



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 8 October 2007*

Time: *6.00pm*

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Delegated Authority (“D” Items):

- To require such investigations, reports or actions as considered necessary in respect of matters contained with the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of Minutes of its Meeting.
- Any other matter falling within the responsibility of the Urban Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed below:

Recommendation only to the Full Council (“R” Items):

- Such matters as are specified in Section 377 of the Local Government Act and within the ambit of the Committee considerations.
- Broad strategic matters, such as:-
 - Town Planning Objectives; and
 - major planning initiatives.
- Matters not within the specified functions of the Committee.
- Matters requiring supplementary votes to Budget.
- Urban Design Plans and Guidelines.
- Local Environment Plans.
- Residential and Commercial Development Control Plans.
- Rezoning applications.
- Heritage Conservation Controls.
- Traffic Management and Planning (Policy) and Approvals.
- Commercial Centres Beautification Plans of Management.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters reserved by individual Councillors, in accordance with any Council policy on "safeguards" and substantive changes.

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

4 October 2007

To: His Worship The Mayor, Councillor Geoff Rundle, ex-officio
Councillors John Comino (Chair)
 Claudia Cullen (Deputy Chair)
 Christopher Dawson
 Wilhelmina Gardner
 Keri Huxley
 Julian Martin
 David Shoebridge

Dear Councillors

Urban Planning Committee Meeting – 8 October 2007

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Monday 8 October 2007 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	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 24 September 2007	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Rezoning Proposal at 4A Nelson Street, Woollahra	2
R2	Draft Woollahra Local Environment Plan 1995 (Amendment 60) Draft Woollahra Neighbourhood Centres Development Control Plan	36

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 24 September 2007**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 24 September 2007 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Urban Planning Committee Meeting of 24 September 2007 be taken as read and confirmed.

Les Windle
Manager – Governance

Item No: R1 Recommendation to Council
Subject: **Rezoning proposal at 4A Nelson Street, Woollahra**
Author: John Davies - Strategic Planner
File No: 1064.G
Reason for Report: To respond to the Council's decision made on 27 August 2007
To obtain a decision of Council to rezone 4A Nelson Street, Woollahra

Recommendation

- A. THAT a draft local environmental plan be prepared to amend Woollahra Local Environmental Plan 1995, to change the zoning of 4A Nelson Street from Special Use 5 (Integrated Housing for Aged Persons/Community Facility) to Residential 2(a).
- B. THAT in order to retain the heritage significance of the site, the current allotment size be retained and no minimum allotment size be set under the Woollahra LEP 1995. All subdivision proposals are subject to development consent and will be assessed with regard to impact on heritage significance.
- C. THAT in resolving to prepare a draft local environmental plan the Council is not indicating its acceptance of a development proposal or building works on the site or other sites from which Jewish Care (the owner) operates or intends to operate. These matters will need to be assessed separately through the development application process.
- D. THAT as required by the Council's adopted Fees and Charges, the applicant is to pay all costs incurred by Council for the preparation and exhibition of the amending local environmental plan, including the assessment of the rezoning application report.

Background

On 25 June 2007 the Urban Planning Committee considered a report that dealt with a rezoning proposal by Jewish Care for their property at 4A Nelson Street, Woollahra, also known as 'Brougham' (**annexure 1**). Currently, the property is zoned *Special Use 5 (Integrated Housing for Aged Persons /Community Facility)*. Jewish Care has requested that the property is rezoned to *Residential 2(a)*.

After considering the report, the Committee, on 25 June 2007, recommended:

That consideration of the matter be deferred and a site inspection be conducted at 8.00am on Monday 2 July 2007 and that a Council Heritage Officer be present at the site inspection.

The Council endorsed the recommendation at its meeting on 9 July 2007.

A further report to the Urban Planning Committee on 13 August 2007 provided additional information as a result of the site inspection (**annexure 2**). At that meeting the Urban Planning Committee recommended:

That the matter be referred back to the Urban Planning Committee to explore the possibility of obtaining a binding planning agreement, investigation of whether the public benefit is enforceable and the protection of the curtilage of the heritage property.

The Council endorsed the recommendation at its meeting on 27 August 2007.

This report addresses the three matters raised in the Council's decision:

1. explore the possibility of obtaining a binding planning agreement
2. investigate whether the public benefit is enforceable
3. protection of the heritage property's curtilage.

Binding planning agreement

Statutory provisions for planning agreements

The statutory provisions for planning agreements are provided in:

- Subdivision 2 (Planning agreements) of Division 6 (Development contributions) within the *Environmental Planning and Assessment Act 1979* (the Act)
- Division 1A (Planning agreements) of Part 4 (Development contributions) within the *Environmental Planning and Assessment Regulation 2000* (the Regulation)

Section 93F of the Act sets down the main provisions for planning agreements (**annexure 3**). In particular, subsections 93F (1), (2) and (9) [with emphasis added] state:

- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer):
 - (a) who has sought a change to an environmental planning instrument, or
 - (b) who has made, or proposes to make, a development application, or
 - (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.
- (2) A public purpose includes (without limitation) any of the following:
 - (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
 - (b) the provision of (or the recoupment of the cost of providing) affordable housing,
 - (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
 - (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
 - (e) the monitoring of the planning impacts of development,
 - (f) the conservation or enhancement of the natural environment

- (9) A planning agreement cannot impose an obligation on a planning authority:
- (a) to grant development consent, or
 - (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.

The important aspects to note are:

- a planning agreement is a voluntary agreement or other arrangement – as such, it must be undertaken with the accord of all parties,
- a planning agreement may be used for a change to an environmental planning instrument – this includes the rezoning of land under a local environmental plan,
- a planning agreement is used where, as a consequence of the planning instrument change or development application, the developer is required to:
 - dedicate land free of cost,
 - pay a monetary contribution,
 - provide any other material public benefit,
 - or any combination of the above three,
which will be used for or applied towards a public purpose
- the Council’s responsibilities and decision making powers are not fettered through a planning agreement – this means the planning agreement cannot bind the Council in its decisions in matters such as the determination of development applications.

DIPNR planning practice notes for planning agreements

The NSW Department of Infrastructure, Planning and Natural Resources (now partly operating as the Department of Planning) issued a Planning Practice Note for planning agreements on 19 July 2005. The intent of this practice note is to provide assistance with the preparation of planning agreements.

The Practice Note states that “Planning agreements provide a facility for planning authorities and developers to negotiate flexible outcomes in respect of development contributions” (p.7) The Practice Note also sets down nine fundamental principles:

1. Planning agreements must be governed by the fundamental principle that planning decisions may not be bought or sold.
2. Planning authorities should never allow planning agreements to improperly fetter the exercise of statutory functions with which they are charged.
3. Planning authorities should not use planning agreements as a means to overcome revenue-raising or spending limitations to which they are subject or for other improper purposes.
4. Planning authorities should not be party to planning agreements in order to seek public benefits that are unrelated to particular development.
5. Planning authorities should not, when considering applications to change environmental planning instruments or development applications, take into consideration planning agreements that are wholly unrelated to the subject-matter of the application, nor should they attribute disproportionate weight to a planning agreement.
6. Planning authorities should not allow the interests of individuals or interest groups to outweigh the public interest when considering planning agreements.

7. Planning authorities should not improperly rely on their peculiar statutory position in order to extract unreasonable public interests from developers under planning agreements.
8. Planning authorities should ensure that their bargaining power is not compromised or their decision-making freedom is not fettered through a planning agreement.
9. Planning authorities should avoid, wherever possible, being party to planning agreements where they also have a stake in the development the subject of the agreements.

Department of Infrastructure, Planning and Natural Resources, Development Contributions Practice Note - Planning Agreements, 19 July 2005, p.8

Applicability of a planning agreement

Several points may be noted when examining the statutory provisions and Planning Practice Note in the context of the rezoning request and further intentions of Jewish Care:

- Jewish Care has indicated a reluctance to enter into a planning agreement. As such, there is a failure to meet one of the fundamental aspects of the legislation, namely the voluntary nature of the process. [section 93F (1)]
- There is no requirement under a policy of the Council, such as the Woollahra Section 94 Contributions Plan 2002, for Jewish Care as a consequence of the rezoning proposal to dedicate land free of cost, pay a monetary contribution or provide any other type of material public benefit which will be used for or applied towards a public purpose. Therefore, the proposal does not meet the requirements of section 93F (2).
- Jewish Care has made known its intention to expand the operation of the Burger Centre in Saber Street, Woollahra, with funds acquired from the sale of 4A Nelson Street, Woollahra. This expansion will involve redevelopment of the Burger Centre, which will be the subject of a future development application. This application must be considered and determined independently to the rezoning request for 4A Nelson Street, Woollahra.
- An agreement or arrangement between the Council and Jewish Care, if at all available under the provisions of section 93F of the Act, or by other means, cannot fetter the Council's statutory functions when assessing and determining a development application for under the relevant sections the Act.

In view of the above points, we consider that a planning agreement under the Act is not available to the rezoning proposal submitted to the Council.

Enforceable public benefit

The report to the Urban Planning Committee on 25 June 2007 (**annexure 1**), included details of the services provided by Jewish Care within the Municipality and to the wider sub-regional area. Jewish Care is a charity which has been operating for over 70 years. It employs 85 staff who provide 25 outreach programs that assist children, families the aged and people with disabilities. These programs include:

- counselling,
- family support,
- foster/respice care,
- mental health care,
- migrant support, and
- personal support.

Whilst Jewish Care is not a public authority it, like other private organisations and institutions, provides social services to sections of the general public. Many of these bodies, as part of their business operations, regularly review and rationalise their assets in order to continue and improve their services.

Jewish care proposes to consolidate its services on the Saber Street site. The proposal is at the design stage and several pre-DA meetings have taken place with Council's development assessment staff. Jewish Care expects to lodge a development application very soon. The application will document the operation of Jewish Care and the intended consolidation and improvement of its services.

We consider there is a genuine commitment by Jewish Care to continue and improve its services to Woollahra and to the broader community, thereby maintaining an important public benefit.

We do not consider there is a planning mechanism which may be used in the LEP process or a provision that may be included in a draft LEP that will have the effect of enforcing Jewish Care to maintain or expand the delivery of its social services.

Protection of heritage property's curtilage

The Council seeks to ensure protection for the remaining curtilage of *Brougham*. The former house is now located on Lot 3 DP 270205 (**annexure 4**) but had the benefit of a larger curtilage before development of Emanuel Gardens.

Heritage curtilage may be defined as:

The area of land (including land covered by water) surrounding an item or area of heritage significance which is essential for retaining and interpreting its heritage significance. It can apply to either:

- land which is integral to the heritage significance of items of the built heritage, or
- a precinct which includes buildings, works, relics, trees or places and their settings.
(Heritage Office, Department of Urban Affairs and Planning, 1996, *Heritage Curtilages*, p.3)

The most significant parts of *Brougham's* remaining curtilage are:

- the gardens, open space and entrance on the eastern and northern parts of lot 3, being generally the frontage to Nelson Street (images 1- 4 **annexure 5**), and
- part of lot 2, also fronting Nelson Street and immediately to the north of lot 3, which is used as a croquet lawn for Emanuel Gardens.

These areas are largely screened from public view along Nelson and Wallis Streets by a high masonry fence and partly by a hedge which protrudes above the fence along Wallis Street and for a large section of Nelson Street.

The western section of *Brougham*, abutting lot 1, is a modern addition (images 8 and 9 **annexure 5**). Council's heritage officer has commented that this part of the building has low heritage significance. Consequently, a small amount of curtilage on lot 1 (approximately four metres at the widest point) is not as important as the areas to the east and north. Notwithstanding this, views to the western elevation of *Brougham* would generally be maintained by compliance with the provisions under the site specific DCP for *Brougham* (DCP for 118 Wallis Street) and the Woollahra Heritage Conservation Area DCP. These provisions were outlined in the report to the Urban Planning Committee on 13 August 2007 (**annexure 2**).

The two most significant areas of *Brougham's* remaining curtilage on lots 3 and 2, as described above, are physically and visually divided by a change in level and retaining walls along the northern common boundary (images 5, 6 and 7 of **annexure 5**). The northern adjoining part of lot 2 is 1 – 1.5 metres below the level of lot 3. Despite these features, there is still a sense of association between lots 3 and 2 in this area which allows an interpretation of *Brougham's* curtilage and assists with an understanding of its heritage significance.

Fencing along the common boundary, subject to its height, could impact to some degree on this sense of association between lots 3 and 2. However, the impact would be minimised by a provision of the Woollahra Heritage Conservation Area DCP which limits the height of fencing where there is a difference in levels between lots. In this case the fence height would be limited to 1.2 metres measured from lot 3, being the higher side.

Apart from fencing, the visual curtilage could be broken by tall hedging, trees and large shrubs. This type of landscaping does not require development consent and might be introduced irrespective of the land use zone. There is currently some disruption to the visual curtilage due to vegetation on lot 3.

If the Council wishes to introduce stricter measures to protect the curtilage of *Brougham* it could resolve to amend the site specific DCP or the Woollahra HCA DCP.

Conclusion

We consider that a planning agreement under section 93F of the Act is not a measure that may be used in the proposed rezoning of 4A Nelson Street, Woollahra. The circumstances of the proposal fail to meet the criteria and principles of section 93F.

Jewish Care is a well established and notable organisation which provides important and necessary social services within Woollahra and to the broader community. It has an ongoing commitment to the provision of these services which will be assisted by rationalisation of its assets. We do not consider there is a provision under the Act to enable the Council to enforce this public benefit as a consequence of the rezoning of land.

There are provisions within the Woollahra HCA DCP and the DCP for 118 Wallis Street that address the issues of fencing and the protection of *Brougham's* remaining curtilage. However, it is open to the Council to make changes to these DCPs to introduce further measures.

John Davies
Strategic Planner

Chris Bluett
Manager Strategic Planning

ANNEXURES

- Annexure 1 Report to Urban Planning Committee 25 June 2007
- Annexure 2 Report to Urban Planning Committee 13 August 2007
- Annexure 3 Section 93F of the *Environmental Planning and Assessment Act 1979*
- Annexure 4 Current subdivision plan for *Brougham* and Emanuel Gardens
- Annexure 5 Photos of *Brougham*
- Annexure 6 Aerial photo of site

Item No: R2 Recommendation to Council
Subject: **Draft Woollahra local Environment Plan 1995 (amendment 60)**
Draft Woollahra Neighbourhood Centres Development Control Plan.
Author: Tom Jones – Urban Design Planner
File No: 1064.G
Reason for Report: To report on the public exhibition of the Draft Woollahra Local Environment Plan 1995 (Amendment 60) and the Draft Woollahra Neighbourhood Centres Development Control Plan.

Recommendation

- A. THAT the amended Draft Woollahra Local Environment Plan 1995 (Amendment 60) as contained in **Annexure 8** of the report to the Urban Planning Committee meeting of 8 October 2007 be referred to The NSW Department of Planning for approval by the Minister and for gazettal, subject to any legal drafting alterations requested by Parliamentary Counsel.
- B. THAT the amended Draft Neighbourhood Centres Development Control Plan as contained in **Annexure 9** of the report to the Urban Planning Committee meeting of 8 October 2007, including the amendments contained in **Annexure 7** of the report to the Urban Planning Committee meeting of 8 October 2007, be approved.
- C. THAT a draft development control plan be prepared to amend the Paddington Heritage Conservation Area Development Control Plan to include controls for buildings in William Street, Paddington which may be used for non-residential purposes under the current provisions of Woollahra LEP 1995 and under Woollahra LEP 1995 (Amendment 60).

BACKGROUND:

Purpose of the Draft DCP and Draft LEP

There are a number of neighbourhood centres scattered throughout the Woollahra Municipality which supplement the retail and commercial services of the major shopping centres of Double Bay, Rose Bay and Edgecliff by providing facilities for their local communities. The Draft Neighbourhood Centres DCP and Draft Woollahra LEP 1995 (Amendment 60) are important components of our place based suite of planning controls. The Draft DCP applies to the centres that have either a 3(c) Business Neighbourhood zoning or are located within heritage conservation areas where they are permitted to have retail uses under Clause 30 of the LEP.

The principal objective of the Draft DCP is to develop urban design guidelines which comprehensively address the elements of structure, form and character for each of the neighbourhood centres. These guidelines are underpinned by economic, social, parking and public transport considerations. The work of developing these controls has been guided by the Strategic Planning Working Party and informed by input from council officers as well as a report by Leyshon Consulting Pty Ltd, *Review of Selected Local/Neighbourhood Centres Aug, 2000*.

The Draft LEP includes changes to permissible and prohibited uses as well as changes to height and FSR controls within the 3(c) Business Neighbourhood zone. The proposed amendments are required to support the objectives and implementation of the draft DCP. The key changes and reasons for these changes are set out in the following table:

Proposed LEP Change	Reason/s
<p>Rezone the Service Station site at 77 New South Head Road, Vacluse, within the Vacluse neighbourhood centre, from 2(b) Residential to 3(c) Neighbourhood Business.</p>	<ul style="list-style-type: none"> • The existing use is non-conforming • The business zone should be extended on the south side of the centre consistent with the zoning on the north side • Would permit a built form consistent with the centre and appropriate on this visually prominent site.
<p>Rezone 3 residential properties, 186-194 Victoria Road, Bellevue Hill from 3(a) Business Neighbourhood to 2(b) Residential.</p>	<ul style="list-style-type: none"> • These properties have minimal connection to the Bellevue Hill shopping village • There is no demonstrated need to expand the shopping centre • Rezoning to 2(b) residential, with the retention of the current height limit (12m) and FSR (1.25:1) would support increased residential density on three sites which have good access to local services and public transport.
<p>Amend building heights for the following buildings:</p> <ul style="list-style-type: none"> • 77-103 New South Head Road (excluding 81) Vacluse from 12m to 10.5m • 167-179 Hopetoun Ave, Vacluse from 9.5m to 10.5m • 694-696, 698-704 Old South Head Road Rose Bay and 2-28 Old South Head Road, Vacluse from 12m to 13.5m. • 484-560 Old South Head Road, Rose Bay (Rose Bay South neighbourhood centre) from 12m to 13.5m. • 3-27A Bellevue Road and 196-204 Victoria Road Bellevue Hill (north side Bellevue Hill neighbourhood centre) from 12m to 10.5m • 2-22 Bellevue Road (south side Bellevue Hill neighbourhood centre) for street frontage from 9.5m to 10.5m • Cnr Bellevue Road and Streatfield Ave Bellevue Hill from 9.5m to 10.5m. • Cnr Grosvenor Street and Edgecliff Road, from 9.5m to 10.5m. • Cnr Attunga Street and Manning Road, Woollahra, from 9.5m to 10.5m. • Cnr Darling Point Road and Mitchell Road from 12m to 6.5m (contains a single storey corner store). 	<p>Current building heights are calculated for an adequate floor to ceiling height for residential development and are not suited to mixed use development where greater floor to ceiling heights are required for good retail and commercial floor space. For 4 storey development 13.5m is proposed, for 3 storey 10.5m is proposed.</p> <ul style="list-style-type: none"> • To apply a height limit of 3 storeys on the south-western side of the Vacluse neighbourhood centre. On sloping sites on the north side the 12m height limit is retained to allow adequate building depth on the upper level without exceeding the height limit. • To appropriately provide for 3 storey mixed use development. • To appropriately provide for 4 storey mixed use development. A maximum height of 4 storeys is desirable since the Rose Bay North neighbourhood centre is on a busy road, has high tenancy rates, a good mix of uses and good public transport. • To provide for 4 storey mixed use development as above. • To maintain a 3 storey village scale and character • To maintain a 3 storey village scale but with appropriate floor to ceiling heights for mixed use development. • To maintain a 2 storey scale to Bellevue Road and a 3 storey scale to Streatfield Ave with appropriate floor to ceiling heights for mixed use development. • To maintain a 3 storey village scale but with appropriate floor to ceiling heights for mixed use development. • To maintain a 3 storey village scale but with appropriate floor to ceiling heights for mixed use development. • To maintain view lines to the tree canopy of the gardens behind in Babworth house • To reflect the heritage context.
<p>To amend the floor space ratios for the following sites:</p> <ul style="list-style-type: none"> • Cnr New South Head Road and Old South Head Road Vacluse from 1.25:1 with max 0.5:1 for non-residential to max 1.25. • 77 New South Head Road, Vacluse, from no LEP FSR to an FSR of 1.5:1. • 186-194 Victoria Road, Bellevue Hill from 1.25:1 with a max 0.5:1 for non-residential to a max. of 1.25:1 	<ul style="list-style-type: none"> • To remove the cap on the maximum amount of non-residential development and provide more flexibility for non-residential uses. • To introduce a max FSR of 1.5:1 consistent with the FSR of adjoining land zoned 3(c), noting that this property is proposed to be rezoned from residential to business. • Retains the current maximum FSR of 1.25:1 but removes the cap of 0.5:1 for non residential because these properties are proposed to be rezoned 2(b).

Proposed LEP Change	Reason/s
<ul style="list-style-type: none"> • 3-11 Bellevue Road and 196-204 Victoria Road, Bellevue Hill from 1.25:1 with a max. 0.5:1 for non-residential to a max. of 1.25:1. (North side between Buller Street and Victoria Road) • 2-22 Bellevue Road (south side) from 1.25:1 with a max. 0.5:1 for non-residential to a max. of 1.25:1. • 117-181A Edgecliff Road (north side) and 142-156 Edgecliff Road (south side), Edgecliff Road neighbourhood centre from 1:1 with a max. of 0.35:1 for non-residential to a max. of 1:1 + 0.5:1 if built form criteria for corner site is achieved. 	<ul style="list-style-type: none"> • To remove the cap on the maximum amount of non-residential development and provide more flexibility for non-residential uses. • As above. • As above.
<p>Amends the definition of restaurant, deletes the definition of cafe and makes restaurants permissible with consent in the 3(c) Business Neighbourhood zone.</p>	<ul style="list-style-type: none"> • The current definition distinguishing cafes from restaurants is arbitrary • The standard LEP definition removes the distinction • The inclusion of restaurants with consent in the 3(c) zone will support social and business activity in local centres • The draft DCP contains controls for restaurants in order to protect acoustic and visual privacy for residential neighbours.
<p>Amends the definition of “mixed development” to include serviced apartments</p>	<ul style="list-style-type: none"> • To allow short term tourist accommodation with consent in the neighbourhood centres. Serviced apartments are compatible as a component of mixed use development and serve a similar function to bed and breakfast accommodation.
<p>Makes “dwelling houses” prohibited uses in the 3(c) Business Neighbourhood zone.</p>	<ul style="list-style-type: none"> • To prevent the conversion of shop-top units to dwelling houses. • To support the objectives of the DCP for active retail or commercial uses at street level.
<p>To allow additional business uses, including fashion shops, shoe shops, jewellery shops, health and beauty shops at ground level in the following William Street Paddington properties:</p> <ul style="list-style-type: none"> • 12-42 William Street • 48-94 William Street • 3-43 William Street • 45-63 William Street 	<ul style="list-style-type: none"> • To enable niche businesses in William Street to continue trading • To retain the unique character of William Street • To provide an alternative shopping experience to Oxford Street

The draft LEP and DCP were exhibited for public comment in May and June this year. This report considers the submissions and makes recommendations for minor changes to the exhibited DCP and the exhibited LEP.

Council consideration

On 15 November 2004 the Urban Planning Committee considered a report (**Annexure 1**) presenting a brief (**Annexure 2**) for a Woollahra Neighbourhood Centres DCP. Council on 29 November 2004, resolved:

“That the Council endorse the brief for the Neighbourhood Centres Strategy (Annexure 1) and include the commercial centres and commercial areas in William Street, Elizabeth Street, Boundary Street and Glenmore Road, Paddington.”

The Draft DCP was prepared in-house by the Urban Design team with regular reporting to the Strategic Planning Working Party (SPWP) at a series of 12 meetings (15.12.04, 02.02.05, 03.03.05, 17.03.05, 14.04.05, 28.04.05, 21.07.05, 17.11.05, 8.12.05, 02.02.06, 06.02.06 and 13.02.06).

The Urban Planning Committee received and noted a report on the progress of the Neighbourhood Centres Strategy on the 30 May 2005.

On 13 March 2006, the Urban Planning Committee considered a report on unauthorised uses in William Street Paddington (**Annexure 3**) and on 27 March 2006, Council resolved in the following terms:

- “1. *That Council prepare a draft LEP, including any necessary amendments to the Paddington DCP, for those properties identified in Figure 3 of this report in William Street, Paddington to:*
 - *permit with consent additional uses in the residential zoned properties, the uses being fashion, shoes, jewellery, health and beauty shops*
 - *provide criteria to ensure the heritage integrity of the street is not compromised*
 - *maintain the amenity of nearby residential properties.*
2. *That the draft LEP and amendments to the DCP be forwarded to all residents and business owners affected by the proposals and a further report be submitted to the Committee prior to public exhibition of the documents.”*

On 27 March 2006 the Urban Planning Committee considered a report on the Neighbourhood Centres and LEP amendments (**Annexure 4**). Council on 10 April 2006 resolved:

- A. *That, in accordance with the requirements of the Environmental Planning and Assessment Act 1979, council prepare a draft local environment plan for Neighbourhood Business ‘C’ zones.*
- B. *That the draft local environment plan incorporate the principles summarised in the report and its Annexure 2 (Summary of LEP Amendments) considered by the Urban Planning Committee on 27 March 2006.*
- C. *That the Draft Neighbourhood Centres DCP (Annexure 1), be endorsed for the purposes of public exhibition, in accordance with clauses 18 and 19 of the Environmental Planning and Assessment Regulation 2000, for a period of at least 28 days.*
- D. *That in the report on the matter returning from the public exhibition/consultation period staff report on the options available for retaining amenity at No 75 New South Head Road by increasing setbacks or reducing the height of development at No 77 New South Head Road.*
- E. *That in the report on the matter returning from the public exhibition/consultation period staff report on the options available for the retention of open space at the corner of Buller Street and Bellevue Road.*
- F. *That the draft DCP be amended:*
 - (1) *to include an additional Control Number C4.3.5 to indicate that the 12 metre height control on the west side of New South Head Road is provided to allow for a maximum 3 storey development given the sloping sites and is not intended to allow greater than 3 storey development.*

- (2) *to amend Control Number C4.8.1 to read “Development on the north side of Bellevue Hill is a maximum of three storeys.”*
- (3) *to include an additional Control Number C4.8.9 to indicate that the 18 metre height control on the west side of Bellevue Road is provided to allow for a maximum of three storey development given the sloping sites and is not intended to allow greater than 3 storey development at the street frontage.*
- G. *That all sections be clearly labelled with directional markings.*
- H. *That Performance Criteria C5.9.2 be amended to read:*
- Development provides for the following number of on-site car parking spaces for the residential component of mixed-use development:*
- | | |
|-----------------------------|----------------------------|
| <i>For 1 bedroom units</i> | <i>1.0 space per unit</i> |
| <i>For 2 bedroom units</i> | <i>1.0 space per unit</i> |
| <i>For 3+ bedroom units</i> | <i>2.0 spaces per unit</i> |
| <i>For visitors</i> | <i>0.25 space per unit</i> |
- I. *That Control Number C5.3.29 be amended to include the words “and/or lift” after “stairway”.*
- J. *That in the report on the matter returning from the public exhibition/consultation period staff consider increasing the height limit in the Vaucluse Shopping Village from 10.5 metres to 12 metres maximum on both sides of the street.”*

On 12 March 2007 the Urban Planning Committee considered a report (**Annexure 5**) addressing item 2 of the Council resolution of the 27 March 2006. Council on 26 March 2007 resolved:

- 1. That the report of the Team Leader Urban Design be received and noted.*
- 2. That Council advises all submitters that their submissions will be considered during the public exhibition of draft Woollahra LEP 1995 (Amendment 60)*
- 3. That a report regarding the Orders issued by Council in respect of the premises in William Street be brought to the Urban Planning Committee.*

PREPARATION OF THE DRAFT LEP AND DCP

After the Council’s decision on 10 April 2006, preparation of the Draft LEP and Draft DCP commenced in the manner set out in the *Environmental Planning and Assessment Act 1979* (the Act) and the *Environmental Planning and Assessment Regulation 2000* (the Regulation). The following statutory steps were undertaken during the plan preparation process.

Section 54(4) notification to the Department of Planning

We notified the NSW Department of Planning about Council’s decision to prepare the Draft LEP in the manner required by section 54(4) of the Act and clause 9 of the Regulation.

The Director General did not issue a direction requiring the Council to prepare a local environmental study relating to the Draft LEP.

Section 62 consultation

As part of the draft LEP process, section 62 of the Act requires that the Council carry out consultation with those public authorities and bodies that, in the Council's opinion, will or may be affected by a draft LEP. Section 62 also requires that the Council consult with the adjoining council, where a draft LEP applies to land on a local government boundary. Consultation was undertaken with the following authorities:

- Waverley Council
- City of Sydney Council
- Sydney Water
- Roads and Traffic Authority
- NSW Heritage Office
-

Section 64 notification

The Department of Planning was informed in the required manner that the consultation had occurred. A copy of the Draft LEP and Draft DCP was included in the correspondence.

Section 65 certificate

Using the delegation from the Director-General we issued a Section 65 Certificate on 10 May 2007, thus enabling the Draft LEP to be exhibited.

Consideration of SEPPs, REPs and Ministerial directions

2.5.1 SEPPs and REPs

In the course of preparing the Draft LEP consideration has been given to relevant State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (REPs). The proposed amendments are not inconsistent with the provisions or objectives of any applicable SEPP or REP.

2.5.2 Section 117 directions

Section 117 of the Act provides that the Minister may give directions to a public authority or a person who has functions under the Act or under an environmental planning instrument. Through section 117, the Minister may direct a council to carry out the council's functions in preparing a draft LEP in accordance with principles set out in the direction. Under section 117, the Minister may also direct a council to include provisions in a draft LEP that will achieve or give effect to principles, aims, objectives or policies specified in the direction. In all instances the principles, aims, objectives and policies must be consistent with the Act. No direction has been issued in relation to the Draft LEP.

Since the inception of the Act a total of thirty-one directions have been made under section 117.

Consideration was given to the section 117 Directions in the preparation of the Draft LEP. The Draft LEP is not inconsistent with these Directions.

PUBLIC EXHIBITION

The Draft LEP and Draft DCP were exhibited in the manner required by the Act and the Regulation. The exhibition occurred at the Council's Customer Services area over the period from Friday 11 May 2007 to Friday 22 June 2007.

Details of the exhibition were notified in the Wentworth Courier editions of 9 May, 16 May, 23 May, 30 May, 6 June and 13 June 2007. All properties affected by the Draft DCP and Draft LEP were notified.

Council resolved on 27 March 2006 to notify, prior to exhibition of the Draft LEP all residents and business owners potentially affected by the additional uses in William Street, Paddington. Notices were sent to the owners on the 27 January 2007 and the responses to that notification were summarised in an annexure to the report to the Urban Planning Committee on 12 March 2007. That annexure is attached to this report in **Annexure 5**

CONSIDERATION OF SUBMISSIONS

As a result of the exhibition of the Draft LEP and Draft DCP sixty-nine submissions were received. These comprised sixty-eight public submissions and one public authority submission. **Annexure 6** contains an outline of the issues raised in the submissions and responses to the issues. A petition containing seventy-five signatures was also submitted.

The alterations we propose to the Draft DCP, in response to the submissions, are tabulated in the *Table of Proposed Alterations to the Draft Neighbourhood Centres DCP, 13 August 2007*. (**Annexure 7**)

Submissions

Summary of submissions

Sixty-nine submissions we received as follows:

- twelve submissions objected to the Draft LEP and DCP
- fifty-four submissions supported the draft LEP and DCP
- two submissions made comments on the exhibited documents
- one submission included a petition of seventy-five signatures in support of the draft LEP and DCP.

Fifty-two of the submissions in support specifically related to the proposed additional permitted uses in William Street, Paddington. These submissions argued that William Street is a unique retail environment. They used terms such as “designer”, “custom service”, “cottage industry” and “cutting edge” to describe the shopping experience.

Two submissions in support of the draft LEP and DCP related to sites which are presently being developed. The owners of a site in the Rose Bay South Neighbourhood Centre point out that Short Lane has been omitted from the rear access lanes. It is recommended that Short Lane is added. **Annexure 7** details this alteration.

Only one submission objected to the additional uses in William Street. The concerns raised relate to the heritage impact and issues relating to servicing the retail properties.

William Street Paddington

During the earlier notification prior to formal public exhibition of the proposal for additional business uses eighteen objections were received with twenty two letters of support. The objectors raised issues regarding:

- The heritage impact of the non-residential use of terrace houses
- Parking and pedestrian safety being affected by increased traffic
- Servicing, particularly garbage and deliveries
- Impact on the viability of the retail on Oxford Street.

These issues were considered in our report to the Urban Planning Committee on 12 March 2007, attached as **Annexure 5**

Brodie Street, Bourke Lane, Margaret Place and Gipps Street, Paddington

The other identifiable grouping of objectors raised issues relating to that part of Paddington, including Brodie Street, Bourke Lane, Margaret Place and Gipps Street.

The issues are summarised as:

- The impact of allowing, with consent, serviced apartments in the 3(c) Business Neighbourhood zone because short term residents will act irresponsibly and have little empathy with the location.
- Noise and amenity impacts, particularly odour, associated with permitting restaurants in the 3(c) Business Neighbourhood zone.
- Problems with parking.

In considering these issues it is noted that:

- There is no evidence to indicate that the occupants of serviced apartments in mixed developments are more likely to act irresponsibly than the occupants of traditional licensed hotels or of other residential dwellings. The provision of serviced accommodation in proximity to residential areas may be beneficial to residents as it allows their visitors to be accommodated at close hand.
- Council's retail consultant recommended that we should allow restaurants in the 3(c) Business Neighbourhood zone to add life and vitality to our local centres. It is an anomaly that restaurants are permissible on the City of Sydney side of Oxford Street but not on the Woollahra side. Community concerns about the potential amenity impacts of restaurants close to residential areas need to be carefully considered on a case by case basis as part of the development application process and in the context of the performance criteria set out in C5.8.5 and C5.8.6 of the draft DCP. It is through this process that concerns about noise, trading hours and amenity impacts can be appropriately regulated.
- Parking problems are acknowledged.

Submission by the Vacluse Progress Association

The Vacluse Progress Association's submission raises concerns about the rezoning of No. 77 New South Head Road, Vacluse from 2(a) Residential to 3(c) Business Neighbourhood. This is the service station site at the south-western end of the Vacluse shopping centre. Their concerns relate to pedestrian safety resulting from increased population from the potential development of No. 77. They also raise issue with references in the DCP to the Vacluse High School.

We do not consider that development on the outside of the road curve at this location will constitute any direct safety issues within the Neighbourhood Centre which is a place of concentrated pedestrian activity.

This submission also notes that the Draft DCP refers to Public Domain Improvement Plans which are not presently available.

In response to this point it is recommended that the references to the Public Domain Improvement Plans be deleted from the Draft DCP. These alterations are detailed in **Annexure 7**.

We agree with the association's submission about the Vacluse High School. The reference in the DCP should be amended to the *former* Vacluse High School. This alteration is detailed in **Annexure 7**.

Our responses to the association's submissions on specific clauses in the Draft DCP are also contained in **Annexure 7**.

Submission by Waverley Council

Waverley Council made a submission which reviews the whole Draft DCP but concentrates on the Rose Bay North and Rose Bay South centres which are shared by the Waverley and Woollahra Local Government Areas. The Waverley Council submission is generally supportive, however, it raises an issue with the description of the Rose Bay North neighbourhood centre in section 4.4. The submission argues that the first sentence of the description should read, "The centre is characterised by two to four storey shop-top buildings." It is recommended that the wording in the draft DCP is altered accordingly. This alteration is detailed in **Annexure 7**.

The submission questions the use of the term "personal services" in O 4.5.1. It is agreed that the term is not defined and could be removed from the Draft DCP. This alteration is detailed in **Annexure 7**.

NSW Heritage Office

No objection was raised to the provisions of the Draft LEP

Roads and Traffic Authority

In their letter of response of the 31 May 2007, no objection was raised to the provisions of the Draft LEP.

Woollahra Municipal Council staff review

As a result of the further review of the draft DCP a number of corrections are recommended:

- That clause 1.7.1 be corrected to make reference to Division 6 of the *Environmental Planning and Assessment Act 1979* and Part 3 of the *Environmental Planning and Assessment Regulation 2000*.
- That the diagram on page 31 be corrected, to indicate the rezoning of 77 New South Head Road from 2(a)Residential to 3(c)Business Neighbourhood.
- That the diagram on page 50 be corrected, to indicate the rezoning of Nos. 186-188, 190 and 194 Victoria Road from 3(c)Business Neighbourhood to 2(b)Residential.

Two minor amendments to the Draft LEP, which are essentially typographical errors, are recommended:

- That clause 3(d) of the Draft LEP be amended to remove reference to objective 2(f).
- That clause 3(e) of the Draft LEP be amended to include reference to objective 2(f).

A summary of all the submissions made during the exhibition period with the issues raised and a response are tabulated in **Annexure 6**.

Considerations in response to Council resolutions

On 10 April 2006, Council resolved that reports be made in the following terms:

- D. That in the report on the matter returning from the public exhibition/consultation period staff report on the options available for retaining amenity at No 75 New South Head Road by increasing setbacks or reducing the height of development at No 77 New South Head Road.*
- E. That in the report on the matter returning from the public exhibition/consultation period staff report on the options available for the retention of open space at the corner of Buller Street and Bellevue Road.*
- J. That in the report on the matter returning from the public exhibition/consultation period staff consider increasing the height limit in the Vaucluse Shopping Village from 10.5 metres to 12 metres maximum on both sides of the street.*

77 New South Head Road

The height limit in the 3(c) zone has been amended in this location to 10.5m reducing the impact of potential development. The possibility of the development of No.77 blocking the frontage of No.75 as a result of utilising the zero front setback is considered unlikely and any conflict would be able to be resolved during the development application process.

Open Space, cnr Bellevue Road and Buller Street

Part E of the resolution asks that we consider options available to retain open space at the corner of Buller Street and Bellevue Roads. At this intersection the curb of Buller Street on the eastern side is about 5m from the street boundary. The area is paved and contains several mature trees. The adjoining property, 11 Bellevue Road contains a mixed use retail and residential flat building which is sited along the road alignment of Buller Street. This open space, being on public land, is not under threat and is maintained by Council.

On the western side of Buller Street the curb is about 4m from the street boundary but largely occupied by the porte cochere to a 1960s-1970s multi-storey residential flat building on 13-21 Bellevue Road. The building on this site greatly exceeds what is permissible under current controls. Therefore, it is most unlikely that this site will be redeveloped. However, since the site is within the 3(c) Business Neighbourhood zone, it is possible that an application could be submitted seeking consent to extend the ground and first floor levels to the street frontage to create a retail frontage. This would result in a loss of some vegetation within the property but would be consistent with the provisions of the draft DCP to develop corner sites with four storeys built to the street with a continuous and consistent parapet line above. The quality of the open space on this corner is not such as to warrant a variation to the controls in the draft DCP.

Vaucluse Shopping Village height limit

Part J of the resolution asks that we consider increasing the height limit in the Vaucluse shopping centre from 10.5m to 12m.

A height limit of 10.5m has been recommended for all 3(c) zones which are intended to accommodate three storey buildings, ie. two levels of residential accommodation over ground floor retail. This has been calculated as follows:

- Ground level, floor to ceiling - 4m
- 1st level, floor to ceiling - 3m
- 2nd level, floor to ceiling - 3m

- Roof articulation - 0.5m
- Maximum height - 10.5m

Where 4 storeys are proposed this height is increased by 3m to 13.5m

The proposed height controls provide for appropriate floor to ceiling levels. A height limit of 12m does not fit well with either 3 or 4 storey development. While it is possible to achieve a four storey mixed retail/residential development within a 12m height limit, it can only be achieved with less than adequate floor to ceiling heights. We consider that a 12m height limit for the Bellevue Hill shopping village is an unsatisfactory dimension since it would allow four storeys with low ceiling heights and hence poor amenity. Consistent with the approach taken in the other centres, the height should remain at 10.5m or, if Council wants to permit four storey buildings, 13.5m.

Other Items

Other items in the Council resolution of 10 April 2006 were acted on prior to exhibition of the document.

William Street

On 26 March 2007, Council resolved:

- “3. *That a report regarding the Orders issued by Council in respect of the premises in William Street be brought to the Urban Planning Committee.*”

A number of notices and orders have been issued to the owners of properties in William Street, Paddington ordering the rectification of unauthorised building works which have included:

1. The removal of timber panel front doors and replacing them with glass doors. This allows the retailer to have a barrier to the exterior environment while still allowing potential clients to see into the premises.
2. The removal of double hung sash windows to the street facade and replacing them with fixed glazing allowing a more extensive display window.
3. The placement and erection of business advertising and signage including displays in the front garden area and painting with distinctive colours.

Most owners have complied with these notices and/or orders but there are three orders outstanding relating to unauthorised alterations to the facades, including the removal of sash windows and timber paneled doors. These matters have been referred to Council's solicitors. In all but one of these three cases, attempts have been made to comply with the terms of the orders. Several properties have replaced their front timber door, as directed, but also retained a glass door. Others have modified the glazed display windows to resemble sash windows.

In the context of these issues it is recommended that Council develop a location specific set of controls which clearly indicates what is acceptable and what is not regarding changes to the properties in William Street. These controls should specifically address the issue of business identification and advertising.

STATUTORY PROCESSES

LEP process

Prior to the draft LEP being approved by the Minister for Planning, an opinion must be obtained from the Parliamentary Counsel that the Draft LEP can be legally made. Comments from the Parliamentary Counsel usually relate to matters of legal drafting.

Following receipt of Parliamentary Counsel's opinion, the Draft LEP will be referred to the Department of Planning for the Minister's approval and then gazettal. The Draft LEP will come into effect when a notice is placed in the Government Gazette.

DCP process

Commencement of the Draft DCP is reliant on the gazettal of the Draft LEP. A notice of Council's approval of the Draft DCP will be placed in a newspaper after the Draft LEP has been gazetted.

IDENTIFICATION OF INCOME AND EXPENDITURE

There are no budgetary implications. All costs associated with this stage of the project are provided for in the 2007/2008 budget.

CONCLUSION

Preparation of the Draft LEP and Draft DCP has been undertaken in the manner required by the Act and the Regulation. Consideration has been given to the submissions received. As a consequence a number of alterations are recommended to the Draft DCP. Two minor amendments to the Draft LEP have been identified by staff. The amendments recommended to the exhibited Draft LEP and Draft DCP are not considered to be of such substance to require re-exhibition of the draft plans.

It is recommended:

1. that the Draft LEP, as amended, (**Annexure 8**) be forwarded to the Department of Planning for gazettal, subject to any legal drafting alterations requested by Parliamentary Counsel.
2. that, having considered all submissions, Council approve the Draft DCP, as amended, (**Annexure 9**) to come into affect following gazettal of Draft Woollahra LEP 1995 (Amendment 60).
3. that the Paddington Heritage Conservation Area DCP be amended to include controls for those buildings in William Street Paddington that may be used for non-residential purposes under the existing LEP provisions and under the Draft LEP.

TOM JONES
URBAN DESIGN PLANNER

CHRIS BLUETT
MANAGER, STRATEGIC PLANNING

ALLAN COKER
DIRECTOR PLANNING AND DEVELOPMENT

Annexures:

- Annexure 1:** Report to the Urban Planning Committee, 15 November 2004, dealing with the brief for the Neighbourhood Centres strategy
- Annexure 2:** Project Brief, Neighbourhood Centres Strategy December 2004
- Annexure 3:** Report to the Urban Planning Committee 13 March 2006, dealing with the unauthorised uses in William and Elizabeth Streets, Paddington.
- Annexure 4:** Report to the Urban Planning Committee 27 March 2006 dealing with the Neighbourhood Centres DCP and LEP amendments.
- Annexure 5:** Report to the Urban Planning Committee 12 March 2007, dealing with the retail uses in William Street, Paddington.
- Annexure 6:** Summary of submissions in response to the exhibition of Draft WLEP 1995 (Amendment 60) and the Draft Neighbourhood Centres DCP.
- Annexure 7:** Table of recommended amendments to the exhibited Draft Neighbourhood Centres Development Control Plan.
- Annexure 8:** Draft Woollahra Local Environmental Plan 1995 (Amendment No. 60) as exhibited with proposed alterations shown in ~~striketrough~~ and underline.
CIRCULATED SEPARATELY
- Annexure 9:** Draft Neighbourhood Centres Development Control Plan as exhibited with proposed alterations shown in ~~striketrough~~ and underline.
CIRCULATED SEPARATELY