



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 12 May 2008*

Time: *6.30pm*

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

8 May 2008

To: His Worship The Mayor, Councillor Geoff Rundle, ex-officio
Councillors John Comino (Chair)
 Claudia Cullen (Deputy Chair)
 Christopher Dawson
 Wilhelmina Gardner
 Keri Huxley
 Julian Martin
 David Shoebridge

Dear Councillors

Urban Planning Committee Meeting – 12 May 2008

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 12 May 2008 at 6.30pm.**

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 28 April 2008	1
D2	Built Environment Principal Activity - 3 rd Quarterly Management Plan Review – 827.G 07-10	2

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

R1	Temple Emanuel 7 Ocean Street, Woollahra – 1080.G (W)	32
R2	Public Car Parking in the Double Bay Commercial Centre – Draft DCP's & Draft Section 94 Contributions Plan – 136.G	93
R3	Notice of Motion – Dilapidation Reports – 900.G	120

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 28 April 2008**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 28 April 2008 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 28 April 2008 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: D2 Delegated to Committee

Subject: **Built Environment Principal Activity – Third Quarterly Management Plan Review**

Authors: Allan Coker – Director Planning and Development
Chris Bluett – Manager Strategic Planning
Tim Tuxford – Manager Compliance
Patrick Robinson – Manager Development Control

File No: 827.G 07-10

Reason for Report: To review the status of projects and services for the Management Plan principal activity of Built Environment for the three months ending 31 March 2008.

Recommendation

- A. That the status of projects for the Built Environment principal activity be noted.
- B. That the variations to projects be agreed subject to adoption of the relevant budget variations included in the separately reported quarterly financial review.

Background

Section 407(1) of the *Local Government Act 1993* requires that Council review the progress of the adopted management plan on a quarterly basis. Included with this report is the third quarterly review of Principal Activity No. 1 of the Management Plan, which is “Built Environment”. This principal activity has the following sub-activities:

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

Included as annexures to this report are:

1. The Built Environment Principal activity section of the Management Plan, with comments on the status of items in each sub-activity.
2. A table of uncompleted notices of motion relating to the Built Environment principle activity.

This report provides a commentary on variations, changes, exceptions and completed work during the third quarter of 2007-2008. The purpose is to provide Councillors with an overview of the key influences and issues affecting the delivery of projects and services within the Built Environment Principal Activity.

"Notices of Motion" which have a major impact on approved management plan core activities and projects have been included in the management plan as variations so as to facilitate the changing of priorities in an orderly and transparent manner.

Environmental Planning

2.1 Management Plan projects

Annexure 1 contains a status summary of projects within the sub-activity. Our work in this program during the quarter was directed towards seven projects.

Double Bay Commercial Centre and Oxford Street Paddington business management

On 17 December 2007 Council resolved to support the establishment of Centre Management in Double Bay and to set up a working party to oversight the preparation of the required documentation. Councillors Dawson and Petrie were appointed to the working party. Since this time the working party has met four (4) times and worked through the necessary documentation, including a draft Memorandum of Understanding (MOU) and Draft Constitution and Rules for the Double Bay Partnership. On 28 April 2008 the Urban Planning Committee recommended, among other things, that Council endorse the signing of the MOU and the transfer of funds not exceeding \$200,000, subject to certain conditions.

A final meeting of the working party will be organised once legal advice on the Constitution and Rules has been finalised and the working party, General Manager and Mayor are satisfied that the Constitution and Rules will provide a satisfactory framework for the operation of centre management. It is anticipated that the Double Bay Partnership will be formally incorporated shortly.

Rezoning request for 4A Nelson Street Woollahra

Following the Council's decision to prepare a draft LEP, we undertook preliminary work which included notice to the Department of Planning and consultation with the NSW Heritage Office. A detailed submission was prepared for consideration by the Department's LEP Review Panel. We have received authorisation from the Director General to exercise delegations for section 65(1) and section 69(1) of the *Environmental Planning and Assessment Act 1979*. Exhibition will occur in the next month.

Section 94 Contributions Plan – Provision of Car Parking in Double Bay Commercial Centre

On 29 January 2008 Council decided to amend the contributions plan, the Car Parking DCP and the Double Bay Centre DCP. The amendments relate to car parking provisions for change of use proposals and car parking contribution rates. Exhibition of the amendments occurred over the period 19 March – 18 April 2008. A report on submissions will be submitted to an Urban Planning Committee meeting in May.

Woollahra Housing Strategy review

The final version of the Woollahra Residential Market Analysis prepared by BIS Shrapnel was submitted in February. Copies have been distributed to all Councillors. A copy was also sent to the Department of Planning as supplementary information to our submission on the Draft East Subregional Strategy. A further stage of the housing strategy review has commenced.

Woollahra Comprehensive LEP

Our work on this project during the quarter involved further analysis of the Standard Instrument provisions against Woollahra LEP 1995 to identify levels of compatibility and possible policy variations. We are preparing documentation for a meeting of the Strategic Planning Working Party to be held on 28 May 2008.

Neighbourhood Centres DCP and LEP – William Street Paddington provisions

Further reporting on this matter arose from comments by the Parliamentary Counsel and Department of Planning about a proposed deferred commencement provision in the Draft LEP. The Council intended to include a provision which had the effect of delaying commencement of provisions for William Street until approval of DCP changes relating to the operation of non-residential uses in William Street. Options for advancing the matter were presented to the Urban Planning Committee on 11 February 2008. The Council has decided to defer the William Street provisions and include them in another draft LEP. We have sought advice from the Department of Planning about the role of the LEP Review Panel in the new draft LEP and the need for a new delegation for section 65 and 69 functions.

Improving the NSW Planning System – discussion paper

We reviewed a discussion paper prepared by the NSW Department of Planning and provided a detailed submission for consideration by the Urban Planning Committee on 29 January 2008. The discussion paper dealt with major changes to the NSW planning system, including the plan making process, development control, compliance and subdivision.

On 3 April 2008 the Department of Planning released the draft exposure Environmental Planning and Assessment Amendment Bill 2008 and draft exposure Building Professionals Amendment Bill 2008 for public comment. The closing date for submissions on these wide ranging and complex amendments to the existing planning legislation was the 24 April, 2008.

Accordingly, Council prepared a further submission to the draft exposure bill. However, due to the constrained time frames set down for comment it was not possible for that submission to be formally considered by the Urban Planning Committee.

In essence the submission raised concern that reforms are being unduly rushed and not well communicated to stakeholders and that the proposed reforms give the Minister and Department of Planning increased control, whilst reducing opportunities for the community to have a say about development that directly affects them. In conclusion it was strongly indicated that Council did not support the proposed reforms, which affect all areas of the planning and development assessment system, including plan making, development assessment, certification, development contributions and community consultation processes.

3 Heritage Conservation

3.1 Management Plan projects

Annexure 1 contains a status summary of projects within the sub-activity. Our focus in this sub-activity was on two projects. Other than the Paddington DCP, attention was directed towards a back log of projects which were delayed due to the vacancy of the Strategic Heritage Officer position.

Paddington DCP review

Our work on this project during the quarter involved two aspects. First, a review was carried out of submissions received during re-exhibition of the Draft DCP in November and December 2007. In re-exhibiting the Draft DCP Council limited submissions to the clauses dealing with excavation and internal changes to the principal building form. These clauses were the focus of the review undertaken by the Peer and Community Panel in 2007. A report on these submissions was presented to the Urban Planning Committee on 28 April 2008.

The second aspect involves the preparation of new controls for lofts over garages. On 17 December 2007 the Council resolved to re-convene the Paddington DCP Working Party to review the proposed controls. The Working Party met on 7 February 2008 and a report was presented to the Urban Planning Committee on 10 March 2008. Further work in conjunction with the Paddington Society is underway.

Deferred potential heritage items – Watsons Bay and Bellevue Hill

Further research was carried out on four potential items:

- Temple Emanuel – A site inspection for Councillors was held on 22 February 2008. A report on this property is scheduled for the Urban Planning Committee in May.
- 98B Bellevue Hill – A report on this property was considered by the Urban Planning Committee on 31 March 2008. The Council resolved on 14 April 2008 to not list the property as a heritage item.
- 4 Victoria Street and 18 Cliff Street Watsons Bay – A review of these two properties culminated in a report to the Urban Planning Committee on 14 April 2008.

3.2 Core activities

The two heritage officers dealing with development applications processed their referrals during the quarter largely within our required time frames.

The Strategic Heritage Officer provided comment on several projects being carried out through the Technical Services Division.

4. Urban Design

4.1 Management Plan projects

Annexure 1 contains a status summary of projects within the sub-activity. Our work in this program during the quarter was mostly directed towards two projects.

Neighbourhood Centres DCP and LEP (including William Street Paddington)

The Council on 29 January 2008 adopted the Committee's recommendation to proceed with the Draft LEP but to defer the William Street Paddington provisions. As discussed, we further reported on this matter due to issues raised by the Parliamentary Counsel. Further consideration resulted in the Council deciding to defer the William Street provisions and include them in another draft LEP.

Double Bay Commercial Centre building inventory

This project forms part of the Double Bay Business Management project. It involves a visual assessment of the external condition and appearance of all buildings in the commercial centre. Each building will have an inventory sheet and photographic record documenting existing conditions and recommending a range of improvements. The format and methodology for this project was resolved in consultation with consultant Jo Kelly. The base inventory sheets have been completed for the entire centre and surveys completed for about 50% of properties.

4.2 Core activities

The Urban Designer Planner provided comments on major development applications and several of Council's capital works projects during the quarter.

5. Development Control

5.1 Core activities

Council is required to fulfil statutory functions as a consent authority under the *Environmental Planning and Assessment Act* 1979. Under Part 4, 'Development Assessment' of the Act Council is charged with assessing and determining development applications (DAs), applications to amend development consents (s.96) and applications for review of determinations (s.82A). Within the Development Control section we also assess and determine construction certificates for class 1 and 10 buildings.

We operate in an environment where the community expects and is provided with a high degree of rigour in the environmental assessment of these applications. This is also driven by the reality that our residents can challenge the validity of approvals granted if there is a failure in process.

This environment has resulted in a "belts and braces" approach to development assessment. We have well developed and well documented processes and procedures which support each part of the process.

Our aim is to provide Councillors and the community with high quality development assessment reports. These reports properly inform Team Leaders, Senior Staff, the Application Assessment Panel (AAP), the Development Control Committee (DCC) and full Council to enable informed decisions to be made.

Our performance in the 1st, 2nd and 3rd quarters of 2007-2008 is compared to our performance during the 2006-2007 year:

	Year 06/07	1 st Qtr 07/08	2 nd Qtr 07/08	3 rd Qtr 07/08
Nett median determination period	72	52.5	57	66
Gross median determination period	83	69	77	84
Delegated nett median		40.5	42.5	53
Delegated gross median		46	54	61
Number of Applications in hand at end of each period	464	372	395	308

Our performance in the 3rd quarter of 2007-2008 is similar to but not as good as the 1st and 2nd quarters.

The net (gross minus ‘stop the clock’ days) median determination times for the 3rd Quarter 2007-2008 was 66 days and the gross median was 84 days across all levels of determination.

These overall average and median figures were largely achieved due to staff delegated approvals being a net median of 53 days and a gross median 61 days.

However, the pleasing part of our statistics for the 3rd quarter is that the number of outstanding DAs, s.96, s.82A and CCs decreased significantly to a historic low of 308.

To put this into perspective the following table shows the number of applications in hand at the end of each of the years 2003 to 2007:

	2003	2004	2005	2006	2007	03/2008
No. of applications on hand	525	387	432	455	395	308

While 308 applications compares favourably with previous years there are still too many applications in the system. A concerted effort needs to be made to further reduce the number of applications in hand as well as our processing times. This is particularly important because of the increased focus on local government performance by the Department of Planning and the Minister for Planning in their annual performance monitoring reports.

Since the time to determine applications jumps significantly from staff determinations to AAP and again to DCC the following figures are also of interest:

	2006	2007
% Applications determined by staff	77	68
% Applications determined by AAP	13	22
% Applications determined by DCC	10	10

While the number of applications determined by the DCC has remained constant there has been an increase in the percentage of applications determined by the AAP. This is something that requires further consideration and will be addressed when we report back on Council’s resolution of 17 December 2007 regarding the determination of applications for hotels.

5.2 Department of Planning Local Development Performance Monitoring: 2006 – 2007.

On 20 March 2008 the Department of Planning released its Local Development Performance Monitoring Report for the period July 2006 to June 2007. That report indicated that while processing times had marginally deteriorated compared to 2005–2006 Council improved its ranking within the ‘Top 10’ list of Councils with the highest gross mean processing times in New South Wales. This was due to deterioration in performance across the State.

	Gross Mean Determination Times	Ranking
2005-2006	111	7
2006-2007	131	10

Since June 2007 improvements have been achieved. For the period 1 July 2007 to 30 March 2008 gross mean processing times dropped from 131 days to 115 days.

In order to obtain further reductions, and also to ensure that Woollahra Council does not appear on any future ‘top 10 lists’, a number of key projects have been identified to facilitate improved processing times, whilst maintaining high quality development outcomes. These projects are:

- To review and streamline assessment report templates.
- Develop performance standards for key steps in the application process.
- Develop performance standards for internal referrals.
- Review Development Control Delegations
- Introduce a formal fast track application process.

As a result of these ongoing projects for 2008-2009, Council may be confident that recent improvements will continue to be built upon.

A more detailed report on the Local Development Performance Monitoring was presented to the Development Control Committee on 5 May 2008.

5.2 Management Plan projects

The projects identified in the management plan are aimed at achieving continuous improvement of development control services. These are ongoing. The specific projects underway are:

Review DA assessment process

The recommendations of the McKinley report on the referrals process have been implemented with significant improvements in referral turnaround times particularly from the Technical Services Division.

We have more recently made a number of changes to the structure and makeup of our development assessment teams and are working with administrative staff to expand the range of services they currently provide.

Post determination processes and procedures

A new notice of determination format has been introduced. A new post determination information package has been prepared and is awaiting final review before implementation.

Post occupation audit of development

The site audits took place on 27 April 2006 with eleven sites inspected. We carried out inspections and completed checklists, reviewing each development against the objectives of the controls.

Staff present included the Director Planning and Development, Manager Development Control, Executive Planner and all three Development Assessment Team Leaders. The Executive Planner is to report on the outcomes but this has been delayed by the Executive Planner's role in assessing several very complex and controversial development applications, including the Rose Bay and Point Piper Marinas and 20 Roslyndale Avenue during the 2006-2007 period. The executive planner has not finalised this as he continues to be diverted to the assessment of major development applications.

Review and document s.68 Activity Approval Process

This project has not been commenced.

6. Compliance

6.1 Core activities

During the quarter the following core services were provided by the Compliance Section:

- 22 construction certificates were determined, representing a market share of 15%. The number of construction certificates determined was more than 47% below the quarterly average for 2006/07 and the market share had significantly fallen from the 2006/07 annual result of 24.2%. The median turn-around time for constructions certificates was 21 days, being comparable with the 2006/07 annual result of 22 days.
- 3 complying development certificates were issued, representing a market share of 42.9%. The median turn-around time for complying development certificates was 2 days. The number of complying development certificates issued for the area is generally low at about 40 applications per year. The third quarter's market share result is in line with the annual results for 2005/06 and 2006/07 where Council issued about 50% of all complying development certificates.
- Council was appointed as the Principal Certifying Authority (PCA) for 21 new construction projects, representing a market share of 19.1%. The number of appointments was more than 31% below the quarterly average for 2006/07 and the market share for the quarter represented a fall of 11.6% from the 2006/07 annual result.
- 55 building certificates were issued, with a median turn-around of 38 days. The number of building certificates determined was consistent with the quarterly average for 2006/07, while the median turn-around time was up from 32 days for 2006/07.
- 12 hoarding applications were determined, with a median turn-around of 36 days. The number of hoarding applications determined was consistent with the quarterly average for 2006/07 and the median turn-around time was above the 2006/07 annual result of 9 days.
- 3 Local Government Act activity applications were determined, being 40% below the quarterly average for 2006/07.
- 1 land and 2 strata applications were processed, being 40% below the quarterly average for 2006/07.
- 7 new fire safety statements and 136 annual fire safety statements were registered.
- 15 Fire Safety Orders were issued, with 10 Fire Safety Orders finalised.
- 97 Notices and Orders were issued for the rectification of work/unauthorised uses/unauthorised works, being about 6% above the quarterly average for 2006/07.

At the Council meeting of 26 November 2007 the following 'Notice of Motion' was moved by Councillors Comino and Boskovitz;

"That Council bring a report to the appropriate Committee with a view to recommending amendments to the Environmental Planning and Assessment Act relating to issue of Building Certificates. The purpose of such amendment(s) being to protect Councils against being stopped from taking action, where it is subsequently discovered the survey (on which the Building Certificate application was based) was materially incorrect revealing encroachments on Council or other property."

During the quarter, legal advice was obtained from Lindsay Taylor Lawyers concerning the above 'Notice of Motion' and a report was presented to the Urban Planning Committee meeting of 28 April 2008 on the matter.

7. Management and Administration

All planning, rates and notices and outstanding orders certificates were issued within the applicable time frames.

8. Conclusion

Our Environmental Planning, Urban Design and Heritage Conservation programs have proceeded in a satisfactory manner in the context of staffing difficulties experienced during the quarter. However, two of our four (4) vacancies within these sections remain unfilled:

- Team Leader Urban Design
- Senior Strategic Planner

We have recruited for these positions but we have not been successful in attracting suitable candidates.

The statistics presented for Development Control demonstrate a slight deterioration in turnaround times for DAs and associated applications, however, the overall longer term trends are in the right direction. A more detailed report and analysis of these trends was presented to the DCC on 5 May 2008.

The Compliance Section focussed on the delivery of its core services, generally meeting our service standards for most core activities. However, it is evident that we are losing market share to accredited certifiers for the provision of core services including construction certificates and Principal Certifying Authority services.

The median determination time for Building Certificates deteriorated during the quarter from 23 days to 42 days, exceeding our target figure of 14 days. This departure is largely due to the fact that some building certificate applications are submitted to regularise illegal building work and, in many cases, we have to wait for works as executed plans, engineering certification and, in some cases, section 96 applications for retrospective approval. Furthermore, some building certificates have to be deferred pending the completion of required works. For this reason there is merit in developing more applicable targets recognising that building certificates submitted to regularise unauthorised work will take more than 14 days. On the other hand, building certificates which are submitted as part of the normal process associated with land transactions should not take no longer than 14 days.

Allan Coker
Director Planning and Development

Chris Bluett
Manager Strategic Planning

Patrick Robinson
Manager Development Control

Tim Tuxford
Manager Compliance

Annexures

1. March 2008 Quarterly Review of Principal Activity, Built Environment
2. March 2008 Quarterly Review of Outstanding Notices of Motion, Built Environment

Item No: R1 Recommendation to Council
Subject: **Temple Emanuel 7 Ocean Street, Woollahra**
Author: Jodi Ayre - former Strategic Heritage Officer
Susan O'Neill - Strategic Heritage Officer
File No: 1080.G [W]
Reason for Report: To respond to the Council decision made on 9 October 2006, deferring the inclusion of 7 Ocean St, Woollahra, as a heritage item in Schedule 3 LEP 1995 to allow for a site inspection by Councillors and further consultation with property representatives.

Recommendation:

THAT a draft Local Environment Plan be prepared to amend Woollahra LEP 1995 to include Temple Emanuel, 7 Ocean St, Woollahra as a heritage item in Schedule 3.

1.0 Background

On 25 September 2006, the Urban Planning Committee considered a report reviewing potential heritage items in the Woollahra Conservation Area. That report recommended that a draft LEP be prepared to include ten properties, including Temple Emanuel, as heritage items on Schedule 3 of Woollahra LEP 1995. The heritage inventory sheet for Temple Emanuel, prepared by Graham Brooks and Associates and later amended by Council's Strategic Heritage Officers, recommended that the site be listed as a heritage item in Woollahra Local Environmental Plan 1995 [**annexure 1**].

Following receipt of correspondence from the property owners [**annexure 2**], amendments to the inventory sheet were made by Jodi Ayre, Council's Strategic Heritage Officer, to address the concerns of Temple Emanuel's representatives, primarily regarding site security.

On 9 October 2006 the Council resolved that a site inspection for all interested Councillors be held at Temple Emanuel and further discussions between Council staff and representatives of Temple Emanuel be undertaken to discuss site security and any other issues associated with the proposed heritage listing of Temple Emanuel.

2.0 Consultation with property owners and Council staff

2.1 Site inspections

A site inspection was undertaken by Council staff on Friday 1 December 2006. Present on behalf of Temple Emanuel, were Steve Denenberg, Chief Executive Officer, Gordon Woolf, Chairman of the Building and Maintenance Committee, Shelley Indyk, Indyk Architects and from Woollahra Council, Allan Coker, Director Planning and Development, Chris Bluett, Manager Strategic Planning and Jodi Ayre, Strategic Heritage Officer.

A site visit was undertaken by available Councillors and Council staff, on 22 February 2008. Present on behalf of Temple Emanuel were Steve Denenberg and Gordon Woolf. Councillors present were Councillor Dawson, Councillor Shoebridge, Councillor Huxley and Councillor Comino. Staff present were Chris Bluett and Susan O'Neill, Strategic Heritage Officer. During the visit, the Neuweg Synagogue, the main Synagogue and its extensions, the administration building and the grounds were inspected.

Both site visits provided an opportunity for Temple Emanuel representatives to reiterate their concerns regarding future site security. The site visits also allowed the Councillors and Council staff to familiarise themselves with the buildings on the site, both externally and internally. Consequently, Council's Strategic Heritage Officers have clarified and refined the heritage inventory sheet, given that the original draft of the inventory sheet had been written by Bradley Hankey of Graham Brooks and Associates without inspecting the site.

2.2 Consultation between Temple Emanuel representatives and Council staff

Following the site visit, Council's Strategic Heritage Officer has spoken to the Heritage Consultant engaged by Temple Emanuel, James Phillips of Weir + Phillips Architects. Weir + Phillips is currently preparing a conservation management plan for the Temple Emanuel site.

3.0 Description of the Site and Buildings

3.1 The Forecourt, main Synagogue and Neuweg Synagogue

The main entry to the site is from Ocean St. The site has a security fence and vehicle gate along the street boundary, accessing the main forecourt, a dramatic and large external gathering place for the congregation, now used as a carpark, terminating at the principal façade of the Synagogue, which is the focus of the site. The forecourt is bounded to the north by the Neuweg Synagogue, which was originally designed as a chapel with an entrance directly from Ocean St. The Ocean Street entry has been closed due to security concerns and the building is entered from a doorway opening onto the forecourt. The relationship between the forecourt, the main Synagogue designed by Samuel Lipson and the Neuweg Synagogue, designed by Aaron Bolot, is of high significance. At present, the use of this space, in a manner which reflects the significance of the place, is restricted by security issues.

Analysis of the setting will be undertaken by the conservation management plan to determine if there are any significant extant or remnant elements of the setting which contribute to the significance of the place. For example, in 2004, Council's heritage officer, Louise Thom, provided comments in relation to the construction of a new fence to the southern boundary of the forecourt. Referral response dated 29 November 2004.

The subject property is an inter-war Jewish Synagogue on a large parcel of land within the Nelson precinct of the Woollahra Heritage Conservation Area. It is located at the southern end of Ocean Street adjacent to inter-war flat buildings that are also considered to be contributory items. The Cypress Pine trees located along the boundary with the inter-war flat building are a planting typical of this period and are likely to originate from the time of construction of the subject property and the flat building.

3.2 Built elements

The Temple Emanuel site comprises a number of buildings. A preliminary heritage assessment of the site was prepared by Clive Lucas, Stapleton & Partners in 1999 to accompany a development application for works to the vestibule in 2002. A site plan included in the heritage assessment identified the key building phases:

- 1941, construction of the Synagogue, designed by Samuel Lipson
- 1954, addition to the east and south of the Synagogue, also designed by Samuel Lipson and construction of the kindergarten
- 1966, construction of the Neuweg Chapel and the administration building to the north of the temple building, both designed by Aaron Bolot.

Additional sites have been amalgamated to the original property purchased in 1941, and include a property at the rear of the site, fronting Woods Avenue, which runs parallel to Ocean Street, with a substantial and mature Morton Bay Fig tree located in this portion of the site and the end terrace of an intact group fronting Woods Lane, both listed as items of heritage on Woollahra LEP1995.

Numerous alterations and additions have been recorded between 1954 and 2003 and further investigation of the evolution of the built fabric on the site will be included in the Conservation Management Plan.

4.0 Summary of on site discussions

4.1 Comments made by Temple Emanuel representatives

- Patronage is increasing, placing pressure on existing facilities. Variety of services and functions are held on the site, which require spaces to be flexible and able to adapt to different uses.
- Site security is of primary importance. The site has been identified as a potential terrorist target. This limits the use of the forecourt to accessing the Synagogue and as a parking area. Temple Emanuel staff and representatives have commissioned a security analysis of the site.
- Master planning for the site is being carried out by Shelley Indyk of Indyk Architects and James Phillips of Weir + Phillips Architects has been engaged as the heritage consultant and is currently working on the conservation management plan.
- Temple Emanuel is keen to adopt a co-operative approach with Council to achieve the best outcome for the site.

4.2 Comments made by Council staff

- Heritage listing would identify the entire site.
- Heritage listing would not preclude future changes to the site. It would require the heritage significance of the place to be considered when proposing alterations and additions and new structures.
- The areas which would be ideally suited to additions and changes to the site are those areas identified as having little or intrusive heritage significance, which will be identified by the conservation management plan. During the site inspection it became clear that there are areas of the site which have potential for adaptive re-use, alterations and additions and new buildings and structures.

- Council is willing to engage in a consultative process with the Temple Emanuel to assist with the future development of the site. In considering the future development of the site, the requirement for site security is appreciated by the Council.
- The historic, aesthetic and social significance of the site was agreed upon. The site visit reaffirmed the importance of the place to the Jewish community and to the wider community.
- The 1941 temple building is of significance for historic, historical association, aesthetic, social, rarity and representative. The building was designed by Samuel Lipson and demonstrates an accomplished contemporary Inter-War Stripped Classical Style of architecture which embodies symbolism of historic and social value to the Jewish community of Sydney.
- The relationship of the 1941 Synagogue to the forecourt is an important aspect of the aesthetic significance which should be appropriately managed. There is also a social component of this relationship, in terms of the use of the site, which is limited at present by the security issues.

5.0 Consideration of state significance

The heritage inventory sheet prepared for Council demonstrated that the grading of cultural significance fulfils the criteria for local listing. The conservation management plan may demonstrate that Temple Emanuel Synagogue fulfils the criteria for a State listing.

6.0 Alterations to the inventory sheet

The heritage inventory sheet has been modified by Council's Strategic Heritage Officers to be more specific in describing and analysing the design of the Synagogue designed by Samuel Lipson and the Neuweg Synagogue designed by Aaron Bolot, as both of Council's Strategic Heritage Officers had the benefit of inspecting the buildings, allowing for a greater degree of detail to be appreciated and included. Original architectural drawings and specifications by Samuel Lipson and Aaron Bolot, held by Woollahra Council Records, were studied and information available from the documentation was confirmed on site and included in the inventory sheet. A detailed analysis of changes to the inventory sheet is explained in the table on the following pages:

Category	Former text	Alterations made by Council's Strategic Heritage Officers and justification for changes
Property Description		The property description was incomplete and additional properties, which make up the total site were added to the description
Former Use	Synagogue	Liberal Synagogue: The original congregation was identified as liberal
Statement of Significance		Clarification of descriptions added, without changing the intent. The Neuweg Synagogue was added to the statement as it is a building of significance by a recognised and accomplished 20 th century architect.
Level of Significance	Local	The place is potentially of State Heritage Significance. The Synagogue by Samuel Lipson is of high/exceptional significance, both gradings fulfil the criteria for State listing, as defined by the Heritage Branch, NSW Department of Planning. This will be confirmed by the conservation management plan and presumably a subsequent application to the Heritage Branch.
Construction Years	1941	1966 added to include the construction date of the Neuweg Synagogue
Physical Description	<p>The main focus of the site is the two storey scale blond face brick International style religious institutional building, set on a battle axe block and surrounded by a collective of later buildings and extensions associated with the evolving needs/services of the Synagogue community. The battle-axe form of the block is not easily discernable from the street, with most of the later buildings and extensions set out of sight of the Ocean Street view of the property. The main building is setback a considerable distance from the street with an open space/carpark/forecourt in the foreground. The Neuweg chapel, a later building (1966) in a similar style is set along the northern boundary and forms an edge to the forecourt of the main building. The main building features a high parapeted symmetrical façade offset by a southern tower element (The tower element is currently much obscured from the street by large overgrown plantings along the southern border of the forecourt.) The ground floor level is raised above forecourt ground level, and is reached by a long wide</p>	<p>There were inaccuracies in the original description. The description has been rewritten by Susan O'Neill, with the benefit of having inspected the site and buildings and the description follows a logical order of; Setting/1941 Synagogue/1966 Synagogue/Forecourt; detailed description of the 1941 Synagogue and later alterations; detailed description of the 1966 Neuweg Synagogue; description of the site and additions made to the site.</p> <p>The description of the 'overgrown planting along the southern border of the forecourt' implies that the trees are intrusive and it has been assessed that the Cypress Pine Trees are probably part of the original plantings (refer to section 3.1 of this report). Samuel Lipson mentioned the '<i>spacious approach and the beautiful setting in what will ultimately be a very fine garden</i>', (refer to history section of inventory sheet) indicating that he intended the forecourt to be a mature garden. It is noted that the Cypress Pines do not obscure the tower of the Synagogue once the site is entered. The Cypress Pines also provide a sense of separation and some privacy between the Inter-War flats next door and the forecourt. Therefore, this reference to the 'overgrown plantings' was removed.</p>

	<p>set of brick and concrete stairs. From the raised entry platform, the building is entered through a feature set of three double timber and glass doors, with top lights and decorative panelling above.</p> <p>A matching low brick boundary wall lines the street frontage; a recent temporary compound type of wire mesh fencing has been erected inside the boundary in front of the forecourt.</p>	<p>The ‘raised entry platform’ description has been enhanced and not altered in intent, the raising of the platform in an institutional or religious building generally has a symbolic intent of marking the transition from the secular world to the sacred realm and this has been articulated in the description. The description of the stairs, entry doors etc has been retained and more detail added.</p> <p>The final reference to the wire mesh was deleted as a fence has been constructed.</p>
<p>Modification and Dates</p>		<p>This section was expanded, based on files obtained from Woollahra Council Records.</p>
<p>Further Comments</p>	<p>The Neuweg Memorial Chapel and memorial garden require assessment of their significance to the complex.</p>	<p>The Neuweg Synagogue, formerly known as the Chapel is of cultural significance and while further research and analysis will be of benefit, the Neuweg Synagogue should be identified as an important component of the cultural significance of the site in the inventory sheet. This is supported by the Clive Lucas, Stapleton Partners Pty Ltd Heritage Assessment, 1999.</p>
<p>Historical association SHR criterion (b)</p>	<p>Temple Emanuel Synagogue is an example of the International Style</p>	<p>The 1941 Synagogue is not an example of the International Style. ‘International Style’ is a term used to describe a cubistic mode of architecture which had spread through the developed world by the time of WWII. It is associated with a stripped planar form, implying a universality of approach, which generally favoured light-weight technique, using synthetic modern materials and standard modular parts, so as to facilitate fabrication and construction and it tended towards a hypothetical flexibility of the free plan, preferring skeleton frame construction to masonry. [Framton, Kenneth 1980 <i>Modern Architecture A Critical History</i> p248 ‘The International Style: theme and variations 1925-65’]</p> <p>Samuel Lipson was born in Scotland, to Lithuanian Jewish parents, trained at Glasgow School of Arts and in 1918 was employed as an articulated student by Honeyman & Keppie, the same firm Charles Rennie Mackintosh had entered 20 years previously. Lipson was greatly influenced by the Dutch School of Architecture, particularly the Dutch architect, Dudok. [oral history interview, Samuel Lipson Architecture Bulletin 1994 p18] The Wrightian architect, W.M. Dudok practiced in Hilversum, Holland, in a style broadly referred to as Dutch Expressionism, examples of which are prolific in the south of Amsterdam, where whole suburbs are constructed from moulded brickwork, exemplifying a concern for the intrinsic structural expressiveness of materials. [Frampton, <i>op cit</i> p120]</p>

		<p>Arriving in Sydney in 1925, Lipson worked for the Sydney Branch of the Department of Works, with Leslie Wilkinson on the School of Tropical Medicine at Sydney University and the Macmaster School of Veterinary Science. Lipson's most important work in the early stage of his career was the remodelling of the Head Office of the Commonwealth Bank in Martin Place, a sumptuous Beaux-Arts building of immense civic presence, internally it is detailed in a lavish neo-classical style. [Jahn, Graham 1997 Sydney Architecture p226, 117]</p> <p>The 1941 Synagogue is more appropriately described as Inter-War Stripped Classical, it is certainly influenced by the Classical tradition, as well as the Modern Dutch Expressionists use of moulded face brick, intricate detailing and craftsmanship, themes present in northern European architecture during the first half of the 20th century. There is no clear line of demarcation between the various influences.</p> <p>The style of the Synagogue is characterised by its formality, the division of the principal facade into vertical bays indicating classical origins, its symmetrical massing which creates a fundamentally classical composition and dignity, accomplished by agreeable proportions rather than ornate ornamentation, it has a somewhat Spartan appearance, giving it an affinity with modern architecture, progressive yet maintaining a conservative character. [Apperly et al 1989 <i>Identifying Australian Architecture</i> pp164-7] The principal façade is subtly decorated, for example, the use of bespoke modelled bricks, used intermittently as headers within the textured brick wall and containing Jewish symbols, not readily noticeable until closer inspection, giving the façade and building a layering of detail and meaning, possibly aimed at the more astute observer, able to recognise the symbolism.</p> <p>In the Clive Lucas Stapleton & Partners Heritage Assessment, there is no style attributed to the Synagogue. The work of Lipson & Kaad is most often associated with the Inter-War Functionalist style and Art Deco style of architecture.</p>
Site diagramme	Site diagramme by Clive Lucas Stapleton and Partners Pty Ltd, taken from a Heritage Assessment 1999.	The site diagramme was amended to include the portion of the site fronting Woods Lane, including the 'driveway' entry with the Fig Tree, and the end terrace house of the row, both identified as heritage items on WLEP1995.

7.0 Conclusion

The Temple Emanuel site has been assessed as being of high local heritage significance, according to the grading and criteria for assessing cultural significance by the NSW Heritage Branch.

Temple Emanuel is of high historical significance for its association with the first Liberal Synagogue congregation established in New South Wales and as the first purpose built premises constructed by the congregation. Constructing the Temple during WWII demonstrates the strength of purpose of the congregation.

The site is of moderate significance for its historical association with two important 20th century architects, Samuel Lipson and Aaron Bolot. The site is also associated with a number of well-known mid-twentieth century Sydney Jewish community members.

Temple Emanuel is of high aesthetic significance as one of the finer examples of the body of work by the architect, Samuel Lipson, particularly the Temple and the composition of the forecourt, including the Neuweg Synagogue. Temple Emanuel is part of a cohesive group of Inter-War buildings on Ocean St and Wallis Street, Woollahra.

Temple Emanuel is of high social significance for its association with the Liberal Jewish Congregation in Sydney and as it has continuously served as a place of worship and instruction since 1941.

The heritage assessment of Temple Emanuel demonstrates that the site fulfils the criteria for local heritage item.

Susan O'Neill
Strategic Heritage Officer

Chris Bluett
Manager – Strategic Planning

ANNEXURES:

1. Heritage Inventory Sheet
2. Correspondence from Temple Emanuel
3. Biographies of Samuel Lipson and Aaron Bolot, RAIA
4. Summary of Works by Samuel Lipson and Aaron Bolot within the Woollahra Municipality and inventory sheets for heritage items, listed Schedule 3 WLEP
5. Article 'Samuel Lipson oral history interview' Architecture Bulletin May 1994 pp16-19
6. Article 'Temple Emanuel' Decoration and Glass November 1941 pp8-13 with transcript of text

Item No: R2 Recommendation to Council
Subject: **Public Car Parking in the Double Bay Commercial Centre - Draft DCPs and Draft Section 94 Contributions Plan**
Author: Chris Bluett - Manager Strategic Planning
File No: 136.G
Reason for Report: To report on the outcome of the public exhibition of the Draft DCPs and the Draft Section 94 Contributions Plan
To obtain the Council's approval of the Draft Plans

Recommendation

That Draft Woollahra Development Control Plan for Off-street Car Parking and Servicing Facilities, Draft Double Bay Centre Development Control Plan (Amendment No.2) and Draft Woollahra Section 94 Contributions Plan 2002 (Amendment No.2) as contained in **annexures 3, 4 and 5** of the report to the Urban Planning Committee meeting on 12 May 2008 be approved.

Background

Reports on the proposed amendments to the DCP for Off-street Car Parking and Servicing Facilities, the Double Bay Centre DCP and the Section 94 Contributions Plan 2002 were considered by the Corporate and Works Committee on 19 November 2007 (**annexure 1**) and the Urban Planning Committee on 17 December 2007 (**annexure 2**). The reports had been prepared in response to various decisions of the Council about car parking requirements and section 94 contributions for car parking in the Double Bay Commercial Centre.

On 29 January 2008 the Council resolved:

- A. That a draft development control plan be prepared to amend Woollahra Development Control Plan for Off-street Car Parking Provision and Servicing Facilities by removing the requirement for additional off-street car parking and the requirement for a contribution under Woollahra Section 94 Contributions Plan 2002 for development involving a change of use in the Double Bay Commercial Centre, unless the proposed development will result in a net increase in gross floor area.
- B. That a draft development control plan be prepared to amend the Double Bay Commercial Centre Development Control Plan by including references which have the effect of allowing exemptions for off-street car parking provision and car parking section 94 contributions for certain development proposals, including change of use proposals, described in the Development Control Plan for Off-street Car Parking Provision and Servicing Facilities and the Woollahra Section 94 Contributions Plan 2002.
- C. That a draft contributions plan be prepared to amend Woollahra Section 94 Contributions Plan 2002 by:
 - a. reducing the contribution for car parking in the Double Bay Commercial Centre from \$38,496 per space to \$27,325 per space,
 - b. making consequential changes to the Contributions Plan, including changes to the following clauses:

- i. clause 2.1 (schedule of contribution rates) - change contribution rate
- ii. clause 2.2 (works schedule) – update the total cost figure for providing additional public parking in the Cross Street Car Park and the staging for the works
- iii. clause 3.3 (land and development to which plan applies) – identify the exemption for change of use proposals and provide a cross reference to the Car Parking DCP
- iv. clause 4.7.2 (additional public facilities), clause 4.7.3 (apportionment of costs) and clause 4.7.4 (contribution calculations) –update the total cost figure for providing additional public parking in the Cross Street Car Park; insert the new contribution rate; and note the exemption for change of use proposals.

D. That a meeting of the Strategic Planning Working Party be convened in late January/early February 2008 to consider part D of the Council Resolution of 26 November 2007 referred to in the report by the Manager Strategic Planning to the Urban Planning Committee meeting on 17 December 2007 and that the further investigation into the provision of parking in Double Bay include a review of the application of the Section 94 Contributions Plan generally.

Amendments to the Car Parking DCP, Double Bay Centre DCP and Section 94 Contributions Plan 2002 were prepared and placed on public exhibition (see below).

There is a possibility that the amendments to the Section 94 Contributions Plan will be affected by legislative changes proposed in the recently exhibited *Environmental Planning and Assessment Amendment Bill 2008*. Our submission on the Bill queried aspects of the proposed legislation as they were not clear on whether contributions could be levied for public parking.

Item D of the Council's decision has not been progressed at this time due to priorities with other projects in the Management Plan. A meeting of the Strategic Planning Working Party is scheduled for 28 May 2008.

Public exhibition of Draft Plans

Exhibition occurred over the period 19 March to 18 April 2008. Documents were exhibited in the Council's Customer Services foyer and on the Council's website. Notices were placed in the Council's advertising page of the Wentworth Courier on 19 March, 26 March, 2 April, 9 April and 6 April 2008.

A letter regarding the exhibition was sent to the Double Bay Chamber of Commerce.

Copies of the exhibited Draft DCPs and Draft Contributions Plan are provided in **annexure 3, 4 and 5**. No submissions have been received.

Next steps

Having completed public exhibition of the Draft Plans, the Council may proceed to approve the plans in their exhibited form, make amendments if necessary or not proceed with the plans. We do not consider it is necessary to make any amendments to the Draft Plans.

Whilst there is some question about the affect of proposed amendments to section 94 in the *Environmental Planning and Assessment Amendment Bill 2008* in so far as they will allow contributions for car parking, we do not consider it is necessary to defer or discontinue the Draft Contributions Plan. If the new legislation is gazetted, consequential changes to the Contributions Plan will be required in time. It is likely that directions, guidelines and model plans will be issued by the Department of Planning to assist with changes.

Conclusion

The Draft Plans have been exhibited in the manner required by legislation. No submissions have been received. The Council may proceed to approve the Draft Plans. Our recommendation is to approve the Draft Plans in their exhibited forms.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

ANNEXURES

1. Report to Corporate and Works Committee on 19 November 2007.
2. Report to Urban Planning Committee on 17 December 2007
3. Draft Woollahra Development Control Plan for Off-street Car Parking and Servicing Facilities
4. Draft Double Bay Centre Development Control Plan (Amendment No.2)
5. Draft Woollahra Section 94 Contributions Plan 2002 (Amendment No.2)

Item No: R3 Recommendation to Council
Subject: Notice of Motion - Dilapidation Reports
Author: P Kauter - Executive Planner
File No: 900.G
Reason for Report: Notice of Motion

Recommendation:

- A. That the advice from HWL, Lawyers in respect of dilapidation report conditions in development consents dated 20/8/07 be noted
- B. That the Council undertake to provide advice to affected property owners of the ramifications and utility of dilapidation report conditions
- C. The advice be in the form of a notation on the development consent notice and on the letters sent to those people who made a submission in respect of the development application

Background:

The Council at its meeting on 9/7/07 resolved to adopt the following Notice of Motion:

That advice be obtained from a panel solicitor and a report be prepared for a Committee as to the appropriateness of providing advice to residents whose property is the subject of a dilapidation report in a Development Consent as to the ramifications and utility of such a condition

Presently we impose the following condition on development consents if it is considered that the carrying out of the development warrants the preparation of dilapidation reports for existing buildings on properties in the vicinity:

Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a professional engineer (structural) of all buildings on land whose title boundary abuts the site and of such further buildings located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration.

These properties must include (but is not limited to):

- a.
- b. and
- c.

The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.

Where excavation of the site will extend below the level of any immediately adjoining building the principal contractor or owner builder must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the notice of commencement required by s81A(2) of the Act not less than two (2) days prior to the commencement of any work.

Standard Condition: D4

Circumstances where it is considered appropriate to impose this condition vary and are considered on a case by case basis. Generally the circumstances which would warrant the imposition of this condition are:

- Excavation in close proximity to the boundary of an adjoining property, e.g. in excess of 1m in depth and closer than 1.5m to the boundary
- Excavation associated with terrace housing
- Development involving piles being driven into the ground
- Development requiring a high number of heavy vehicle movements in close proximity to buildings on adjoining properties
- When a geotechnical report submitted with a development application recommends that dilapidation reports be prepared

There is a provision in Woollahra Local Environmental Plan 1995 (WLEP), clause 18(2) relating to dilapidation reports. Clause 18 requires the Council to have regard to the temporary and permanent affects of excavation when it considers a development involving excavation. Subclause (2) provides:

*The Council may decline to grant such a consent unless it has considered specialist reports, including geotechnical reports, structural engineering reports, hydrology reports and **dilapidation reports** of properties which may be affected by the proposed excavation.*
(emphasis added)

This provision applies to the consideration of reports relating to excavation, including dilapidation reports, before the granting of consent whereas the Notice of Motion concerns dilapidation reports required by a development consent.

In practice, dilapidation reports are not usually required to be submitted as part of a DA. The exception is where there may be an issue regarding the structural impact of development on heritage significant buildings.

Consultation:

Advice was sought from HWL Lawyers in relation to the Notice of Motion. HWL responded by letter dated 20/8/07, see annexure A.

The advice states that it would be of practical utility to inform parties and in particular the owner(s) whose property is subject to a dilapidation report, of the reasons why the report is considered necessary. It also discusses:

- the Land & Environment Court's approach to applying conditions requiring dilapidation reports and
- our standard condition

The advice explains the utility of dilapidation reports as follows:

Dilapidation reports can be useful tools to assist in providing evidence and clarifying pre-development and post-development states of properties in the event of damage giving rise to a dispute. (p.2)

Without such a report it is very difficult to ascertain whether damage has occurred during the development works carried out pursuant to the development consent. Dilapidation reports therefore protect the interests of the owners of property adjoining construction sites (or further still if the zone of influence is wider), to the extent of providing an analysis by a qualified person, of the position of the property pre and post development.

A dilapidation report in respect of adjoining properties also protects the builder or contractor carrying out the works on the construction site as all existing cracks and faults within the adjoining buildings are documented. Future claims and legal action can either be prevented, for cracks that already existed prior to the construction phase, or where damage has occurred, the claim can be justified and to some extent quantified. (p.3)

The advice discusses two options for advising residents of adjoining properties of the ramifications and utility of having a dilapidation report prepared on their property as a consequence of a condition of development consent. These are:

1. including a notation on the development consent
2. by notification letter to adjoining residents

The advice recognises that in terms of option 1, an adjoining property owner who did not make a submission on the DA would not receive notification of the terms of its determination.

The HWL advice also deals with litigation involving dilapidation reports (pp.3-4). It discusses 2 Land & Environment Court cases where the Court considered whether or not it would impose conditions requiring dilapidation reports both pre and post construction. Reference is also made to cl.18 of the WLEP.

The advice notes the following key factors in relation to our standard condition for requiring dilapidation reports:

1. it requires dilapidation reports for all buildings on land which abuts the site and other buildings within the likely zone of influence
2. submission of dilapidation reports to Council is required prior to the commencement of work and in some cases after the completion of work (post construction dilapidation reports would require our standard condition to be appropriately customised)
3. where excavation is below immediately adjoining buildings the dilapidation report must be given to the adjoining land owner 2 days before the commencement of any work

The advice also comments on dilapidation report conditions used by some other Councils are as follows:

- Sutherland Shire Council's condition includes "*Such report shall be prepared prior to the commencement of any site works and copies of the report shall be provided to both Council and the owners of the two (affected) properties.*"

- Mosman Municipal Council's condition requires "*The report will be held by Council and will be made readily available in any private dispute between the neighbours regarding damage arising from site and construction works.*"
- Another example of wording used is "*If damage is identified by the person agreed to by the parties which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/persons as soon as possible and prior to occupation of the development.*". The advice suggests that this wording could prove problematic in terms of satisfying the *Newbury* test and could expose Council to a possible claim
- Inclusion of a paragraph to the effect that, *in the event that access for undertaking the dilapidation survey is denied, the applicant was to demonstrate in writing to the satisfaction of the Council that all reasonable steps had been taken to obtain access to the adjoining property and to advise the affected property owner of the reason for the report*
- A notation that the document was for record keeping purposes only and that it could be used by an applicant or an affected property owner to assist in an action required to resolve any dispute over damage to adjoining properties arising from the works

Consideration:

Regarding the terms of the Notice of Motion, the advice from HWL supports that it is appropriate to provide advice to the owners of properties affected by a condition of development consent as to the ramifications and utility of such a condition.

The benefits for affected property owners of such advice can be summarised as follows:

- they would better understand why the condition was imposed
- they could make a more informed decision regarding whether to allow the developer's consultants access to their property for the purpose of conducting the dilapidation survey
- they would be aware that the dilapidation report itself does not mean that no damage to their property would occur
- they would be aware that the dilapidation report was available to them in the event of a dispute with the developer or its contractors over property damage
- they would understand that Council was not responsible for rectification of property damage caused by the developer or its contractors

The HWL advice also makes suggestions regarding:

- options for notifying affected property owners
- possible alternative wording for the dilapidation report consent condition

Of the options discussed in the HWL advice it is considered that the notation on the development consent notice would be the more appropriate. This is because:

- we inform the applicant, the owner of the development site and each person who made a submission on the DA (objectors and supporters) of all conditions and advisings relating to the granting of a development consent
- the owners of adjoining properties who would be the most interested in knowing the utility and ramifications of a dilapidation condition are likely to have made a submission on the DA

- we would have no direct role in any dispute over damage allegedly caused to adjoining properties
- it would keep all the information in the one document which would make easier referencing and avoid what can be a confusion of multiple notifications
- because we do not always know which properties are in the zone of influence of a development site there is a problem in ensuring that all affected properties can be notified

The notation option may result in some property owners affected by the condition not receiving the information, i.e. those that did not make a submission on the DA. However, for the reasons outlined above the notation options is considered to be the more appropriate. Annexure B is an example of a notation that we could use on the development consent.

Identification of Income & Expenditure:

Expenditure associated with notifications would relate to establishing the administrative framework to make the process effective and efficient. This would be an initial one-off cost. Depending on the notification method there may be some ongoing postal costs. However, these would be minimal.

The work involved would not require additional staffing and could be undertaken within the existing budget.

There would be no direct income generation.

Conclusion:

Based on the advice from HWL it is considered that it would be appropriate to provide advice to the owners of affected properties of the utility and ramifications of dilapidation report conditions. For this purpose arrangements should be made for a notation to be included on development consent notices, including the notification letters to people who made a submission in respect of the DA.

Peter Kauter
Executive Planner

Allan Coker
Director-Planning & Development

ANNEXURES:

- A** HWL letter 20/8/07
- B** Notation on standard condition (example)