

## Pre-DA meetings, Yes, No, Maybe?



Pre-DA meetings - Yes, No, Maybe? Outcomes of a pre-DA meeting can be mixed so: time it right; be prepared; and, think before you pre-DA.

### **what is a pre-DA meeting?**

A pre-DA meeting is a meeting with experienced officers from Council who may end up assessing your development application ("DA"). The officers usually give some feedback at the meeting and possibly also later in writing. Council is not bound to follow that advice (which seems at least a bit unfair).

Most Councils promote pre-DA meetings for larger developments. One Council's website states that pre-DA meetings are mandatory for some types of development - while that may be that Council's preference, it is not a legal requirement. Pre-DA meetings are outside any legislation, they are informal meetings and there are no standard fees, forms or information to be provided across Councils.

### **that seems helpful...**

It can be very helpful. Even though a developer and Council will have access to the same planning instruments and policies, the Council officer will know about Council's objectives for the area and the relative importance of Council controls that are not always obvious. It's good to get this information from Council.

Some developer clients have reported back that some Councils are very helpful and take an approach focussed on identifying what they see as concerns, but also considering what options are open to accommodate the developer's objective of achieving a return of investment sufficient to justify the risk of the development.

When this approach is taken, and the developer is also focussed on solutions, then the planning process can progress more smoothly. In the last few months we have had clients with positive experiences in western Sydney Council areas and also several City of Sydney Council developments involving multi-unit residential/commercial developments where the pre-DA process has been worthwhile. DA assessment ran smoother for some, but, as a rule, our clients have not regretted going through the pre-DA process.

### **if you do pre-DA: time it right & don't waste money!**

By the time draft architectural plans have been prepared, a significant amount of time and money has already been spent by the developer and their professionals, considering design options and compliance.

In contrast, a pre-DA meeting usually requires Council's officers to form a view on a proposed development in a short timeframe, usually a matter of 1-2 weeks. Council officers will be very familiar with their planning codes and recent local development. However, the proposal would be completely new to them and if the proposal involves a unique design, or some complexity, then it is natural that some will take a conservative view, especially where they are putting those views in writing.

The challenge that can arise is that it is hard to change opinions once made...**First impressions count!** and if it is in writing then it will be a bigger challenge to change that impression without a very good reason.

Because of this, if you go ahead with a pre-DA, do it sooner rather than later. Do it when you, and your consultants have sketch plans that show the proposed layout and look of the development but are still able to consider and incorporate suggestions into your design.

#### **sometimes a pre-DA isn't helpful - a client's recent experience:**

A client had a recent challenging situation with a large Sydney Council where Council planners were unhappy that their pre-DA advice was not completely followed. It is fair to say, that Council's pre-DA advice was conservative and limiting. When we reviewed Council's file, it was clear that the planners were unhappy and critical of the client's decision not to follow all of their advice.

On one view, it made sense that the planners would feel that way because they gave their professional opinion and it was not completely followed. However, the planners did not engage in a real discussion aimed at considering what appropriate options were available. The Council clearly stated that it was not bound by pre-DA advice so it also made sense to the client that it was not obliged to follow all of that advice.

Ultimately the client received a good consent from the Council, but only after involving more senior Council officers (who were not involved at the pre-DA stage) through internal review procedures. These Council officers took a different approach that led to a good outcome from a planning, and client's, perspective.

#### **the negotiating exercise - a hard nosed approach suits some**

DA assessment is sometimes seen (by Councils as well as applicants) as a negotiating exercise between stakeholders, or even an adversarial system, instead of a merit based assessment process. This is not ideal - it costs more in time and money and probably leads to compromised designs.

However, because this is how the system "works" sometimes, it does not make sense to adjust your proposal in the pre-DA process, and then face more adjustments during the DA process through requests for amended plans in light of objections and further assessments, and then finally, conditions on any approval.

One way or another you will find out Council's position after lodging the DA and Council officers have had enough time (more than through a pre-DA) to consider the proposed DA, discuss with colleagues, get input from specialised officers and review submissions from neighbours. There will always be the opportunity (subject to time and money) to lodge amended plans as part of the DA as lodged, or as a new DA. It is rare that a Council will refuse your DA without giving you prior notice of their concerns.

That initial assessment period, after lodging the DA, is likely to be a more complete assessment. If you expect that you are going to be amending plans, then it may be better after a more complete initial assessment rather than at the pre-DA stage and then potentially again after lodgement.

#### **Good luck and think before you pre-DA!**

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Eakin McCaffery Cox Lawyers can help by advising you through the DA process and available options as well as acting as your legal representatives in the L&E Court on a cost effective basis. Please contact **Eakin McCaffery Cox Lawyers on (02) 9265 3000** for advice and action on planning, Council and the Land & Environment Court matters.

This paper is a summary providing general information and should not be construed as specific legal advice. Each development application is different and is made in different circumstances which require subjective assessment before legal advice may be provided.