plan can adequately provide for local character controls in the Canada Bay LGA without an amendment to the LEP. A Development Control Plan also allows greater flexibility for proponents and Council in applying appropriate local character provisions for specific development types.

Dated 24<sup>th</sup> day of August 2022.



**Amanda Harvey**  
**Executive Director**  
**Metro East and South**  
**Department of Planning and Environment**

**Delegate of the Minister for Planning and Homes**

IRF22/2666