

10.1. North Sydney Council v EIG: NSW Civil and Administrative Tribunal – Appeal Panel

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ATTACHMENTS	1. CONFIDENTIAL - Letter reporting on decision [10.1.1 - 3 pages]
CSP LINK	5. Our Civic Leadership 5.2 Strong civic leadership and customer focussed services

PURPOSE:

The purpose of this report is to provide a report on the North Sydney Council v EIG matter as resolved by Council at its meeting of 22 May 2023.

EXECUTIVE SUMMARY:

- On 27 October 2021 the NSW Civil and Administrative Tribunal (NCAT) found that North Sydney Council (Council) had collected, disclosed, and published personal information in contravention of the Privacy and Personal Information Protection Act 1998: EIG v North Sydney Council [2021] NSWCATAD 131
- Council commenced an appeal against the decision of the NCAT, which was heard by the Appeal Panel on 18 February 2022.
- On 24 October 2022 the Appeal Panel delivered judgment in the Appeal proceedings, allowing the Appeal, and setting aside the Orders of the NCAT, excluding Order No.2, being a section 64 Order prohibiting the disclosure of EIG's (anonymity Order).
- Should Council wish to discuss this report it is noted that the attached confidential document includes advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community. As such should this matter be discussed it should be considered in closed session.

RECOMMENDATION:

- 1. THAT** the report on the North Sydney Council v EIG matter be noted.
- 2. THAT** Council resolves that the identified attachment to this report is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

Report

On 24 October 2022, the Appeal Panel decision on the matter of North Sydney Council v EIG was published. On 2 November 2022, Councillors were provided with a report on the matter and the attached legal report through the Councillor Bulletin.

At its meeting of 22 May 2023, Council in considering the Current Appeals and Results – May 2023 resolved as follows in part:

3. THAT a full report on the NCAT EIG appeal and costs be presented to Council.

The following information was included as an attachment to the bulletin report (public attachment):

Property DA No. Appeal No. Date of Appeal (DOA)	Applicant/ Other party	Fees Billed (\$) Officer Recommendation Council decision	Result
NCAT Appeal against NCAT: 80016/21 AP: 319529/21 DOA: 10/11/21 MDK	EIG	\$87,212.50	Appeal upheld Closed

Below is a link to the full decision of the Appeal Panel.

[North Sydney Council v EIG - NSW Caselaw](#)

Attached is a reporting letter, prepared by Maddocks Lawyers, on the Appeal Panel's decision. This is a confidential attachment and is subject to legal professional privilege.

Consultation requirements

Community engagement is not required.

Financial Implications

Legal costs associated with this Appeal which was brought by Council have been included in Council's budget. There are no further financial implications as a result of this report.