



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 14 November 2011*

Time: *6.00pm*

Outline of Meeting Protocol & Procedure:

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

Recommendation only to the Full Council (“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.

Delegated Authority (“D” Items)

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

Committee Membership: 7

Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

10 November 2011

To: Her Worship The Mayor, Councillor Susan Wynne ex-officio
Councillors Malcolm Young (Chair)
Chris Howe (Deputy Chair)
Sean Carmichael
Lucienne Edelman
Nicola Grieve
Ian Plater
David Shoebridge

Dear Councillors

Urban Planning Committee Meeting – 14 November 2011

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Thornton Room (Committee Room)**, 536 New South Head Road, Double Bay, on **Monday 14 November 2011 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda

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

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 31 October 2011	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Commercial Signs and Paintings of Commercial Buildings - 900.G	2
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Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 19 September 2011**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 19 September 2011 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 19 September 2011 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: **Commercial Signs and Painting of Commercial Buildings**
Author: Chris Bluett – Manager Strategic Planning
File No: 900.G
Reason for Report: To respond to an adopted notice of motion relating to painting and signs on commercial buildings.

Recommendation:

THAT as part of the preparation of the new comprehensive DCP a review of advertising sign provisions be undertaken with the aim of addressing amendments proposed in section 9 of the report to the Urban Planning Committee meeting on 14 November 2011.

1. Background

On 12 April 2010 Council adopted the following notice of motion regarding painting and commercial signs on commercial premises:

- A. *That a report be brought to the Urban Planning Committee on options for amending our planning controls to regulate offensive, unsightly and/or garish painting and commercial signs on commercial premises across the Municipality and standard procedures for the urgent enforcement of Council's controls.*
- B. *That the report use as case studies the Priceline Pharmacy and Discount Chemist premises in Rose Bay.*

2. Report methodology

The ability of Council to amend existing planning controls contained within a local environmental plan (LEP) or a development control plan (DCP), or introduce new planning controls in those plans, is governed by State legislation. Generally, LEPs and DCPs must be consistent with State legislation. With this framework in mind, this report:

- Identifies the State planning legislation for painting and signs on commercial buildings which applies to the Woollahra Municipality.
- Identifies our local planning controls which address painting and signs on commercial buildings.
- Identifies the relationship of State and local planning controls in order to establish which controls prevail and therefore our ability to further regulate painting and signs on commercial buildings.
- Identifies our current enforcement policy and procedures.

In preparing this report we have examined the particular circumstances applying to the Priceline Pharmacy at 779 New South Head Road, Rose Bay, and the Discount Chemist at 15 Dover Road, Rose Bay. On the basis of these two examples being mentioned in the resolution, we have carried out our research with an understanding that Council's concerns lie with the impact of certain types of painting and signage when viewed from the public domain.

3. Relevant State planning legislation

The *Environmental Planning and Assessment Act 1979* (the Act) provides the overarching State legislation. It has broad objectives and sets out the framework for the preparation of State and local planning documents. Detailed policy is contained in State environmental planning policies (SEPPs)

State legislation in the form of a SEPP will, in most cases, override local planning controls. Further discussion on this matter is provided in sections 5 and 6 of this report.

Of particular relevance to the Council's resolution is the operation of exempt and complying development provisions contained in SEPPs. Proposed development which satisfies the exempt development standards and criteria set out in SEPPs may be carried out without approval. Complying development must also meet specified standards and criteria and must obtain consent through the complying development application process. A council or a private accredited certifier may issue a complying development certificate with relevant conditions.

3.1 State planning policies

3.1.1 External painting

The main State planning policy for external painting of buildings, including commercial buildings irrespective of the land use zone applying to those buildings, is contained in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The Codes SEPP enables the painting of buildings to be carried out as exempt development subject to certain restrictions.¹ The relevant provisions are contained in Part 2 – Division 1 – General Exempt Development Code.

- Part 2 – Division 1 – General Exempt Development Code
Subdivision 25A Maintenance of buildings in draft heritage conservation areas

Within this category of exempt development painting may be carried out as maintenance. The relevant restriction is that “the development [the painting] must reproduce the existing materials, finish and design of the building so as not to alter its appearance”. A copy of subdivision 25A is provided in **annexure 1**.

- Part 2 – Division 1 – General Exempt Development Code
Subdivision 27 – Minor building alterations (external)

Within this category, external painting of a building is exempt development. There are no development standards applying to this category which restrict matters such as the type of colours, the composition of colour schemes, the extent of painting or the location of painting on a building. However, the exempt provisions do not apply to a building that is a heritage item or a draft heritage item or to buildings in a heritage conservation area or in a draft heritage conservation area. Notwithstanding that restriction, it will be noted that Subdivision 25A allows painting of buildings in a draft heritage conservation area but only for the purpose of maintenance and subject to restrictions on the appearance of the building. A copy of Subdivision 27 is provided as **annexure 2**.

¹ In addition to restrictions applying to each exempt development type, the Codes SEPP has general restrictions on all exempt development types. For instance, exempt development cannot be carried out on land which comprises, or on which there is, an item listed on the State Heritage Register.

3.1.2 Commercial signs

The State planning policy for commercial signs is contained in two SEPPs:

- SEPP 64 – Advertising and Signage
- Codes SEPP

SEPP 64 – Advertising and Signage

SEPP 64 applies to all signage which is permissible with or without development consent and which is visible from a public place or public reserve. However, the SEPP does not apply to exempt development. Furthermore, the provisions of the SEPP relating to advertisements do not apply to:

- business identification signs²
- building identification signs³
- signage on vehicles.

The advertisements to which SEPP 64 applies include:

- advertisements that have a display area greater than 20 square metres, or that are higher than 8 metres above the ground,
- advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road
- advertisements with an advertising display area greater than 45 square metres
- roof or sky advertisements
- wall advertisements
- freestanding advertisements
- building wrap advertisements.

The display of advertisements to which the SEPP applies is prohibited in certain zones and areas including heritage conservation areas, open space zones, residential zones and scenic protection areas.

In circumstances where SEPP 64 applies, thereby requiring development consent for particular types of signage, the consent authority is required to take into consideration a range of specified matters including:

- the objectives of the SEPP, and
- the assessment criteria set out in Schedule 1 of the SEPP

These two heads of consideration are particularly relevant because they lead to an assessment of a development application which can draw on criteria within an LEP and DCP.

The aims and objectives of the SEPP state in part:

² Business identification sign is defined as a sign:

- (a) that indicates:
 - (i) the name of the person, and
 - (ii) the business carried on by the person,
 - at the premises or place at which the sign is displayed, and
- (b) that may include the address of the premises or place and a logo or other symbol that identifies the business, but that does not include any advertising relating to a person who does not carry on business at the premises or place.

³ Building identification sign is defined as a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services.

- (1) This Policy aims:
 - (a) to ensure that signage (including advertising):
 - (i) is compatible with the desired amenity and visual character of an area, and
 - (ii) provides effective communication in suitable locations, and
 - (iii) is of high quality design and finish,⁴

Schedule 1 of the SEPP is reproduced below.

Assessment criteria

1 Character of the area

Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?

Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?

2 Special areas

Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?

3 Views and vistas

Does the proposal obscure or compromise important views?

Does the proposal dominate the skyline and reduce the quality of vistas?

Does the proposal respect the viewing rights of other advertisers?

4 Streetscape, setting or landscape

Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?

Does the proposal contribute to the visual interest of the streetscape, setting or landscape?

Does the proposal reduce clutter by rationalising and simplifying existing advertising?

Does the proposal screen unsightliness?

Does the proposal protrude above buildings, structures or tree canopies in the area or locality?

Does the proposal require ongoing vegetation management?

5 Site and building

Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?

Does the proposal respect important features of the site or building, or both?

Does the proposal show innovation and imagination in its relationship to the site or building, or both?

6 Associated devices and logos with advertisements and advertising structures

Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?

⁴ Whilst SEPP 64 regulates the size and location of signs and to some extent their appearance, it does not regulate the content of signs. Clause 3(2) of the SEPP expressly states "This Policy does not regulate the content of signage and does not require consent for a change in the content of signage."

7 Illumination

Would illumination result in unacceptable glare?

Would illumination affect safety for pedestrians, vehicles or aircraft?

Would illumination detract from the amenity of any residence or other form of accommodation?

Can the intensity of the illumination be adjusted, if necessary?

Is the illumination subject to a curfew?

8 Safety

Would the proposal reduce the safety for any public road?

Would the proposal reduce the safety for pedestrians or bicyclists?

Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?

The criteria under the headings “character of the area”, “special areas”, “streetscape, setting or landscape” and “site and building” are particularly relevant to controls and statements which can be found in DCPs.

Codes SEPP

The Codes SEPP allows as exempt development the replacement of an existing building identification sign and an existing business identification sign. It also allows as exempt development the replacement of the content of those signs. The relevant provisions are contained in Subdivision 36A Signage (replacement of identification signs). (**Annexure 3**)

These provisions are restricted to replacement of lawful signs. The replacement sign must not be larger than the existing sign.

Over the period 3 March to 6 May 2011, the NSW Department of Planning and Infrastructure exhibited a discussion paper on the proposed expansion of the General Exempt Development Code to include further types of signage. The majority of the proposed signs fall within the definition of business identification signs and comprise fascia signs, flush wall and painted wall signs, freestanding signboards, pole and pylon signs, suspended under awning signs, top hamper signs, vertical and horizontal projecting wall signs and window signs. Proposed standards for these signs include restrictions on the size, location and number of signs.

4. Woollahra planning policy for painting and signage

Our planning policies for the commercial signs and the painting of commercial buildings are contained in:

- Woollahra Local Environmental Plan 1995
- Precinct DCPs – Rose Bay Centre DCP, Double Bay Centre DCP, Edgecliff Commercial Centre DCP, Paddington Heritage Conservation Area DCP, Woollahra Heritage Conservation Area DCP,
- Other DCPs – Neighbourhood Centres DCP and the Woollahra DCP for Exempt and Complying Development
- Code for Advertising Signs.

4.1 External painting

There are no controls in Woollahra LEP 1995 which regulate painting of commercial buildings in terms of nominating appropriate colours or the extent of painting. However, there are heritage

conservation controls which deal indirectly and broadly with the painting of heritage items and buildings in a heritage conservation area.

Heritage conservation provisions in Part 4 of the LEP address non-structural changes to the outside of heritage items and buildings in a heritage conservation area. These changes include maintenance.⁵ Generally, under the definition of maintenance, painting of buildings in a heritage conservation area and heritage items does not require consent.

Woollahra LEP 1995 also has broad urban design objectives which address matters such as the quality of new buildings and environmental impact. These objectives provide a framework for controls within DCPs.

Three of the five precinct DCPs listed above apply exclusively to commercial centres.

The Double Bay Centre DCP does not include statements or controls about painting of buildings. It uses general design statements about promoting high quality architectural design and encouraging coherent streetscapes. (**annexure 4**)

Rose Bay Centre DCP contains similar general design statements about high quality architectural design and coherent streetscapes. Additionally, though, it requires that exterior colours should be appropriate to the building's context and not draw undue attention to the building. (**annexure 5**)

The Edgecliff Commercial Centre DCP provides general objectives about building design. It requires façade designs to be of a high aesthetic quality and to complement the form, roofline, fenestration, material, finishes and colour of adjoining buildings. (**annexure 6**)

The Woollahra HCA DCP and the Paddington HCA DCP contain controls for external colours. (**annexures 7 and 8**) These controls are applicable across the respective HCAs and apply to all types of development. The Paddington HCA DCP is the more detailed of the two DCPs. It includes controls which address colour schemes, inappropriate colours and finishes, colour intensity and hue, composition and location of colours.

The Neighbourhood Centres DCP has very broad and limited objectives and controls about cohesive streetscapes and compatible use of materials. (**annexure 9**)

Woollahra DCP for Exempt and Complying Development lists external painting as exempt development, except in the case of heritage items and inter-war flat buildings. These exempt development provisions no longer apply due to the operation of the exempt development provisions within Part 2, Subdivision 27 of the Codes SEPP (see section 3.1.1 of this report).

4.2 Commercial signs

Objectives and controls for commercial signs are spread across numerous Woollahra planning documents. Woollahra LEP 1995 contains objectives for outdoor advertising and defines advertising structure and advertisement. (see **annexure 10** for objectives)

⁵ Maintenance is defined in Schedule 1 of Woollahra LEP 1995. Maintenance in relation to a heritage item, or a building within a heritage conservation area or an inter-war flat building, means the continuous protective care of the fabric of the item and its setting or of the building within the heritage conservation area, or of the inter-war building, but in relation to an inter-war flat building, does not include the painting, rendering or similar treatment of external brickwork and other masonry surfaces that are not painted, rendered or similarly treated.

All of the Precinct DCPs and the Neighbourhood Centres DCP contain specific objectives and clauses for advertising and signs. However, the detail of those objectives and clauses is varied and hence the level of regulation is also varied. (**annexures 11 – 16**)

The Woollahra HCA DCP, the Paddington HCA DCP and the Neighbourhood Centres DCP include controls for the colour of signs. The two HCA DCPs go to the extent of nominating inappropriate colours. The Paddington HCA DCP also includes a control about the use of corporate colours.

Woollahra DCP for Exempt and Complying Development applies throughout the Municipality and includes exempt development provisions for a range of advertising structures and signs (**annexure 17**). Restrictions apply to the zones and areas to which the provisions apply, to the size and number of signs and in some cases to the content of signs.

The Code for Advertising Signs was adopted by Council in 1987. The Code has limited application because the advertising and signage controls within the precinct DCPs and other major DCPs prevail.

5. Relationship between State and local controls

SEPPs contain statements which establish the hierarchical relationship between themselves, LEPs and DCPs. In some cases SEPPs explicitly state that other SEPPs, LEPs and DCPs cease to apply to matters covered by the SEPP. This is the case with the Codes SEPP in regard to exempt and complying development provisions within an LEP and DCP.

A SEPP may also state that it prevails where there is an inconsistency with another environmental planning instrument such as a SEPP or an LEP. This occurs in the case of SEPP 64.

It is possible for the application of SEPPs to be excluded in whole or part from a parcel of land, a precinct or a local government area (LGA). For example, the Codes SEPP lists parts of LGAs which are excluded from the operation of the General Exempt Development Code and the General Housing Code. In the Sydney Metropolitan Area parts of the Botany Bay LGA are excluded from the General Exempt Development Code and parts of Botany Bay, Marrickville, Mosman, Pittwater and Randwick LGAs are excluded from the General Housing Code.

6. Current hierarchy of controls for painting and signs on commercial buildings in Woollahra

Based on the rules identified in section 5 of this report, the following hierarchy applies in the Municipality to the controls for external painting of commercial buildings and advertising signs on commercial buildings.

Painting

The Codes SEPP provisions prevail over Woollahra DCP for Exempt and Complying Development. Painting may be carried out as exempt development under:

- Part 2 – Division 1 - Subdivision 25A Maintenance of buildings in draft heritage conservation areas (see **annexure 1**), and
- Part 2 – Division 1 – Subdivision 27 Minor building alterations (external) (see **annexure 2**).

Where the exempt development standards and exclusion criteria of the Codes SEPP cannot be met, development consent is required through the development application process.

Commercial signs

The Codes SEPP provisions prevail over Woollahra DCP for Exempt and Complying Development in regard to the following exempt development:

- the replacement of a lawful existing building identification sign,
- the replacement of a lawful existing business identification sign, and
- the replacement of the content of those identification signs.

If the proposed expansion of the General Exempt Development Code takes place with additional advertising signs becoming exempt development, further erosion of the Woollahra DCP for Exempt and Complying Development will occur.

SEPP 64 operates in the following manner:

- it prevails over Woollahra LEP 1995 in regard to prohibiting certain advertisements,⁶
- it requires the Council to take into consideration assessment criteria (see 3.1.2 of this report) before it grants consent to a DA for an advertisement to which SEPP 64 applies
- it does not override the exempt development provisions of the Codes SEPP or Woollahra DCP for Exempt and Complying Development.

7. When is painting an advertisement?

This question is particularly relevant because external painting is exempt development under the Codes SEPP. Furthermore, there are no development standards applying to this exempt development category which restrict matters such as the type of colours, the composition of colour schemes, the extent of painting or the location of painting on a building.

If it cannot be established that a particular colour or a combination of colours is an advertisement which may be regulated through the development application process, and painting does not otherwise require consent, situations may arise where an undesirable or offensive colour is applied to a building. In such situations the Council would have no recourse other than perhaps to negotiate a change of colours with the owner or occupier of the building.

Legal advice has been sought on this matter. The advice examined the definition for “advertisement” in Woollahra LEP 1995, the definitions of “signage” and “wall advertisement” in SEPP 64 and the definition of “sign” in the *Trademarks Act 1995*. It is apparent from reading the advice that a case by case assessment of proposals is required although certain common questions can be asked. These include:

- Does the use of colours in patterns, symbols, messages or other devices promote the business, a product, an event or an activity?
- Does the use of colours in patterns, symbols, messages or other devices convey information, instructions or directions?
- Is a business, activity or event readily identifiable from a colour or a colour scheme?

If it is determined that painting is an advertisement, it then needs to be established whether the advertisement is exempt development or whether development consent is required. Exempt

⁶ Prohibited advertisements include advertisements with a display area greater than 20m² or higher than 8 metres above ground; advertisements greater than 20m² and within 250 metres of, and visible from, a classified road; advertisements with a display area greater than 45m²; advertisements with certain names and logos; roof or sky advertisements; wall advertisements; freestanding advertisements; building wrap advertisements.

development is dealt with under the Codes SEPP and the Woollahra DCP for Exempt and Complying Development. Development consent is dealt with by SEPP 64 and Woollahra planning documents.

8. Relationship between SEPP exempt and complying development provisions and development consent conditions

The question of whether development consent conditions are protected from the operation of exempt and complying development provisions has been raised by Councillors in the past. An extension of this question is whether it would be unlawful to carry out exempt or complying development which would conflict with a condition of consent.

The issue is relevant to matters considered in this report because it is possible the Council may grant consent to a DA subject to conditions which relate to advertising signs or exterior painting.

We have obtained legal advice on this matter. The advice concludes that:

1. Development that falls within a category of exempt development or is carried out in accordance with a complying development certificate, may be carried out even if it is contrary to a DA consent condition.
2. A condition of the consent with which exempt or complying development is inconsistent is not struck out but it is not unlawful to carry out the exempt or complying development.

9. Options for amending Woollahra planning controls relating to external painting and commercial signs

The overriding nature of State legislation such as the Codes SEPP and SEPP 64 means that there are limited options for regulating external painting and many forms of advertising signs through local planning controls. However, the analysis of current planning legislation and policy applicable in Woollahra suggests that some changes to our DCPs could be beneficial in cases where development consent is required for advertising signs through SEPP 64 or Woollahra LEP 1995.

We have observed that controls and objectives for advertising signs within the relevant DCPs vary and would benefit from a review with the aim of -

- providing an element of consistency for matters such as the use of colours in signs,
- providing controls relating to the external painting of buildings for the purpose of advertising signs,
- providing elaboration on the character of commercial centres in regard to their existing and desired future character,
- providing appropriate controls for advertising signs on commercial buildings located in residential zones.

We caution against prescribing or totally prohibiting particular colours in all circumstances. Rather, we suggest an approach used in the DCPs for the Paddington and Woollahra HCAs may be considered. (see **annexures 14 and 15**).

Additionally, we consider advertising in general, and particularly colour schemes used in advertising, could be incorporated within more expressive desired future character statements for commercial centres and commercial buildings. This will be particularly helpful when assessing development applications under the criteria provided in SEPP 64.

We suggest any changes to our DCPs are best co-ordinated through the review which will result in the new comprehensive DCP. This approach will also allow us to gauge the impact of further proposed amendments to the Codes SEPP and prepare policy which is effective.

10. Council's enforcement policy

Our policy for enforcement of development activities is set out in the document titled *Woollahra Municipal Council's Enforcement Policy* which was adopted on 16 April 2007. The policy is based on the Model Policy prepared by the NSW Ombudsman. Preparation of the policy also had regard to the NSW Ombudsman's Enforcement Guidelines 2002.

The purpose of the policy is to assist Council staff to act promptly, consistently and effectively in response to allegations of unlawful activity primarily associated with development and building matters. The policy includes sections on:

- procedural fairness and natural justice
- options for dealing with unlawful activity
- matters to be taken into consideration in deciding whether to take enforcement action
 - the nature and seriousness of the breach,
 - balancing of public interest and cost to Council,
 - available methods of enforcement,
 - the circumstances of each case
- methods of enforcement
 - penalty infringement notices,
 - consents,
 - orders and building certificates,
 - Land and Environment Court proceedings,
 - local court proceedings,
- recovery of legal costs.

Orders which may be issued for breaches of planning law are set down in the Act under *Part 6 Implementation and enforcement – Division 2A Orders*. These measures can be used for breaches of exempt and complying development provisions within SEPPs, LEPs and DCPs.

Division 2A of the Act lists the range of orders that may be issued by a council and sets out the statutory procedure for issuing notices and orders. There are particular orders listed in section 121B of the Act that may be applied to advertisements and external painting which breach planning law.

Order No.	What to do?	In what circumstances?
5	To alter, obliterate, demolish or remove an advertisement and any associated advertising structure	The advertisement is unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed. The advertisement is displayed contrary to a provision made by or under this Act. The advertising structure is erected contrary to a provision made by or under this Act.
12	To do such things as are specified in the order to restore premises to the condition in which they were before building was unlawfully erected or before work was unlawfully carried out	Building has been unlawfully erected, and an order No.2 has been given requiring the building to be demolished or removed. Work has been unlawfully carried out.

An internal procedure relating to the issuing of notices and orders has been developed and is followed by the Council's Regulatory staff. The procedure follows the statutory steps required by the Act. Additionally, the procedure sets out:

- how the terms of an order and the reasons for an order are to be written,
- hearing representations,
- dealing with a proposed order after representations are made,
- documenting a decision to issue an order,
- deciding when prosecution should occur,
- seeking court orders,
- dealing with Court appeals.

We consider the Council's enforcement policy and procedure are thorough documents which observe the requirements of the Act and other relevant legislation. The policy and procedure enable Council staff to act with urgency and in a considered manner.

11. Conclusion

In preparing a response to the Council's decision of 12 April 2010, we have examined relevant State and local planning provisions. The hierarchical relationship of State and local legislation is a major influence on the Council's ability to prepare local planning controls. This is most evident with the operation of the Codes SEPP and other SEPPs such as SEPP 64.

There is very little ability to control external painting of commercial buildings. Opportunity to provide additional controls for advertising signs on commercial buildings is also limited and will be further reduced with proposed changes to the Codes SEPP.

Despite this, we consider changes can be made to our DCPs to strengthen controls for advertising signs in cases where DAs are required and where State policies provide a cross reference to local planning controls. We consider these changes can be taken up in the preparation of the new comprehensive DCP.

With regards to enforcement of non-complying painting and signage, we find that staff are appropriately and consistently applying Council's Enforcement Policy. The policy and guidelines are adequate and effective.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

Annexure

1. Codes SEPP Part 2 – Division 1 – General Exempt Development Code - Subdivision 25A - Maintenance of buildings in draft heritage conservation areas
2. Codes SEPP Part 2 - Division 1 – General Exempt Development Code - Subdivision 27 – Minor building alterations (external)
3. Codes SEPP Part 2 – Division 1 – General Exempt Development Code - Subdivision 36A - Signage (replacement of identification signs)
4. Double Bay Centre DCP – clause 6.3.6 – Architectural resolution
5. Rose Bay Centre DCP - clause 6.3.5 – Architectural resolution
6. Edgecliff Commercial Centre DCP – clause 6 – Building design
7. Woollahra HCA DCP – clause 3.4.5 – Materials, finishes and colours
8. Paddington HCA DCP – clause 4.2.8
9. Neighbourhood Centres DCP – clause 5.2 – Street character
10. Woollahra LEP 1995 – clause 2(2)(m) – objectives in relation to outdoor advertising
11. Double Bay Centre DCP – clause 6.4.6 – Signage and advertising
12. Rose Bay Centre DCP – clause 6.3.9 – Signage and advertising
13. Edgecliff Commercial Centre DCP – clause 7 – Advertising
14. Paddington HCA DCP – clause 4.2.10 – Advertising signs on buildings
15. Woollahra HCA DCP – clause 3.4.11 – Advertising
16. Neighbourhood Centres DCP – clause 5.11 – Advertising, signage and illumination
17. Woollahra DCP for Exempt and Complying Development – advertising structures and signs

**POLITICAL DONATIONS DECISION MAKING FLOWCHART
FOR THE INFORMATION OF COUNCILLORS**

