



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 30 April 2007*

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).

Delegated Authority (“D” Items):

- To require such investigations, reports or actions as considered necessary in respect of matters contained with the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of Minutes of its Meeting.
- 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 below:

Recommendation only to the Full Council (“R” Items):

- 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.
- Local Environment Plans.
- Residential and Commercial Development Control Plans.
- Rezoning applications.
- Heritage Conservation Controls.
- Traffic Management and Planning (Policy) and Approvals.
- 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.

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

26 April 2007

To: The Mayor, Councillor Keri Huxley, ex-officio
Councillors Geoff Rundle (Chair)
 Isabelle Shapiro (Deputy Chair)
 John Comino
 Christopher Dawson
 Wilhelmina Gardner
 David Shoebridge
 John Walker

Dear Councillors

Urban Planning Committee Meeting – 30 April 2007

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 **Committee Room, 536 New South Head Road, Double Bay, on Monday 30 April 2007 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	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 26 March 2007	1
D2	Built Environment Principal Activity – Draft 2007 - 2010 – Management Plan – 827.G 04-07	2

Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Sydney Grammar School Tennis Courts Rezoning – 324.	27
R2	Draft Woollahra Local Environment Plan 1995 (Amendment No. 61) – 1064.G (Amend 61)	41
R3	Issue Encountered in Assessing Commercial Marina Developments – 900.G	63
R4	Report on Notices of Motion – Roof Terraces – Mechanical parking Installations & Air Movement Systems – 1014.G WP/ Part 2	68

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 26 March 2007**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 26 March 2007 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 26 March 2007 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: D2 Delegated to Committee

Subject: **Built Environment Principal Activity- Draft 2007-2010 Management Plan**

Author: Allan Coker – Director Planning and Development
Tim Tuxford – Manager Compliance
Brett Daintry – Manager Development Control
Chris Bluett – Manager Strategic Planning

File No: 827.G 06-09

Reason for Report: To review the principal activity of Built Environment prior to inclusion in the Draft 2007-2010 Management Plan.

Recommendation

That, subject to any variation to the budget, the programs and projects for the Built Environment Principal Activity be included in the draft Management Plan.

1. Background

Principal Activity No. 1 of the Management Plan is “Built Environment”. This principal activity has the following sub-activities:

- 1.1 Environmental Planning
- 1.2 Heritage Planning
- 1.3 Urban Design
- 1.4 Development Control
- 1.5 Compliance
- 1.6 Management and Administration

Included as an annexure to this report is the proposed Built Environment Principal Activity of the Management Plan with detailed comments on the programs and projects in each sub-activity.

Following is the commentary on each sub-activity.

2. Proposed Plan

2.1 Environmental Planning

As with the previous plan the emphasis for the Draft Management Plan 2007-2010 will be on responding to the planning requirements of the NSW State Government. The major areas of focus included in the plan are:

- Preparing our new comprehensive LEP based on the Department’s standard template, noting that this plan must be completed by 30 April 2010.
- Reviewing our housing strategy and determining our position on the housing target figures that will be set in the Eastern Sydney Sub-metropolitan strategy.
- Consolidating our placed based and issue based DCPs into a single document that will meet the requirements of the State that only one DCP apply to any one parcel of land, and at the same time enable the plan to be electronically queried to find out the rules by address and development type.

We briefed Councillors on these projects at a workshop held on 23 October 2006 and they are currently under way. Further reports and briefings on progress will be provided to the Urban Planning Committee in the near future.

The other key projects in the Management Plan 2007-2010 are essentially the continuation of existing strategic projects or new projects determined by resolution of Council:

Double Bay Commercial Centre and Oxford Street Paddington business management

This project arose from two adopted notices of motion relating to the current and ongoing economic viability of the Double Bay Commercial Centre and the Oxford Street Paddington shopping strip. Separate Councillor Working Parties have been established and meetings have occurred. The matter was reported to the Urban Planning Committee on 27 March 2005 and a decision was made by the Council on 10 April 2005 to undertake further investigations on how the Council could consider taking a more hands on position in the business management of the two commercial areas.

Two reports which examined the existing trading profiles of the centres and made recommendations on how the Council and the Chambers of Commerce could work to stimulate business activity were considered by the joint working party. We are currently in the process of putting together strategies for Double Bay and Oxford Street. It is expected that these strategies will contain various elements to address issues such as parking, centre marketing and capital improvements.

Section 94 Contributions Plan review

The review is being undertaken in response to an adopted notice of motion from 11 July 2005 addressing changes of use and contributions and decisions by Council on 27 February 2006 and 27 November 2006 dealing with the extension of the Plan's application to lands south of the Kiaora Lane car park area. The second aspect of the review has advanced to the preparation of an amending plan, but was deferred by Council. In response to expressed concerns the review process will examine options for a change of policy to car parking contributions within the Double Bay commercial centre.

Car Parking DCP review

The primary reason for the project is to review and update the car parking generation rates for residential and non-residential land uses. Matters for consideration in the review will include environmental sustainability, recognition of public transport options and the likely variation of rates due to precinct or area characteristics. The conclusions and new provisions will need to be dealt with in the context of the one DCP per site approach.

Policy on commercial use of harbour foreshore

This project also arose from a notice of motion. It is linked to legislative matters, in particular the provisions of the new comprehensive LEP, but also needs to be considered in the context of plans of management for open space lands and the operational provisions for community land under the *Local Government Act 1993*.

Review of zoning for Sydney Grammar School

This project arises from a resolution of Council on 19 December 2005 and a decision of Council on 16 April 2007 that we consider an immediate rezoning of land owned by Sydney Grammar School adjoining the southern boundary of the Weigal Sportsground. The land is currently zoned 2(b) Residential "B" but used for tennis courts.

Report on zoning anomalies near Bondi Junction

This project arises from a resolution of Council on 29 January 2007. The resolution requires that a report be brought to Urban Planning Committee of Council addressing and examining the anomaly currently existing between the zoning of areas immediately north of Syd Einfeld Drive (in particular Vernon Street & Junction Street, Bondi Junction), the restrictions of the Heritage Conservation Area and Woollahra Conservation DCP, the permissibility of medical uses under the zoning for this area and Council becoming obliged to refuse DA's for Medical Rooms in this area due to lack of parking availability on-site and taking on board the development application for the proposed works depot by Waverley Council under Syd Einfeld Drive.

Electronic Deployment of Planning Instruments

This project is the second stage of an ambitious project we commenced with funding provided by the Regulation Reduction Incentive Fund. It will provide for the delivery of planning information on line so that an enquirer will be able to find the relevant rules that apply to a particular development proposal on any nominated parcel of land in the Municipality.

2.2 Heritage Conservation

The Heritage Conservation sub-activity work program for 2007-2010 also involves undertaking work that will be necessary to meet the planning requirements of the State, including:

- Reviewing our statutory heritage provisions for the comprehensive LEP
- Reviewing the heritage provisions for our consolidated DCP.

The emphasis on reviewing our LEP heritage provisions will focus on rectifying current mapping anomalies with listed heritage items and heritage conservation areas. The review of heritage provisions in our consolidated DCP will focus on achieving consistency in heritage provisions and terminology.

A number of other projects will complete our work on contemporary heritage items, potential heritage items in Watsons Bay and in the Woollahra HCA, and the review of the Paddington DCP. These projects have been advanced throughout the 2006-2007 year, but delays have occurred with staff resource issues and changes to priorities. Projects carried over into the new plan include:

Paddington DCP Review

Following public exhibition of a new draft Paddington DCP a Peer and Community Review Panel was established to review aspects of the plan relating to excavation and to internal structural modifications to Victorian terrace houses. This panel is unlikely to report its findings until late May. Depending on those findings and Council decisions the draft plan may have to be re-exhibited.

Heritage Item LEP

This plan will consolidate items from separate studies into potential heritage items in Woollahra, Watsons Bay, Bellevue Hill and Rose Bay as well as contemporary heritage items throughout the Municipality.

Review of potential heritage items - Wilkinson buildings

Professor Leslie Wilkinson was a prominent Sydney architect whose work is well represented throughout Woollahra. His work is highly regarded for its sensitivity to site and climate and its Mediterranean influences. Several of his buildings are listed as heritage items. The purpose of this project is to investigate his remaining works to establish their heritage significance. Any potential items arising from these investigations will be included for consideration in the comprehensive LEP project.

Oxford Street Paddington Heritage Provisions

In response to the draft Oxford Street DCP, prepared jointly by the former South Sydney Council and Woollahra Council, we need to review and prepare appropriate heritage conservation provisions for the Oxford Street commercial precinct for inclusion in the Paddington DCP.

Study of hotels in Paddington

This project arises from a resolution of Council on 11 September 2006 that a consultant study of hotels in Paddington be undertaken with the aims of identifying significant hotels and preparing appropriate development and conservation provisions.

Research the work of architect John Brogan

This project arises from a resolution of Council on 9 October 2006 in response to the review of heritage items in the Woollahra Heritage Conservation Area. The resolution provides that we undertake a further report which investigates the work of John Brogan throughout the Municipality.

Review Exempt and Complying Development DCP

This project arises from a resolution of Council on 27 November 2006 following consideration of the contemporary heritage item project. The resolution requires that a further report be submitted to Council concerning extending the Exempt and Complying Development Control Plan in relation to kitchens and bathrooms in heritage properties.

Potential heritage conservation area - Fairfax Road

The Tanner Study identified several potential items in Fairfax Road. Further investigations have been carried out and indicate that we should consider the merit of identifying certain land in Fairfax Road as a heritage conservation area. These investigations will be undertaken in full consultation with property owners. The project will be merged with the preparation of the comprehensive LEP should it be decided to create a new heritage conservation area.

2.3 Urban Design

The key urban design projects in this sub-activity are as follows:

The Neighbourhood Centres Strategy

This project was commenced in 2005 and is a further stage in our place-based planning model. It has involved a comprehensive review of our main neighbourhood centres from Watsons Bay to Paddington. Progress of the work has been monitored by the Strategic Planning Working Party. A Draft DCP and associated LEP amendments were submitted to the Urban Planning Committee on 27 March 2006. A decision to prepare a draft LEP and exhibit the draft DCP was made by the Council on 10 April 2006. However, the plan has not been exhibited due to delays in the issue of a Section 65 Certificate. Submissions on the draft plan will need to be considered during the life of the new Management Plan.

Edgecliff Commercial Centre DCP – urban design and public domain

Edgecliff is one of our main business centres located at a major bus/rail interchange. The current controls for this centre were prepared in 1989 and need to be reviewed and updated to contemporary standards. This work will need to be undertaken in the context of the new metropolitan strategy that places a high emphasis on centres serviced by major public transport facilities. This LEP also includes the additional use provisions for properties in William Street Paddington.

Rose Bay car parks

The Rose Bay Car Parks are major public lands that are in poor condition but offer the opportunity for significant upgrading to meet likely future needs. This project will explore a number of development and improvement options.

Gateways Project

This project will examine opportunities to improve the quality and attractiveness of the public domain along New South Head Road between Rushcutters Bay Park and the Sydney Grammar School/White City sites following landscaping and replanting by Energy Australia.

White City DCP

Council on 16 April 2007 resolved to proceed with a ‘principles based’ DCP for the White City site. This plan will be publicly exhibited in May but it won’t be until at least June 2007 that the revised plan will be able to be considered in the context of public submissions.

Controls for transition areas between Residential 2(a) and Residential 2(b) zones

This project arose from a notice of motion on 11 September 2006. It was discussed in a Strategic Planning Working Party meeting on 1 March 2007 but Council’s policy position on the matter remains to be determined.

Kiaora Lands

Council on 16 April 2007 resolved to proceed with discussions with Woolworths in relation to the development of the Kiaora Lands site. This project will involve testing various design options and will examine relevant planning, urban design and traffic issues. Depending on Council decisions there may be a need to review our LEP and DCP controls for the site.

Oxford Street and Double Bay Urban Design Improvements

Both the URBIS and HillPDA reports identified opportunities for urban design improvements to these shopping and commercial centres. This project will examine opportunities for urban design improvements and make recommendations relating to the presentation of each building in Double Bay.

Review Schools and Colleges DCP

On 30 January 2007 we reported to the Strategic Planning Working Party on the need to review our Schools and Colleges DCP. As a consequence of that consideration the working party recommended a number of changes to the DCP. These will need to be drafted and reported to a meeting of the Urban Planning Committee.

Urban Design Information Program

We propose a program to improve the urban design skills of our development assessment officers. This program will involve the conduct of workshops by our urban design team as well as the preparation of practice notes on design assessment issues.

2.4 Development Control

The core regulatory functions of the Development Control Department under Part 4 and Part 4A of the *Environmental Planning and Assessment Act 1979* will be delivered with the aim being that the total gross median determination time for all applications does not exceed 75 days. We want to see the total undetermined development related applications at any time under 400 (currently 466). We want to see a continued reduction in deemed refusal appeals following the downward trend over the last 4 years.

The major influences upon the efficiency and effectiveness of this department include, the economy (no. of applications), the complexity of the planning system, delegations, staff resources, referral responses, quality of applications and management systems. Projects for this year will focus on improving internal efficiency particularly of the internal referrals.

Review of DA Assessment Processes

We will continue to review and update our current procedures database to ensure that all processes reflect current legislation, contemporary planning principles, judgments and best practice. We will monitor and refine our report formats and following presentation of an external report on our internal referral processes we will examine in detail how this part of our process may be streamlined. We will publish through our web site more critical procedures that will assist applicants understand how we will assess and determine application.

Post Determination Process

Whilst new consent formats including conditions have made substantial improvements to the post determination process we are going to develop a package to support applicants' understanding of the post consent processes. Unfortunately, we have seen an increase in people gaining consent and then failing to complete all the other processes required prior to occupation and use of developments. This project will help applicants better understand the post consent processes.

Post Occupation Audit

This project has been subject to initial reporting and the audit has been completed. However, the follow up evaluation and reporting has not been completed.

Section 68 Activity Approvals

There remain a number of approvals required under the Local Government Act for various activities such as structures and places of public entertainment, management of waste and activities on community land and public roads. Although we don't receive a large number of activity applications we should have a similarly rigorous approach to their registration, electronic tracking and information management as we have with applications under the EPA Act. This project will implement an *Authority* database and more rigorous procedures similar to those already in place for applications under the EPA Act. This project has been rolled over from the previous management plan.

Web Site Update

As part of our continuing improvement program we are committed to further improving the quality of information and usability of our section of the Council's web site. This project will build on the results of user testing and recommendations made by external consultants.

2.5 Compliance

The key focus for our Compliance Section over the coming year will continue to be on core activities. Enforcement of development consents relating to land use and building construction as well as the enforcement of building construction work with the Building Code of Australia (BCA) and its fire safety provisions remains a principle activity.

The role of the Compliance Section in enforcing building construction works varies depending on whether or not Council is appointed as the Principal Certifying Authority (PCA). As the PCA, the Compliance Section must carry out critical stage inspections to ensure that building work progresses in accordance with the approved plans and conditions of consent. In 2006 we were appointed as the PCA for about 25% of construction projects.

Another significant core activity for the Compliance Section is the Council's fire safety program, which operates to ensure that the owners of all class 2-9 buildings maintain adequate fire safety measures such as smoke alarms, sprinklers, extinguishers, exit signs, etc as required by the BCA. This is achieved by checking that building owners submit fire safety certificates and annual fire safety statements as required by the *Environmental Planning & Assessment Act 1979* and Regulations.

In addition to the Compliance Section's numerous core activities two continuous improvement projects are listed in the draft Management Plan. The specific projects are:

Procedures Data Base

There are several internal working procedures that need to be reviewed and updated to ensure that Compliance work practices are consistently carried out to a high standard.

Review of the section's procedures is on-going.

Revised Facts Sheets and Brochures

This project will produce a number of new fact sheets and brochures about compliance services. These will be produced for both paper and electronic distribution.

2.6 Management and Administration

Existing core services involving the production of rates, planning and outstanding notices and orders certificates will be maintained.

3. Conclusion

The programs and projects suggested for the 2007/2010 Management Plan have been derived from three main sources:

1. Projects we are required to undertake as a consequence of State requirements
2. Projects identified by Council
3. Projects which focus on improving our efficiency and service levels.

Allan Coker
Director Planning and Development
Brett Daintry
Manager Development Control

Tim Tuxford
Manager Compliance
Chris Bluett
Manager Strategic Planning

ANNEXURES

1. Proposed Built Environment Principal Activity for the 2007-2010 Management Plan.

Item No: R1 Recommendation to Council
Subject: **Sydney Grammar School Tennis Courts rezoning**
Author: Chris Bluett - Manager Strategic Planning
File No: 324
Reason for Report: To respond to a decision of the Council made on 16 April 2007

Recommendation

That a draft local environmental plan be prepared to rezone Lot 1 DP 633259, being land owned by Sydney Grammar School located between Nield Avenue and Vialoux Avenue Paddington, from Zone No.2(b) (Residential "B" Zone) to Zone No.6 (Open Space Zone).

1. Background

A report on the zoning of the tennis courts owned by Sydney Grammar School was considered by the Urban Planning Committee on 26 March 2007 (**annexure 1**). The Council considered two recommendations from the Committee at its meeting on 16 April 2007 and resolved:

That the matter be deferred to the next meeting of the Urban Planning Committee where there be consideration in relation to the immediate rezoning of Lot 1 DP633259, Nield Avenue, Paddington (owned by Sydney Grammar School) to Zone 6 (Open Space).

This report responds the decision of the Council. The report also provides information on the quarterly meeting held with representatives from the Department of Planning on 23 April 2007, at which the rezoning proposal was discussed.

2. Rezoning of Lot 1 DP 633259

There are several aspects about a rezoning of the land that require consideration.

- Consistency with Standard Instrument 2006
- Appropriate land use zone

2.1 Consistency with Standard Instrument 2006

The *Standard Instrument (Local Environmental Plans) Order 2006* was gazetted on 31 March 2006. As part of the planning reform package, the Department of Planning has issued circulars about the implementation of the Standard Instrument. Our report to the Committee on 26 March 2007 included a copy of Circular PS 06-015 - Spot rezoning, which set down criteria for preparing single LEPs. Another Circular, PS 05-005(**annexure 2**), also contains reference to criteria and states in part:

When notifying the Director-General under section 54 (*Environmental Planning and Assessment Act 1979*) of the intention to prepare an amending plan, councils will need to demonstrate the need for any proposed amendments. Any LEP amendment will also need to be consistent with the standard template as far as possible, to facilitate consolidation into the new instrument.

In regard to the need for the proposed amendment, we understand this to include the urgency for preparing the draft LEP. Therefore, in making a submission to the Department of Planning the Council must demonstrate:

- how the proposed draft LEP meets the criteria for spot rezonings
- the need for the draft LEP
- the reason why the draft LEP should be pursued at this time, rather than be dealt with as part of the new comprehensive LEP or perhaps in a “house-keeping” LEP that takes up a range of matters.

Consistency with the Standard Instrument 2006 raises several issues. The Standard Instrument does not contain Zone No. 6 (Open Space). Instead, it introduces two recreation zones being Zone RE 1 Public Recreation and Zone RE 2 Private Recreation. The land use tables for these zones and land use definitions are provided in **annexure 3**. It will be seen from the directions provided as part of the Standard Instrument that some elements of the tables are mandatory and additional elements may be inserted by a council. If the draft LEP is to be consistent with the Standard Instrument further consideration must be given by the Council to completing the Zone RE 2 provisions.

We do not consider it would be practical for the Council to take up the Standard Instrument land use zone in this case for two reasons. First, the intention of the Standard Instrument is for the zone to apply to all private open space and recreation land across a local government area. Therefore, Council would need to complete the content of the land use table for the RE 2 Private Recreation zone with a mind to its later application throughout the Municipality. Second, the current Zone No.6 (Open Space) applies to private and publicly owned land throughout the Municipality. Introduction of a new Private Recreation Zone for the subject land would create inconsistency for other open space and recreation sites under private ownership until the new comprehensive LEP came into force.

If the Council wishes to pursue a draft LEP to rezone the subject land open space we consider the current Zone No.6 (Open Space) zone should be used. Reasons for supporting this zone rather than the Private Recreation Zone in the Standard Instrument would need to be provided to the Department’s LEP Review Panel.

2.2 Appropriate land use zone

Whilst the Council has expressed an intention to rezone the subject land to Zone No.6 (Open Space), it is arguable that the land and the adjoining recreation land known as the Weigall Sportsground, which is also owned by Sydney Grammar School, should be zoned Special Uses 5 (School). The current Zone No.6 (Open Space) is an anomaly carried over from the City of Sydney Planning Scheme which applied to Paddington until 1984. The Special Use zone is consistent with the manner in which established school sites and their associated ovals and recreation facilities are zoned in the Municipality.

3. Meeting with Department of Planning

A meeting was held with representatives from the Department of Planning’s Sub-regional Branch on 23 April 2007 to discuss general planning issues and progress of the Sub-regional Strategy. We discussed work being undertaken on the Comprehensive LEP, Housing Strategy, amalgamation of DCPs, Neighbourhood Centres LEP and DCP, Draft Woollahra LEP 1995 (Am. 61) – Community Facilities and various heritage projects.

We also discussed the Sydney Grammar School tennis court rezoning. The Department questioned whether the proposed draft LEP met the spot LEP criteria and suggested the Council incorporate the rezoning in the comprehensive LEP or at least combine it with other issues in a broader draft LEP. Despite this, the Department indicated that it was open to the Council to present a case to the LEP Review Panel for a site specific LEP.

4. Identification of income and expenditure

Normal costs incurred in the preparation of a draft LEP can be met through current budget allocations. No income will arise from the draft LEP.

5. Conclusion

A recommendation has been prepared to enable the Council to commence preparation of a draft LEP to rezone the subject land to Zone No.6 (Open Space).

To assist with our submission to the LEP Review Panel, we ask the Committee to include the following two points in its discussion:

- the need for the draft LEP
- the reason why the draft LEP should be pursued at this time, rather than be dealt with as part of the new comprehensive LEP or perhaps in a “house-keeping” LEP that takes up a range of matters.

This is critical information we will need to submit to the Department to support the Council’s decision.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

ANNEXURES

1. Report to Urban Planning Committee on 26 March 2007
2. Department of Planning Circular PS 05-005
3. Extract from *Standard Instrument (Local Environmental Plans) Order 2006*

Item No: R2 Recommendation to Council
Subject: **Draft Woollahra Local Environmental Plan 1995 (Amendment No. 61)**
Author: Peter Kauter, Executive Planner
File No: 1064.G (Amend 61)
Reason for Report: To report on the public exhibition of Draft Woollahra Local Environmental Plan 1995 (Amendment No. 61)

Recommendation:

- A. THAT Draft Woollahra Local Environmental Plan 1995 (Amendment No. 61) as contained in **Annexure 3** of the report to the Urban Planning Committee meeting of 30 April 2007 be referred to the Department of Planning for approval by the Minister and for gazettal, subject to any legal drafting alterations requested by Parliamentary Counsel
- B. The issues raised in the submission by Cranbrook School are not considered to be of such significance that they should be the subject of a public hearing under Section 68(1) of the *Environmental Planning and Assessment Act 1979*

1.0 BACKGROUND

The Court of Appeal's decision in *Cranbrook School v Woollahra Council [2006] NSWCA 155* declared that development proposed by Cranbrook School for a preparatory and junior school to be development permissible with consent under Woollahra Local Environmental Plan 1995 being development which constitutes a 'community facility' within the meaning of that plan.

Following that decision the Council at its meeting on 26 June 2006 adopted a Notice of Motion which required the preparation of an LEP to clarify the meaning of 'community facility'. The Notice of Motion provided for the LEP to exclude the Rose Bay Bowling Club site and for the definition to preclude an 'educational establishment'.

At its meeting on 10 July 2006 Council adopted an Urban Planning Committee recommendation to adopt a draft LEP to clarify the meaning of 'community facility'. The Council resolution provided for the draft LEP to apply to all land zoned Open Space without reservation. We informed the Department of Planning of the Council's decision by letter dated 28 July 2006, in accordance with s.54(4) of the *Environmental Planning and Assessment Act 1979* (the Act).

The Director General advised that he would not issue an authorisation delegating Council to exercise functions in respect of the draft LEP as it proposed a definition that was inconsistent with *Standard Instrument (Local Environmental Plans) Order 2006*. A further report was considered by the Urban Planning Committee on 25 September 2006. At its meeting on 6 October 2006 Council resolved to revise the draft LEP.

The Director General issued an authorisation for Council to exercise delegations in respect of the revised draft LEP on 8 December 2006.

2.0 Preparation of Draft Woollahra LEP 1995 (Amendment No. 61) for exhibition

Preparation of the Draft LEP for exhibition purposes has been undertaken in the manner set out in the Act and the *Environmental Planning and Assessment Regulation 2000* (the Regulation). The following statutory steps were undertaken during the plan preparation process.

2.1 Section 54(4) notification to Department of Planning

Notification to the Department of Planning about Council's decision to prepare the draft LEP was carried out in the manner required by section 54(4) of the Act and clause 9 of the Regulation.

No direction has been received from the Director-General requiring the Council to prepare a local environmental study relating to the draft LEP.

2.2 Section 62 consultation

As part of the draft LEP process, section 62 of the Act requires that the Council carry out consultation with those public authorities and bodies that, in the Council's opinion, will or may be affected by a draft LEP. Section 62 also requires that the Council consult with the adjoining council, where a draft LEP applies to land on a local government boundary. Consultation was undertaken with the following authorities:

- City of Sydney
- Waverley Council

No submissions were received.

2.3 Section 64 notification

The Department of Planning was informed in the required manner that the consultation had occurred. A copy of the draft LEP was included in the correspondence.

2.4 Section 65 certificate

A certificate under section 65 of the Act enabling the draft LEP to be exhibited was issued using the delegation from the Director-General.

2.5 Consideration of SEPPs, REPs and Ministerial directions

2.5.1 SEPPs AND REPs

In the course of preparing the draft LEP consideration has been given to relevant State environmental planning policies (SEPPs) and regional environmental plans (REPs). The proposed amendment is not inconsistent with the provisions or objectives of any applicable SEPP or REP.

2.5.2 Section 117 directions

Section 117 of the Act provides that the Minister may give directions to a public authority or a person who has functions under the Act or under an environmental planning instrument. Through section 117, the Minister may direct a council to carry out the council's functions in preparing a draft LEP in accordance with principles set out in the direction. Under section 117, the Minister may also direct a council to include provisions in a draft LEP that will achieve or give effect to principles, aims, objectives or policies specified in the direction. In all instances the principles, aims, objectives and policies must be consistent with the Act. No direction has been issued to Woollahra Council specifically for the draft LEP.

Consideration was given to the section 117 Directions in the preparation of the Draft LEP. The draft LEP is not inconsistent with these Directions.

3.0 Public exhibition

The draft LEP was exhibited in the manner required by the Act and the Regulation. The exhibition occurred at the Council's Customer Services area over the period from 7 February 2007 to 7 March 2007. A copy of the exhibited Draft LEP is attached as **Annexure 1**.

The exhibition material included an information brochure explaining the provisions of the draft LEP.

Details of the exhibition were notified in the Wentworth Courier editions of 7, 14, 21 and 28 February 2007.

4.0 Submissions and alterations

Three (3) submissions regarding the Draft LEP were received in response to the exhibition. **Annexure 2** contains an outline of the issues raised in the submissions, responses to the issues and recommended alterations to the draft LEP where warranted.

In summary the submissions focus on the development of land that was formerly occupied by the Rose Bay Bowling Club which is zoned open space and is now owned by Cranbrook School. The submissions by and on behalf of properties which adjoin that land generally support the draft LEP on the basis that it will afford some protection to the existing residential amenity.

The submission by Cranbrook raises concerns about the retrospective nature of the draft LEP and its impact on the planning controls which apply to the land. Generally their concerns are that the draft LEP could jeopardise the School's development of the land despite a ruling by the Court of Appeal and the Council's decision to grant consent to a DA (DA508/05).

4.1 Savings provision

It is recommended that the draft LEP be altered to include a savings provision that permits the development proposed by the consent granted in respect of development application DA508/05 to be carried out.

DA508/05 is for the staged development of 6 & 6A Kent Road Rose Bay for the purpose of a preparatory and junior school by Cranbrook School. Part of the development site, being 6 Kent Road Rose Bay, is land formerly occupied by the Rose Bay Bowling Club and which is zoned Open Space.

The reason for this recommendation is that at the time of the Council's resolutions of 10 July and 6 October 2006, which provided for the draft LEP to apply to all Open Space zoned land without reservation, DA508/05 had not been determined. On 12 February 2007 the Council resolved to grant conditional consent to DA 508/05 and following the discontinuance of class 1 appeal proceeding in the Land and Environment Court against the deemed refusal of that DA the consent was issued. The School is entitled to rely upon and act on the consent.

The decision to grant consent to DA508/05 is a clear indication that the Council considers the development proposed by Cranbrook, including the development on that part of the site zoned Open Space, to be acceptable.

Section 96A of the Act provides that the Council can revoke or modify a development consent having regard to a draft LEP. In this situation the draft LEP was considered by Council as required under s.79C(1)(a)(ii) of the Act before the granting of consent. Therefore, revoking or modifying the consent should not be a consideration.

Section 101 of the Act prevents the validity of consents from being challenged in any legal proceedings except those commenced within 3 months of the consent being publicly notified. The consent granted in respect of DA508/05 was publicly notified on 14 March 2007. No notification of legal proceedings has been received to date.

DA508/05 was the initial DA in a staged development process. The consent granted in respect of DA508/05 related to the development concept, including the use of the land, the location of buildings and building envelopes. The actual physical works permitted by the consent are limited to preliminary works, e.g. demolition of buildings, site remediation and drainage. Under the staged development provisions a subsequent DA will be necessary for the carrying out of other works including the construction of buildings, the road and other facilities and structures.

In the absence of a savings provision to exclude the development proposed by DA508/05 (including the subsequent DA necessary to permit the development to be carried out) the granting of consent to the required subsequent DA will be problematic. This is because the proposed development will no longer fit within the definition of a 'community facility' as the definition under the draft LEP requires the owner or controller of the building or place used as a community facility to be a public authority. The Cranbrook School is not a public authority. The development would therefore be prohibited. If the draft LEP was adopted without the recommended savings provision it would create a situation where the approved development could not be carried out because consent could not be granted to the necessary subsequent DA as it would propose development that was prohibited. This would create a planning anomaly and prevent development from occurring in an orderly manner.

Since the granting of consent to DA508/05 officers from the Department of Planning have asked about the absence of a savings provision in relation to the approved development. Should Council not alter the draft LEP to include a savings provision it is likely the Minister will require such a provision before making the plan.

Including a savings provision in relation to DA508/05 would also be consistent with advice from Lindsay Taylor Lawyers dated 4 July 2006, see **Annexure 4** (paragraphs 16 and 19).

4.2 Rezoning

An option is to rezone the land from Open Space to Special Uses (School). This rezoning option was raised by the Director General in his response to Council in August 2006 in relation to the original version of the draft LEP. Cranbrook's submission on the draft LEP states that an appropriate planning decision would be to rezone the site and suggests s.68 of the Act would enable the rezoning as part of the current draft LEP. Cranbrook's request is that the Open Space zoned portion of the site, i.e. the land formerly occupied by the Rose Bay Bowling Club, be rezoned Special Uses (school). Their submission also requests a public hearing in accordance with s.68(1) of the Act. The merits of Cranbrook's request for a rezoning in the context of this draft LEP are discussed below.

4.3 Public Hearing

Section 68 relates to the consideration of submissions. Section 68(1) provides that the Council shall arrange a public hearing in respect of a submission where:

- (a) *a person making a submission so requests, and*
- (b) *the Council considers that the issues raised in a submission are of such significance that they should be the subject of a hearing before the council decides whether and, if so, what alterations should be made*

As mentioned earlier Cranbrook's submission requests a public hearing. Discussion of the significance of the issues raised in the submission is therefore necessary in deciding whether a public hearing should be held.

The draft LEP should not be used to prevent the development and use of the land by Cranbrook in accordance with DA508/05 considering:

- the decision by the Court of Appeal regarding permissibility of that development and
- the decision of the Council to grant consent to the development application

Accordingly, altering the draft LEP to include a savings provision to facilitate the development and use of the land in that manner is supported. However, in terms of the need for a public hearing, this issue is well understood and it is not considered to be of such significance as to warrant a public hearing before the council is able to decide if and how the draft LEP should be altered.

In the scope of the draft LEP, which relates to the definition of community facility in respect of all land in the Council area, Cranbrook's request for the re-zoning of an individual parcel of land is a substantially different matter. Section 68(1)(b) requires a public hearing *...before the Council decides whether and, if so, what alterations (to the draft LEP) should be made*. The question is whether the issue raised in Cranbrook's submission is significant enough to warrant a public hearing rather than the merits of any proposed alterations. The regime envisages the merits of any proposed alterations to be considered after the public hearing.

Nevertheless, it is considered that Cranbrook's reasonable expectation is that it should be able to develop and use the land in accordance with the consent granted to DA508/05. This does not require a change to the land use zoning. Changing the land use zoning would be so significantly different to what the draft LEP is seeking to achieve that Cranbrook, should it wish to seek a rezoning, should do so through a separate request for an amendment to the LEP. In the circumstances it is also considered that this matter is not of such significance to warrant a public hearing before the council is able to decide if and how the draft LEP should be altered.

The work currently being undertaken on the preparation of a comprehensive LEP, based on the Standard Instrument, can also include a review of school zonings.

4.4 Deferred Matter

Section 68(5) provides that the Council may exclude certain provisions of a draft plan or exclude part of the land from the draft plan. If the Council does this the certain provision or part of land becomes a deferred matter. This allows the particular matter to be further considered without prejudicing consideration of the draft plan. Therefore if the Council considered it appropriate the Open Space zoned portion of the Cranbrook site could be excluded from the draft LEP pending further investigation. However, for the reasons given earlier in respect to the question of whether a public hearing should be held, this course is also not considered to be appropriate.

4.5 Additional alteration

The Council's resolution of 10 July 2006 provided for a further objective to be included for Open Space zoned land as follows:

(f) to retain the green and open nature of the existing open space within the Municipality

The draft LEP should be altered to include this objective.

5. STATUTORY PROCESSES

5.1 LEP process

Prior to a draft LEP being approved by the Minister for Planning, an opinion must be obtained from the Parliamentary Counsel that the draft LEP can be legally made. Comments from the Parliamentary Counsel usually relate to matters of legal drafting.

Following receipt of Parliamentary Counsel's opinion, the draft LEP will be referred to Department of Planning for the Minister's approval and then gazettal. The draft LEP will come into effect when a notice is placed in the Government Gazette.

6. Identification of income and expenditure

There are no budgetary implications. All costs associated with the preparation and exhibition of the draft LEP are accounted for in the 06/07 budget.

7. Conclusion

Preparation of the draft LEP has been undertaken in the manner required by the Act and the Regulation. Consideration has been given to the submissions received and as a consequence alterations to the draft LEP are recommended.

It is recommended that the draft LEP (**Annexure 3**) be forwarded to the Department of Planning for gazettal subject to any legal drafting alterations requested by Parliamentary Counsel.

Peter Kauter
Executive Planner

Allan Coker
Director Planning and Development

Annexures:

1. Draft Woollahra Local Environmental Plan 1995 (Amendment No. 61), as exhibited
2. Summary of Submissions
3. Draft Woollahra Local Environmental Plan 1995 (Amendment No. 61) (altered version with tracked changes) post exhibition
4. Advice from Lindsay Taylor Lawyers dated 4 July 2006

Item No: R3 Recommendation to Council
Subject: **Issues Encountered in Assessing Commercial Marina Developments**
Author: Peter Kauter, Executive Planner
File No: 900.G
Reason for Report: Response to Notice of Motion

Recommendation:

That the information contained in the report by the Executive Planner on the Notice of Motion regarding issues encountered by Council in assessing commercial marina developments in the Municipality be noted.

Background:

The following Notice of Motion was adopted by Council on 26/2/07:

A report be brought to Urban & Planning Committee advising of the issues encountered by Council in assessing commercial marina development within the Municipality particularly with respect to the Royal Motor Yacht Club at Point Piper.

In responding to this Notice of Motion files relating to development proposals for the following marinas were reviewed:

- Cruising Yacht Club – 1 New Beach Road Darling Point
- d'Albora Marina – 1B New Beach Road Darling Point
- Double Bay Marina – 8 Castra Place Double Bay
- Royal Prince Edward Yacht Club – 160 Wolseley Road Point Piper
- Royal Motor Yacht Club – 21 Wunulla Road Point Piper
- Point Piper Marina – 5 Wunulla Road Point Piper
- Rose Bay Marina – 594-596 New South Head Road Rose Bay

Issues relating to marina developments:

The following table lists various marina developments considered by Council with brief descriptions of the proposal and the issues identified in the assessment. The list has been compiled from development applications considered by Council since 1995.

MARINA DEVELOPMENTS		
MARINA	PROPOSAL	ISSUES
Cruising Yacht Club	DA1357/99 Air conditioning	<ul style="list-style-type: none"> • Visual impact • Noise
	DA1137/99 Temporary offices & storage containers for the Sydney to Hobart yacht race	<ul style="list-style-type: none"> • Nil
	DA1063/99 Alterations to accommodate 8 large yachts during the Olympic Games	<ul style="list-style-type: none"> • Designated development • SREP 23 • Existing use rights • Carparking
	DA983/99 Alterations & additions to the shipwrights building	<ul style="list-style-type: none"> • Nil
	DA140/98 Replacement of a fixed timber walkways & moorings with floating concrete pontoons	<ul style="list-style-type: none"> • Residential amenity during construction • Impact on marine environment
	DA117/98 Major alterations to the club building	<ul style="list-style-type: none"> • Intensity of use • Previous unauthorised work • Car parking • Residential amenity
	d'Albora Marina	DA263/2004 Interview room addition
DA524/2004 Change of use – canteen to café with outdoor seating and an office		<ul style="list-style-type: none"> • Car parking & traffic congestion • Owner's consent
Double Bay Marina	DA50/97 Jet ski pontoon	<ul style="list-style-type: none"> • Noise • Car parking • Unauthorised works
	DA607/99 Pontoon for dinghies or jet skis	<ul style="list-style-type: none"> • Designated development • Existing use rights • Foreshore development • Noise impact • Intensification of existing use • Visual impact • Residential amenity • Unauthorised works
	BA744/95 Garage door	<ul style="list-style-type: none"> • Streetscape • Erection without approval
Royal Prince Edward Yacht Club	DA340/2001 Boat store, car stand and loading bay	<ul style="list-style-type: none"> • Bulk and scale • Streetscape • Traffic/parking • Privacy

MARINA DEVELOPMENTS		
MARINA	PROPOSAL	ISSUES
Royal Motor Yacht Club	DA71/97 18 berth jet ski facility	<ul style="list-style-type: none"> Noise (see 3.1 below)
	DA599/99 Replacement of fixed timber marina with floating marina	<ul style="list-style-type: none"> Integrated development Existing use rights Designated development provisions Damage to marine vegetation Noise during construction (see 3.2 below)
Point Piper Marina	DA127/95 Platform extension and slipway reconstruction	<ul style="list-style-type: none"> Nil
	DA573/96 Refurbishment of workshop and office facilities; alterations to dwelling; access facilities	<ul style="list-style-type: none"> Noise Location on Council land
Rose Bay Marina	DA79/95 Conversion of a residential unit into additional restaurant floor area	<ul style="list-style-type: none"> Parking
	DA705/00 Internal alterations and additions and provision of a kiosk and outdoor seating	<ul style="list-style-type: none"> NSW Maritime Authority's requirements Land owner's consent Validity of consent
	DA463/01 Alterations to existing marina including kiosk with new window and doors	<ul style="list-style-type: none"> Seating capacity NSW Maritime Authority's requirements

3. Issues relating to the Royal Motor Yacht Club of Australia:

The Royal Motor Yacht Club of Australia is located at 21 Wunulla Road Point Piper and comprises a hardstand car park at street level, licensed club premises and a marina which extends into Rose Bay.

3.1 DA71/97

DA71/97 proposed an 18 berth jet ski facility. It was refused by Council on 4/8/97. The applicant appealed to the Land & Environment Court. The appeal was heard by Assessor K G Hoffman who upheld the appeal subject to conditions.

The main issue considered by the Court was noise impacts on the existing and likely future amenity of the neighbourhood and the cumulative effect of increased noise levels generated by the site. Expert evidence was given to the Court by noise consultants engaged by the applicant and by the Council. The Court was satisfied that the evidence of the Applicant was sufficient for the potential environmental impacts of the proposal to be predicted with adequate certainty. Further, that the measures proposed to mitigate those effects were sufficient and reasonable to ensure there would be no significant or unacceptable impacts caused by the proposal.

The Court was satisfied that the environmental impacts of the proposal on their merits, were not significant in themselves, and therefore could not significantly increase the environmental impacts of the existing large marina, and therefore the proposal was not designated development.

At the time of the Court hearing there were no adjoining property owners who objected to this DA. Earlier objections were withdrawn or ownership of the properties changed.

3.2 DA599/99

DA599/99 proposed demolition of an existing fixed marina and replacement with a floating marina. No change in the number or type of berths was proposed from the 85 marina berths, 18 swing moorings and 17 jet skis. The size of marina berths was to be increased to comply with current standards resulting in an enlargement of the area occupied by the marina. The number of mooring piles was to be reduced from 260 (timber) to 80 (steel and concrete).

Notification and advertising of this DA resulted in no objections being received from adjoining property owners.

The main issues relating to this DA were:

- the standard of documentation provided by the applicant
- existing use rights – the development was prohibited in both of the zonings which applied to the waterway under *Sydney Regional Environmental Plan No. 23* (SREP 23), being W1-General Waterways and W5-Aviation; the DA was considered on the basis that the marina had existing use rights (Note: SREP 23 has since been replaced by *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*)
- whether the proposal should be considered as designated development – this issue was relevant as the existing marina fitted the designated development criteria and therefore the proposal could also be considered as designated development or as non designated development; after considering the relevant matters it was decided that the DA would be considered as non designated development
- comments from approval bodies regarding integrated development issues – approval bodies comprised:
 - the Environment Protection Authority (EPA) as the marina constituted scheduled premises under the *Protection of the Environment Operations Act 1997* – the EPA issued its general terms of approval
 - Waterways Authority as a part 3A permit was required under the *Rivers and Foreshores Improvement Act 1948* – the Waterways Authority issued its general terms of approval
 - NSW Fisheries as a permit to harm marine vegetation was required under the *Fisheries Management Act 1994* – NSW Fisheries advised that a permit would be issued
 - Department of Land and Water Conservation under the *Water Act 1912* – the Department advised that no permit was required
- damage to marine vegetation – the Department of Fisheries indicated it would issue a permit to harm marine vegetation
- noise during construction – specific conditions were imposed

The DA was considered by the Development Control Committee on 17/4/00 and the recommendation to grant conditional consent was adopted.

Conclusion:

The issues encountered by Council in dealing with commercial marina developments have varied depending on the nature of the development being proposed. To summarise, the main recurring issues relating to developments which have impacted on berthing facilities have concerned:

- impacts on marine ecology
- permissibility – existing use rights
- designated development
- integrated development – approval body’s general terms of approval
- noise – construction noise and noise associated with jet ski berthing facilities
- car parking

Regarding developments not involving berthing facilities the main issues have been:

- car parking
- illegal works/activities being carried out not in accordance with consents

Peter Kauter
Executive Planner

Allan Coker
Director – Planning & Development

Item No: R4 Recommendation to Council
Subject: **Report on Notices of Motion: Roof Terraces; Mechanical Parking Installations; and Air Movement Systems**
Author: Tom Jones, Urban Design Planner
File No: 1014.G WP/Part 2
Reason for Report: To respond to a council resolution (28 August 2006) regarding roof terraces, mechanical parking installations and air conditioners.

Recommendation:-

1. That a draft development control plan be prepared and exhibited to amend the Residential Development Control Plan 2003 in the manner set out in **Annexure 2** of the report to the Urban Planning Committee on 30 April 2007.

1.0 Background

On 14 August 2006 The Urban Planning Committee considered a report on roof terraces, mechanical parking devices and air conditioning condensers (**Annexure 1**). Council adopted the recommendations of the Urban Planning Committee on 28 August 2006 and resolved in the following terms:-

- A. *That the report in response to Council's Notices of Motion regarding roof terraces, mechanical parking installations, and air conditioning condensers be received and noted.*
- B. *That, in relation to the roof terrace controls, a further report be submitted to the Committee providing additional proposed controls that :*
 - a. *Assume that a roof terrace that does not comply with the minimum setbacks under the more stringent of either the relevant DCP or SEPP 65 will have an unreasonable impact on adjoining neighbours.*
 - b. *Provide that roof terraces are not to be the principal private open space for any dwelling so as to encourage deep soil and building articulation.*
 - c. *Provide that there be no noise amplification or light spill from roof terraces.*
 - d. *Provide that no awning or covering, temporary or otherwise, be allowed on roof terraces.*
 - e. *Amend figure 5.8.5 so that it is expressed as an additional control.*
 - f. *Consider controls that seek to retain pitched roofs.*
 - g. *Consider appropriate controls for stair access.*
 - h. *Ensure that the height of any roof terrace balustrade does not exceed the statutory height control.*
- C. *That, in relation to mechanical parking installation controls, a further report be submitted to the Committee on the following matters:*
 - a. *Permitting mechanical parking devices only in exceptional circumstances.*
 - b. *Investigation of accumulative impacts on energy levels, including ESD considerations and BASIX.*
 - c. *Consideration of ongoing maintenance and servicing controls.*

- D. That, in relation to air conditioning condensers, the control to include that they cannot have a greater visual or amenity impact on the streetscape or neighbours than they have on the applicant.

This report responds to items B, C & D of the above resolution. It also reconsiders the recommendations in the report of 14 August 2006 to the Urban Planning Committee which were not the subject of the resolution.

2.0 Roof Terraces (Item B of Council resolution)

- a. Assume that a roof terrace that does not comply with the minimum setbacks under the more stringent of either the relevant DCP or SEPP 65 will have an unreasonable impact on adjoining neighbours.

Minimum setbacks are required to minimise any potential impacts on privacy, views and noise to adjoining neighbours. Section 5.2 *Building Size and Location* of the RDCP establishes required front, side and rear setbacks and has separate controls for views (C5.5.6) and acoustic and visual privacy (C5.8.1-C5.8.8). Setbacks for roof terraces will be adequately controlled by the insertion of Fig. 5.8.5 below. This control provides that the trafficable area of roof terraces be sufficiently set back so that there will be no direct line of site to neighbouring open space or to the windows of habitable rooms.

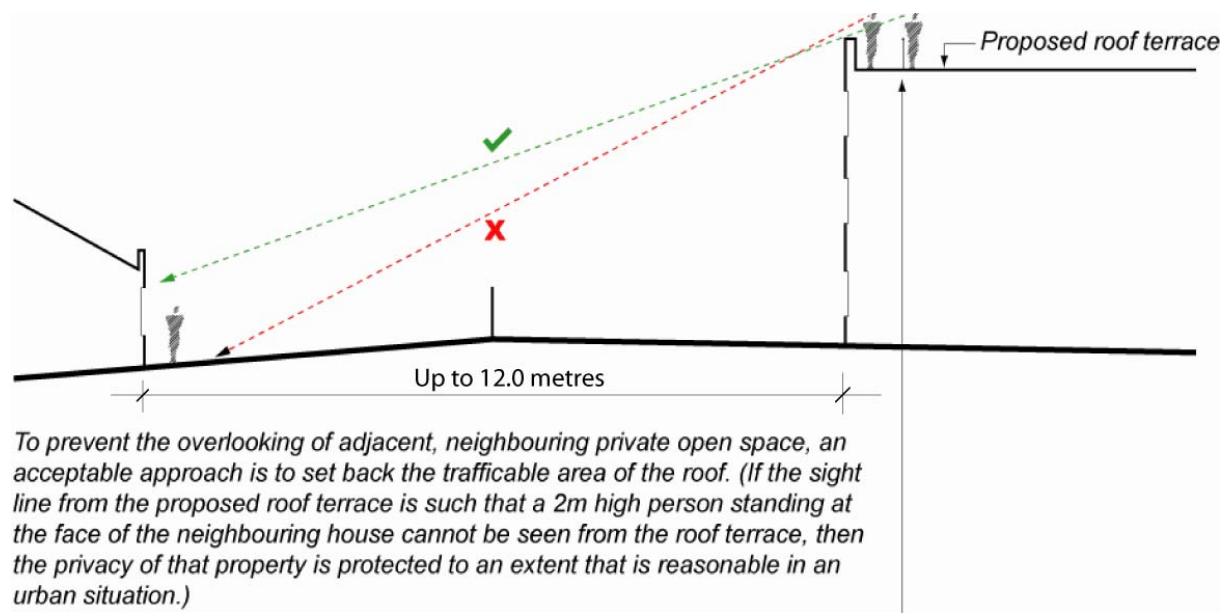
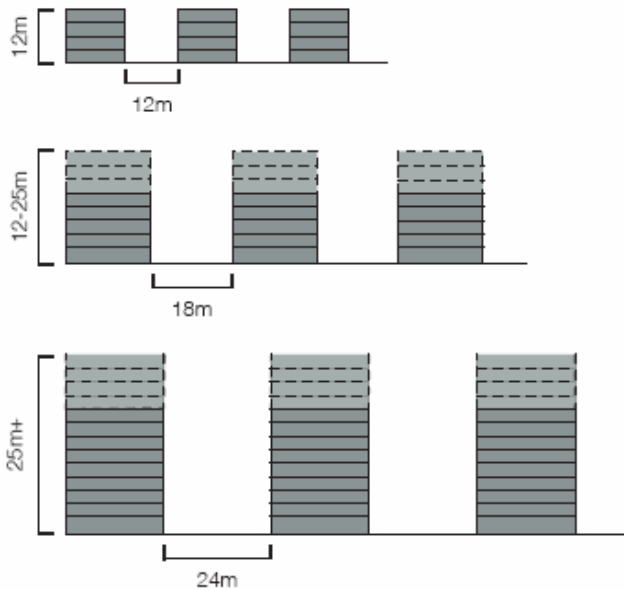


Figure 5.8.5

The SEPP 65 Residential Flat Design Code contains recommended minimum distances between buildings to ensure that scale, visual and acoustic privacy, overshadowing, open space and deep soil zones are satisfactory. The Code applies to residential flat buildings over three storeys in height and delineates a relationship between the height and separation of buildings. This relationship is illustrated **Figure 01.61** of the Code:



01.61. Building separation is proportionate to building height to facilitate better urban form and improved residential amenity.

The most applicable code provision for Woollahra is the 12.0m recommended minimum separation between buildings up to 12m in height. In instances where there is less than 12.0m separation, Fig. 5.8.5 will maintain visual privacy. Where there is more than 12m separation it is considered that privacy is adequately protected by distance.

b. Provide that roof terraces are not to be the principal private open space for any dwelling so as to encourage deep soil and building articulation.

There is no direct correlation between the area of deep soil provided on site or the articulation of the building and the provision of roof terraces. The existing RDCP 2003 controls require deep soil and building articulation as follows:-

C 5.3.1 For residential flat buildings deep soil landscape area comprises at least 40% of the site area.

C 5.3.2 For dwelling houses and dual occupancies at least 50% of the unbuilt upon area is located at ground level and comprises deep soil landscape area.

C 5.3.10 Buildings are designed and located to acknowledge the private open space of surrounding development by:

- keeping upper storey parts of buildings away from neighbouring private open space to avoid an unreasonable sense of enclosure; and
- using articulation, colour and detailing to reduce visual bulk.

These stand alone controls will ensure that satisfactory deep soil and building articulation are provided.

Furthermore, C5.3.7 of the RDCP ensures that private open space is provided with direct access from the main living area of the dwelling. Therefore, any private open space provided on a roof terrace must be in addition to the private open space provided at ground level.

For the reasons stated there is no need for the proposed control.

c. Provide that there be no noise amplification or light spill from roof terraces.

The RDCP provides controls in section 5.8 to minimise noise impacts including building orientation, location, screening and separation to alleviate the effects of traffic and domestic noise. Amplified noise is not controlled in the RDCP as it is often derived from a movable source and is controlled by the enforcement of the *Protection of the Environment Operations Act 1997 (POEO Act) (Noise Control) Regulation 2000*. These controls prohibit amplified noise at night that is audible in neighbouring dwellings and regulate against “offensive noise” during the day. Both the police and council’s compliance officers are able to enforce the Act.

Additional controls in the RDCP governing amplified noise would duplicate the provisions of the POEO Act and are not appropriate.

In relation to light spill an additional control is recommended to ensure that only low level lighting is provided to roof terraces. The control also requires compliance with Australian Standard AS 4282 -1997 (Control of the Obtrusive Effects of Outdoor Lighting) in **Part 5.8 Acoustic and Visual Privacy**

- C 5.8.10** Lighting on roof terraces must be at a low level, appropriately shaded and contained within the roof terrace area so that the light source is not visible from neighbouring properties. The lighting of roof terraces must be designed in compliance with AS 4282-1997.

d. Provide that no awning or covering, temporary or otherwise, be allowed on roof terraces.

Permanent awnings and coverings are ‘development’ and can be regulated. However, temporary shade devices such as umbrellas, booths, tents or other temporary enclosures and mobile structures are not ‘development’ within its meaning under the *Environmental Planning and Assessment Act 1979* and cannot be regulated by a DCP. Furthermore, it would be unwise for Council to attempt to effectively ban such devices for the following reasons:-

- Open space without solar shade is problematic for comfort and amenity reasons and because of the dangers of sun exposure.
- Awnings and coverings that are within the height and setback controls may have no adverse amenity impacts on neighbours.
- Well designed awnings and coverings can add to the visual presentation of a building.

Rather than ‘ban’ shade structures on roof terraces it would be better to include a new control that provides that awnings and coverings will only be permitted where they:

- Comply with the height and view controls
- Do not cause a loss of amenity to adjoining properties, including loss of amenity due to view loss.

The following additional control is therefore recommended in **Part 5.5.Views** to make it clear that coverings on roof terraces must be within the applicable height controls.

- C5.5.7** Awnings and coverings on roof terraces, if provided, must be within the height control and must enable the sharing of views.

e. Amend figure 5.8.5 so that it is expressed as an additional control.

As requested, an additional control which refers to Figure 5.8.5 is recommended as follows:

C5.8.9 The trafficable area of roof terraces must be set back so that there is no direct line of sight to neighbouring open space or to the windows of habitable rooms within a distance of 12m (see Figure 5.8.5)

f. Consider controls that seek to retain pitched roofs.

The desired future character objectives in **Part 4: Precinct Controls** of RDCP 2003 identify those precincts where pitched roofs are desirable. The following example is from the Manning Road precinct:

C 4.4.6.3- Roof Form *Minimise massing of roof forms to enable views of the tree canopy across the precinct. Hip and gabled roof forms are encouraged.*

If Council wants to more generally encourage the retention of pitched roofs it will be necessary to alter the manner in which our height controls currently operate.

Clause 12 of WLEP 1995 controls the height of buildings within Woollahra. It provides that a building shall not be erected on land within a height zone to a height greater than the maximum height shown on the height map as applicable to the land within that height zone. The height maps then set out the maximum height of buildings from locality to locality. These heights vary from 6.5m to 24m. Maximum height is defined in the LEP as the greatest distance measured vertically from any point on the building to the existing ground level immediately below that point.

This means that the height control applies to the highest part of a building, usually its roof ridge and that the maximum development potential that can be achieved within the height controls will usually be a building with a flat or parapet roof form. The current height control tends, therefore, to encourage flat rather than pitched roof forms. This approach is perpetuated in the Department of Planning's new LEP template. This means that there is little prospect that the Department would allow us to proceed with an alternative approach such as separate controls for wall and roof heights to encourage the retention of pitched roofs.

In the circumstances, to encourage pitched roof forms, we will need to continue to rely upon the controls contained in our DCPs.

g. Consider appropriate controls for stair access.

Stair access to roof terraces on both houses and residential flat buildings, whether open or enclosed, is required to be within the relevant height limits and setbacks of the RDCP as well as comply with the Building Code of Australia. These controls are adequate.

h. Ensure that the height of any roof terrace balustrade does not exceed the statutory height control.

Roof terraces and associated structures are subject to the maximum height control in WLEP 1995 and all other controls in the RDCP. Therefore, there is no need to add a further control for roof terrace balustrades.

3.0 Roof Terraces- Proposed amendments to RDCP 2003 in report of the 14 August 2006

In the report to the Urban Planning Committee on the 14 August 2006, a number of amendments to the RDCP 2003 were recommended. Additional research suggests a need to reconsider some of those recommended amendments. These amendments are illustrated in the following table. The table shows the existing control, the alterations proposed at the 14 August 2006 meeting and the amendments which are now proposed.

3.1 Alteration 1

The existing control	Recommended Amendments 14 August 2006	Recommended Amendments 16 April 2007	Reasons
<p>5.3 Open Space and Landscaping</p> <p>C 5.3.5 For residential flat buildings each dwelling located above ground level is provided with private open space in the form of a balcony, verandah or uncovered roof terrace which has a minimum area of 8m² and a minimum dimension of 2.0m².</p>	<p>C 5.3.5 For residential flat buildings each dwelling located above ground level is provided with private open space in the form of a balcony, verandah or uncovered roof terrace which has a minimum area of 8m² and a minimum dimension of 2.0m².</p> <p>Uncovered roof terraces will only be considered where their size, location and design is such that they do not impose or have unreasonable impacts on adjoining properties (refer to Part 5.5 Views and Part 5.8 Visual and Acoustic Privacy).</p>	<p>C 5.3.5 For residential flat buildings each dwelling located above ground level is provided with private open space in the form of a balcony, verandah or uncovered roof terrace which has a minimum area of 8m² and a minimum dimension of 2.0m.</p> <p>Uncovered roof terraces <u>and associated structures</u> will only be considered where their size, location and design is such that they do not impose or have unreasonable impacts on adjoining properties (refer to Part 5.5 Views and Part 5.8 Visual and Acoustic Privacy).”</p>	<p>To not preclude the provision of covered roof terraces (subject to compliance with height and view controls).</p>

3.2 Alteration 2

The existing control	The amendments recommended 14 August 2006	Recommended amendments 16 April 2007	Reasons
<p>5.8 Acoustic and Visual Privacy</p> <p>C 5.8.6 Balconies, terraces, decks and other like areas within a development are suitably screened to prevent direct views into habitable rooms or private open space of adjacent dwellings.; (see Figure 5.8.4).</p>	<p>C 5.8.6 Balconies, terraces, decks, uncovered roof terraces and other like areas within a development are suitably located and screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings.; (see Figures 5.8.4 and 5.8.5)</p> <p>Note, screening to roof terraces will only be considered where the screening will have no impacts on streetscape, desired future character, views, overshadowing, and the scale and bulk of a building.</p> <p>Fig 5.8.5 inserted here</p>	<p>C 5.8.6 Balconies, terraces, decks uncovered roof terraces and other like areas within a development are suitably located and screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings; (see Figures 5.8.4 and 5.8.5)</p> <p><u>Note, screening to Roof terraces and associated structures will only be considered where they have no impacts on streetscape, desired future character, views, overshadowing, and the scale and bulk of a building and are within the height and setback controls relating to the site.</u></p> <p><u>5.8.9 The trafficable area of roof terraces must be set back so that there is no direct line of site to neighbouring open space or the windows of habitable rooms within a distance of 12m (see Fig.5.8.5)</u></p> <p>Fig 5.8.5 inserted here Refer below</p>	<p>To not preclude the provision of covered roof terraces.</p> <p>New control associated with Fig. 5.8.5.</p>

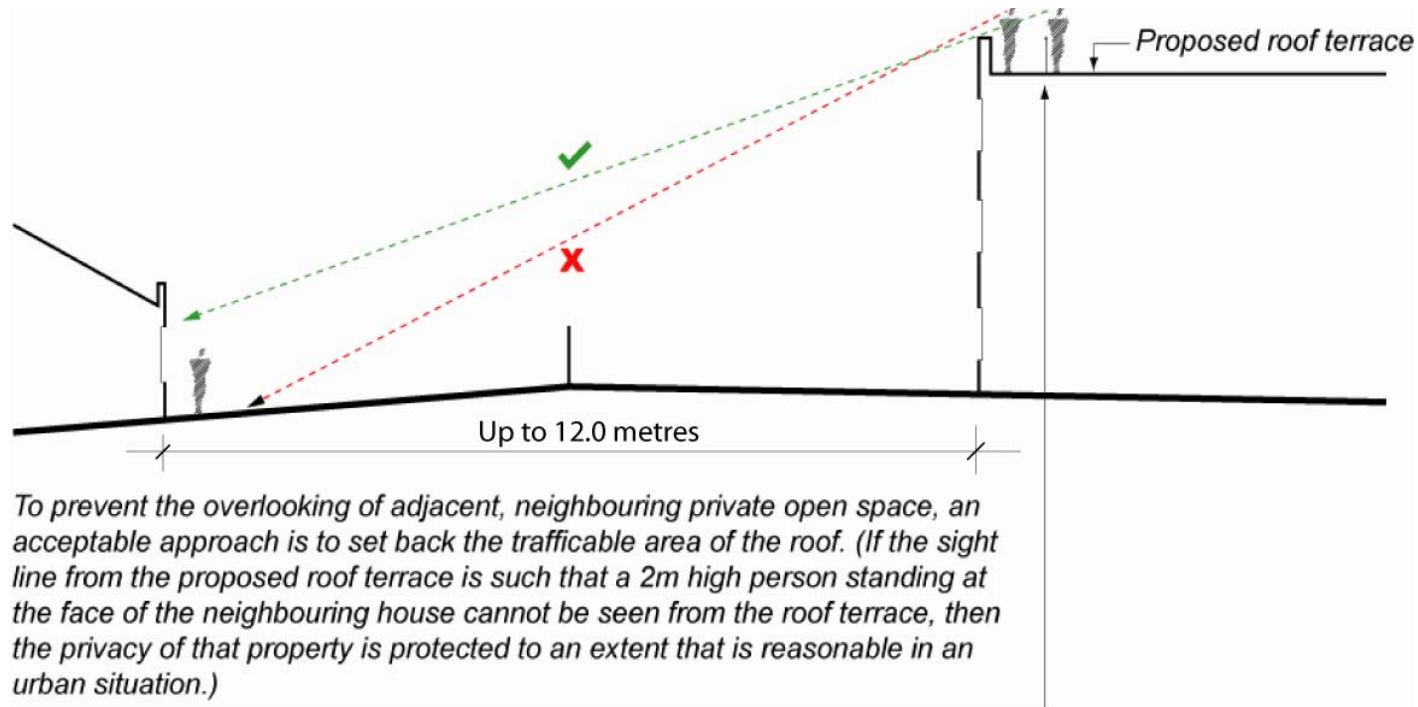


Figure 5.8.5

The recommended amendments to the RDCP 2003 in relation to roof terraces are included in **Annexure 2** of this report.

4.0 Mechanical Parking Installations (Item C of Council resolution)

a. Permitting mechanical parking devices only in exceptional circumstances.

The following control **C5.9.18** is recommended to address this resolution:-

C 5.9.18 Council will only permit mechanical parking devices such as car lifts, turntables and stackers in situations where the topography does not allow a simpler parking arrangement, or where no other alternative for on site parking is available.

b. Investigation of accumulative impacts on energy levels, including ESD considerations and BASIX.

All residential building applications are required to pass a BASIX assessment. Power used in mechanical parking installations is considered at this stage of any application. Information from Energy Australia indicates that the power usage is comparable with domestic lifts and does not create heavy demands on the grid (such as is caused by air conditioning) due to their intermittent usage pattern.

No additional control is proposed in relation to the cumulative impact of mechanical parking devices.

c. Consideration of ongoing maintenance and servicing controls.

The breakdown of a mechanical parking devices may impact on public amenity by causing additional on-street parking and traffic queuing. However, research indicates that there are no instances in Woollahra Municipality where such a breakdown has caused disruption to traffic movement in adjacent streets. In addition, there are considerable incentives for the building management to retain an operating system.

Therefore, no additional controls are proposed in relation to ongoing maintenance.

In the report to the Urban Planning Committee on the 14 August 2006, a number of amendments to the RDCP 2003 were recommended. Additional research suggests a need to also reconsider some of those recommended amendments relating to mechanical parking installations. These amendments are illustrated in the following table. The table shows the existing control, the alterations proposed at the 14 August 2006 meeting and the amendments which are now proposed.

5.0 Mechanical Parking Installations – Proposed amendments to RDCP 2003 in report of the 14 August 2006

5.1 Alteration 4

The existing controls	Recommended amendments 14 August 2006	Recommended amendments 16 April 2007	Reasons
<p>No controls setting out specific requirements for mechanical parking devices.</p>	<p>C 5.9.20 Details of a proposed mechanical parking installation is to be submitted to Council with the development application. Details are to include internal and external dimensions (including heights) of the device, and manufacturer’s documentation.”</p>	<p>C 5.9.20 <u>A report from a suitably qualified traffic consultant is required for all applications using mechanical parking installations involving more than 2 cars. The report should address: waiting time, maximum number of car movements and other relevant information required in assessing the application and the number of on-site waiting spaces required. Waiting spaces must not obstruct the driveway.</u></p>	<p>To improve the quality of information that accompanies applications involving mechanical parking devices.</p>

Recommended amendments to the RDCP 2003 in relation to mechanical parking installations are included in **Annexure 2** of this report.

6.0 Air Handling Systems (Item D of Council resolution)

That, in relation to air conditioning condensers, the control to include that they cannot have a greater visual or amenity impact on the streetscape or neighbours than they have on the applicant.

Appropriate changes are proposed as follows:

6.1 Alteration 5

Recommended amendments 14 August 2006	Recommended amendments 16 April 2007	Reasons
<p>Part 5.2 Building size and Location</p> <p>Air conditioners C 5.2.21 External condensers and air conditioning units are to be sited and screened to minimise noise impacts on neighbours and minimise visual impacts upon views and the streetscape. Air conditioning condenser units should not be visible from the public domain.”</p>	<p>5.10 Site Facilities</p> <p>Air conditioners C 5.10.11 External condensers and air conditioning units are to be sited and screened to minimise noise impacts on neighbours and minimise visual impacts upon views and the streetscape. Air conditioning condenser units should not be visible from the public domain, <u>nor should they have a greater visual or amenity impact on the streetscape or the neighbours than they have on the occupants of the site.</u></p>	<p>To give effect to Council’s resolution.</p>

Recommended amendments to the Residential DCP 2003 in relation to air handling systems are included in **Annexure 2** of this report.

8.0 Identification of Income/Expenditure

There are sufficient funds available in the 2006-2007 Budget for advertising and notification of the amended draft RDCP.

9.0 Conclusion

9.1 Roof Terraces

It is recommended that RDCP 2003 be amended in relation to roof terraces to provide a level of additional guidance for designers, assessment officers and decision makers. This is consistent with the performance based approach to residential development controls, setting design controls in addition to numeric measures, to determine appropriate outcomes.

In relation to the Heritage Conservation Areas of Paddington, West Woollahra and Watsons Bay, controls relating to roof forms, streetscape and infill building types severely limit the opportunity to provide roof terraces. No amendments are proposed to these DCPs. For the business zones, suitable controls are currently provided in both the Rose Bay Centre and Double Bay Centre DCPs that deal with amenity and privacy issues relating to roof terraces and no amendments are recommended.

9.2 Mechanical Parking Installations

It is recommended that the RDCP 2003 be amended to include the requirement for a traffic and parking report.

9.3 Air Conditioners.

It is recommended that the RDCP 2003 be amended to incorporate additional controls in relation to the appropriate location and screening of air conditioners.

Tom Jones
Urban Design Planner

Margaret Zulaikha
Team Leader Urban Design

Allan Coker
Director Planning & Development

ANNEXURES:

- 1 Report to Urban Planning Committee 14 Aug 2006 (including Annexure A)
- 2 Table of Proposed Amendments-RDCP 2003 - March 2007