



# Urban Planning Committee

**Agenda:** *Urban Planning Committee*

**Date:** *Tuesday 27 January 2004*

**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:**

6 Councillors

## **Quorum:**

The quorum for a committee meeting is 4 Councillors.

# WOOLLAHRA MUNICIPAL COUNCIL

## Notice of Meeting

22 January 2004

To: The Mayor, Councillor John Comino, ex-officio  
Councillor L Berger (Chair)  
V Corrigan  
S Crawford  
C Dawson  
M Watts  
C Wrublewski

Dear Councillors

### **Urban Planning Committee Meeting – 27 January 2004**

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 Tuesday 27 January 2004 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 24 November 2003	1
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### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	Draft Access Development Control Plan and Draft Woollahra Local Environmental Plan 1995 (Amendment No. 45) – G1064 Amend 45	2
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**Item No:** D1 Delegated to Committee  
**Subject:** **CONFIRMATION OF MINUTES OF MEETING HELD ON 24 NOVEMBER 2003**  
**Author:** Les Windle, Manager – Governance  
**File No:** See Council Minutes  
**Reason for Report:** The Minutes of the Meeting of Monday 24 November 2003 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 24 November 2003 be taken as read and confirmed.

Les Windle  
Manager - Governance

**Item No:** R1 Recommendation to Council

**Subject:** DRAFT ACCESS DEVELOPMENT CONTROL PLAN AND DRAFT WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995 (AMENDMENT NO. 45)

**Author:** Anita Lakeland

**File No:** G1064 Amend 45

**Reason for Report:** To report on the public exhibition of Draft Woollahra Local Environmental Plan 1995 (Amendment No. 45) and Draft Woollahra Access Development Control Plan.  
To make recommendations on future actions for the draft plans.

**Recommendation:**

- A. THAT Draft Woollahra Local Environmental Plan 1995 (Amendment No. 45), as contained in **annexure 3** of the report to the Urban Planning Committee meeting on 27 January 2004, be referred to the Department of Infrastructure, Planning and Natural Resources for approval by the Minister assisting the Minister for Infrastructure and Planning (Planning Administration) and for gazettal.
- B. THAT Draft Access Development Control Plan, as contained in **annexure 4** of the report to the Urban Planning Committee meeting on 27 January 2004, be approved and come into effect when a public notice of Council's approval is placed in the newspaper.

**1.0 Background**

At its meeting of 11 June 2002, the Urban Planning Committee considered a report that presented the results of the Moxon Report which reviewed the access objectives and provisions in Council's current planning documents. The recommendations of the Moxon Report, subject to some minor changes, were adopted by Council on 11 June 2002 with that resolution leading to the preparation of the recently exhibited Draft Access DCP and Draft Woollahra LEP 1995 (Amendment No. 45).

At its meeting of 10 March 2003 the Urban Planning Committee considered a report on the Draft Access DCP and a draft LEP that would amend Woollahra LEP 1995 to address the requirements of accessibility for older people and people with a disability. At its meeting of 24 March 2003 Council resolved:

- 1. *THAT the Draft Access Development Control Plan as contained in annexure 1 of the report to the Urban Planning Committee meeting of 10 March 2003 be exhibited in the manner required by the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.*
- 2. *THAT Council prepare a draft LEP to amend Woollahra LEP 1995 to provide for access provisions and that the draft LEP be jointly exhibited with the Draft Access Development Control Plan.*
- 3. *THAT Council prepare and exhibit the necessary amendments to existing development control plans to include access provisions that integrate with the Draft Access Development Control Plan.*

## **1.1 The purpose of the Access DCP and Woollahra LEP amendment**

The Draft Woollahra LEP 1995 (Amendment No. 45) and Draft Access DCP have been formulated to respond to the recommendations of the Moxon report and provide controls for the assessment of developments against the requirements of the Building Code of Australia (BCA) and Australian Standards (AS). The Draft Access DCP and Amendment No. 45 address the requirements of the *Disability Discrimination Act 1992* (DDA), the access standards contained in the Building Code of Australia (BCA) and development assessment considerations under the *Environmental Planning and Assessment Act 1979* (the Act). The Draft Access DCP provides a framework for the assessment of access to new buildings, to existing buildings involving major changes, and to works in the public domain. Council has an obligation under the Act to ensure that development meets the requirements of the BCA, including the provisions relating to access for older people and people with a disability.

## **2.0 PREPARATION OF DRAFT WOOLLARA LEP 1995 (AMENDMENT NO. 45)**

Draft Woollahra Local Environmental Plan 1995 (Amendment No. 45) was prepared in the manner required by 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 Planning NSW**

A letter of notification under Section 54 (4) of the Act was forwarded to Planning NSW (now the Department of Infrastructure, Planning and Natural Resources) advising of Council's decision to prepare Amendment No. 45. No direction has been received from the Director-General requiring Council to prepare a local environmental study relating to Amendment No. 45.

### **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 the adjoining council, where the draft LEP applies to land on a local government boundary.

Consultation was undertaken with the following authorities:

- South Sydney Council
- City of Sydney Council
- Waverley Council

No submissions were received from these authorities.

### **2.3 Consideration of SEPPs, REPs and Ministerial directions**

Amendment No. 45 and the draft DCP are consistent with relevant State environmental planning policies and regional environmental plans and Ministerial directions, particularly the following relevant policies.

### **2.3.1 SEPPs and REPs**

#### **SEPP No. 5 Housing for Older People or People with a Disability**

SEPP 5 aims to encourage the supply and diversity of housing to meet the needs of older people or people with a disability. The policy achieves these aims by setting aside local planning controls that would prevent the development of housing for older people or people with a disability that meets the development standards specified in the policy. The policy applies to the Municipality of Woollahra and contains specific design and location principles to achieve the desired outcomes of the policy. The Draft Access DCP and Amendment No. 45 are consistent with the aims of SEPP 5.

### **2.3.2 Section 117 directions**

Section 117 of the Act provides that the Minister for Planning 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.

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 Amendment No.45.

In the course of preparing Amendment No.45 consideration has been given to section 117 directions and Amendment No. 45 is consistent with these directions.

## **3. PREPARATION OF THE DRAFT DCP**

The Draft DCP was prepared using the key recommendation of the Moxon Report. The Woollahra Access Committee members were involved throughout the preparation of the draft plans which were presented to the Committee on 19 May and 16 June 2003. The specific comments raised by the Committee members in relation to the draft plans are discussed in section 5 to this report along with the issues raised in the written submission received during the exhibition period.

## **4. PUBLIC EXHIBITION PROCESS**

### **4.1 Exhibition**

Amendment No. 45 and the Draft Access DCP were placed on public exhibition in the manner required by section 66(2) of the Act and clauses 13 and 18 of the Regulation. The exhibition occurred for a period of 31 days from 11 June 2003 until 11 July 2003. A copy of the exhibited version of Amendment No. 45 and the Draft Access DCP are contained in **annexures 1 and 2** respectively.

### **4.2 Notifications**

Public notices of the exhibition were placed in the *Wentworth Courier* on the 11 June, 18 June, 25 June, 2 July and 9 July 2003 in the manner required by the Act and the Regulation. The Mayoral column of the 18 June 2003 edition also contained information regarding the exhibition.

Members of the Woollahra Access Committee were notified of the exhibition of the Draft Access DCP and Amendment No. 45. An information brochure was included with the letter outlining the key elements of the draft plans.

#### **4.3 Exhibition location**

The draft plans were exhibited in the Council's Customer Service area. Copies of the draft plans and brochure were made available at these locations free of charge.

### **5.0 SUMMARY OF SUBMISSIONS AND ALTERATIONS TO THE DRAFT PLANS**

One public submission was received with respect to the exhibition of the draft plans. Issues were also raised by the Woollahra Access Committee and Council staff.

#### **5.1 Public submission**

##### *The Vaucluse Progress Association*

- Clarification is sought as to the relationship of the Draft Access DCP with the provisions of the Exempt and Complying DCP. The need for clarification arises from the reliance of the Access DCP on the lodgement of a development application.
- Table 1 of the Access DCP states that "alterations and additions to Class 1 to Class 4 (inclusive) will be assessed on the basis of compliance as a new building". The implications of the mechanisms adopted by the Access DCP are unclear for development for which consent is not required.

A copy of the original submission is contained in **annexure 5**.

#### **Response**

*The Draft Access DCP contains requirements for access under the BCA. The only discrepancy between the Access DCP and BCA requirements is the concept of "encouraged visitor access" where a dwelling house or residential flat building comprising 1 to 4 dwellings are proposed. The BCA does not apply access provisions to this scale of development. It is proposed, however, to encourage the provision of visitor access to these types of development, together with on-going education, the preparation of an access information brochure and staff training.*

Development listed in *Schedule 1 – Exempt Development* in the *Exempt and Complying Development DCP* must comply with any "deemed to satisfy" provisions of the BCA relevant to the development. Access provisions within the BCA may apply to certain development identified in Schedule 1. If so, the development would need to comply with these provisions in order to qualify as exempt development. Should the development not comply with the BCA provisions or the exempt development criteria, a development application will need to be lodged and the Access DCP would apply.

Similarly, development identified in *Schedule 2 – Complying Development*, that does not comply with the “deemed to satisfy” provisions, including any access provisions in the BCA or the complying development criteria, would require consent through the development application process, and the Access DCP would apply.

Alterations and additions to buildings that are not exempt or complying development will require a development application and will be assessed under the requirements of the Access DCP.

It is considered that, although the Access DCP does not apply to certain development identified as either exempt development or complying development under the Exempt and Complying DCP, compliance with the “deemed to satisfy” access provisions under the BCA will adequately ensure that development meets the relevant access requirements.

It is considered there is no discrepancy between the intended application of the Access DCP and the provisions of the Exempt and Complying DCP. However, additional text has been inserted at subsection 1.7 under the heading “relationship to other legislation” to clarify the relationship between the Exempt and Complying DCP and the Access DCP. In addition, it is recommended that on its review, the Exempt and Complying DCP be altered to specifically refer to the “deemed to satisfy” access provisions of the BCA.

## **5.2 Woollahra Access Committee submission**

The following issues were raised by Committee members at the meeting of 16 June 2003:

- Councillor Rose Watson reiterated her interest in both plans making reference to the wider community and the need for access for everyone, especially mothers with prams.
- Ms Joan Hume raised concerns about the language used in the draft documents and requested that the term “people with a disability” be used rather than “the disabled”. Following further general discussion it was also requested that the term “older people” rather than “the aged”.
- A number of committee members stressed the importance of safe, convenient parking. Ms Maree Steinway mentioned the large number of lifts in the Municipality and the need to make these accessible in new developments as well as building up-grades. Particular reference was made to access issues for people with visual impairments, including the need for engraved numbers on each floor level of a multi-storey building as well as tactile numbering or audio floor identification within lifts.

## **Response**

The changes suggested at the Access Committee Meeting have been made to the draft planning documents. The term “visitability”, whilst commonly used in areas of access and referred to in the exhibited version of the draft LEP and draft DCP, is not considered to be plain English. The term has consequently been changed to “visitor access” or “visitor accessible” in the altered Access DCP. This alteration will make the Access DCP more user friendly and will not change the substance or effect of the exhibited draft.

## **5.3 Staff submissions**

Several alterations are proposed to the draft plans following the review of the plans by staff. The alterations and the justification for them are outlined below.

### **5.3.1 Draft Woollahra LEP 1995 (Amendment No. 45)**

Amendment No. 45 proposes to include additional objectives and a definition for “visitable” in Woollahra LEP 1995. These additional objectives assist in the facilitation of the Access DCP.

It is not, however, considered necessary to include the definition of “visitable” in Woollahra LEP 1995, as this definition, together with other definitions, have been revised and placed in the Access DCP.

Additional minor administrative alterations to Amendment No. 45 are shown with tracked changes on the altered version in **annexure 3** to this report.

### **5.3.2 Draft Access Development Control Plan**

The following alterations are proposed to the Draft Access DCP. **Annexure 4** contains the altered version of the Draft Access DCP with tracked changes.

#### **Definitions**

Table 1 of the Draft Access DCP contains definitions for “visitable”, “encouraged visitability”, “adaptable”, “fully accessible” and “unjustifiable hardship”. It is proposed to delete the definitions of “encouraged visitability” and “unjustifiable hardship” from Table 1. “Unjustifiable hardship” is a term that will no longer be used in the Draft Access DCP (see next point) and there is no need to define “encouraged visitability”.

In relation to the definitions of “visitable” and “adaptable” it is proposed to use more plain English terms of “visitor accessible or visitor access” and “adaptable housing or dwellings”. It is proposed to alter these terms, together with the term “fully accessible”, and their definitions to be consistent with relevant legislation.

#### **Unjustifiable hardship claims**

Claims of unjustifiable hardship may be used as a reason for not complying with the access requirements under the DDA. The Draft Access DCP provides for a similar claim to ensure a consistent approach is taken when dealing with applications that do not comply with the BCA and AS requirements. These applications are currently dealt with as the need arises, by the relevant assessment or building compliance officers.

It is proposed to alter the Draft Access DCP’s approach to the assessment procedure for dealing with claims of unjustifiable hardship by requiring claims to be supported by a report from a suitably qualified access consultant. The claim and supporting report may be referred to an independently qualified access consultant for validation of the claim prior to the DA being determined.

It is proposed that Council retain an appropriately qualified consultant to ensure a consistent assessment of the unjustifiable hardship claim and to ensure complete independence of the review process. It is possible for Council to recover the costs associated with this independent assessment under the provisions of section 608 of the *Local Government Act 1993*. A further report on the schedule of fees, to cover the assessment of these claims, will be prepared for the Urban Planning Committee.

Further, to avoid any potential confusion regarding the concept of unjustifiable hardship under the DDA and the Access DCP it is recommended that the term “exceptional circumstances” rather than “unjustifiable hardship” be used in the DCP. This will convey the appropriate message that compliance with the access requirements contained in the Access DCP is mandatory, and non-compliance will only be acceptable where exceptional circumstances can be established.

It is unlikely that the use of unjustifiable hardship will become a significant issue as the Draft Access DCP adopts similar provisions to the BCA. The only exceptions to the BCA are the encouragement of visitor access to dwelling houses and applying Class A requirements [the most stringent] to adaptable housing developments.

Staff training will increase awareness of accessibility issues and ensure that access requirements are addressed during the early stages of the design process rather than later during the assessment process.

### **Access requirements for minor alterations, additions and change of use**

The Draft Access DCP requires that all alterations, additions and changes of use to Class 5-9c buildings be fully accessible, regardless of the type or scale of the proposal. This requirement is considered to be very onerous for minor alterations or additions or changes of use not involving alterations and additions. For example, requiring an application to be fully accessible for a change of use from a shop to a professional office, where no alterations and additions are proposed, is considered to be an excessive requirement. Likewise, requiring full accessibility where an application proposes alterations involving window replacement or changes to the internal walls is also considered excessive.

Clause 94 (1) (a) and 94 (2) of the Regulation applies to development applications for rebuilding, alterations and additions where the proposed building work, together with any other building work done in the previous three years amounts to more than half the total volume of the building. In determining a development application to which this clause applies, Council must consider whether it would be appropriate to require the existing building to be brought into total or partial conformity with the BCA, which may include access requirements.

**It is considered that this clause provides an adequate statutory framework in which Council can use its discretion to apply either part or total conformity with the Access DCP for minor developments.** In this regard, it is proposed to continue to require alterations or additions (including those involving a change of use) to Class 5 – 9c buildings to be fully accessible, subject to clause 94 of the Regulation. Change of use applications that do not involve alterations and additions will be encouraged to provide accessibility.

### **Consistency with BCA**

Changes proposed to *Table 1 Access requirements* ensure consistency with the requirements of the BCA rather than applying more stringent requirements that cannot be readily enforced. These changes specifically relate to the definition of “fully accessible”.

### **Australian Standards for access**

The Draft Access DCP requires compliance with AS1428.1 *General requirements for access – Buildings* and AS1428.2 *Enhanced and additional requirements – Buildings and facilities* where buildings are to be “fully accessible”. On further review of the standards, Council’s Manager-Compliance has indicated that AS1428.1 is accepted as the minimum requirement and that this standard is considered more appropriate for inclusion in the Draft Access DCP.

AS1428.2 contains more onerous requirements to provide a greater level of accessibility than the minimum requirements of AS1428.1. The alterations recommended by Council’s Manager-Compliance incorporate “encouragement” rather than “compliance” with this higher standard. AS1428.1 is well accepted and is the standard currently adopted under the BCA based on research of the capabilities of 80% of people with disabilities within Australia.

Council can enforce a greater level of accessibility than the minimum requirements of AS1428.1 by retaining the more onerous exhibited version of the Draft Access DCP and require compliance with AS1428.2. It is however, recommended that Council adopt the approach suggested by Council’s Manager-Compliance at this stage and review the document at a later stage to see whether compliance with the higher standard is appropriate.

The changes of wording in the table relate to the suggested changes made by the Council’s Access Committee along with minor changes that introduce plain English.

### **Administrative and minor alterations**

Minor administrative alterations are proposed to the Draft Access DCP. These alterations do not represent significant change to the content of the document. The main administrative alterations are outlined and discussed below.

Sections 2.3 and 3.3 of the Draft Access DCP have been deleted and replaced with a general subsection in Part 1 of the document which outlines the requirements for submitting a development application. This has been done to reduce the duplication of this advice in Sections 2 and 3 of the document. Section 4.2 and 4.3 have been combined to avoid repetition.

The text throughout the document has been simplified and streamlined to avoid unnecessary duplication and provide greater clarity.

### **Amendments to existing DCPs**

Cross-reference to Council’s Access DCP has been provided in recently approved DCPs- Woollahra Residential DCP 2003, Woollahra Heritage Conservation Area DCP and the Watsons Bay DCP. The review of the Paddington DCP will include appropriate access provisions and cross reference to the Access DCP. On their review, other existing DCP’s will be similarly amended.

### **6.0 . IDENTIFICATION OF INCOME & EXPENDITURE:**

Expenditure for the preparation of Amendment No.45 and the Draft DCP has been or will be met by allocations from the 2002-2003 and 2003-2004 operational budget. Income will be received from the sale of the documents.

It is believed that the administrative impact of Council adopting the recommended Access DCP and Amendment No. 45 would be minimal. Currently 75% of development applications are for alterations and additions to residences and these are excluded from the access provisions of the Access DCP and BCA. Of the remaining 25% of DAs, many are required to have access for people with a disability either by the BCA or by the DDA.

## 7. CONCLUSION

Preparation of Amendment No.45 and the Draft Access DCP has been undertaken in the manner required by the Act and the Regulation. Consideration has been given to submissions and a range of alterations are recommended for both draft plans.

It is recommended that the alterations referred to in the body of this report and in **annexure 3 and 4** be incorporated into Amendment No.45 and the Draft Access DCP. The alterations respond to submissions and are not considered to be of such magnitude that would warrant re-exhibition of Amendment No.45 and the Draft Access DCP.

It is recommended that Amendment No.45, *as altered*, be forwarded to the Department of Infrastructure, Planning and Natural Resources for gazettal subject to any alterations requested by Parliamentary Counsel. It is recommended that the Council approve the Draft Access DCP, *as altered*.

Anita Lakeland  
Team Leader, Strategic Planning

Chris Bluett  
Manager Strategic Planning

## ANNEXURES:

Annexure 1	Draft Woollahra Local Environmental Plan (Amendment No. 45), as exhibited
Annexure 2	Draft Woollahra Access Development Control Plan, as exhibited
Annexure 3	Woollahra Local Environmental Plan (Amendment No. 45), as altered
Annexure 4	Woollahra Access Development Control Plan, as altered.
Annexure 5	Vaucluse Progress Association - submission