



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 22 July 2013*

Time: *6.00pm*

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Recommendation only to the Full Council:

- Such matters as are specified in Section 377 of the Local Government Act and within the ambit of the Committee considerations.
- Broad strategic matters, such as:-
 - Town Planning Objectives; and
 - major planning initiatives.
- Matters not within the specified functions of the Committee.
- Matters requiring supplementary votes to Budget.
- Urban Design Plans and Guidelines.
- Planning Proposals and Local Environment Plans.
- Residential and Commercial Development Control Plans.
- Rezoning applications.
- Heritage Conservation Controls.
- Commercial Centres Beautification Plans of Management.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

Delegated Authority:

- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of the Minutes of its Meetings.
- Any other matter falling within the responsibility of the Urban Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed above.
- Statutory reviews of Council's Delivery Program and Operational Plan.

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

18 July 2013

To: His Worship the Mayor, Councillor Andrew Petrie ex-officio
Councillors Greg Levenston (Chair)
 Ted Bennett
 Luise Elsing
 Elena Kirillova
 Katherine O'Regan
 Matthew Robertson
 Toni Zeltzer (Deputy Chair)

Dear Councillors

Urban Planning Committee Meeting – 22 July 2013

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 22 July 2013 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence Note Council resolution of 27 June 2011 to read late correspondence in conjunction with the relevant Agenda Item	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 24 June 2013	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Licensed Premises Development Control Plan – 1259.G	2
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Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 24 June 2013**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 24 June 2013 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Urban Planning Committee Meeting of 24 June 2013 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: **Licenced Premises Development Control Plan**
Author: Peter Kauter, Executive Planner
File No: 1259.G
Reason for Report: To obtain a resolution from Council to proceed with the preparation of the Licenced Premises Development Control Plan

Recommendation:

1. That the Council resolve to proceed with the preparation of a Licenced Premises Development Control Plan in accordance with **Annexure A** of this report
2. That the draft plan be included in the forthcoming Comprehensive DCP

1. Background:

At its meeting on 30/4/12 the Council adopted the following Notice of Motion (N of M):

That a report be brought to the Urban Planning Committee that evaluates the merits of a "Licensed Premises DCP" for the Woollahra Municipality.

Such a DCP would consider all licensed venues and include plans for regulating:

- *Appropriate trading hours for different types of premises and by location*
- *Requirements for noise control*
- *Where 'small bars' are appropriate*
- *Documentation requirements for applications*
- *How we deal with the cumulative social and amenity impacts of licensed premises*

In response to this N of M a report was considered by our Urban Planning Committee on 8/4/13, see **Annexure B**. In consideration of this report the Council on 22/4/13 resolved as follows:

1. *That the Council resolve to introduce provisions, for inclusion in its Comprehensive Development Control Plan, for licenced premises including objectives and controls for the assessment and determination of development applications involving licenced premises.*
2. *That a report including specific objectives and controls for licenced premises be prepared for consideration by the Urban Planning Committee so that they can be incorporated into the Comprehensive Development Control Plan*
3. *The report required by item 2 is to include information to be added to our Development Application Guide in relation to licenced premises.*

On 11/6/13 there was a staff briefing on a Draft Licenced Premises Development Control Plan (Licenced Premises DCP) for Urban Planning Committee Councillors. In addition to the Draft DCP, guidelines for the preparation of management plans and social impact reports were circulated for discussion.

This report has been prepared in response to items 2 and 3 of the above resolution.

2. Proposal:

The Draft Licenced Premises DCP is **Annexure A**.

Item 1 of the Council's decision on 22/4/13 provided for licenced premises provisions to be included as part of our Comprehensive DCP (Woollahra DCP 2013), which is currently in the course of preparation. If adopted they will most likely be included as a chapter in Part J, Miscellaneous controls, of the Woollahra DCP 2013.

J4.1 is the **Introduction** to the licenced premises provisions. The Introduction is in five (5) parts:

- 4.1.1 Background
- 4.1.2 Purpose of this chapter
- 4.1.3 Land and development to which this chapter applies
- 4.1.4 Types of licences – *Liquor Act 2007*
- 4.1.5 Licenced premises risk rating

4.1.1 Background

This part refers to the positive and negative social impacts of licenced premises on the community. It includes discussion on the relationship between the *Liquor Act 2007* (Liquor Act) and the *Environmental Planning and Assessment Act 1979* (the Act) and the role of the *Woollahra Local Environmental Plan 2013* (WLEP 2013) regarding licenced premises.

It identifies three (3) risk factors associated with the impact of licenced premises on the community, i.e. type, location and trading hours/ capacity.

4.1.2 Purpose of this chapter

This part identifies the purposes of the licenced premises provisions as **standardising** assessment processes, providing **certainty** to stakeholders including nearby residents and to achieve **consistency** in determining operating conditions.

It also makes a statement about the Council reserving its right to make submissions/objections under the Liquor Act. The relevance of this statement is that under the Liquor Act the Independent Liquor and Gaming Authority (ILGA) needs to be satisfied that a development consent is in force for premises that are the subject of a licence application. Certain applications under the Liquor Act also need to be accompanied by a Community Impact Statement (CIS). A CIS needs to be prepared by the person applying for a liquor licence and part of that preparation requires the applicant to consult with the local council. Further, the ILGA needs to consult with the local council in respect of liquor licence applications. It is important that an applicant and the ILGA understands that although we may have granted development consent for the use of premises that does not mean we will not make a submission/objection in relation to a CIS or liquor licence application.

An example of when we might wish to make a submission/objection in response to a CIS or liquor licence application is where we may have granted development consent for a licenced premises subject to conditions restricting trading hours but the liquor licence seeks trading hours outside of our restrictions.

4.1.3 Land and development to which this chapter applies

Under this part the Licenced Premises DCP applies to all land within the Woollahra local government area and to all development proposals involving licenced premises. It also applies to DAs for existing licenced premises, applications to modify development consents (s.96 applications), determination reviews (s.82A reviews) and reviewable conditions.

This part also refers to the special provisions that apply to premises which are existing uses. In the Woollahra LGA there is a significant number of licenced premises in areas where they are no longer permitted under the land use zoning, e.g. some Paddington pubs that historically exist in residential zones. The provisions of the Licenced Premises DCP would have limited application in the assessment of DAs for such premises.

In addition, this part draws attention to our procedure for *Extension or Intensification of a use* and to the relevant Planning Principle established by the Land and Environment Court.

Further, this part clarifies that although the Licenced Premises DCP does not apply to the current operations of existing licenced premises, should a planning application be received for such premises, then those operating conditions will be reviewed and possibly varied.

4.1.4 Types of licences – Liquor Act 2007

This part includes a table of the types of licences under the Liquor Act. It should be noted that the *Liquor Amendment (Small Bars) Act 2013*, commenced on 1/7/13. Information relating to small bars, including the provision of the then *Liquor Amendment (Small Bars) Bill 2013*, is included in the report to the Urban Planning Committee on 8/4/13, see **Annexure B**, part 5.

4.1.5 Licenced premises risk rating

This part includes a Risk Rating Table which states the risk rating of licenced premises based on the type of licence and the location of the premises. The type of licence is an indication of the likely impacts of licenced premises with hotels, clubs and other licenced premises with a capacity of 100 or more patrons being likely to have a greater impact than restaurants, cafes, small bars and the like. The location of the premises, based on land use zonings under WLEP 2013, gives an indication of the sensitivity of that area to the likely impacts of licenced premises. Residential areas, i.e. Zones R.2 – Low Density Residential, and R.3 – Medium Density Residential, are therefore identified as the most sensitive areas while the B.2 – Local Centre, is identified as the least sensitive.

Using these criteria, the table categorises the premises as either having a high or low risk rating. These risk ratings are used to determine what operating conditions should apply to licenced premises.

This approach to determine operating conditions for licenced premises is similar to that of our neighbouring councils, City of Sydney, Waverley and Randwick (draft provisions).

J4.2 of the Licenced Premises DCP contains the **Objectives and controls**. It comprises five (5) objectives each supported by a number of controls. The objectives relate to:

- O4.2.1 minimising impacts
- O4.2.2 trading hours
- O4.2.3 capacity
- O4.2.4 management practices
- O4.2.5 design matters

O4.2.1 Minimising impacts

The controls under this objective contain matters for consideration in the assessment and determination of applications involving licenced premises. These relate to location, type of licenced premises, size/capacity, trading hours, cumulative impacts, management practices, density, transport options/availability and recommendations/comments by NSW Police.

O4.2.2 Trading hours

The controls under this objective include a Trading Hours Table which stipulates allowable trading hours having regard to the risk rating of the premises (determined by the Risk Rating Table in 4.1.5) and whether the licenced area is internal or external. The table divides trading hours into base hours and extended hours. Generally trading hours will initially be limited to the base hours shown in the 'base' columns of the table. This would be achieved by imposing a condition on the development consent which stipulates the trading hours.

Should an application be received to extend trading hours, and if after considering the relevant matters as contained in O4.2.1 an extension is considered satisfactory, then the trading hours may be extended up to the hours shown in the trading hours table under the 'extended' columns. This would involve changing the trading hours condition imposed on the original consent.

A changed condition of development consent would be a *reviewable condition* as provided for in s.80A (10B) of the Act. An additional condition (a *review condition*) would also be imposed setting out the review process. The premises would operate on a trial basis with on-going, periodical reviews of the operation of the extended trading hours. If the review finds that the premises are operating satisfactorily then the extended trading hours would allowed to continue until the next review. Should the review find that the premises are not operating satisfactorily then the extended trading hours could be reduced. This would be done by changing the reviewable condition.

This process allows for a significant degree of control to be exercised over the operating conditions/trading hours of licenced premises on an on-going basis.

O4.2.3 Capacity

The controls under this objective establish the criteria for determining the maximum number of persons permitted on licenced premises. Once the capacity of the premises has been established through an assessment of likely amenity impacts, fire safety and other emergency situation considerations a maximum capacity condition would be imposed on the consent that stipulates the maximum number of persons permitted on the premises.

Should an application be received to increase the capacity of the premises, and if after considering the relevant matters as contained in O4.2.1 an increase is considered satisfactory, then the maximum capacity of the premises may be increased. This would involve changing the maximum capacity condition imposed on the original consent.

A changed condition of development consent would be a *reviewable condition* as provided for in s.80A (10B) of the Act. An additional condition (a *review condition*) would also be imposed setting out the review process. The premises would operate on a trial basis with on-going, periodical reviews of the operation of the increased capacity of the premises. If the review finds that the premises are operating satisfactorily then the increased capacity of the premises would be allowed to continue until the next review. Should the review find that the premises are not operating satisfactorily then the increased capacity condition could be changed by reducing the maximum number of persons permitted on the premises. This would be done changing the reviewable condition.

This process allows for a significant degree of control to be exercised over the operating conditions/maximum capacity of licenced premises on an on-going basis.

An increase in the maximum number of persons permitted on the premises would not be allowed where fire safety or other emergency situation criteria would be exceeded.

04.2.4 Management practices

The controls under this objective require the submission of management plans and social impact reports to accompany:

- DAs
- applications to extend trading hours
- applications to increase the capacity of premises
- a review of reviewable conditions to extend trading hours or increase the capacity of premises.

Other controls relate to minimising opportunities for anti-social behaviour and crime both on and adjacent to licenced premises and that provision be made for active and passive surveillance of the premises and its surrounds.

04.2.5 Design matters

The controls under this objective concern the location/proximity of outdoor areas, openings in external walls, plant and equipment and waste collection areas to residential and other sensitive uses. Other controls relate to acoustic reports, upgrading existing buildings, lighting and street façade design.

J4.3 of the Licenced Premises DCP contains **Definitions**. The terms *high impact premises*, *low impact licenced premises* and *reviewable conditions* are defined.

J4.4 of the Licenced Premises DCP, **Lodging a development application**, refers to information contained in our DA Guide. The DA Guide will need to be updated to include information on the preparation of management plans and social impact reports for applications relating to licenced premises. Attached are draft updates for management plans, **Annexure C**, and for social impact reports, **Annexure D**.

3. Councillor briefing:

The following is a summary of issues raised at the Councillor briefing held on 11/6/13:

Are the controls facilitating the opening of new licenced premises?

The controls are intended to create a greater level of certainty for applicants and the community in relation to new licenced premises. They acknowledge the social benefits of licenced premises but balance that with the need to manage external impacts on the surrounding community.

Can we revoke a consent if conditions are breached?

A consent can only be revoked by the Land & Environment Court. We do have wide ranging powers under the notices and orders provisions of the Act to take action for breaches of consent conditions. These can include fines imposed on persons responsible for causing a breach or for the carrying out of works as may be necessary to ensure compliance with consent conditions.

The provisions of the Liquor Act also enable the Director General, NSW Trade & Investment, to take action to remedy any breaches of licence conditions.

Small bars should be allowed

The legislation for small bars has now been passed by State Parliament and commenced on 1/7/13. The Bill included amendments to *Standard Instrument (Local Environmental Plans) Order 2006* to include small bars under the definition of 'food and drink' premises. This means that small bars will be permissible with consent in zonings where food and drink premises are permissible under *Woollahra Local Environmental Plan 2013* (WLEP 2013). (Note: Confirmation of the final detail of the amendments was not available at the time this report was prepared but should be known by the time of this meeting).

Under WLEP 2013 'food and drink' premises will be permissible in all business zones except for 'pubs' in the B1 zone.

Where do we promote licenced premises?

The permissibility of licenced premises is a function of the land use controls as contained in planning instruments, i.e. local environmental plans and state environmental planning policies. The DCP cannot permit licenced premises on land where the zoning prohibits licenced premises. Rather, the DCP provides criteria against which planning applications can be assessed and determined in zones where licenced premises are permissible.

Should we be issuing time limited consent in order to manage premises?

The DCP is a mechanism for applying trial periods through the application of reviewable conditions for trading hours and maximum capacity of premises as provided for in the Act. There may be circumstances where it is appropriate for consents for licenced premises to be time limited. This is a mechanism which we have used in the past and which can be part of a suite of measures, together with the reviewable conditions, to manage the impacts of licenced premises.

How do we control the number of people allowed to use premises?

This can be done through the imposition of reviewable conditions on consents where the maximum number of persons permitted on licenced premises is increased. Under the DCP likely amenity impacts on surrounding residential and other sensitive areas and fire and other emergency criteria need to be considered in determining the capacity of licenced premises.

What is happening with the proposed legislation for small bars?

The *Liquor Amendment (Small Bars) Act 2013* commenced on 1/7/13. At the time of writing this report the final details of the Act could not be confirmed. However, the details of the associated Bill were included in an earlier report to the Urban Planning Committee on 8/4/13, see **Annexure B**.

Does the State Government have relevant legislation to address breaches of a licence?

There are provisions under the Liquor Act which enable the State Government, through the Director General, NSW Trade & Investment, to address breaches of a licence. These provisions can be activated through disturbance complaints, requests to impose conditions on a licence or licensee and disciplinary complaints.

Standardised controls and conditions

This is one of the main aims of the DCP.

Flesh out management plan guidelines

The management plan guidelines will form part of our DA Guide rather than being part of the DCP. This means that the guidelines can be changed administratively without the need to go through the process of amending the DCP. For example, we could develop a pro-forma template as part of the DA Guide for use by applicants.

4. Consultation:

The preparation of the Draft Licenced Premises DCP was informed by the following:

- *Late night trading premises Development Control Plan 2007*, by the City of Sydney
- *An appraisal of social harm issues relating to increasing liquor outlet density*, by James E Bleasel, 20 February 2003
- *Melbourne Planning Scheme, 22.22 Policy for licenced premises that require a planning permit*, by the City of Melbourne
- *A guide to liquor laws for local councils*, NSW Trade & Investment – Office of Liquor & Gaming
- *in:fo Social Profile Report – Woollahra LGA*, NSW Office of Liquor, Gaming and Racing, February 2009
- *Introduction to the community impact statement process*, NSW Government - Casino Liquor & Gaming Control Authority, December 2008
- *Draft Development Control Plan*, (part F-Miscellaneous controls, part D5 Late night trading) Randwick City Council
- *Development assessment – referrals to licensing police*, Woollahra Municipal Council
- *Development assessment – extension or intensification of a use*, Woollahra Municipal Council
- *Soltel Pty Limited v Woollahra Council [2011] NSWLEC 1210*
- *Jasa 1 Pty Ltd v Council of the City of Sydney [2013] NSWLEC 1061*
- *Waverley Development Control Plan 2012*, (D1 – Commercial and retail development), Waverley Council

Consultation with the community will occur through the exhibition processes required under Part 3 of the Act and the *Environmental Planning and Assessment Regulation 2000*. These require that we consider any submissions received as a result of the public exhibition of a draft DCP before it can be adopted.

5. Identification of Income & Expenditure:

It is considered that the application of a Licenced Premises DCP would be undertaken by our Planning & Development Division by the current staff allocation. The introduction of the DCP will not generate additional income. It will therefore be revenue neutral.

6. Conclusion:

The proposed licenced premises provisions of the Woollahra DCP 2013 are intended to:

- standardise the way we assesses and determine planning and other related applications for licenced premises
- provide certainty to stakeholders including applicants and surrounding residents
- achieve consistent outcomes in relation to licenced premises

It will therefore facilitate licenced premises in appropriate locations through the implementation of management controls as may be necessary to avoid unreasonable negative external impacts. It will do this by tailoring controls based on the risk rating of licenced premises and by periodic reviews of trading hours and maximum capacity restrictions where extensions/increases have been allowed. It will also introduce standards for the assessment of proposed management practices, social impacts and building design.

It is therefore recommended that we proceed to introduce, as part of our Comprehensive DCP, a licenced premises DCP in accordance with the attached Draft Licenced Premises Development Control Plan, see **Annexure A**.

Peter Kauter
Executive Planner

Allan Coker
Director – Planning & Development

Annexures:

- A. Draft Licenced Premises DCP
- B. Urban Planning Committee report 8/4/13
- C. DA guide update – management plans
- D. DA guide update – social impact reports

Political Donations – matters to be considered by Councillors at Meetings

