

Strategic & Corporate Committee

Agenda: *Strategic & Corporate Committee*

Date: 22 July & 29 July 2014

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)

Note: This Committee to function on the basis of referral with considerations to encompass functions and responsibilities from any other Committee.

Principal Considerations:

- Municipal Strategy
- Objectives Setting
- Policies and Codes Development
- Corporate Management
- Corporate Planning
- Woollahra Planning
- Community Services

Delegated Authority

Nil

Committee Membership:

- All Councillors

Quorum:

- The quorum for a committee meeting is 8 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

1 July 2014

To: Her Worship the Mayor, Councillor Toni Zeltzer ex-officio
Councillors Ted Bennett
Anthony Boskovitz
Peter Cavanagh
Luise Elsing
James Keulemans
Greg Levenston
Anthony Marano
Katherine O'Regan
Andrew Petrie
Matthew Robertson
Deborah Thomas
Elena Wise
Susan Wynne
Jeff Zulman

Dear Councillors

Strategic & Corporate Committee Meeting – 22 & 29 July 2014

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Strategic and Corporate Committee** to be held in the **Thornton Room, 536 New South Head Road, Double Bay, on Tuesday 22 July 2014 at 6.00pm and Tuesday 29 July 2014 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Session times for meeting held on 22 July 2014

Session 1 6.00pm to 7.30pm

Session 2 Commences at 8.00pm

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 Submitted to the Council for Decision with Recommendations from this Committee

R1	Draft Woollahra Local Environmental Plan 2014	1
----	---	---

***Note: Annexures Distributed Under Separate Cover**

Item No: R1 Recommendation to Council

Subject: **DRAFT WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

Author: Anne White – Senior Strategic Planner

File No: 1064.G (Principal LEP Draft Woollahra Plan)

Reason for Report: To advise of the submissions received to the public exhibition of Draft Woollahra Local Environmental Plan 2013 and to provide an assessment of these submissions.

To identify proposed changes to the exhibited version of the Draft LEP.

To obtain a decision to proceed with Draft Woollahra Local Environmental Plan 2014 with amendments and submit the Draft LEP to the Minister to make the plan.

Recommendation:

That Draft Woollahra Local Environmental Plan 2014 provided at **Annexure 1** of the report to the Strategic and Corporate Committee meeting on 22 July 2014, is referred to the Director-General of the NSW Department of Planning and Environment under section 59 of the *Environmental Planning and Assessment Act 1979* to make arrangements for the drafting of the new LEP and the making of the LEP by the Minister.

Note: For the purpose of this report the name “Draft Woollahra LEP 2013” refers to the version of the plan placed on public exhibition in 2013. The name “Draft Woollahra LEP 2014” refers to the version of the plan which incorporates the post exhibition amendments.

1. Summary

On 26 November 2007 Council resolved to prepare a new plan to replace Woollahra Local Environmental Plan 1995 (WLEP 1995) as the local statutory plan for regulating development in Woollahra. In response, Draft Woollahra Local Environmental Plan 2013 (Draft LEP) was prepared and exhibited. The Draft LEP applies to the whole local government area and seeks to broadly translate the policy intent of the WLEP 1995.

The Draft LEP was on public exhibition for 12 weeks from 21 August 2013 until 13 November 2013. The exhibition material was available on Council’s website, and hardcopies were available at Council’s Customer Services Centre and libraries. The exhibition of the Draft LEP was consistent with the statutory requirements in the *Environmental Planning and Assessment Act 1979* (the Act), the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and the gateway determination¹.

During the public exhibition period over 1,800 external customers visited the LEP website. A total of 292 written submissions were received.

¹ The gateway determination issued by the NSW Department of Planning and Environment on 12 July 2013 under 56(2) of the Act included conditions for the exhibition.

The assessment of the submissions is divided into the following sections:

Proposed controls for the Vaocluse sites (1-7 Hopetoun Avenue, 22A-24 New South Head Road and 1 Petrarch Avenue)

There are 136 submissions related to the proposed planning control changes for the sites in Vaocluse (1-7 Hopetoun Avenue, 22A-24 New South Head Road and 1 Petrarch Avenue). Following an assessment of these submissions, which included further investigations and site inspections, it is recommended that the proposed changes not proceed. Instead, the translation of the current controls from WLEP 1995 should be included in Draft WLEP 2014 (see Section 5).

Post exhibition changes recommended to the Draft LEP

In addition to the submissions requesting changes to the Vaocluse sites, 17 submissions raised issues which propose minor amendments to the Draft LEP and have merit. These changes are inconsequential and not significant departures from the exhibited Draft LEP and do not require re-exhibition (see Section 6).

It is recommended that Draft Woollahra LEP 2014 at **Annexure 1** which incorporates these changes be forwarded to the Department of Planning and Environment (DPE) with a request that the Minister make the LEP.

Issues arising from exhibition where changes are not recommended

Some submissions raised matters which may have planning merit but lie outside the translation of WLEP 1995 and require further investigation. This investigation will take place after the new LEP has commenced, and will be separately reported to a meeting of Council (see Section 7.1).

The remaining submissions raised issues which do not warrant amendments to the Draft LEP because they:

- cannot be achieved within the framework of the Standard Instrument;
- are not an LEP or planning matter;
- do not reflect current best building or planning practice;
- or have no planning merit.

No changes are recommended to the Draft LEP in response to these submissions (see Section 7.2-7.5).

2. Background

Council commenced the preparation of a new LEP in response to planning reforms initiated by the NSW Government in 2006. Under the planning reform agenda all councils in NSW are required to prepare a new LEP based on a format prescribed in the *Standard Instrument (Local Environmental Plans) Order 2005* (the Standard Instrument).

The Draft LEP seeks to broadly translate the policy intent of WLEP 1995, while fine tuning existing controls to make them more relevant, to address planning matters identified by Council, and to comply with the NSW Government's Standard Instrument template.

The NSW Government has placed a high priority on councils to complete their new LEPs and has urged Woollahra to finalise its new LEP. On 18 February 2013 the Urban Planning Committee under its delegation resolved "that priority be given to the completion of the Woollahra Principal LEP and Comprehensive DCP".

On 13 May 2013 Council resolved to refer the Draft LEP to the then NSW Department of Planning and Infrastructure (DPI) under section 64 of the *Environmental Planning and Assessment Act 1979* (the Act), with a request for a certificate under section 65 to allow the Draft LEP to be placed on public exhibition.

In response, a gateway determination was issued by the Department on 12 July 2013 under section 56(2) of the Act. This determination² allowed the Draft LEP to proceed to exhibition, subject to a number of conditions. For example, the conditions specified that the Draft LEP be on public exhibition for a minimum of 28 days, and that particular public authorities were consulted.

Attached at **Annexure 5A** is a copy of the gateway determination and a document identifying how compliance with each condition has been achieved.

3. Public exhibition of the Draft LEP

The Draft LEP was on exhibition for twelve weeks from 21 August 2013 until 13 November 2013. Submissions continued to be lodged after the completion of the formal exhibition period. The Draft LEP exhibition material remains available online and at Council's Customer Services centre.

The Draft LEP, supporting information and explanatory materials were placed on exhibition consistent with the requirements in:

- the Act;
- the Regulation;
- the gateway determination.

All statutory requirements in exhibiting and notifying the Draft LEP have been satisfied.

3.1 Exhibition material

The exhibition and supporting material comprised the following information:

Draft LEP

- Written instrument;
- Maps - There are 10 maps which relate to clauses in the written instrument: Land Application Map, Land Zoning Map, Lot Size Map, Height of Buildings Map, Floor Space Ratio Map, Land Reservation Acquisition Map, Heritage Map, Foreshore Building Line Map, Acid Sulfate Soils Map and Flood Planning Area Map.

Discussion paper and fact sheets

- The discussion paper provided detailed explanatory information about the proposed changes in Draft WLEP 2013, including why changes are proposed.
- The fact sheets provided summaries and explanations for key aspects of the Draft LEP. The topics addressed were the written instrument and maps, land use zones, lot sizes, height of buildings, floor space ratios and heritage conservation. A separate fact sheet provided assistance with making a submission.

Current LEPs that apply

- Woollahra Local Environmental Plan 1995 (written instrument and maps);
- Woollahra Local Environmental Plan No. 27 (written instrument and maps).

² This gateway determination was slightly modified by a second gateway determination letter dated 25 July 2013 (under section 56(7) of the Act).

Statutory framework

- Gateway determination from DPI (12 July 2013 and 25 July 2013);
- Council's response to the gateway determination conditions;
- Transitional arrangement letter from DPI (11 July 2013);
- Consistency assessment with relevant LEP practice notes issued by DPI and copies of relevant LEP practice notes issued by DPI;
- Consistency assessment with relevant State Environmental Planning Policies (SEPPs) and copies of relevant SEPPs;
- Consistency assessment with relevant section 117 Directions and copies of relevant section 117 Directions;
- Statement on section 62 consultation.

Council reports and minutes

- Council resolution (13 May 2013) and Strategic and Corporate Committee report (29 April 2013) - to obtain a decision to endorse Draft WLEP 2013 for the purpose of public exhibition.
- Council resolution (27 May 2013) and Urban Planning Committee report (27 May 2013) - to approve minor amendments to Draft WLEP 2013 before exhibition.

Flood studies

- Double Bay Catchment Flood Study (2008);
- Rose Bay Catchment Flood Study (2010);
- Rushcutters Bay Catchment Flood Study (2007);
- Watsons Bay Drainage Investigation, Drainage Management Study and Plan (2004).

3.2 Access to exhibition information

Exhibition material could be accessed in the following ways:

Hard copy displays

A hard copy of the exhibition material was available at Council's Customer Services Centre, Double Bay Library, Paddington Library and Watsons Bay Library.

Website

A dedicated website was established for the Draft LEP containing all exhibition information and additional background documents. This website could also be accessed through the Council's homepage. During the exhibition period over 1,800 external customers visited the LEP website.

Drop-in sessions

Two drop-in sessions were held outside of normal business hours to provide additional opportunities for customers to talk to Council's Strategic Planners about the Draft LEP. These sessions were held on Saturday 7 September (10am-2pm) and Tuesday 22 October (4.30pm-7pm).

Social media

Woollahra Council's Library Twitter account was used to publicise the exhibition of the Draft LEP via tweets to its followers.

A dedicated Facebook page was established for the Draft LEP containing the exhibition dates, links to the exhibition website and information on the drop-in sessions.

3.3 Notification

Notification of the Draft LEP comprised:

Information brochure sent to all property owners and occupiers

A one page information brochure was distributed to:

- Each property owner in an envelope labelled with the property owner's mailing address as contained in the Council's rates database. These envelopes were delivered by Australia Post.
- Each property in a separate letter box drop by a private company which regularly distributes material across the municipality.

This process sought to ensure that both property owners and tenants received notice of the exhibition. Consequently, properties with owner occupiers would have received the brochure twice.

Wentworth Courier

Notice of the public exhibition was placed in the Wentworth Courier in the following ways:

- Council Notice page: Notification was included fortnightly during the formal exhibition period. The publication dates were 21 August, 4 September, 18 September, 2 October, 16 October and 30 October 2013;
- Woollahra News page: Item in the publications on 21 August and 4 September 2013;
- Mayor column: Item in the publications on 21 August and 16 October 2013;
- News: Item in the general news section in the issue dated 2 October 2013.

Website

A notice was placed on Woollahra Council's website homepage for the duration of the formal exhibition period.

Key stakeholders

Key stakeholders were separately notified at the beginning of the formal exhibition period. This comprised:

- 31 public agencies;
- 19 community groups including The Paddington Society, Darling Point Society and The Vacluse Progress Association;
- 4 adjoining Councils (Mayors and General Managers);
- State and Federal Government members for Vacluse, Sydney and Wentworth;
- 10 educational establishments;
- Planning Institute of Australia and Australian Institute of Architects;
- 9 other groups including Royal Australian Naval Association and Rose Bay and Double Bay Chambers of Commerce.

4. Public submissions

Council has received 292 written submissions including one petition with 20 signatures. Of those submissions, 136 including the petition related exclusively to the proposed controls for the sites in Vaucluse (1-7 Hopetoun Avenue, 22A-24 New South Head Road and 1 Petrarch Avenue). These comprise 47% of all the submissions received.

All the submissions were logged in a database to assist with collating and responding to the issues raised. Each issue was summarised. A planning response to these submissions and recommended changes to the Draft LEP, where considered appropriate, are provided in **Annexure 3**.

The submissions received on the sites in Vaucluse are separately listed and summarised in **Annexure 4**, with the assessment and recommendation provided in Section 5 of this report.

Excluding the submissions received on the Vaucluse sites, the most common issues raised was a request for increased development potential. These related to changes to the exhibited planning controls relating to land use zone, lot size, height and/or FSR in order to increase the development potential of a site or area.

The remaining submissions raised issues on a variety of matters including:

- Request to retain existing controls;
- Concerns regarding the approach to the height controls in Double Bay, Rose Bay and Paddington;
- Heritage conservation;
- Wording of the Draft LEP clauses;
- Changes to the permissible land uses;
- Flood planning;
- Matters unrelated to planning;
- Matters related to State legislation;
- Matters related to a DCP.

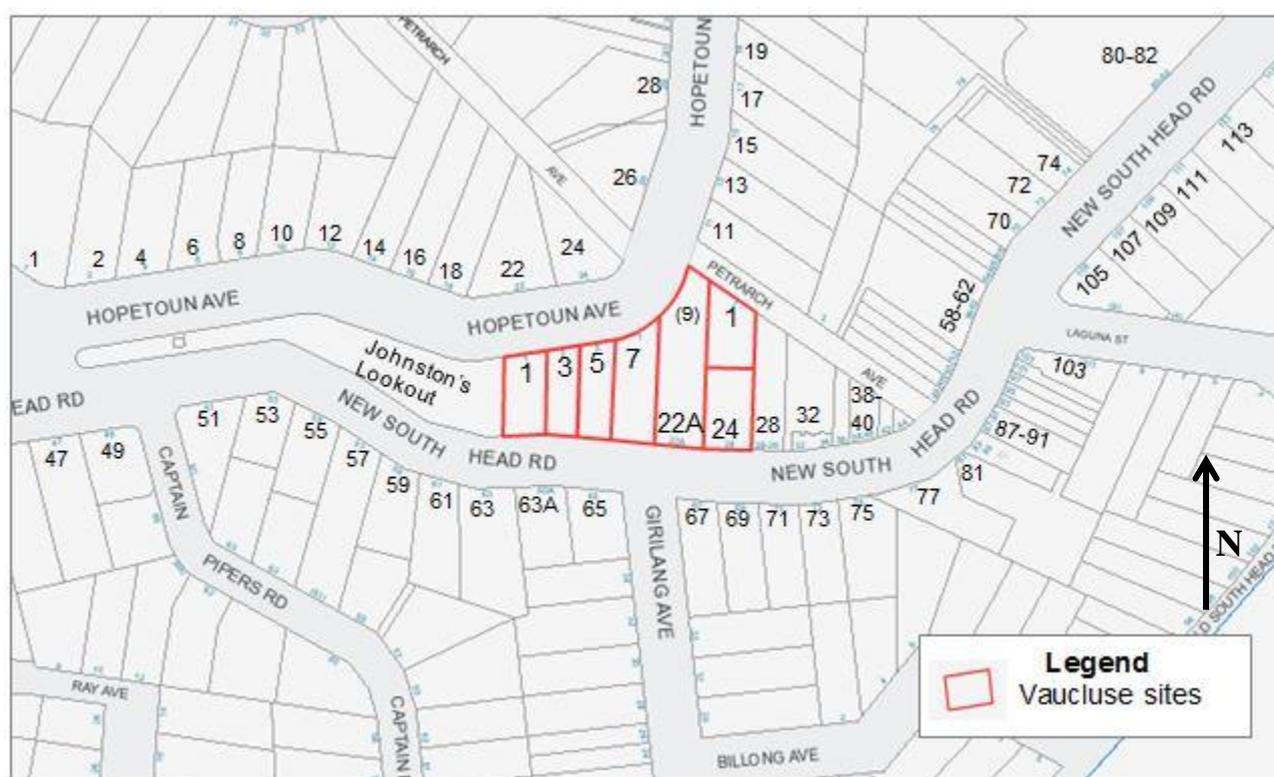
As a result of considering these submissions, minor amendments to the Draft LEP are recommended. All the proposed changes are identified in Section 6 below.

5. Proposed controls for the Vaucluse sites (1-7 Hopetoun Avenue, 22A-24 New South Head Road and 1 Petrarch Avenue)

A total of 136 submissions including the petition relate to the proposed planning controls applying to the Vaucluse sites. The table below identifies the current controls, and the controls that were exhibited in the Draft LEP in regard to those sites.

	WLEP 1995 current	Draft WLEP 2013	
Zone	2(a) Residential	R3 Medium Density Residential	
Height	9.5m	1 Petrarch Ave	10.5m (3 storeys ³)
		1-7 Hopetoun Ave and 22A-24 New South Head Rd	13.5m (4 storeys ³)
FSR	0.55:1 in the Residential DCP	1 Petrarch Ave	1:1
		1-7 Hopetoun Ave and 22A-24 New South Head Rd	1.3:1
Min. lot size	675m ²	700m ²	

The Vaucluse sites are identified below.



Vaucluse sites and surrounding area

³ The number of storeys is a guide only and not a control in the Draft LEP. 10.5m and 13.5m equate to three and four storeys.

Of the 136 submissions:

- 1 supported the proposed controls;
- 6 requested an increase to the exhibited height and/or FSR controls;
- 129 objected to the proposed controls (including 1 petition with 20 signatures).

5.1 Recommendation

Having assessed the submissions, which included further investigations and site inspections, it is recommended that the proposed changes do not proceed. The potential view loss from the public domain was the single most important factor informing this recommendation.

It is recommended that the current WLEP 1995 controls that apply to the Vaucluse sites be translated into the format of the Draft LEP.

The table below identifies the current controls, the exhibited controls in Draft WLEP 2013 and the post exhibition controls recommended for adoption in Draft WLEP 2014.

	WLEP 1995 Current	Draft WLEP 2013		Draft WLEP 2014
Zone	2(a) Residential	R3 Medium Density Residential		R2 Low Density Residential
Height	9.5m	1 Petrarch Ave 1-7 Hopetoun Ave and 22A-24 New South Head Rd	10.5m (3 storeys ³) 13.5m (4 storeys ³)	9.5m
FSR	0.55:1 in the Residential DCP	1 Petrarch Ave 1-7 Hopetoun Ave and 22A-24 New South Head Rd	1:1 1.3:1	N/A
Min. lot size	675m ²	700m ²		675m ²

From the above table it will be noted that FSRs will not apply in the R2 Low Density Residential zone. Building envelope controls, which will be contained in the new Comprehensive DCP for the municipality, will replace FSRs and will apply to dwelling houses.

Residential flat buildings in the R2 Low Density Residential zone will be non-conforming uses and will be subject to existing use rights.

5.2 Key matters raised in submissions and Council's responses

The key matters raised in these submissions were:

- Unsatisfactory notification process;
- View loss from the public domain:
 - New South Head Road;
 - Johnston's Lookout;
- View loss from private properties.

Other matters raised were:

- Existing traffic, parking and pedestrian safety issues will be exacerbated by development;
- Alternative nearby sites for increased residential development are more appropriate;
- Requests to further increase the height and FSR controls above those exhibited.

5.2.1 Notification process

Most submissions raised concerns with the public exhibition process. The submitters stated that they did not receive notification of the Draft LEP exhibition in August 2013.

Council's response

Council is satisfied that the exhibition of Draft LEP met all statutory requirements (see Section 3 above).

5.2.2 View loss from the public domain

A number of submissions raised concerns with the potential loss of significant public views from the footpath on New South Head Road and from Johnston's Lookout.

Council's response

New South Head Road

Public views are currently available over the top of 1-7 Hopetoun Avenue from the footpath on New South Head Road. These views are significant and take in the foreshore of Vaucluse and Watsons Bay, the waters of Vaucluse Bay and Sydney Harbour, Middle Harbour, Dobroyd Head and North Head.

Under the exhibited controls a four storey building could be constructed to a height of 13.5m at 1-7 Hopetoun Avenue, which would present to New South Head Road as one storey. A single storey building to New South Head Road would eliminate the majority of public domain views in this location, potentially allowing only narrow view corridors through side boundary setbacks.

Public views from streets, footpaths, parks and other public areas are among Woollahra's most prized assets.

The potential view loss in this location is inconsistent with existing objectives in the Woollahra Residential Development Control Plan 2003 (RDPC) which address views from public places:

O5.5.1 To protect and enhance opportunities for vistas and views from streets and other public places.

O5.5.3 To protect and enhance existing views and vistas from streets and other public spaces.

Accordingly, it is recommended that Council does not proceed with the controls exhibited in Draft WLEP 2013 as development under these controls could result in the loss of significant views from the public domain.

Johnston's Lookout

Johnston's Lookout is located to the west of 1 Hopetoun Avenue (see figure above). The main water views and views of immediate and distant foreshores are achieved from the lookout looking to the north.

Views to the east, over the Vaucluse sites are currently blocked by vegetation. Should that vegetation be removed, the views to the east would then be impeded by buildings further along New South Head Road. However, there are currently no views to, or over the Vaucluse sites as there is vegetation screening the properties.

Potential development based on the proposed controls in the Draft LEP would have no impact on the direct northern public views from Johnston's Lookout. Arguably, a development might impede some views from Johnston's lookout close to the boundary of 1 Hopetoun Avenue.

5.2.3 View loss from private properties

A number of submissions raised concerns regarding the potential view loss from private properties in the vicinity of the subject sites.

Council's response

The Council supports the concept of view sharing and considers it reasonable that opportunities for view sharing are included in the building design process.

In response to the submissions, site visits were undertaken to further consider potential view impacts on properties in the vicinity of the Vaucluse sites. The site visit covered some apartments at 22A, 24 and 28 New South Head Road and the dwellings houses at 63A and 65 New South Head Road. The views available from these locations are:

- District views;
- District foreground and foreshores;
- Water views;
- Distant foreshore.

The view analysis of the affected properties is provided below.

In summary, whilst view sharing could be achieved for some properties, for others the proposed controls could result in view loss with no opportunities for view sharing.

Within the development assessment process, it is Council's practice to assess view impacts using the principles of view sharing set out by the Land and Environment Court in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* (pars 23-33). Tenacity identifies steps that should be used in assessing impacts on views. Key considerations are:

- The assessment of the views affected:
 - water views are valued more highly than land views;
 - whole views are valued more highly than partial views.
- Consideration from what part of the property views are obtained:
 - the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries;
 - whether the views are from a standing or sitting position may also be relevant.
- The extent of view impact:
 - this should be done for the whole property, not just the view affected;
 - the impact on views from living areas is more significant than bedrooms.

This approach informed the consideration of views when assessing the submissions. However, the assessment has limitations because a clear development proposal with detailed design features was not available.

28 New South Head Road

28 New South Head Road is a four storey residential flat building containing five dwellings to the east of 1 Petrarch Avenue. Views are to the north and north-west overlooking 1 Petrarch Avenue.

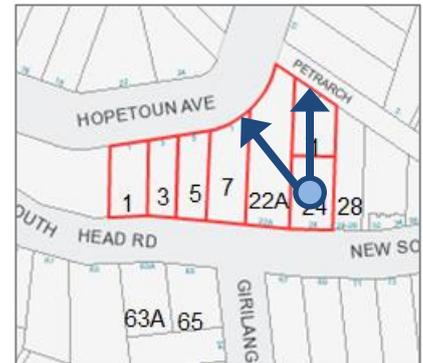
The analysis indicates that at 28 New South Head Road the views from living spaces of apartments on the top level are over a side boundary and these would be affected if a three storey building was constructed at 1 Petrarch Avenue. There would be limited opportunities for view sharing.



24 New South Head Road

24 New South Head Road is a four storey residential flat building containing four dwellings and is located directly to the south of 1 Petrarch Avenue. Views are to the north and north-west over the top of 1 Petrarch Avenue.

The analysis indicates that at 24 New South Head Road the views from the living space on the 3rd storey and a bedroom on the 2nd storey are to the north-west and north. These would be affected if a three storey building was constructed at 1 Petrarch Avenue. There would be limited opportunities for view sharing.



22A New South Head Road

22A New South Head Road is a residential flat building containing 12 apartments. Dwellings on the upper levels have views to the north and west.

The analysis indicates that at 22A New South Head Road the views to the north from the living spaces would be retained.

Western views from bedrooms and living spaces would be affected if a four storey building were constructed at 1-7 Hopetoun Avenue. View sharing to the north would be achieved.



63A and 65 New South Head Road

63A and 65 New South Head Road are two storey dwelling houses to the south of the Vacluse sites. Views are to the north over the existing properties at 1-7 Hopetoun Avenue.

The analysis indicates that if four storey buildings were constructed on 1-7 Hopetoun Avenue there would be view loss from the ground floor.

The principal living areas of both of these dwellings are located on the first floor. The analysis indicates that the majority of the views from the first floor principal living areas would be retained. View sharing would be achieved.



5.2.4 Existing traffic, parking and pedestrian safety issues will be exacerbated by development

A number of submissions raised concerns with the existing traffic, parking and pedestrian safety in the area, and suggested that any development would exacerbate these existing problems.

For example:

- Location is on a blind corner;
- Cars and emergency services vehicles speed down New South Head Road;
- Area is congested;
- There are no safe pedestrian crossings in the area.

Council's response

It is estimated that 12 additional dwellings could be facilitated on these sites under the exhibited controls. The traffic impacts associated with these additional dwellings could be successfully managed and adequate car parking provided consistent with Council's Parking DCP.

Concerns regarding speeding vehicles and pedestrian safety have been, and will continue to be, investigated by Council as part of the ongoing management of the area.

Notwithstanding these comments, the exhibited controls in Draft WLEP 2014 are not supported.

5.2.5 Alternative nearby sites for increased residential development are more appropriate

Some submissions identified other sites in the vicinity where increased residential density could be accommodated. These included:

- Diamond Bay;
- Block bordered by Old South Head Road, Laguna Street and Billong Crescent.

Council's response

The alternative sites in the Woollahra municipality may have planning merit but require further detailed investigation. This review will take place after the new LEP has commenced and will be reported to Council. Any proposed changes to planning controls would be subject to public exhibition.

5.2.6 Requests for increased height and FSR to those exhibited

Six submissions sought additional variation to the exhibited planning controls to further increase development potential on the Vacluse sites. The submissions requested the following:

- Minimum lot size: Decrease from 700m² to 500m²
- FSR
 - 1 Petrarch Avenue: Increase from 1:1 to 1.3:1;
 - 1-7 Hopetoun Avenue and 22A-24 New South Head Road: Increase from 1.3:1 to 1.75:1.
- Height
 - 1-7 Hopetoun Avenue: Increase from 13.5m to 16m.

Council's response

Having considered the issues raised in the submissions, particularly those regarding loss of public views, it is recommended that the exhibited planning controls do not proceed and the current WLEP 1995 controls are to apply. Requests to decrease the minimum lot size and further increase the heights and FSRs are not supported.

6. Post exhibition changes recommended to the Draft LEP

As a result of considering the submissions, as well as an internal review of the Draft LEP by Council officers, 23 minor amendments to the Draft LEP are recommended. These changes are identified in the table below. Under section 58 of the Act, changes to the Draft LEP can be made prior to submission to the DPE.

The recommended amendments to the Draft LEP written instrument and maps are annotated in **Annexure 2**. These changes have been incorporated into Draft WLEP 2014 attached at **Annexure 1**.

No.	Amendment	Justification
Part 1 Preliminary		
1.2 Aims of Plan		
1	Amend the order of the list of aims: promote ecologically sustainable development from (k) to (h).	Amendment arises from submissions requesting that ESD is given more prominence in the plan. The submissions requested that this aim be located at (a) as the first aim. In response it is recommended that this aim is relocated to (h). This is more consistent with the location of ESD in section 5 of the Act, which lists the objects of the Act.
2	Amend aim (c) to include reference to "open space". Amended aim reads: <i>to provide for an appropriate balance and distribution of land for commercial, retail, residential and tourist development and for recreation, open space, entertainment and community facilities</i>	Amendment arises from a submission requesting that the appropriate balance and distribution of land should also include open space.
3	Insert three new aims <i>(i) to minimise and manage stormwater and flooding impacts,</i> <i>(l) to minimise and manage traffic and parking impacts,</i> <i>(n) to minimise excavation and manage impacts.</i>	Amendment arises from an internal review to reflect current WLEP 1995 aims and objectives which remain relevant, but were omitted from the Draft LEP. Controls in the Comprehensive DCP will support these aims.

No.	Amendment	Justification
<p>Part 2 Permitted or prohibited development and Part 4 Principal development standards</p>		
<p><i>2.2 Zoning of land to which Plan applies</i></p>		
4	<p>Scottish Hospital, Paddington (74 Brown Street, Paddington)</p> <ul style="list-style-type: none"> • Remove zone R2 Low Density Residential; • Apply zone SP2 (Seniors Housing). 	<p>Amendment arises from a submission identifying that the application of a residential zone to the Scottish Hospital site is not consistent with the existing use of the land.</p> <p>The land has development consent for a seniors living development including a 100 bed residential aged care facility and 79 independent units and support services.</p> <p>Applying the SP2 Infrastructure zone and identifying the permitted use of the land as Seniors Housing on the Land Use Map is consistent with the consent and current use.</p>
5	<p>Vaucluse High School Site (2 Laguna Street, Vaucluse)</p> <ul style="list-style-type: none"> • Remove zone R3 Medium Density Residential; • Apply zone SP2 (Seniors Housing). 	<p>Amendment arises from an internal review. Consistent with the approach for the Scottish Hospital site (see Amendment 6 above), zone SP2 (Seniors Housing) is more appropriate to reflect the use of this site.</p> <p>The land has development consent for a seniors housing development comprising a 227 bed residential care facility and 14 self-contained dwellings.</p> <p>Applying the SP2 Infrastructure zone and identifying the permitted use of the land as Seniors Housing on the Land Use Map is consistent with the consent.</p>
<p><i>2.2 Zoning of land to which Plan applies</i></p>		
<p><i>4.1 Minimum subdivision lot size</i></p>		
<p><i>4.3 Height of buildings</i></p>		
<p><i>4.4 Floor space ratio</i></p>		
6	<p>1-7 Hopetoun Ave, 22A-24 New South Head Rd and 1 Petrarch Ave</p> <ul style="list-style-type: none"> • Remove zone R3 Medium Density Residential • Apply zone R2 Low Density Residential. 	<p>Amendment arises from submissions objecting to the proposed planning controls for these sites. Having considered these submissions, it is recommended that Council does not proceed with the exhibited planning controls. Instead a translation of the existing controls in WLEP 1995 will be applied. These are:</p> <ul style="list-style-type: none"> • R2 Low Density Residential • Remove FSR control and apply minimum lot size of 675m² • Height of 9.5m.
7	<p>82-84 Edgecliff Road, Woollahra</p> <ul style="list-style-type: none"> • Remove zone SP2 (Educational Establishment); • Apply zone R3 Medium Density. 	<p>Amendment arises from a submission identifying that the property is used as a dwelling and does not form part of the adjoining educational establishment. The adjoining R3 Medium Density zone is appropriate for this site and reflects the current and historic use of the property.</p> <p>In applying the R3 Medium Density Zone, a minimum lot size of 700m² and FSR of 0.65:1 has also been applied to this site. This is consistent with the controls on the adjoining R3 land.</p>

No.	Amendment	Justification
Land Use Table		
Zone R3: Medium Density Residential		
8	Delete the fourth zone objective: <i>To include land that contains existing high density residential development.</i>	Amendment arises from a condition in the gateway determination to delete this objective as it is contrary to the core objective of the zone.
Zone B1: Neighbourhood Centre		
9	Insert new zone objective: <i>To provide for a range of other uses including light industrial, that serve the surrounding neighbourhood without impacting on the amenity of the adjoining uses.</i>	Amendment arises from a condition in the gateway determination to insert an additional objective. It adds to the scope of the objectives for the zone, and reflects the land use table which permits light industries.
Part 6 Additional local provisions		
6.1 Earthworks		
10	Insert additional consideration to Cl 6.1 as (f): <i>the proximity to, and potential for adverse impacts on, any heritage item, archaeological site or heritage conservation area,</i> [Renumber list accordingly].	Amendment arises from a submission from the NSW Heritage Division to address concerns regarding the potential impacts on heritage items from earthworks. Cl 6.1 is a model clause provided by the DPE. This clause does not consider "detrimental impacts on heritage items". This issue is also not addressed in Cl 5.10 Heritage conservation. In response, the suggested additional consideration to be inserted into this clause as (f) is supported.
Schedule 1: Additional permitted land uses		
11	3 Military Road, Watsons Bay Insert provision in schedule to allow a restaurant or cafe on the site: <i>Development for the purpose of a restaurant or café.</i>	Amendment arises from an internal review. Site is zoned R3 Medium Density Residential and consists of a medium density development with a ground floor commercial use. However, the commercial use is not permissible in the zone. Inserting this provision into Schedule 1 removes existing use rights applying to part of the property, thereby making it a conforming use.
Schedule 2: Exempt development		
Restaurants or cafes (located on the footway of a public road)		
12	Delete exempt provision.	Amendment arises from an internal review. This exempt provision is redundant as it is overridden by the recent amendments to <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 –Part 2: Division 1: Subdivision 20A Footpaths – outdoor dining.</i>
Signage		
13	Delete part of the exempt development provisions	Amendment arises from an internal review. Part of the signage exempt development provisions is not relevant as it is overridden by

No.	Amendment	Justification
	regarding signage.	<p>recent amendments to <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 – Part 2: Division 2: Subdivision 1-13</i>.</p> <p>The only exempt development signage provisions retained in Schedule 2 of the Draft LEP are those relating to heritage conservation areas and heritage items (which generally translate existing exempt provisions in the <i>Woollahra Development Control Plan - Exempt and Complying Development 2005</i>).</p>
14	<p><i>Display of goods on the footpath</i></p> <p>Insert exempt development provision relating to the display of goods on the footpath.</p>	<p>Amendment arises from an internal review to reflect current controls. Provision was omitted in error from Draft WLEP 2013.</p> <p>The display of goods on the footpath is currently exempt development subject to an approval under section 68 of the <i>Local Government Act 1993</i>.</p> <p>The new exempt development provision in Schedule 2 reflects the existing provision in the <i>Woollahra Development Control Plan - Exempt and Complying Development 2005</i>.</p>
15	<p><i>Scaffolding and site cranes</i></p> <p>Insert exempt development provision relating to scaffolding and site cranes.</p>	<p>Amendment arises from an internal review. Until 22 February 2014 <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> permitted scaffolding and site cranes as exempt development. The latest amendment to the SEPP means these uses require a separate development consent.</p> <p>To allow these uses to continue as exempt development a new exempt provision has been added to Schedule 2. This provision reflects an existing provision in the in the <i>Woollahra Development Control Plan - Exempt and Complying Development 2005</i>.</p>
Schedule 5: Environmental Heritage		
<i>Category 1: Heritage Items</i>		
16	Amend description of Heritage Item 195 by deleting reference to the 4 Cocos Palms. (71 Bay Street, Double Bay)	<p>Amendment arises from a submission identifying there is an error in the description of this item.</p> <p>Support removal of the reference to the 4 Cocos Palms from the heritage item description. The trees are not part of the historically significant palm garden associated with the former Tueila estate.</p>
17	Delete Heritage Item 224 (2 Short Street, Double Bay).	<p>Amendment arises from a submission identifying that this property has no local heritage significance and should be removed from Schedule 5.</p> <p>This position is supported. Recent heritage assessments by Council’s Heritage Officers identify that the building does not have heritage significance.</p>
18	Amend description of Heritage Item 280 (Elaine: 550 New South Head Road, Double Bay) by deleting reference to the gateposts.	<p>Amendment arises from a submission requesting a change to the description of the heritage item.</p> <p>In response, amending the description is supported but only to delete reference to the gateposts and gates, gardens to the foreshore</p>

No.	Amendment	Justification
	gates and stoneworks and inserting the term grounds.	and stoneworks; and replace by a reference to the “grounds” which will encompass the gates, gateposts and any remnant stonework on the property.
Category 3: Heritage Items – Archaeological Sites		
19	Item A2: (Subterranean sewage ejector station and environs, Double Bay) correct significance from Local to State.	Amendment arises from a submission from the NSW Heritage Division. The item is incorrectly listed with Local significance in the Draft LEP. The correct significance is State.
Other		
Correct drafting errors		
20	Amend all typographical drafting errors in the plan.	Amendment arises from an internal review. There are 31 drafting errors in Draft LEP that are corrected in Draft WLEP 2014.
Correct mapping errors		
21	Floor Space Ratio Map (Sheet 5): 484-486 Old South Head Road, Rose Bay – apply FSR of 2:1 to the site.	Amendment arises from a submission identifying that the incorrect FSR control has been applied to this site. The maximum FSR control under WLEP 1995 is 2:1. In the Draft LEP the site is identified with an FSR of 1:1. It should be within "Area 2" and therefore have a maximum FSR of 2:1 under clause 4.4B Areas 2 and 3 (Selected B1 and B4 Centres) – floor space ratio. This change is consistent with WLEP 1995 Cl 11 3(a) which permits an FSR of up to 2:1 for certain corner sites that have a business zone.
22	Heritage Maps: Correct mapping errors.	An internal review identified 23 sites around the LGA where the shading on the Heritage Map has been incorrectly applied. For example: <ul style="list-style-type: none"> • The mapped area did not cover the whole lot; • The mapped area extends onto adjoining lots. These are identified in Annexure 2B .
23	Flood Planning Map: Correct mapping errors.	An internal review identified 13 parcels in Double Bay which were omitted in error from the Flood Planning Map. These parcels should be included on the map to reflect the Double Bay Catchment Flood study (June 1998). A list of these parcels has been included in Annexure 2B .

7. Issues arising from exhibition where changes are not recommended

The remaining submissions raised issues which do not warrant amendments to the Draft LEP, because they:

- require further consideration;
- cannot be achieved within the framework of the Standard Instrument;
- are not an LEP or planning matter;
- do not reflect current best building or planning practice; or
- have no planning merit.

Below is a summary of the key issues raised in the submissions and the responses to those submissions. A detailed response to individual submissions is provided in **Annexure 3**.

7.1 Matters requiring further consideration

In reviewing the submissions 23 matters were identified which may have planning merit but require further detailed investigation. These matters are listed in **Annexure 5B**.

The majority of these matters are requests for increased development potential. These relate to changes to one or more controls regarding land use zone, building height or floor space ratio. In most cases additional information to substantiate the merits of the proposal will be required.

This review will take place after the new LEP has commenced and will be reported to Council with a recommendation. As these matters are substantial changes they will, if supported, require public exhibition.

7.2 Matters which cannot be achieved within the framework of the Standard Instrument

The NSW Government requires all councils to prepare a new LEP that complies with the Standard Instrument template. Councils must conform with the format and content of the Standard Instrument and the associated policies, practice notes and circulars. Some submissions raised issues which cannot be achieved under the framework of the Standard Instrument. Three examples are summarised below.

Issue	WMC response
Retain WLEP 1995	
<p>Five submissions raised objections to the controls in the Draft LEP.</p> <p>Summary:</p> <ul style="list-style-type: none"> • Existing WLEP 1995 controls better reflect the local area; • Important controls should be retained in the LEP, and not placed into the DCP; • The Draft LEP should not be adopted. 	<p>The Draft LEP is based on the NSW Government's Standard Instrument LEP template. The Standard Instrument prescribes what may and may not be included in an LEP. Wherever possible the current policy content of WLEP 1995 has been translated into the Draft LEP.</p> <p>The NSW Government has placed a high priority on councils to complete their new LEPs and has urged Woollahra to finalise its new LEP. On 18 February 2013 the Urban Planning Committee under its delegation resolved “that priority be given to the completion of the Woollahra Principal LEP and Comprehensive DCP”.</p>

Issue	WMC response
Do not zone roads	
<p>Six submissions raised objections to the zoning of roads in the Draft LEP.</p> <p>Summary:</p> <ul style="list-style-type: none"> • Roads, laneways and night soil lanes should not take on the adjoining zone as this creates uncertainty around land use; • There are concerns that this land will be used for residential development; • It is more appropriate to apply the Infrastructure zone. 	<p>To comply with the Standard Instrument and Practice Note PN 10-001 issued by the NSW Department of Planning and Infrastructure on 14 December 2010, all land must be zoned in the Draft LEP, including roads. Wherever possible, the zone applied should be the same as that applied to the adjoining land.</p> <p>Zoning of roads does not change the existing ownership pattern, nor facilitate or imply an intention for the sale of public land to adjoining properties.</p>
CI 1.9A Suspension of covenants, agreements and instruments	
<p>Three submissions raised objection to the model local provision which suspends any agreement, covenant or other instrument which restricts the carrying out of development.</p> <p>Summary:</p> <ul style="list-style-type: none"> • All private covenants must continue; • Suspending private covenants will be detrimental to amenity and views; • Covenants can protect public access to the harbor and foreshore areas; • Property values will be affected, and compensation issues may arise. 	<p>These concerns are noted, however, the DPE has advised that this clause must be included in the new Draft LEP.</p>

7.3 Not an LEP matter

Some submissions raised planning issues which are not LEP matters, but could be considered in the context of the new Comprehensive DCP. Other matters raised issues which are not planning matters. Examples are below.

Issue	WMC response
Consider for Comprehensive DCP	
<p>Ten submissions raised planning matters which cannot be considered as part of the Draft LEP.</p> <p>For example:</p> <ul style="list-style-type: none"> • Process relating to the notification of proposed building work; • Introduction of design rules to create consistent architectural style; • New or amended controls relating to: <ul style="list-style-type: none"> – front and rear setbacks; – deep soil planting; – introduce mandatory car stackers to minimise above ground bulk; 	<p>These submissions have been forwarded to the team preparing the Comprehensive DCP.</p>

– dormer windows.	
Not a planning matter	
<p>Twenty submissions raised matters which are not planning matters.</p> <p>For example:</p> <ul style="list-style-type: none"> • Cleanliness of the footpaths in Double Bay; • Traffic calming measures; • Noise complaint from construction work; • Improve tidiness in public places; • Vacant retail spaces in Double Bay. 	<p>These matters are not related to the provisions of the Draft LEP.</p> <p>Where matters are related to other Council works or responsibilities they have been forwarded to relevant departments and sections in Council.</p>

7.4 Matters which do not reflect current best building or planning practice

Preparation of the Draft LEP followed the approach of translating WLEP 1995 whilst creating a suite of controls that are practical, reasonable and reflect current building practice. For example, the current height controls for medium density residential development are too low to provide for building design and construction that meets best practice.

To respond to this, maximum building heights have been marginally increased in approximately 80% of the R3 zoned land in the Draft LEP. Two further examples are provided below.

Issue	WMC response
Objection to increased heights in Double Bay	
<p>Five submissions objected to an increase in the maximum building height in the Double Bay Centre.</p> <p>Summary:</p> <ul style="list-style-type: none"> • SEPP 65 floor to ceiling heights are guidelines only; • There is no requirement in the BCA for an additional 100mm between floors; • DCP storey control should not inform LEP height control; • Rounding up heights results in increased storeys; • Concerns regarding overshadowing. 	<p>The height controls were established in response to changes to current building practice as set out in <i>State Environmental Planning Policy 65 - Design Quality of Residential Flat Development</i> and acoustic privacy standards in the <i>Building Code of Australia</i>. These changes mean that new development needs marginally more height per storey.</p> <p>The proposed height controls will facilitate more liveable, high quality buildings by allowing greater floor to ceiling heights and better noise insulation. They reflect good building and construction practice.</p> <p>The DCP controls remain subservient to the LEP. However, DCP storey controls have informed LEP maximum building heights as they are an important component of the desired future character of Double Bay, and were established in consultation with the community.</p> <p>The controls were rounded up by a maximum of 0.4m which will not facilitate an additional storey of development.</p> <p>The marginal increases to height will not significantly affect shadowing in the centre.</p>
Objection to increased heights in Rose Bay	
<p>Seven submissions object to an increase in height in the Rose Bay Centre.</p>	<p>The Rose Bay Development Control Plan specifies a four storey character in the centre. However, the current</p>

Issue	WMC response
<p>Summary:</p> <ul style="list-style-type: none"> • Current controls provide opportunity to redevelop properties in the centre without impacting amenity; • Centre heights should be limited to the height of the Mariner building; • Alternatively, centre heights only need to increase by 1m (to 13.5m). • Increased heights are out of character and will result in view loss; • Concerns regarding parking and access to public transport facilities; 	<p>height controls in WLEP 1995 are too low, and do not facilitate high quality development that meets current building practice.</p> <p>The Mariner building at 809 New South Head Road building is 13.4m at the Dover Road frontage. However, it does not use recommended floor to floor heights. It is therefore not an appropriate benchmark to use to set heights for the centre.</p> <p>Similarly, a 13.5m control would not facilitate floor to floor heights needed to meet current building practice.</p> <p>The maximum building heights contained in the Draft LEP facilitate four storey development that meets current building practice. No additional storeys are permitted.</p> <p>These minor increases to height in the Draft LEP will retain the existing character of the centre.</p> <p>The Rose Bay Centre is well served by public transport and new development should provide off-street car parking in accordance with Council's DCP.</p>

7.5 No planning merit

Some submissions raised matters applying to a single site or issue. Broadly these proposals are inconsistent with good planning practice and/or the desired future character of the area.

Issue	WMC response
Request to change planning controls	
<p>A number of submissions requested changes which included amending one or more of the following controls: land use, minimum lot size, height, floor space ratio, foreshore building line or an additional permitted use.</p>	<p>These changes are not supported because the proposed controls:</p> <ul style="list-style-type: none"> • Represent an over development which is not consistent with the desired future character of the area; • Represent a spot rezoning to facilitate a particular use or development which does not have planning merit.
Object to property being identified on the Flood Area Map	
<p>Four submissions expressed concerns regarding the accuracy of the Flood Area Map, and two submissions requested that their property be removed from the map.</p>	<p>The Flood Planning Map that accompanies the Draft LEP is based on flood studies and flood maps adopted by Council. These flood studies used current best practice modelling.</p> <p>The Draft LEP has not sought to amend the adopted flood maps.</p>
Object to home occupations (sex services)	
<p>Five submissions objected to Home Occupations (Sex Services) being permitted due to potential anti-social behaviour.</p>	<p>Home Occupations (Sex Services) are currently permissible in the residential zones as a home occupation without consent in a dwelling house and with consent in a residential flat building. The Draft LEP converts the general intent of the current controls.</p>

8. Proceed with Draft Woollahra LEP 2014

The Draft LEP has been on exhibition and is ready to be submitted to the Minister to make the plan subject to:

- Not proceeding with the proposed controls for the Vaucluse sites (1-7 Hopetoun Avenue, 22A-24 New South Head Road and 1 Petrarch Avenue) and translating the current controls from WLEP 1995; and
- Minor amendments identified in Section 6 above.

A copy of Draft WLEP 2014 can be found in **Annexure 1**.

Submitting Draft WLEP 2014 to the Minister is the final stage in the LEP making process and involves:

1. Obtaining Council's endorsement to proceed with Draft WLEP 2014.
2. Submitting Draft WLEP 2014 to the Director-General for Planning and Environment to make arrangements for the final drafting of the plan. This part of the process will involve a review of the plan by the:
 - a. Metropolitan Planning Team: To check that the plan is consistent with relevant state plans and policies, and to review the consultation with relevant public authorities; and
 - b. Parliamentary Counsel: To check the clauses in the plan are legally drafted.

Note: When the gateway determination was issued in July 2013 the then Department of Planning and Infrastructure identified that the draft LEP may be subject to post exhibition changes to satisfy legal drafting requirements.

3. Making of the LEP by the Minister. The Minister may make the plan with or without variation.
4. The LEP will commence on the date that it is published on the NSW Legislation website. This may occur towards the end of 2014.
5. Public notice that the new LEP has commenced, and notification to those who made a submission.

9. Conclusion

The NSW Government requires Council to prepare a new LEP that complies with the Standard Instrument template. The Draft LEP seeks to broadly translate the policy intent of WLEP 1995, whilst fine tuning existing controls to make them more relevant and practical, whilst complying with the Standard Instrument.

The Draft LEP was on exhibition for 12 weeks, consistent with the statutory requirements in the Act, the Regulation and the gateway determination.

In total 292 written submissions were received. Of these, 136 submissions including one petition related exclusively to the proposed planning controls for the Vaucluse sites (1-7 Hopetoun Avenue, 22A-24 New South Head Road and 1 Petrarch Avenue), and one of those submissions supported the proposed planning controls for the site. Having considered the submissions, it is recommended that Council does not proceed with the exhibited planning controls for these sites, and instead applies a translation of the existing controls in WLEP 1995.

Having considered the remaining submissions and an internal review, 23 minor amendments to the Draft LEP are proposed. These changes are generally inconsequential, do not have a significant adverse impact, and are unlikely to generate objections from the community.

It is recommended that Council submits the Draft WLEP 2014 at **Annexure 1** to the Minister to make the plan, incorporating the minor amendments identified in Section 6 above and provided in **Annexure 2**.

In reviewing the submissions 23 matters were identified which may have planning merit but lie outside a translation of WLEP 1995 and require further investigation. This will take place after the new LEP has commenced, and will be separately reported to a meeting of Council.

Anne White
Senior Strategic Planner

Jacquelyne Della Bosca
Team Leader Strategic Planning

Chris Bluett
Acting Director Planning and Development

ANNEXURES (DISTRIBUTED UNDER SEPARATE COVER)

ANNEXURE 1: DRAFT WOOLLAHRA LEP 2014

TO SUBMIT UNDER SECTION 59 OF THE EP&A ACT 1979

Part 1A Written instrument

Part 1B Map sheets

ANNEXURE 2: DRAFT WOOLLAHRA LEP 2013

AS EXHIBITED WITH PROPOSED AMENDMENTS

Part 2A Written instrument annotated with proposed amendments

Part 2B Proposed map amendments

Annexure 3: Summary table of submission and responses (excluding Vacluse sites)

Annexure 4: Summary table of submissions on Vacluse sites

(1-7 Hopetoun Avenue, 22A-24 New South Head Road and 1 Petrarch Avenue)

Annexure 5: Other matters

Part 5A Gateway determination and Council's response:

- Council's response to the gateway determination conditions
- Gateway determination from DP&I (12 July 2013 and 25 July 2013)

Part 5B Matters requiring further consideration

Political Donations – matters to be considered by Councillors at Meetings

