



# Urban Planning Committee

**Agenda:** *Urban Planning Committee*

**Date:** *Monday, 11 July 2005*

**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

7 July 2005

To: The Mayor, Councillor Rundle, ex-officio  
Councillor David Shoebridge (Chair)  
John Comino  
Christopher Dawson  
Keri Huxley  
Julian Martin  
Isabelle Shapiro  
Fiona Sinclair King

Dear Councillors

### **Urban Planning Committee Meeting – 11 July 2005**

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 11 July 2005 at 6.00pm.**

Gary James  
General Manager

## Meeting Agenda

<b>Item</b>	<b>Subject</b>	<b>Pages</b>
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 27 June 2005	1
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### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54) – To rezone a part of Rose Bay Public School from Special Uses (School) to Residential 2(B) – 136.G	2
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**Item No:** D1 Delegated to Committee  
**Subject:** **Confirmation of Minutes of Meeting held on 27 June 2005**  
**Author:** Les Windle, Manager – Governance  
**File No:** See Council Minutes  
**Reason for Report:** The Minutes of the Meeting of Monday 27 June 2005 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 27 June 2005 be taken as read and confirmed.

Les Windle  
Manager - Governance

**Item No:** R1 Recommendation to Council

**Subject:** **Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54) - to rezone a part of Rose Bay Public School from Special Uses (School) to Residential 2(B)**

**Author:** George Losonci, Senior Strategic Planner

**File No:** 136.G

**Reason for Report:** To report on the public exhibition of Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54) and Draft Woollahra Residential Development Control Plan 2003 (Amendment No. 1)

### Recommendation

1. THAT Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54), as exhibited and as contained in **Annexure 1** of the report to the Urban Planning Committee meeting of 11 July 2005, be referred to the Department of Infrastructure, Planning and Natural Resources for approval by the Minister and for gazettal.
2. THAT Draft Woollahra Residential Development Control Plan 2003 (Amendment No. 1), as exhibited and as contained in **Annexure 2** of the report to the Urban Planning Committee meeting of 11 July 2005 be approved and come into effect upon the gazettal date of Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54).

### 1.0 Background

On 15 November 2004, Council's Urban Planning Committee considered a report regarding a proposal to amend Woollahra LEP 1995 to rezone part of Rose Bay Public School from Special Uses 5 – Existing (School) to Residential 2(b) and apply a maximum floor space ratio of 0.75:1. The land to which the rezoning application relates has been declared by the applicant to be surplus to the School's requirements. The land, (previously known as Lot 11, DP 4567), identified as surplus is known as Lot 111, DP 1076937 (the site) and is currently not accessible to the children of the School.

The former Minister of Education approved the sale of the site with up to 90% of the net proceeds from the sale being allocated to the provision of a hall at the school. The report to the Committee recommended that a draft LEP be prepared.

Council, at its meeting of 29 November 2005, resolved the following:

- A. *THAT following the registration of the minor boundary adjustment of Lot 11, DP 4567 with the Land Titles Office, a draft local environmental plan be prepared to amend Woollahra Local Environmental Plan 1995 to rezone part of Rose Bay Public School known as Lot 11, DP 4567 to Residential 2(b) and apply a maximum floor space ratio of 0.75:1.*
- B. *THAT following the registration of Lot 11, DP 4567 with the Land Titles Office, a draft development control plan be prepared to amend the maps and plans in Part 4.9 [Rose Bay Precinct] of the Residential DCP 2003.*

- C. *THAT in resolving to prepare a draft local environmental plan for part of Rose Bay Public School known as Lot 11, DP 4567, and resolving to amend the Residential DCP 2003, the Council is not indicating its acceptance of a development proposal or building works on the site. These matters will need to be assessed separately through the development application process.*
- D. *THAT as required by the Council's adopted Fees and Charges, the applicant is to pay all costs incurred by Council for the preparation and exhibition of the amending local environmental plan and development control plan.*
- E. *That prior to the report on the public exhibition of the draft LEP being considered by Council, the Rose Bay Public School submit a valuation prepared by a qualified practising valuer to Council. The valuation shall be based on the proposed Residential 2(b) zone and associated development standards and controls, as well as a Special Uses Community Facility zone.*
- F. *The applicant is to provide to Council, for the purpose of the exhibition period, "indicative" plans of the proposed hall indicating at the very least - location, height and footprint.*
- G. *That Council, on behalf of the Rose Bay Public School, write to the Department of Education seeking financial assistance with the view that, with approved State or Federal funding, the School may avoid having to rezone and sell off land in order to build a community hall.*

## 1.1 Response to Council Resolution

### **Part A:**

The registration of the minor boundary adjustment of Lot 11, DP 4567 with the Land Titles Office has taken place. The newly created allotment is now known as Lot 111, DP 1076937. The draft LEP was prepared and exhibited (**Annexure 1**) with reference to the newly registered property description. Details of the preparation and exhibition of the Draft LEP are provided within sections 2 and 3 of this report.

### **Part B:**

Following the registration of Lot 111, DP 1076937 with the Land Titles Office, a draft development control plan that amends the maps and plans in Part 4.9 [Rose Bay Precinct] of the *Woollahra Residential DCP 2003* was prepared and exhibited (**Annexure 2**). Details of the preparation and exhibition of the Draft Woollahra Residential DCP 2003 (Amendment No. 1) are provided within section 4 of this report.

### **Part C:**

This part of Council's resolution has been complied with to the extent that the applicant was previously notified of Council's resolution by letter dated 15 December 2004.

### **Part D:**

All fees associated with the preparation and exhibition of the draft LEP and draft Residential DCP amendment to date have been paid by the applicant.

**Part E:**

The applicant has provided a copy of a letter dated 25 May 2005 (part of **Annexure 3**) from the Department of Education and Training. This letter states in part:

*The Department intends to dispose of the allotment on rezoning in accordance with government guidelines, by competitive process and the release of a valuation assessment prior to an auction or tender could prejudice any potential sale. The information should remain confidential and not in the public domain.*

The request for a valuation of the site was to satisfy Council that the value of the property when sold, would meet the cost of constructing the school hall. Written correspondence dated 26 May 2004 (**Annexure 5**) from the Department indicates that the sale of the land is linked solely to the provision of the school hall. A valuation would only be reliable at or soon after the date it was obtained and would have little relevance should the site be sold at a later date. Public disclosure of a valuation could prejudice the site's future sale price where the intention is to dispose of the land through a competitive public process.

For these reasons, the Department's reasons for not providing a valuation are supported.

**Part F:**

Indicative plans of the proposed school hall were provided by the applicant and exhibited concurrently with the Draft LEP and Draft DCP.

**Part G:**

On behalf of the Rose Bay Public School, Council officers wrote to the Department of Education seeking financial assistance for the construction of the school hall. In response to this request, a letter was received from the Department of Education (**Annexure 4**) stating the following:

*.....the former Minister approved the sale of this portion of the school site in 2002 and for the proceeds of its sale to be used for the construction of a new school hall. This portion of the site is not useable by the school.... under an initiative to provide a significant number of new school communal halls over four years, schools without a communal hall and with enrolments of more than 500 students are assigned priority within the Department's capital works budget.... As the Rose Bay Public School's current total enrolment is substantially below 500, it cannot be afforded priority consideration for a permanent communal hall at the present time.*

In addition, in letter dated 25 May 2005 (part of **Annexure 3**), the Department stated that:

*The land proposed for disposal is an unusable portion of the school site. The Department's policy allows for the provision of improved facilities to be funded from the net proceeds from the sale of surplus property assets. The school has requested that the proceeds from the sale be directed towards the provision of a hall.*

Consequently, the School is only able to achieve the benefit of a hall if it is financed by the rezoning and sale of the subject site. This was more recently confirmed by a telephone conversation between Council's Team Leader – Strategic Planning (Anita Lakeland) and Mr Brian Frankham – Director Asset Management – Dept of Education and Training) who, on Friday 1 July 2005, confirmed that the school does not qualify for funding under the regular halls program and that the Department is committed to the sale of the land with 90% of funds going towards the construction of a school hall. Confirmation of this is to be forwarded in writing from the Department.



## **2.0 Preparation of Draft Woollahra LEP 1995 (Amendment No. 54)**

After the Council's decision of 29 November 2004, preparation of the Draft LEP commenced in the manner set out in the *Environmental Planning and Assessment Act 1979* (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 DIPNR**

Notification to the Department of Infrastructure, Planning and Natural Resources [DIPNR] 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 the draft LEP, and with the adjoining council, where the draft LEP applies to land on a local government boundary.

Notification of the Draft LEP and a copy of the report to Council's Urban Planning Committee of 15 November 2004, were sent to DIPNR and to the Department of Education and Training.

Neither department has raised any objection to the aims and content of the Draft LEP.

### **2.3 Section 64 notification**

DIPNR 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 under 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.

Since the inception of the Act a total of twenty-nine general directions and twenty-eight specific directions have been issued for the preparation of draft LEPs. No directions have been issued specifically for the preparation of the Draft LEP.

In the course of preparing the Draft LEP consideration has been given to section 117 directions as required by the Act. There are no specific directions applicable to the Draft LEP.

### **3.0 Public Exhibition Process – Draft LEP**

#### **3.1 Exhibition period and location**

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 Wednesday 2 March 2005 to Friday, 8 April 2005. The content of the exhibited Draft LEP is attached as **Annexure 1**.

#### **3.2 Advertising and notification**

Details of the exhibition were notified in the Wentworth Courier editions of 2 March, 9 March, 16 March 23 March, 30 March and 6 April 2005.

The owners of the property affected by the Draft LEP and immediately adjoining and surrounding property owners were informed of Council's decision and invited to participate in the public consultation process associated with the exhibition of the Draft LEP.

#### **3.3 Summary of submission**

Following the exhibition of the Draft LEP, one submission was received from the Rose Bay Residents' Association (**Annexure 5**). The submission raised a number of issues which are addressed below.

- (i) **The rezoning will ultimately result in the land being alienated from public use. The land once rezoned and sold will be lost forever regardless of the future needs of the School and the community.**

#### *Response*

The rezoning of the site will result in its sale and use for private residential purposes. However, the proposed rezoning and sale will also lead to the construction of a new hall at Rose Bay Public School. This hall will have a significant public benefit not only to the school but also to the broader community.

The provisions of this facility are considered to be of a greater public benefit than the currently unused land.

Council's Urban Planning Committee resolved to require the applicant to provide indicative plans of the proposed school hall and to confirm with the Department of Education that State or Federal funding be available and thereby avoid the need to sell off the land in order to build a community hall.

Correspondence from the Department of Education (**Annexure 4**), states that due to the School's size being less than 500 students, such funding is unavailable. Consequently, the only option for funding the hall is through the proposed rezoning and sale of a surplus portion of the site.

The site is currently surplus to the School's needs and has not been used or accessed for many years. The loss of the site from the remaining school grounds will be insignificant, whereas the future school hall will benefit not only the School, but also the broader community.

- (ii) **Rather than rezoning the land, the school should consider leasing the land to other bodies and institutions such as a kindergarten or day care facility.**

*Response*

The redundancy of the site for school related activities has already been well established. There has been no information provided by the applicant or the School that would suggest that the site could be converted to or leased for an alternate use. Although the site fronts Albermarle Avenue, there is a significant retaining wall which prevents direct pedestrian/vehicular access to it. An alternate use of the site while remaining in the School's ownership may not be viable given the School's priority for expending funds on a new hall.

Notwithstanding this, a number of alternative uses are permissible under the proposed Residential 2(b) zone including child care centres, hospitals, parks and gardens.

- (iii) **Council should have paramount in its mind the public interest of ensuring that 'special uses land' within our community be preserved for the needs of our community.**

*Response*

A number of zones under Woollahra LEP 1995 permit community related uses and provide for a range of community needs. The proposed Residential 2(b) zone permits community uses such as child care centres, parks and gardens and medical consulting rooms, subject to development consent being obtained. It is therefore considered that although the site will no longer be publicly owned, the proposed zone does not prejudice future community use of the site.

In addition, the provision of a school hall would be in the public interest by benefiting the students and community users of the hall.

#### **4.0 Public Exhibition Process – Draft Residential DCP 2003 (Amendment No. 1)**

##### **4.1 Exhibition period and location**

The Draft Residential DCP 2003 (Amendment No. 1) was also exhibited in the manner required by the Act and the Regulation. The exhibition occurred at the Council's Customer Services area over the period Wednesday 4 May 2005 till Friday 3 June 2005. The content of the exhibited Draft Residential DCP is attached as **Annexure 2**.

##### **4.2 Advertising and notification**

Details of the exhibition were notified in the Wentworth Courier editions of 4 May, 11 May, 18 May, 25 May and 1 June 2005.

The owners of the property affected by the Draft Residential DCP amendment and immediately adjoining and surrounding property owners were informed of Council's decision and invited to participate in the public consultation process.

No submissions were received.

#### **5.0 Statutory Processes**

Prior to a draft LEP being approved by the Minister Assisting the Minister for Infrastructure and 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 the Department of Infrastructure, Planning and Natural Resources for the Minister's approval and then gazettal. The Draft LEP will come into effect when a notice is placed in the Government Gazette.

In accordance with the provisions of the Act and Regulation, should Council adopt the recommendation to forward the draft LEP for the Ministers consent, an advertisement would be placed in the local newspaper stating that once the Draft LEP has been gazetted, the provisions of the amendment to Council's Residential DCP 2003 will also come into effect.

## **6.0 Conclusion**

The proposed rezoning and sale of the site will result in an otherwise redundant and unusable portion of Rose Bay Public School to be sold and thereby provide the future benefit of a new school hall which under current circumstances would not be eligible for government funding. The proposed school hall will have a significant public benefit not only to the school but also to the broader community.

Preparation of the Draft LEP and Draft Residential DCP has been undertaken in the manner required by the Act and the Regulation. No alterations to the Draft LEP and Draft Residential DCP are recommended.

It is recommended that the Draft LEP be forwarded to the Department of Infrastructure, Planning and Natural Resources for gazettal subject to any legal drafting alterations requested by Parliamentary Counsel.

It is also recommended that the draft amendment to *Woollahra Residential Development Control Plan 2003* be approved and come into effect upon the gazettal date of Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54)

George Losonci  
Senior Strategic Planner

Anita Lakeland  
Team Leader – Strategic Planning

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## **Annexures**

1. Draft Woollahra LEP 1995 (Amendment No. 54).
2. Draft Woollahra Residential Development Control Plan 2003 (Amendment No. 1).
3. Submission from PTW dated 23 June 2005.
4. Submission from Department of Education and Training dated 7 June 2005.
5. Submission from Department of Education and Training dated 26 May 2004.
6. Submission from Rose Bay Residents' Association dated 8 April 2005.