



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 12 July 2004*

Time: *6.00pm*

Outline Of Meeting Protocol & Procedure:

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

Delegated Authority (“D” Items):

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

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

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

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

8 July 2004

To: The Mayor, Councillor Rundle, ex-officio
Councillor David Shoebridge (Chair)
Anthony Boskovitz
John Comino
Christopher Dawson
Keri Huxley
Julian Martin
Isabelle Shapiro

Dear Councillors

Urban Planning Committee Meeting – 12 July 2004

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Monday 12 July 2004 2004 at 6.00pm.**

Gary James
General Manager

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 15 June 2004	1
----	---	---

Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Review of Woollahra Development Control Plan Exempt and Complying Development – 1064.G	2
----	--	---

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 15 June 2004**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 15 June 2004 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 15 June 2004 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: **REVIEW OF WOOLLAHRA DEVELOPMENT CONTROL PLAN EXEMPT AND COMPLYING DEVELOPMENT**
Author: Anita Lakeland – Team Leader Strategic Planning
File No: 1064.G (Amend 53)
Reason for Report: To report on the review and proposed amendments to *Woollahra Development Control Plan- Exempt and Complying Development* and *Woollahra Local Environmental Plan 1995*.
To obtain a decision to prepare a draft development control plan and draft local environmental plan.

Recommendation:

- A. That under section 54 of the *Environmental Planning and Assessment Act 1979*, Council resolve to prepare a draft local environmental plan to amend *Woollahra Local Environmental Plan 1995* by:
- altering clause 25B to facilitate the proposed amendments to *Woollahra Development Control Plan- Exempt and Complying Development*; and
 - allowing development for the purpose of filming with the consent of Council; and
 - inserting a new definition for filming.
- B. That under clause 22 of the *Environmental Planning and Assessment Regulation 2000*, Council resolve to prepare a development control plan to amend *Woollahra Development Control Plan - Exempt and Complying Development* as detailed in the report and annexures 2 and 3 to the Urban Planning Committee on 12 July 2004.

1.0 Background

In July 1998 the Department of Urban Affairs and Planning (now Department of Infrastructure, Planning and Natural Resources) introduced a number of amendments to Part 4 (Development Assessment) of the *Environmental Planning and Assessment Act 1979* (the Act). The purpose of the amendments was to introduce a new development classification system and implement two development categories known as *exempt development* and *complying development*.

Councils were requested by the Minister to amend their principal LEPs and DCPs to accommodate the exempt and complying development provisions of the Act, or they would be subject to the new *State Environmental Planning Policy No. 60 Exempt and Complying Development* (SEPP 60) when introduced. The purpose of SEPP 60 was to provide for exempt and complying development in certain local government areas that did not provide for those types of development through a local environmental plan.

In response to the Minister's request, the Council at its meeting of 2 November 1998 endorsed the preparation of a draft LEP and draft DCP for exempt and complying provisions for the Woollahra Municipality. The draft LEP (Amendment 20) introduced clause 25B *exempt and complying development* into *Woollahra LEP 1995*. This clause facilitates exempt and complying development through *Woollahra Development Control Plan – Exempt and Complying Development* (the DCP).

The DCP specifies the development types which may be exempt development or may be assessed as complying development and the development criteria which must be satisfied by those developments.

The preparation of the exempt and complying provisions of clause 25B in Woollahra LEP 1995 and the introduction of the DCP gained Woollahra Municipality an exemption from SEPP 60.

1.1 Exempt Development

Exempt development may be carried out without application or notification to Council. Notification to adjoining properties, that would otherwise occur during the development assessment process, is also not required.

Under Section 76(2) of the Act, an environmental planning instrument (such as an LEP) may provide that development of a specified class or description that is of minimal environmental impact is *exempt development*. Exempt development may be carried out in accordance with the environmental planning instrument without the need for development consent from the Council, provided the land on which the development is proposed is not identified as critical habitat or wilderness area within the meaning of the Wilderness Act 1987, and certain development criteria can be satisfied. Exempt development is also excluded from assessment under Part 5 of the Act. Proposed development must also satisfy predetermined development criteria and the provisions of the Building Code of Australia.

1.2 Complying Development

The primary purpose of the complying development process is to expedite the assessment of applications that satisfy the pre-determined standards.

Section 76A(5) of the Act states that an environmental planning instrument may provide that local development (development which requires development consent) that can be addressed by predetermined development standards is *complying development*. Complying development may be carried out following the issuing of a complying development certificate. The certificate includes standard conditions to which the development must comply.

Complying development certificates may be issued by Council or a private accredited certifier. An accredited certifier is a person who is accredited by an accreditation body, which is a professional association authorised for accreditation purposes by the Minister for Infrastructure, Planning and Natural Resources. The Act and *Environmental Planning and Assessment Regulation 2000* (the Regulation) provide for matters such as the establishment of accreditation bodies, their authorisation, creation, and liability and insurance issues.

A complying development certificate may be issued within a seven day period from the date of lodgement of the application to Council or an accredited certifier.

2.0 Woollahra Development Control Plan – Exempt and Complying Development

Throughout 1999 Council undertook a community consultation program that resulted in the preparation and exhibition of a draft LEP and draft DCP for exempt and complying development in Woollahra Municipality. Council received a number of submissions from the community on the content of the draft plans during the preparation and exhibition periods.

At its meeting of 10 April 2000 Council approved the *Woollahra Development Control Plan – Exempt and Complying Development* (the DCP). The LEP provisions which facilitated the DCP were gazetted on 12 May 2000. The DCP came into effect on 31 January 2001 and is attached as **Annexure 1**.

The DCP contains a range of development types identified as exempt development or complying development. To qualify as either exempt or complying development, a proposal must satisfy a set of general development criteria. These criteria include for example, that the development must be otherwise permissible under the relevant environmental planning instrument and must comply with the ‘deemed to satisfy’ provisions of the Building Code of Australia. Should the proposal meet the general criteria, the development must then comply with the specific development criteria applying to each development type.

For exempt development, should the general development criteria and the specific development type criteria be satisfied, the development may proceed without development consent and notification.

For complying development, should the general development criteria and the specific development type criteria be satisfied, a complying development certificate may be issued by Council or a private certifier. The certificate will be issued with standard conditions which the development must additionally satisfy. The DCP specifies the standard conditions that will apply to each complying development type. In 2003, forty complying development certificates were issued by both Council and private certifiers. In comparison 630 development consents were granted in 2003. This year twelve complying development certificates have been issued to date. In the same period 375 development consents have been granted. These statistics indicate that complying development is a small proportion of all applications for development in Woollahra.

2.1 The DCP Review

The DCP has been in place for over three years, during which time Council staff have identified certain aspects of the plan in need of review. A detailed internal review process has been underway for the past six months to identify proposed amendments to the document. To assist in understanding the range and rationale for the amendments, a number of annexures are attached to this report.

- **Annexure 1** is a copy of the DCP as approved on 10 April 2000.
- **Annexure 2** is an altered version of the DCP which identifies proposed deleted text (shown as ~~struck-out~~) and proposed additional text (***shown in bold, italic underline***). This altered version of the DCP shows how the final DCP will appear when the amendments are adopted. (An amending DCP will be prepared to introduce the amendments outlined in this annexure, See section 4 of this report for explanation).
- **Annexure 3** is a summary of the proposed amendments to the exempt and complying tables. It identifies the issue or area of concern, provides a response and sets out proposed amendments to the DCP.

In summary, it is generally proposed to make the following key amendments to the DCP.

- Structure and format alterations;
- Content clarification;
- Introduction of additional general development criteria for exempt development;
- Deletion of certain general development criteria for exempt development;
- Broadening or restricting the zones or areas where certain exempt development may occur;
- Introduction of additional exempt development types and development criteria;

- Amendments to exempt development criteria and complying development criteria for various development types;
- Introduction of additional complying development types and development criteria;
- Amendments to the standard conditions;
- Introduction of new definitions; and
- Introduction of new schedules.

2.1.1. Structure and format

To improve the useability and legibility of the DCP and for greater interpretation it is proposed to:

- Amend *section 2 Exempt Development* to include all explanatory information, general development criteria and development tables related to exempt development in one location, by relocating schedule 1 to section 2.
- Amend *section 3 Complying Development* to include all explanatory information, general development criteria and development tables related to complying development in one location, by relocating schedule 2 to section 3.
- Provide minor amendments to formatting, section titles and headings to clarify and streamline the DCP.

2.1.2 Content clarification

It is proposed to clarify the meaning of exempt development and complying development by providing additional explanatory information and cross references to the general development criteria and development tables.

2.1.3. Introduction of additional general development criteria for exempt development

To ensure the site to which a development relates is suitable, and that the resultant development meets minimum building standards, it is proposed to introduce additional general criteria for development to qualify as exempt development, including that:

- the site to which the development relates is not an item on the State Heritage Register;
- the site to which the development relates does not require the preparation of a preliminary acid sulfate soils assessment or acid sulfate soils management plan under the propose provisions of clause 25D of Woollahra LEP 1995;
- the proposal complies with any relevant Australian Standards; and
- the proposal will not exceed certain restrictions on hours of work to maintain the amenity of the neighbourhood.

2.1.4 Deletion of certain general development criteria for exempt development

Two general development criteria are proposed to be deleted.

- The existing general development criterion which requires a development not to cause interference with the amenity of the neighbourhood because of light, noise, smell fumes, smoke, vapour etc. This criterion is open to variable and subjective interpretation and is a merit assessment which cannot be quantified by exempt development.
- The existing general development criterion which requires compliance with the standards in an environmental planning instrument. The criterion is contrary to Clause 25 B of Woollahra LEP 1995 which states that development listed as exempt development is exempt development despite any other provisions of the LEP.

2.1.5 Broadening or excluding certain zones or areas where exempt development may occur

Certain development types that are exempt development and which apply to heritage items are now considered to require a full environmental assessment (development consent) to adequately assess the potential impact on the significance of the item. It is therefore proposed to exclude the following development types as exempt development in the case of heritage items:

- ancillary landscaping development;
- building alterations (internal); and
- roof space conversions.

As previously stated in section 1.1 of this report, exempt development is development of minimal environmental impact. Currently, a number of development types exclude heritage conservation areas and heritage items from being exempt development, therefore requiring development consent. It is proposed to broaden the application of exempt development for certain minor development types to include exemptions for heritage items and heritage conservation areas detailed below. The full range of amendments are outlined in **annexure 3**.

With regard to heritage conservation areas, it is proposed to include the following development types as exempt development. Specific development criteria are also proposed to control the development.

- awnings and canopies;
- fences – side and rear (timber palings);
- outbuildings;
- rainwater tanks; and
- solar water heaters.

With regard to heritage items, it is proposed to include the following development types as exempt development and to include specific development criteria to control the development.

- building repair and maintenance work (external);
- fences side and rear (timber palings); and
- rainwater tanks.

2.1.6 Introduction of additional exempt development types and development criteria

It is proposed to introduce a number of additional minor development types, as exempt development. **Annexure 3** contains a detailed explanation and rationale for the introduction of the proposed development types, the applicable zones / areas to which they apply, and the development criteria which must be satisfied. The additional exempt development types fall into three broad types.

□ Development requiring multiple approvals

Certain minor development requires approval from Council under section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993*, in addition to development assessment under Part 4 or Part 5 of the *Environmental Planning and Assessment Act 1979*. The proposed development types are listed below:

- Activities requiring an activity approval under section 68 of the *Local Government Act 1993*;
- Stormwater drainage works;
- Water supply and sewerage works; and
- Works and structures under section 138 of the *Roads Act 1993*

Activities requiring an activity approval under section 68 of the *Local Government Act 1993*

Activities which require an approval from Council under section 68 of the *Local Government Act 1993* fall within the following categories: structures or places of public entertainment; water supply, sewerage and stormwater drainage work; management of waste; community land; public roads; and other activities. (see **Annexure 2** - schedule 2 - Extract of section 68 for the full list of activities).

The current two-staged approvals process for these minor developments is onerous and repetitive. The approvals process undertaken under the requirements of the *Local Government Act 1993* is adequate and may be conditioned appropriately. To streamline the approvals process it is proposed to include certain activities of minor environmental impact listed in section 68 as exempt development, provided an approval has been issued under that section. These activities are detailed in **annexure 2** and **annexure 3** under the development type of "Activities requiring approval under section 68 of the *Local Government Act 1993*".

Part B of section 68 – *Water supply, sewerage and stormwater drainage work* will be dealt with separately, as section 68 does not apply to areas under the control of the Sydney Water Board. Water supply and sewerage works will be a separate exempt development type, as will stormwater drainage work (repairs and maintenance). New stormwater drainage works will be dealt with separately as complying development.

Works and structures under section 138 *Roads Act 1993*

Developments which requires approval under section 138 of the *Roads Act 1993* fall into the following categories of works or structures occurring on or over a public road (including footpaths and roadways):

- Erect a structure or carry out work in, on or over a public road, or
- Dig up or disturb the surface of a public road, or
- Remove or interfere with a structure, work or tree on a public road, or
- Pump water into a public road from any land adjoining the road, or
- Connect a road (whether public or private) to a classified road.

Council currently issues the section 138 approval for these works, as the roads authority delegate, except for New South Head Road, in which case approvals are issued by the Roads and Traffic Authority. The two staged approvals process for these developments is onerous given the minor nature of the works likely to occur in Woollahra. It is proposed to streamline the approvals process by including these developments as exempt development, provided an approval under the *Roads Act 1993* has been issued by Council or the Roads and Traffic Authority. This approval may be conditional.

□ Further minor development

Minor development of minimal environmental impact which currently requires development consent:

- Building repairs and maintenance work – (external) - heritage items and inter-war flat buildings.
- Garbage enclosures
- Security doors, screens and grills
- Skylights
- Swimming pool and spa fencing.

These development types are minor in nature and are recommended as new exempt development types with appropriate development criteria. See **Annexure 3** for full explanation and proposed development criteria.

□ State policy exempt development

Development that is identified as development without consent under a state policy:

- Filming (private land) -(residential and business zones)

State Environmental Planning Policy No. 4 – Development without Consent and Miscellaneous Exempt and Complying Development (SEPP 4), which overrides local environmental plans, identifies filming on private land as exempt development where certain development criteria can be met. For consistency with this provision, it is proposed to include filming on private land as exempt development. (See section 3 to this report for additional explanation).

2.1.7 Amendments to exempt development criteria for various development types

A number of amendments are proposed to the development criteria for certain development types. In summary, the purpose of the amendments is to:

- Clarify the intent of the development criteria;
- Strengthen the development criteria to better control the development;
- Introduce additional development criteria specifically for heritage conservation areas, heritage items and interwar flat buildings;
- Delete certain development criteria to broaden the application of a particular development type;
- Delete unnecessary or repetitive development criteria; and
- Update certain development criteria to conform with recent legislative, standard or industry changes.

Of particular note are the alterations to the development criteria for:

Exempt development types

- Advertising structures and signs;
- Aerials / antennas / microwave antenna;
- Ancillary landscaping development;
- Awnings and canopies;
- Barbeques;
- Building alterations, repair and maintenance (internal);
- Building alterations, repair and maintenance (external);
- Driveways over private land;
- Driveways over public land;
- Events;
- Fences side and rear;
- Home occupations;
- Landscape works on public land;
- Outbuildings; and
- Rainwater tanks;
- Roofspace conversions;
- Solar water heaters;
- Subdivision;
- Water heaters;
- Windows.

Complying development types

- Air handling systems;
- Carports and garages;
- Pergolas;
- Satellite dishes;
- Single storey detached dwelling houses;
- Swimming pools;
- Temporary structures.

A full explanation of the proposed amendments for all development type is detailed in **Annexure 3**.

2.1.8 Introduction of additional complying development types

Development that can be addressed by predetermined development standards may be complying development. It is proposed to introduce additional complying development types and development criteria for:

- Fences – side and rear (masonry construction);

Annexure 3 contains a detailed explanation on the rationale for the above amendments.

2.1.9 Alterations to standard conditions

The DCP identifies the standard conditions that will apply to each complying development type when the certificate is issued. On review, it is necessary to apply additional conditions to all complying development types as outlined in **Annexure 2** –schedule 1.

These conditions are consistent with the standard conditions used in development application consents. From time to time, the standard conditions are updated. To ensure the DCP's conditions are consistent with Council's standard conditions it is proposed to alter those conditions where necessary. (See **Annexure 2 –Schedule 1** for conditions)

2.1.10 Definitions

A number of terms that are defined in schedule 5 of the DCP are not used in the document. It is therefore proposed to delete these definitions. These are:

- sporting organisation;
- storm blinds.

For assistance with interpretation it is proposed to include a number of additional terms in the definitions schedule. These are:

- BASIX certificate;
- deep soil landscaped area;
- events;
- temporary building;
- temporary structure;
- filming;
- filming management plan;
- notification of filming;
- principal building form; and
- significant cultural planting.

2.1.11 Introduction of new schedules

It is proposed to introduce two new schedules that provide an extract of section 68 of the *Local Government Act 1993* and an extract of section 138 of the *Roads Act 1993*. This will allow easy cross-reference for those proposed exempt development types. (See discussion in section 2.1.6 of this report).

3.0 Proposed amendments to Woollahra LEP 1995

As previously mentioned in section 1 of this report, Woollahra LEP (Amendment 20) introduced clause 25B *exempt and complying development* into Woollahra LEP 1995. This clause facilitates exempt and complying development through *Woollahra Development Control Plan – Exempt and Complying Development*. Two amendments are proposed to Woollahra LEP 1995 to facilitate the proposed amendments to the DCP and to correct an anomaly in the plan.

3.1 Amendment to clause 25B

Clause 25B of Woollahra LEP 1995 refers specifically to the DCP as approved by Council on 10 April 2000. To facilitate the proposed amendments to the DCP outlined in this report, it is proposed to prepare a draft LEP to amend clause 25B of Woollahra LEP 1995 to refer to the DCP as approved by Council on 10 April 2000 *and subsequently amended by DCP's approved on specified dates*.

3.2 Amendment to include filming as a permissible use

All development types within the Exempt and Complying DCP must be permissible under Woollahra LEP 1995. An anomaly currently exists between the DCP and the LEP in that filming on public open space and unzoned land is included as exempt development in the DCP, but the LEP 1995 does not provide for filming as a permissible use (unless it can be demonstrated that filming forms part of or is ancillary to a permissible use in that zone). In addition, *SEPP 4* overrides Council's plans and permits filming on private land without development consent.

To correct the anomaly in the Woollahra LEP 1995, and to be consistent with the exempt provisions of *SEPP 4*, it is proposed to insert a clause which permits filming on all land with the consent of Council. A definition for filming will also be provided.

It is proposed to include filming as exempt development for residential and business zones, including heritage conservation areas and heritage items, where certain development criteria can be met. The development criteria will be consistent with the criteria contained in *SEPP 4* and will include special provisions for heritage conservation areas and heritage items. (see **Annexure 3**). Filming in public open space and unzoned land will continue in its current form as exempt development.

4.0 Preparation of an amending DCP

Under clause 22 of the Regulation, a council may amend a development control plan by a subsequent development control plan. It is proposed to prepare the amending DCP, (the legal instrument specifying the amendments to the current DCP), in accordance with the proposed alterations outlined in this report and annexures. This amending DCP (known as Amendment 1) will be exhibited in the manner required by clause 18 of the Regulation. To assist in interpretation of the amending DCP it is also proposed to exhibit the altered DCP with tracked changes. (**Annexure 2**).

5.0 Exhibition and notification

5.1 Section 62 consultation

As required by section 62 of the Act, relevant public authorities will be notified of Council's intention to prepare the draft LEP and invited to provide information that will assist with its preparation. These authorities will be further notified during the exhibition period.

5.2 Public notification

As required by the Act and the Regulations, the Draft LEP and Draft Woollahra Development Control Plan –Exempt and Complying Development (Amendment No. 1) will be exhibited for a minimum period of twenty eight days, during which time public notices will be placed in the Wentworth Courier. Written submission will be invited during this time. An information brochure will also be prepared to explain the draft plans.

6.0 Identification of income and expenditure

Costs associated with the review of the current exempt and complying development documents and with the preparation of the Draft LEP and Draft Woollahra DCP- Exempt and Complying Development (Amendment No. 1) have been or will be met by allocations from the 2003-2004 and 2004-2005 operational budget. Income will be received from the sale of the new documents.

7.0 Conclusion

The Woollahra Development Control Plan – Exempt and Complying Development has been in operation for over three years. The internal review process has identified a number of proposed amendments to the DCP which aim to improve the operation of the DCP, strengthen its provisions and streamline the approvals process in Council.

It is therefore recommended that Council prepare a draft local environmental plan and amending development control plan to facilitate the proposed amendments outlined in this report and annexures.

Anita Lakeland
Team Leader Strategic Planning

Chris Bluett
Manager Strategic Planning

Annexures:

1. Woollahra Development Control Plan – Exempt and Complying Development
2. Woollahra Development Control Plan –Exempt and Complying Development (altered version with tracked changes)
3. Proposed amendments to Exempt and Complying Development Tables within Woollahra Development Control Plan –Exempt and Complying Development