

**Item No:** Recommendation to Council  
**Subject:** **WHITE CITY PLANNING PROPOSAL AND WHITE CITY DEVELOPMENT CONTROL PLAN**  
**Author:** Chris Bluett - Manager Strategic Planning  
**File No:** 7.30  
**Reason for Report:** To respond to a decision of the Council made on 8 September 2014. To inform Council of preliminary responses received from the Department of Planning and Environment regarding the White City Planning Proposal.

### **Recommendation**

That the progress report on the White City Planning Proposal and the White City Development Control Plan review be received and noted.

## **1. Background**

On 8 September 2014 the Council made a lengthy and detailed decision about the preparation of a planning proposal to list the White City site as a local heritage item (**annexure 1**). The particular parts of that decision which are relevant to this report are provided below.

- A. That the planning proposal to amend Woollahra LEP 1995 by listing as a heritage item *White City Site* be adopted subject to Part E.
- B. ....
- C. That a review of the White City DCP 2007 be carried out and reported to the Urban Planning Committee within the next 10 weeks.
- D. ....
- E. That the Heritage Inventory Sheet considered as Late Correspondence at the Urban Planning Committee held on 25 August 2014 include the following additional amendments arising from discussion by the Committee:

vii "Recommendation" section

The following statement be added – "The White City site should be included as a heritage item in the Woollahra Local Environment Plan, specifying that the only three items to be retained and/or adapted are specifically the 1923 Southern grandstand trusses, the Stage 1 Northern grandstand arches and the NSWLTA gates.

The significance of the site, along with the history of the site, should be the subject of an interpretation strategy."

Part C of the decision required that a review of the White City Development Control Plan be carried out and reported to the Urban Planning Committee within 10 weeks. This report responds to that requirement, albeit in the manner of a progress report for reasons explained below in section 3. This report also provides the status of the planning proposal.

## 2. White City Planning Proposal

A planning proposal was submitted to the Department of Planning and Environment (DPE) on 2 October 2014. The planning proposal and the description of the proposed heritage item were based on the Council's decision of 8 September 2014, in particular Part A and Part E vii. The description was in the following terms:

White City site – but the only three items to be retained and/or adapted are specifically the 1923 Southern grandstand trusses, the Stage 1 Northern grandstand arches and the NSWLTA gates

The DPE has commenced a review of the planning proposal in accordance with the gateway determination<sup>1</sup> process. Part of the review has involved referral of the proposal to the Office of Environment and Heritage (OHE) for comment.

A formal response from the OHE has not been received at this time. However, the DPE has provided preliminary comment on the planning proposal, advising that:

1. In its current form, the planning proposal is inconsistent with Practice Note PN 11-001 and therefore would not progress through the legal drafting process.
2. Once an item is identified to have local significance, Council may require the preparation of a heritage management plan before granting consent to any development. It is at this stage of the planning process that the relevant importance of individual items across a larger site is considered and appropriate management strategies are put in place.
3. The current description of the proposed local heritage item clearly pre-empts this process by conditioning only three items to be retained and/or adapted.

The DPE will complete its review of the planning proposal, with input from the OHE, and provide a formal response. This may be in the form of a gateway determination or a letter.

Practice Note PN 11-001 was issued by the Department of Planning on 10 March 2011 and deals with the preparation of LEPs using the Standard Instrument template. Schedule 5 of the Standard Instrument provides a place for heritage items, heritage conservation areas and archaeological sites. An extract from the Practice Note is contained as **annexure 2**.

The description of a heritage item follows a defined practice. For example, the description can cover a whole site, a building and its interior, or part of a building. The description does not include actions, considerations or decisions which might flow as a consequence of an item being listed.

The description of the heritage item contained in the planning proposal does not conform with the required standard listing approach. It nominates the whole White City site as the item, but also specifies that only three elements are to be retained or adapted. The proposed listing, therefore, combines a number of steps which is confusing.

It is commonly understood that if a whole site is listed, the land and all buildings and components are included as the item unless particular exclusions are mentioned as part of the description. Listing a whole site does not prevent the adaptation, demolition and interpretation of elements and features or does it prevent new works from occurring on the site. This is the same understanding for the listing of a single building and its site.

---

<sup>1</sup> A gateway determination is a decision by the Minister for Planning and Environment or delegate on whether a planning proposal should proceed to public exhibition stage with or without variation.

A conservation management plan, which incorporates the results of an assessment of heritage significance, may conclude that adaptation and demolition of certain elements or features are reasonable and that new work may occur in a particular manner. This policy may be expressed in a flexible way in order to accommodate a range of future development options.

It is not necessary or is it appropriate for the listing to contain references to matters that are the subject of future decisions associated with the preparation, assessment and determination of development proposals.

The DPE has two options for dealing with the planning proposal.

1. Issue a gateway determination with a condition amending the planning proposal so that the listing is consistent with the practice note. This would probably involve either –
  - (a) Changing the description to relate to the whole site and exclude the specific reference to the three elements. In this way, the three nominated elements are implicitly included with the listing for the whole site.
  - (b) Changing the description to only include the three nominated elements. In this case all other parts and elements, including the grounds, are not listed
2. Decline to issue a gateway determination and ask Council to clarify its intentions having regard to the practice note requirement.

Option 1(b) is problematic for two reasons. First, the 1923 Southern Grandstand trusses and the Stage 1 Northern Grandstand arches are structural components of larger buildings.

Listing trusses and arches by themselves can create confusion because the full extent of the item is not clear. For instance, technically an arch is a structure which spans an opening or space. A narrow interpretation would not allow the surrounding walls supporting the arch and other associated elements to be considered as the item. Similarly, the trusses are not floating features, but are supported by columns and linked with walls.

Isolating elements without acknowledging their relationship to the whole structure could lead to a conclusion that the elements can be relocated anywhere on a site. As such, the heritage value of elements, which lies in part with their current location, their strong visual presence and their contribution to the sense of place, can be compromised.

The second issue with selectively listing elements is that the degree of heritage conservation policy that can be applied to the whole site through a DCP is affected. This matter is explained in section 3, below and is associated with the statutory relationship of a DCP and an LEP.

### **3. Review of White City DCP 2007**

A review of the White City DCP has been carried out and part of the plan has been redrafted. However, the heritage conservation provisions, which represent a major element of the DCP, have not been finalised. This aspect is influenced by the extent of land on which the heritage item listing applies and the description of the heritage item. In this regard, the review of the White City DCP and the preparation of a planning proposal for the White City site are related projects.

In conducting the review of the White City DCP we were mindful that whilst a planning proposal had been endorsed by the Council, it had not received a gateway determination from the DPE.

Because of the statutory relationship between a DCP and an LEP, it was considered necessary to establish a degree of certainty about the heritage item listing through the gateway process before completing the DCP review.

The *Environmental Planning and Assessment Act 1979* (the Act) regulates the purpose and status of DCPs and the preparation of DCPs. In regard to the latter, the Act directs how provisions of a DCP are moderated through their relationship with those of an LEP. This arrangement is mentioned in section 74C which states:

#### **74C Preparation of development control plans**

- (5) A provision of a development control plan (whenever made) has no effect to the extent that:
- (a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or
  - (b) it is inconsistent or incompatible with a provision of any such instrument.

A provision of a DCP, therefore, could have no effect where it sought to apply heritage-related guidelines and controls, irrespective of their detail, on a site or part of a site that was not heritage listed or within a heritage conservation area. Arguably, such a provision in a DCP should not be used in the assessment and determination of a development application for the site. If it was used in the consideration and determination of a DA, the determination might be open to legal challenge.

Most of the White City site is located within the Paddington Heritage Conservation Area. That part within the HCA. Part of that land was once occupied by the original NSW Lawn Tennis Association Clubhouse (demolished in 1968).

It would be possible to include heritage conservation provisions in the DCP for the part of the site within the HCA. However, the detail of those provisions would be influenced by the heritage listing.

The operation of section 74C (5)(b) would have the effect of nullifying the DCP's heritage conservation provisions should they be applied to the northern part of the site. This would mean that even very broad heritage conservation provisions such as an interpretation strategy for the former NSW LTA Clubhouse might not be achievable.

#### **4. Conclusion**

Progress of the White City Planning Proposal has advanced to the stage where it has received preliminary consideration by the DPE. Issues have been raised by the DPE about the proposal's consistency with the Standard Instrument. It is likely the proposal will need to be amended. The precise nature of the change will be confirmed by the DPE either through a gateway determination or by another written response.

Because of the statutory limitations applying to the content of DCPs, it will be necessary to obtain confirmation about the content of the planning proposal before the White City DCP review can be finalised. This will enable the heritage conservation provisions of the DCP to be consistent with the future heritage listing in the LEP as expressed in the planning proposal.

A further report on the DCP review will be presented to the Committee once the planning proposal has been clarified.

Allan Coker  
Director Planning and Development

Chris Bluett  
Manager Strategic Planning

---

**Annexure**

1. Decision of Council made on 8 September 2014.
2. Extract from Practice Note PN 11-001