



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 14 March 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

10 March 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 – 14 March 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 14 March 2005 at 6.00pm.**

Gary James
General Manager

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 February 2005	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Section 94 Contributions Plan 2002 – 136.G	2
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Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 28 February 2005**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 28 February 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 28 February 2005 be taken as read and confirmed.

Les Windle
Manager - Governance

- Item No:** R1 Recommendation to Council
- Subject:** **Section 94 Contributions Plan 2002**
- Author:** Chris Bluett - Manager Strategic Planning
- File No:** 136.G
- Reason for Report:**
1. To submit changes to contribution rates based on annual indexation figures.
 2. To provide comment on the Council's decision of 22 March 2004 regarding amendments to the Plan.
 3. To provide information on a meeting of the Strategic Planning Working Party which discussed the operation of section 94 of the *Environmental Planning and Assessment Act 1979*
 4. To provide information on the *Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004*.
 5. To obtain a decision of the Council to amend Woollahra Section 94 Contributions Plan 2002.

Recommendation

- A. That the annual indexed contribution rates in the Woollahra Section 94 Contributions Plan 2002, as outlined in the report to the Urban Planning Committee meeting on 14 March 2005 be approved.
- B. That a draft contributions plan be prepared to amend Figure 3.1 in the Woollahra Section 94 Contributions Plan 2002 to show the adjusted boundaries of the Double Bay Commercial Centre.

Background

Woollahra Section 94 Contributions Plan 2002 (the Plan) was approved by the Council on 10 March 2003 and came into operation on 31 March 2003.

The Plan is reviewed on an annual basis to update contribution rates and address operational issues. Further reporting can be required due to Council decisions, such as those arising from notices of motion.

On 22 March 2004 the Council amended the Plan by:

- altering contribution rates to reflect variations to indexed figures (consumer price index, average weekly earnings, and buildings materials price index)
- correcting minor typographical anomalies.

A copy of the amended Plan is contained in **Annexure 1**.

On 22 March 2004 the Council made the following additional resolution:

- A. *That Council note the response and progress on the actions resulting from Council's resolutions of 10 March 2003.*
- B. *That a report be submitted to a future meeting of the Urban Planning Committee on the following amendments to Woollahra Section 94 Contributions Plan 2002:*

- (i) *An appropriate formula and contribution rate for the capital costs, including library books, for the Library.*
- (ii) *Alteration of figure 3.1 of the plan to include all land within Double Bay which is within a business zone.*

A further decision of the Council arising from a notice of motion relating to the application of section 94 was taken on 31 May 2004:

That Council bring a report to the Urban Planning Committee reviewing Council's current Section 94 Plan with particular reference to amending such plan to include the following:

- (a) *Preparation of an overall catchment assessment identifying drainage problems and opportunities for reasonable or improved levels of service. This may include incremental Section 94 Contributions towards necessary services.*
- (b) *Transport and access including local area traffic management, due to increased demand for such works and facilities as a consequence of development.*
- (c) *Bicycle works.*
- (d) *Road replacement and upgrade resulting from increased traffic and damage caused by construction trucks and plant.*
- (e) *Community facilities and services, due to increased demand within the local government area.*
- (f) *Creation of a fund for the cost of acquiring and augmenting public open space in lieu of its physical provision.*

Matters raised in the additional resolution of 22 March 2004 and the decision of 31 May 2004 are addressed in **section 3** of this report.

In December 2004 the *Environmental Planning and Assessment (Development Contributions) Bill 2004* was put before the NSW State Parliament. Once passed this Bill together with amendments to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) will extend the means by which councils may obtain development contributions. These changes are briefly outlined in **section 4** of this report.

2.0 Proposed amendments to Woollahra Section 94 Contributions Plan 2002

2.1 Statutory framework

Clause 32 in *Division 4- Amendment and repeal of contributions plans* of the Regulation provides that a council may amend a contributions plan by a subsequent contributions plan (clause 32(1)) or without the need to prepare a new contributions plan in the case of:

- (a) minor typographical corrections
- (b) changes to rates set out in the plan to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index)
- (c) the omission of details concerning works that have been completed.(clause 32(3)).

2.2 Preparation of amending contributions plan

The amendment set out in item B(ii) of Council's decision of 22 March 2004 is required due to the extension of the Business 3(c) Zone in Double Bay which resulted from the Kiaora Lands master plan process. The alteration will have to be carried out through the preparation of an amending contributions plan (clause 32(1) of the Regulation) as the change does not qualify as an alteration within the provisions of clause 32(2). **Recommendation B** of this report deals with this amendment.

The proposed amendment will extend the operation of the Plan as it applies to contributions for public car parking and civic improvement works within the Double Commercial Centre.

Preparation of a draft contributions plan follows a statutory process, which includes:

- the placement of advertisements within the Wentworth Courier
- notification to affected property owners
- public exhibition of the draft plan
- consideration of submission
- approval of the plan
- public notice of the decision to approve the plan.

2.3 Annual indexed contribution rates

Provision is made within the Plan for the annual indexing of contribution rates. This occurs on, or immediately before the Plan's anniversary (31 March) depending on the cycle of Council's meetings. The indexing of contribution rates ensures that the value of the monetary contributions is not eroded over time by increases in construction costs, including the cost of materials and labour, and by the costs associated with the administration of the Plan.

Clause 3.13 Indexation of contributions of the Plan contains a formula to be used in calculating the indexed contribution rates. The formula relies on a number of factors, which determine the index rate, including the consumer price index, average weekly earnings and the building materials price index.

Using the formula contained in clause 3.13 of the Plan and information obtained from the Australian Bureau of Statistics, it is proposed to increase the capital works costs and administration costs contained in the Plan by 5.2 %. The increased rates will take effect immediately from the date of the Council's resolution.

A copy of the Plan with the new contribution rates is contained in **annexure 2**.

3.0 Application of section 94

On 16 September 2004 Dr Lindsay Taylor, from Lindsay Taylor Lawyers, addressed the Strategic Planning Working Party on the operation and scope of section 94 of the Act. Dr Taylor also provided responses to the amendments to the Plan requested by Council. A copy of the Working Party minutes, with Dr Taylor's comments, is provided as **annexure 3**. Dr Taylor's notes distributed at the meeting are provided as **annexure 4**.

Dr Taylor confirmed the purpose of section 94, how it works, and the limitations of its use. When addressing limitations, Dr Taylor confirmed that section 94 could not be used for maintenance works or for the purpose of requiring new development to fund “any catch-up in the historically deficient provision of public facilities.” Hence, section 94 contributions are restricted to capital costs, not recurrent costs. When establishing contribution rates, the capital costs must be apportioned between the demand for facilities created by new development and the demand from the existing population. In regard to apportionment Dr Taylor states: “Thus in an established urban area, the cost of new public facilities often has to be apportioned between the existing population and new development or between local and regional demand. Apportionment often results in modest funding.”

It can be seen from the minutes of the Working Party meeting that several items listed in the Council’s decisions of 22 March 2004 and 31 May 2004 are not open to the operation of section 94. Other items may qualify as projects within a contributions plan, but because those projects will also serve the needs of the existing population, the costs must be shared (apportioned) between the new population resulting from development and the existing population.

Where apportionment of costs is required, the use of section 94 must be carefully considered due to the potential impact on a council’s financial planning and management processes. In particular, where a plan is largely based on apportionment of costs there can be substantial implications for the general budget and for the planning and delivery of other services. Potentially, it can be financially detrimental to a council where a substantial portion of costs is to be borne by the council on behalf of the existing population. The following exercise demonstrates this problem.

Capital project cost - \$200,000

Existing population – 50,000

Anticipated population growth due to new development over five years – 500

$500 / 50,000 \times \$200,000 = \$2,000$ or 1.0% of total project cost to be paid by new development
(99% of costs borne by council)

It is important to understand that in preparing and approving a contributions plan, a council is committing itself to providing those public facilities listed within the plan or, subject to reviewing the plan, committing to similar facilities that achieve the purpose for which contributions are received.

Provided a council is committed to the provision of a project, section 94 may offset costs to a council for that one project, albeit to a very small extent in cases where there is minor population growth. However, a contributions plan for an area of low population growth will not be financially sustainable for a council where all or most of the capital works projects are based on apportioned costs.

Experience across the Sydney metropolitan area over the past twenty years has shown that section 94 is more easily implemented for “green field” development areas rather than established urban areas such as Woollahra. Generally this is attributable to a number of factors including:

- the difficulty in accurately predicting anticipated growth in established areas
- the effects and uncertainty of market forces (both slow and accelerated growth)
- declining dwelling occupancy rates
- the need to consider apportionment of costs between new and existing populations
- the difficulty in establishing nexus.

Item B(i) of Council's decision of 22 March 2004 asks for "An appropriate formula and contribution rate for the capital costs, including library books, for the Library." This decision was taken in view of the proposed library facility within the Kiaora Lands development scheme. Although the Council has granted consent to the development application, and preliminary costs for the library facility were prepared when the scheme was being drawn up, a more detailed cost estimate is required to prepare the contribution rates for the Plan. Once these costs are known, an amending contributions plan will be required to insert a new capital works projects and contribution rate into the current plan.

4.0 Environmental Planning and Assessment (Development Contributions) Bill 2004

The *Environmental Planning and Assessment (Development Contributions) Bill 2004* (the Bill) includes significant changes to the operation of section 94. The main changes are:

- **Voluntary planning agreement:** A planning authority (which includes a council) may obtain development contributions for a public purpose through a voluntary planning agreement with a developer. In particular, it should be noted that a public purpose includes the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure.
- **Joint planning agreement:** A council may enter into a joint planning agreement with another council or planning authority.
- There are requirements and constraints on the operation of planning agreements. These measures address probity, accountability and public involvement.
- **Fixed development consent levies:** A council may impose a condition of consent requiring an applicant to pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development. Money obtained in this manner is to be applied towards the provision, extension or augmentation of public amenities or public services or towards recouping the costs in providing, extending or augmenting those amenities or services. Public amenities or public services are not defined by type, other than to exclude water supply and sewerage services.
- The maximum percentage of a levy is set within the Regulation (this has yet to be released).
- If imposing a condition for a development consent levy, a consent authority cannot also impose on the same consent a condition requiring another type of contribution under section 94.
- **Cross boundary use of contributions:** A monetary contribution may be required by condition of consent for the benefit, in whole or part, of an area that adjoins the local government area in which the development is carried out.
- **Joint contributions plans:** Two or more councils may prepare and approve a contributions plan.

A copy of the Bill and explanatory notes is provided as **annexure 5**.

The Bill has been introduced in Parliament and had a second reading on 8 December 2004. Dr Taylor, who was instrumental in the Bill's production, advised us that it is likely the Bill will be debated in Parliament in May this year and could commence in July 2005. He is not aware whether the State opposition or minor parties have determined their final positions on the Bill. In December 2004, he and members of the team from the Department of Infrastructure, Planning and Natural Resources (DIPNR) responsible for the Bill's preparation briefed the Shadow Planning Minister.

According to Dr Taylor, the Bill seems to have reasonable support from stakeholders. However, he is aware that the Local Government and Shires Association may not be fully supportive, and the Housing Industry of Australia may not be supportive at all.

Dr Taylor and the team from DIPNR are currently drafting the regulations for the Bill. It is likely that the Bill and the regulations will be released for consultation in April 2005. The Council may be given an opportunity to make a submission to DIPNR on the Bill at that time.

Dr Taylor has informed us that the revised section 94 manual will be prepared over the next few months by the DIPNR team with his assistance.

The proposed changes to section 94 will provide substantial opportunities to assist with the provision of public amenities and services. Once the legislation comes into effect and associated regulations and guidelines are prepared, a new contributions plan will need to be prepared. At that time the Council will need carry out several important actions, including:

- Identify those public amenities and public services which will be the subject of fixed development consent levies. A clear demand for these amenities and services must be demonstrated and therefore studies and investigations may need to be undertaken.
- Identify those development types that will be the subject of a condition of consent for a fixed development consent levy.

The regulations and any guidelines issued by DIPNR will provide direction and scope for the preparation and content of new contributions plans.

Conclusion

The Regulations provide for the amendment of section 94 contributions plans to reflect annual variations to contribution rates based on indexed figures. This amendment may be made by a decision of the Council. A review of contribution rates has been made using the latest figures from the Australian Bureau of Statistics. It is recommended that Council approve the annual indexed contribution rates.

There are limitations on the current operation of section 94. Dr Lindsay Taylor has explained these limitations in his presentation to the Strategic Planning Working Party. Consequently certain items listed in Council's decisions do not currently qualify for inclusion in the contributions plan. Proposed amendments to section 94 will expand the scope and opportunities for developer contributions. However, Council will need to justify all new contribution levies and fulfil all requirements in the preparation of a new contributions plan.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

Annexure

1. Woollahra Section 94 Contributions Plan 2002 (as amended March 2004)
2. Woollahra Section 94 Contributions Plan 2002 (with new indexed rates March 2005)
3. Minutes of the Strategic Planning Working Party meeting of 16 September 2004
4. Presentation by Dr Lindsay Taylor to Strategic Planning Working Party meeting of 16 September 2004 Strategic Planning Working Party meeting of 16 September 2004
5. Environmental Planning and Assessment (Development Contributions) Bill 2004