

# Urban Planning Committee

**Agenda:** *Urban Planning Committee*

**Date:** *Monday 26 November 2012*

**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

22 November 2012

To: His Worship the Mayor, Councillor Andrew Petrie ex-officio  
Councillors Greg Levenston (Chair)  
Ted Bennett  
Luise Elsing  
Elena Kirillova  
Katherine O'Regan  
Matthew Robertson  
Toni Zeltzer

Dear Councillors

### **Urban Planning Committee Meeting – 26 November 2012**

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 26 November 2012 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 12 November 2012	1
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### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	9a Cooper Park Road, Bellevue Hill – Rezoning & Reclassification – 1064.G Amend 71	2
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**\*Note Annexure 1 to 3 distributed Under Separate Cover**

R2	Modification to the Definition of ‘Height’ & ‘Existing Ground Level’ in the Woollahra Local Environmental Plan 1995 – 1064.G (Amend. 74)	11
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**\*Note Confidential Annexure B distributed Under Separate Cover**

**Item No:** D1 Delegated to Committee  
**Subject:** **Confirmation of Minutes of Meeting held on 12 November 2012**  
**Author:** Les Windle, Manager – Governance  
**File No:** See Council Minutes  
**Reason for Report:** The Minutes of the Meeting of Monday 12 November 2012 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 12 November 2012 be taken as read and confirmed.

Les Windle  
Manager - Governance

**Item No:** R1 Recommendation to Council

**Subject:** **9a Cooper Park Road, Bellevue Hill—  
Rezoning and reclassification**

**Author:** Jacquelyne Della Bosca – Team Leader Strategic Planning

**File No:** 1064.G Amend 71

**Reason for Report:** To advise on the exhibition of the planning proposal to rezone and reclassify the land, and provide our assessment of submissions and recommendations.  
To advise on the public hearing into the reclassification of the land and provide the chairperson’s findings.  
To obtain Council’s approval to proceed with the rezoning and reclassification of the land, and prepare a site-specific development control plan.

### Recommendation

- A. That Council proceeds with the planning proposal for 9A Cooper Park Road, Bellevue Hill, as exhibited and provided in **Annexure 1** to the report to the Urban Planning Committee on 26 November 2012, which seeks to-
1. Rezone the land from Zone No. 6 Open Space Zone to Zone 2(b) Residential Zone
  2. Apply a floor space ratio of 0.625:1
  3. Apply a height control of 9.5 metres
  4. Reclassify the land from community land to operational land under the *Local Government Act 1983*
- by referring it to the Director-General and Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* to make arrangements for the drafting of the amendment to Woollahra LEP 1995.
- B. That a site-specific development control plan is prepared for land at 9A Cooper Park Road, Bellevue Hill, detailing side boundary setbacks, the siting of buildings, and view corridors for properties adjoining to the north-east and looking over and across the site.
- C. That the Council, in preparing the site-specific development control plan provisions, and in order to be fully informed regarding future development controls that achieve equitable view sharing, undertake an outlook/view analysis of the potential impact of medium density residential development at a scale and form envisaged in the planning proposal, from the residential properties adjoining to the north-east of the site fronting Bellevue Road.

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### 1. Summary

On 25 July 2011, Council resolved to prepare a planning proposal to rezone and reclassify land at 9A Cooper Park Road, Bellevue Hill (Lot 101, DP 827011).

The statutory process for rezoning and reclassifying involves two public consultation stages, which are now complete:

1. Public exhibition of the planning proposal (see Section 4 of this report for details)
2. A public hearing conducted by an independent chairperson, Mr McDonald (see Section 5 of this report for details)

We have considered the issues raised during the exhibition and public hearing processes, as well as the chairperson's findings, and conclude that the proposal is appropriate and in the public interest. We recommend that Council proceed with the planning proposal and prepare a site-specific development control plan (DCP) to ensure that any future redevelopment on the site suitably addresses amenity, privacy and view sharing to the adjoining properties.

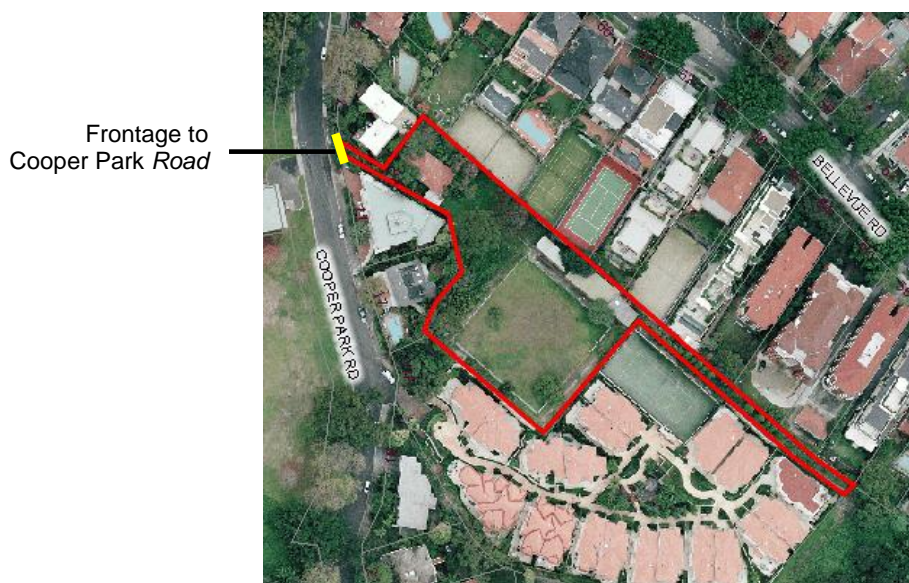
## 2. Background

Council took ownership of 9A Cooper Park Road in 1992. The land is currently zoned 6 Open Space under Woollahra Local Environmental Plan 1995 (Woollahra LEP). This zone applies to public and private land used, or intended to be used, for recreational purposes or community facilities.

The Open Space zone permits the following land uses with consent: child care centres, clubs (other than clubs registered under the *Registered Clubs Act 1976*), community facilities, recreation areas, recreation facilities, roads, uses or buildings associated with development permitted in the zone without development consent, utility installations (other than gas holders or generating works).

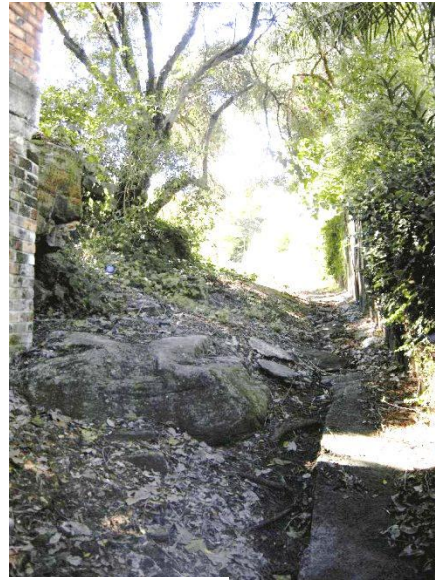
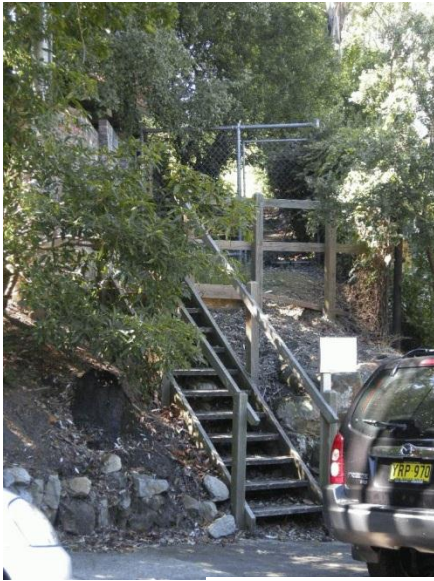
Despite the Open Space zone, the land has not been made available for public use and the site is now vacant, overgrown with weeds and kept locked. This is because Council has had difficulty identifying a suitable use for the land, access to the site is constrained, and vandalism and antisocial activities had occurred on the site—a product of the seclusion of the site and poor casual surveillance into the site.

Over the years Council has undertaken various studies to identify a use for the site. However, these studies have identified that the land is not well suited or located for public recreational and community uses. The narrow access and limited street frontage reduces the site's identity as public land. The absence of a wide street address also impacts on casual surveillance and public safety. Hence, using public funds to remediate the land and improve access has not been justified because the land is not genuinely appropriate for use as public land.



The subject site – 9A Cooper Park Road





*Existing access to site from Cooper Park Road*



*Poor visual connection with the street frontage:  
View within the site looking towards street access at  
Cooper Park Road*



*View of the site from North Cooper Park:  
The site has no street presence as it is elevated and  
located behind the residential properties at Cooper Park  
Road. The lines indicate the approximate location and  
ground level of the site*



*View within the site looking south to Bondi Junction*



*View from within the site looking north east to  
residential properties with frontage to Bellevue Road*

### 3. The planning proposal

A planning proposal is a document that identifies and explains amendments that are being proposed to the Council's LEP. The objectives of the planning proposal are to amend Woollahra LEP to:

- Rezone the land from Zone No. 6 Open Space Zone to Zone 2(b) Residential "B" Zone. The 2(b) Residential Zone permits dwelling houses and medium density housing such as townhouses and low rise residential flats. This zone applies to the immediately adjoining properties and will provide for development that is compatible and consistent with the area.
- Apply a floor space ratio (FSR) of 0.625:1 and a height control of 9.5 metres. The proposed FSR and height controls will provide for low scale, low rise development (i.e. 2 to 3 storeys), which is compatible with the character of the adjoining residential properties and wider locality.
- Reclassify the land from 'community land' to 'operational land' under the *Local Government Act 1993* (LG Act).  
This will remove restrictions on the management of the land, including its sale.

If the land is sold, Council has committed to directing funds towards recreational or community facilities that serve the wider Woollahra community, resolving on 16 May 2011, that "subject to the land reclassification and rezoning proceeding, a further report will be presented to the Corporate and Works Committee addressing how the proceeds from any future sale of the land are committed to public open space, recreation and community facility projects."

### 4. Public exhibition of the planning proposal

The planning proposal (**Annexure 1**) was placed on exhibition from 26 April to 31 May 2012, consistent with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Regulation. Details of the exhibition were notified weekly in the *Wentworth Courier* from 25 April to 30 May 2012. We also wrote to over 1,450 property owners about the proposal.

#### *Issues raised in the exhibition of the planning proposal*

We received 56 submissions to the exhibition of the planning proposal, 53 of these were objections.

Most of the submissions objecting to the proposal are concerned about the loss of open space and public land. Many of these people identified that they would like the land developed for a bike park, community garden or tennis courts.

The other issues raised in the objections broadly relate to concerns about: the legality and process and procedure for rezoning and reclassifying the land, site contamination, impacts of built form impacts of any future medium density residential development on the land, increased traffic and street parking, and the width of the site access.

#### *Council's response to the issues*

Council's Open Space and Trees, Traffic and Transport, and Strategic Planning Departments considered the issues raised in the submissions. We did not identify any issues in the submissions that justify change to the planning proposal.

Our detailed responses to the specific issues raised in the submissions are set out in the planner's report (August 2012) at **Annexure 2**. A summary of our assessment is provided below.

We assessed the suitability of the land for the open space and community uses for which it is currently zoned, and confirmed that the current 6 Open Space Zone for the land is not suitable:

- *From an open space and recreation perspective*  
The land is not suitable for use as a park because of site constraints relating to street presence and passive surveillance, access and contamination. Although the site access and contamination issues can be resolved, the use of public funds to do so cannot be justified because the land is not in a suitable location for a park.  
Our assessment of the site against criteria in Council's Recreational Needs and Assessment Strategy (2006) and Council's Community Gardens Policy (2011) is provided in the planner's report (Section B, points 2 and 3).
- *From a land use planning perspective*  
We are also concerned about the street presence and passive surveillance issues. Developing the land for park and recreation uses would not be consistent with crime prevention through design principles because the site is secluded, does not have a strong street presence, and provides limited opportunities for casual surveillance.  
There is strong planning merit to rezone the land for residential uses, compatible with the directly adjoining land. Analysis by Council's urban designer identifies that the land can be redeveloped for low storey medium density housing without unreasonable impacts on the adjoining properties.  
Notwithstanding, in response to resident submissions concerned about potential overlooking, amenity and view loss impacts, we are recommending that a site specific DCP is prepared to address side boundary setbacks and view sharing opportunities.
- *From a property asset management perspective*  
The land requires significant investment to make it usable, and even then has limited potential to provide public benefit to a wider section of the community beyond those living in the immediate vicinity of the site.

The planner's report concluded that it is not in the broader public interest to retain this land in public ownership because the site is not well located for use as public land.

Residents in this locality are already well serviced by Cooper Park which offers substantial open space and recreational opportunities. It is not viable to spend money on 9A Cooper Park Road to try to make the site adequate for use as open space, as the site does not have the characteristics that make for an effective, safe and good public park. Furthermore, Council has an existing program for open space improvement works, as identified in the current Delivery Program and Operational Plan, which requires funding and will provide greater public benefit to the community.

The planner's report was made available to the public one week before the public hearing. All those who made a submission to the planning proposal were advised of the report and invited to attend the public hearing. A copy of the report was also provided to the chairperson for the public hearing.

## 5. Public hearing held by independent chairperson

A public hearing was held in relation to the reclassification of land at 9A Cooper Park Road, Bellevue Hill. The hearing was required under section 29 of the LG Act because the land is owned by Council, and the planning proposal involves reclassifying the land from 'community land' to 'operational land'.<sup>1</sup>

The public hearing process allows people to put forward their comments about the proposed reclassification of public land. Anyone may do this by speaking at the public hearing or making a written submission to the hearing.

Under section 47G(2) of the LG Act, the public hearing must be conducted by an independent chairperson. To that end we undertook a selective tender process and engaged Stuart McDonald. Mr McDonald has 25 years of experience in planning and development, is currently a Director of SJB Planning, and is also a state-appointed member of the Sydney West Joint Regional Planning Panel.

Mr McDonald's role was to consider the issues raised in submissions to the exhibition of the planning proposal and to the public hearing, as well as the staff responses provided in the planner's report (August 2012), and provide Council with a recommendation.

On 31 May 2012, Mr McDonald inspected the site and locality with Council staff. Documents relating to the exhibition of the planning proposal were also provided for his information.

The public hearing was conducted over two sessions held at the Woollahra Council Chambers on:

- Thursday 9 August 2012 from 3.00pm to 7.30pm; and
- Friday 10 August 2012 from 11.00am to 1.30pm.

Over the two days, 11 people made a verbal submission to the hearing; two written submissions were also received. These submissions opposed the reclassification.

Mr McDonald's report identifies that the key issues raised were:

- *Concern regarding the rezoning and land classification process and procedural issues, including the relationship of the Council's Cooper Park Plan of Management;*
- *Loss of public open space, community owned land, and public access and use of the site;*
- *Impacts of the built form resulting from a medium density residential development;*
- *Restricted site access;*
- *Increased traffic and street parking;*
- *Site contamination.*

*Two separate and specific matters arising from submissions to the hearing were:*

- *A proposal by The Scots College (TSC) to use the site as tennis courts; and*
- *A suggestion that the site be used as a "carbon sink" with trees grown and harvested on the site.*

Arising from the matters raised at the public hearing, Mr McDonald undertook a site inspection of the property at 5/60 Bellevue Road. This helped to inform consideration of the issues the property owner had raised regarding view and amenity loss.

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<sup>1</sup> In New South Wales all public land is classified as either community land or operational land under the LG Act. Land classified as community land must be retained in public ownership. It cannot be sold and must not be leased or licenced for more than 30 years, and management of the land is regulated by a plan of management. These restrictions do not apply to land classified as operational.

Council also provided Mr McDonald with additional information after the public hearing:

- Traffic count data for Cooper Park Road for the period 14 August to 20 August 2012. These traffic counts supplement the counts for the period 25 June and 1 July 2012 provided in the planner's report (identified during the hearing as being taken during the school holiday period).
- Written statement from the Manager Engineering Services providing further advice that the site has adequate access to meet the needs of a future medium density residential development.

*The chairperson's response to the issues*

Mr McDonald's detailed consideration of the issues raised in submissions to the public hearing are provided in his report at section 4.0 Summary and Discussion of Submissions (see **Annexure 3**).

His report states that:

*The matters raised in the submissions were consistent with past community comments provided during public consultation regarding the "opportunity" sites and the site specific planning proposal. The one new topic raised was the desire for the Council to use the site as a "carbon sink". The concept put forward by The Scots College for the site to be subject to a 99 year lease and used as tennis courts is not directly related to the planning proposal and reclassification process.....*

*In my opinion, and based on the information available to me through the public hearing process, the Council's professional officers have given considerable thought to the community value and usefulness of the site and, on balance, the Council has concluded that the land has limited potential to be useful as a public asset and that it is not in the broader public interest to retain the land in public ownership. This is a reasonable position to have reached and there are no issues raised during the public hearing process that would suggest that the rezoning and reclassification not proceed. (page 32)*

Mr McDonald findings at section 6.0 Recommendations are:

- (1) *That the planning proposal including the reclassification of the site from "community land" to "operational land" proceed as exhibited.*
- (2) *That the Council prepare a site specific development control plan detailing;*
  - *side boundary setbacks;*
  - *the siting of buildings; and*
  - *view corridors for properties adjoining to the north-east and looking over and across the site on the site.*
- (3) *That the Council, in preparing the site specific development control plan provisions, and in order to be fully informed regarding future development controls that achieve*

*equitable view sharing, undertake an outlook/view analysis of the potential impact of medium density residential development at a scale and form envisaged in the planning proposal, from the residential properties adjoining to the north-east of the site fronting Bellevue Road.*

Mr McDonald's report was made available for the public to inspect on Council's website within four days of Council receiving the report, consistent with the requirements of section 47G(3) of the LG Act. All those who made a submission to the planning proposal or public hearing were advised of the report, and notified of the date that the matter would be reported to the Urban Planning Committee.

## **6. Conclusion**

We conclude that Council should proceed with the planning proposal to rezone and reclassify the land at 9A Cooper Park Road, Bellevue Hill.

Our conclusion is based on our consideration of the issues raised in submissions received during the exhibition of the planning proposal and the findings by Mr McDonald, the independent chairperson for the public hearing whose recommendations have been incorporated into the recommendations of this report.

Based on town planning, open space and recreation, and property asset management considerations, the land at 9A Cooper Park Road, Bellevue Hill, is not suitable for the recreation and community uses permitted under the current Open Space zone. Retaining the current planning controls perpetuates an inappropriate, inefficient and inequitable use of this public asset.

It is in the broader public interest to rezone and reclassify the land at 9A Cooper Park Road. Should Council decide to sell the land, funds from the sale can be used to provide new or upgraded recreational or community facilities that will benefit the wider community.

If Council decides to proceed with the planning proposal it will be sent to the NSW Department of Planning and Infrastructure and the NSW Government Parliamentary Counsel Office where amendments to the Woollahra LEP will be drafted. The Draft LEP will then be submitted to the Planning Minister for approval. If the Minister's approval is given, the LEP will be notified on the NSW legislation website and will take effect from that date.

Subject to Council proceeding with the rezoning and reclassification, we also recommend that Council prepares a site-specific DCP for land at 9A Cooper Park Road, Bellevue Hill, to address amenity, privacy and view sharing issues. The draft DCP will be reported to a meeting of the Urban Planning Committee and then exhibited for public comment.

Jacquelyne Della Bosca  
Team Leader Strategic Planning

Chris Bluett  
Manager Strategic Planning

Allan Coker  
Director Planning and Development

### **Annexures (Separately circulated)**

1. Planning proposal for 9A Cooper Park Road, Bellevue Hill (exhibited 26 April to 31 May 2012)
2. Planner's report (August 2012) on submissions received to the planning proposal
3. Public hearing report (November 2012) by the independent chairperson, Stuart McDonald of SJB Planning

**Item No:** R2 Recommendation to Council  
**Subject:** **Modification to the definition of 'Height' and 'Existing Ground Level' in the Woollahra Local Environmental Plan 1995**  
**Author:** Patrick Robinson - Manager Development Control  
**File No:** 1064.G (Amend. 74)  
**Reason for Report:** To provide additional advice to support the recommendation to the Urban Planning Committee Item R2, Agenda of 12 November 2012

**Recommendation:**

- A. That Council resolve to prepare a planning proposal under section 55 of the *Environmental Planning and Assessment Act 1979* (the Act) to amend the definition of 'height' and 'existing ground level' contained in Schedule 1 of the *Woollahra Local Environmental Plan 1995* (WLEP 1995).
- B. To provide certainty as to how building height is to be measured the planning proposal adopt the definition of 'height' and 'existing ground level' generally in accordance with Standard Instrument – Principal Local Environmental Plan

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On 12 November, 2012 the Urban Planning Committee considered a report and recommendation relating to modifying the definition of 'height' and 'existing ground level' in the Woollahra Local Environmental Plan 1995. On deliberation it resolved as follows:

*That consideration of the matter be deferred to the next Urban Planning Committee meeting with additional legal advice being obtained providing Council certainty that the recommended course of action suggested by the Manager Development Control will be applicable and resolve all issues relating to height measurement, particularly in relation to alterations and additions.*

In view of the analysis provided in the advice requested the recommendation to the Urban Planning Committee is generally unchanged. We remain of the opinion that the most effective solution raised in the attached report is to alter the definitions in the WLEP 1995. The only change that we would suggest is altering part B of the original recommendation as follows:

“To provide certainty as to how building height is to be measured the planning proposal adopt the definition of 'height' and 'existing ground level' **generally** in accordance with *Standard Instrument – Principal Local Environmental Plan.*”

That minor alteration will allow flexibility for Council to raise any issues of certainty in the Standard Instrument definition of height with the Department as part of the planning proposal.

Patrick Robinson  
Manager Development Control

Allan Coker  
Director Planning & Development

**Annexures:**

- A. Report to Urban Planning Committee of 12 November 2012
- B. Confidential documents separately distributed
- C. Drawings presented to the Committee on 12 November 2012

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

