

URGENT MOTION: MOSMAN AND NORTH SYDNEY LEGAL PROCEEDINGS

RESPONSIBLE OFFICER: DEBRA JUST – GENERAL MANAGER

AUTHOR: MARNIE HILLMAN

CITY STRATEGY LINK: 6.1.1 A COUNCIL THAT IS OPEN, ACCOUNTABLE AND REPRESENTS ITS CONSTITUENTS

MEETING DATE: 23 MAY 2016

Purpose of Report

The purpose of this report is to seek a response to requests from Mosman and North Sydney Councils to be party to their legal proceedings, listed for hearing from the 27 May 2016.

Background

The General Manager today received two pieces of correspondence:

- 1) A letter from Pikes & Verekers attaching a Notice of Motion in proceedings no. 40395 of 2016, *Mosman Council v Minister for Local Government* (the Mosman proceedings)

The Mosman proceedings attaches a Notice of Motion seeking to join Willoughby Council to the proceedings as the sixth respondent (together with other parties as other respondents). The Notice of Motion is listed before the Court this Friday 27 May 2016.

- 2) A letter from Matthews Folbigg dated 20 May 2016, *North Sydney Council v Minister for Local Government* (the North Sydney proceedings).

The North Sydney proceedings letter suggests that the Council should be a party to the proceedings and seeks a response in this regard.

It is necessary for the Council to make a decision urgently about this matter as both matters are listed for final hearing commencing next Monday 30 May 2016. This matter could be regarded as a matter of urgency under clause 241(3)(b) of the *Local Government Act Regulations*.

Discussion

Council has sought advice from Wilshire Webb Staunton Beattie Lawyers.

The test that the court uses for joining is generally that a person who is directly affected by orders sought in proceedings is considered a necessary party and so there is an obligation to join that person on the Plaintiff or the Applicant bringing the proceedings. This is why Mosman Council has sought to include Willoughby Council as a party in the proceedings (and why North Sydney suggests the Council should be in their proceedings).

As the rights of Council are affected by the proposed proceedings it is likely a Court would tend towards Council being joined and it may be pointless in terms of time and money to debate whether the Council should in fact be joined.

However, in the event that the Council does not wish to actively participate in the proceedings then the Council can file a "submitting appearance". This means that the

Council indicates to the Court that they would submit to the orders made by the Court and that the Council would not take any active role in the proceedings subject to costs. In other words the submitting appearance would be "save as to costs" which means that the Council would reserve its position to claim any costs as necessary at the end of the proceedings. This would usually be minimal and of no relevance as the point of submitting appearance is that the submitting party is not active in the proceedings

After a submitting appearance is filed and served it should not be necessary for the Council to attend or be represented at the hearings to commence next Monday.

OFFICER'S RECOMMENDATION

That Council, on the basis of filing a submitting appearance (save as to costs), consents to being joined as a party in the proceedings *North Sydney v the Minister for Local Government*, proceedings no: 2016/40403 and consents to being joined as a party in the proceedings *Mosman Municipal Council v the Minister for Local Government*, proceedings no: 2016/40395.

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