

Ku-ring-gai Council v State of New South Wales

Land and Environment Court Proceedings 2024/00173748

Mediation Agreement reached on 21 November 2024 between Ku-ring-gai Council and the State of NSW (subject to approval by Council at the Ordinary Meeting on 26 November 2024)

The parties have agreed to take the following steps:

1. Council to continue public consultation on specific alternative planning options for the precincts in Ku-ring-gai LGA affected by the TOD SEPP. Council officers will collaborate with the Department in developing those alternative planning options from the date of this agreement.
2. New South Wales Government to make a public statement to the following effect –

Consistent with the approach it has taken with other Councils, the NSW Government is supporting Ku-ring-gai Council as it develops specific planning controls that deliver at least equivalent dwelling capacity to the TOD program, intended to culminate in an amendment to the TOD SEPP. As a consequence, the planning controls applicable to the Ku-ring-gai LGA in the TOD SEPP might change. The process is expected to be completed by May 2025.
3. Council will use its best endeavours to put relevant proposals to Council for approval in Council meetings in both February and April 2025.
4. In the event of a satisfactory proposal being finalised, Council and the Department will work towards implementation of that proposal in or before May 2025.
5. The proceedings will remain on foot and the mediation will be adjourned (or left open) as necessary for the purposes of reaching a final settlement.
6. The parties agree to continue to prepare the proceedings for hearing in the usual manner and, at an appropriate time, seek a hearing date in June 2025 or as early as is appropriate (given the readiness of the proceedings for hearing) after June 2025.
7. The terms of this agreement will remain confidential until the Statement referred to in clause 2 is made publicly.

Council Resolution accepting the Mediation Agreement

At the Ordinary Meeting of Council on 26 November 2024, Council resolved as follows in relation to item C.1 - Land and Environment Court - Transport Oriented Development SEPP

01 **Land and Environment Court - Transport Oriented Development SEPP**

File: S14468

Vide: C.1

In accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*, in the opinion of the General Manager, the following business is of a kind as referred to in section 10A(2)(g), of the Act, and should be dealt with in a part of the meeting closed to the public.

Section 10A(2)(g) of the Act permits the meeting to be closed to the public for business relating to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

This matter is classified confidential under section 10A(2)(g) because it contains advice concerning a legal matter that:

- (a) is a substantial issue relating to a matter in which the Council is involved
- (b) is clearly identified in the advice, and
- (c) is fully discussed in that advice.

It is not in the public interest to release details of the legal advice as it would prejudice Council's position in court proceedings.

Report by General Manager dated 22 November 2024.

Resolved:

(Moved: Councillors Spencer/Pettett)

That Council accept the proposed mediation agreement detailed in this report.

CARRIED UNANIMOUSLY