



# Urban Planning Committee

**Agenda:** *Urban Planning Committee*

**Date:** *Monday 12 May 2014*

**Time:** *6.00pm*

### **Outline of Meeting Protocol & Procedure:**

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

### **Recommendation only to the Full Council:**

- 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.
- Planning Proposals and Local Environment Plans.
- Residential and Commercial Development Control Plans.
- Rezoning applications.
- Heritage Conservation Controls.
- Commercial Centres Beautification Plans of Management.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

### **Delegated Authority:**

- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of the Minutes of its Meetings.
- Any other matter falling within the responsibility of the Urban Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed above.
- Statutory reviews of Council's Delivery Program and Operational Plan.

### **Committee Membership:**

7 Councillors

### **Quorum:**

The quorum for a committee meeting is 4 Councillors.

# WOOLLAHRA MUNICIPAL COUNCIL

## Notice of Meeting

8 May 2014

To: Her Worship the Mayor, Councillor Toni Zeltzer ex-officio  
Councillors Katherine O'Regan (Chair)  
Ted Bennett  
Anthony Boskovitz  
Luise Elsing (Deputy Chair)  
James Keulemans  
Greg Levenston  
Matthew Robertson

Dear Councillors

### **Urban Planning Committee Meeting – 12 May 2014**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 12 May 2014 at 6.00pm.**

Gary James  
General Manager

# **Additional Information Relating to Committee Matters**

**Site Inspection**

**Other Matters**

## Meeting Agenda

<b>Item</b>	<b>Subject</b>	<b>Pages</b>
1	Leave of Absence and Apologies	
2	Late Correspondence Note Council resolution of 27 June 2011 to read late correspondence in conjunction with the relevant Agenda Item	
3	Declarations of Interest	

### **Items to be Decided by this Committee using its Delegated Authority**

D1	Confirmation of Minutes of Meeting held on 28 April 2014	1
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### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	Rose Bay Sea Wall, Promenade and Its Setting	2
R2	Timber Cottages in Paddington	77

**Item No:** D1 Delegated to Committee  
**Subject:** **Confirmation of Minutes of Meeting held on 28 April 2014**  
**Author:** Les Windle, Manager – Governance  
**File No:** See Council Minutes  
**Reason for Report:** The Minutes of the Meeting of Monday 28 April 2014 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 28 April 2014 be taken as read and confirmed.

Les Windle  
Manager - Governance

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**Item No:** R1 Recommendation to Council  
**Subject:** **Rose Bay Sea Wall, Promenade and its Setting**  
**Author:** Amelia Parkins, Strategic Heritage Officer  
**File No:** 900.G  
**Reason for Report:** To inform Council of the public exhibition of the nomination for the Rose Bay Sea Wall, Promenade and its setting on the State Heritage Register.  
To obtain Council's decision for a submission in response to the Heritage Council's notice of intention to list the Rose Bay Sea Wall, Promenade and its setting on the State Heritage Register.

**Recommendation:**

- A. That a submission to the Heritage Council be prepared that:
  - a. Generally supports the intention to list the Rose Bay Sea Wall, Promenade and its setting on the State Heritage Register;
  - b. Explains why the item as originally nominated by the Council to the Heritage Council has social heritage significance at a state level;
  - c. Provides further justification to support Council's original nomination and assessment that the body of water of Rose Bay is integral to the state heritage significance of the item; and
  - d. Recommends that the curtilage be amended to reflect the Council's original nomination and assessment of significance, which includes the waters of Rose Bay.
- B. That Council write to the Minister for Heritage expressing its disappointment and concern about the lack of transparency in the reporting and decision making carried out by the Heritage Division when assessing and altering the Council's nomination.
- C. That the Committee's recommendation proceeds to the Council meeting 12 May 2014 as a matter of urgency. This will enable Council staff to prepare a submission prior to the 16 May 2014 when the exhibition period for the draft nomination will close.

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**1. Background**

1.1 Notice of motion

On 22 October 2012 Council adopted the notice of motion:

*That Council pursue and expedite the process of seeking to have the Rose Bay Sea Wall, Balustrade and Promenade listed as a State Significant item of the NSW State Heritage Register. This process shall be initiated by the production of a report on the heritage significance of the structure and whether it meets the criteria for state heritage listing.*

On 11 March 2013 the Urban Planning Committee considered a report on the heritage significance of the Rose Bay Seawall and Promenade.<sup>1</sup> The report concluded that the Rose Bay Seawall, and Promenade have state significance as a large 20<sup>th</sup> century civic improvement scheme designed by prominent architect and engineer Herbert E Ross.

On 25 March 2013 Council resolved:

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<sup>1</sup> The balustrade component of the item has often incorporated with the collective term "Seawall and Promenade".

- A. That the heritage assessment and draft heritage inventory sheet for the Rose Bay seawall and promenade be received and noted.
- B. That a state nomination be prepared and submitted to the Heritage Branch of the Office of Environment and Heritage to list the Rose Bay seawall, balustrade and promenade, including its trees, stairs, parking bays and lights as a heritage item on the State Heritage Register.
- C. That the inventory sheet be adopted by Council and used to assist with development applications associated with the item, subject to amendments which reference the significance of the trees, stairs, parking bays and the relationship of the promenade with Sydney Harbour, including local and distant views to Sydney Harbour which are enjoyed from the promenade.
- D. That a heritage assessment of the refreshment pier be carried out at a later date.

The decision was rescinded on 8 April 2013 and the following resolution was made:

- A. That the heritage assessment and draft heritage inventory sheet for the Rose Bay seawall and promenade be received and noted.
- B. That a state nomination be prepared and submitted to the Heritage Branch of the Office of the Environment and Heritage to list the Rose Bay seawall, curtilage, balustrade and promenade, its trees, stairs, parking bays, lights and including local and distant views which are enjoyed from the promenade, as a heritage item in the State Heritage Register.
- C. That the inventory sheet be amended to include reference to significant trees, stairs, parking bays and the relationship of the promenade to Sydney Harbour including local and distant views, which are enjoyed from the promenade and that this amended inventory sheet be adopted by Council.
- D. That a heritage assessment of the refreshment pier be carried out at a later date.

## 1.2 Status of nomination

On 15 April 2013 we submitted a nomination to the NSW Heritage Branch for listing of the Rose Bay Promenade on the State Heritage Register (SHR) (**annexure 1**). The nomination included the amendments referred to in part C of Council's decision on 8 April 2013.

A summary of events following the submission of the original nomination is provided below:

<b>Date</b>	<b>Event</b>
15 April 2013	Discussion with Heritage Division regarding nomination process.
1 May 2013	SHR Committee considers nomination.
20 June 2013	Letter dated 12 June 2013 received from Manager Listings Team, Heritage Division, advising of SHR Committee's decision. The decision and advice from the Committee was in part: <ul style="list-style-type: none"><li>• The Rose Bay seawall and promenade, including the parking bays, roadway and avenue of figs is a good example of a large early 20<sup>th</sup> century civic improvement scheme designed for the recreation of pedestrians and motorists.</li><li>• The nominated curtilage does not include the waters of Rose Bay and therefore the listing would not legally protect views over the water.</li><li>• Consideration could be given to including Lyne Park and the waters of the western part of Rose Bay which may have been used for flying boats.</li><li>• An expanded curtilage taking in the whole civic improvement scheme,</li></ul>

Date	Event
9 July 2013	<p>Lyne Park and part of Rose Bay waters may be of state significance as an example of a transport hub for cars, trams and sea planes as well as an example of an early 20<sup>th</sup> century civic improvement scheme for recreation, pedestrians and motorists.</p> <ul style="list-style-type: none"><li>• The nomination was not accepted because it did not include the whole of the original design scheme.</li><li>• Council should consider an extended curtilage using one of the Committee's options.</li></ul>
16 July 2013	<p>Submission to Heritage Division responding to SHR Committee's decision together with discussion on options.</p> <p>Discussion with Heritage Division regarding SHR Committee's options for expanding the curtilage, in particular the inclusion of Lyne Park and former sea plane operations. Heritage Division suggested we consider the SHR listings for Bondi Beach and Braidwood as examples where views were used to establish curtilages.</p>
16 September 2013	<p>Letter dated 11 September 2013 received from Manager Listing Team, Heritage Division, responding to our submission and discussions. The Heritage Division:</p> <ul style="list-style-type: none"><li>• acknowledged the need for further research to enable the inclusion of Lyne Park and the former sea plane operation within the nomination, particularly in regard to the area of water used by the facility.</li><li>• noted that Council may provide further information on the potential heritage significance of the water views and articulate their state significance in a revised nomination; and</li><li>• encouraged Council to consider extending the curtilage beyond the proposed nomination to take in the whole road carriageway and the trees, footpath and parking bays on the southern side of New South Head Road.</li></ul>
17 September 2013	<p>Site inspection carried out by Strategic Heritage Officer and representative from Heritage Division.</p>
28 October 2013	<p>The State nomination was updated in accordance with the feedback from the Heritage Council and further informed by a detailed visual assessment. The findings and updated nomination were presented to the Urban Planning Committee (<b>Annexure 2</b>) with recommendations for a curtilage for the item.</p>
11 November 2013	<p>Following the recommendation from the Urban Planning Committee, Council resolved:</p> <p><i>That the amended heritage inventory sheets for the item known as the Rose Bay Promenade and its Setting, provided at annexure 5 of the report to the Urban Planning Committee meeting on 28 October 2013 and the Visual Assessment and Curtilage Study provided in annexure 4 of that report, be endorsed for the purpose of an amended nomination to the Heritage Division of the Office of Environment and Heritage subject to the following amendments to the heritage inventory sheets:</i></p> <ul style="list-style-type: none"><li>a) <i>Include within the historical notes references to the Land and Environment Court Appeals relating to the Rose Bay Marina,</i></li><li>b) <i>Include within the criteria for assessing heritage significance reference to the social significance and community's values of the waters of Rose Bay and views of and over those waters as particularly</i></li></ul>

<b>Date</b>	<b>Event</b> <i>expressed through the community's response to the Land and Environment Court Appeals.</i>
27 November 2013	The nomination was amended to address the resolution and submitted to the Heritage Council.
5 December 2013	Letter from the Heritage Council received acknowledging receipt of the nomination for listing the Rose Bay Promenade and its Setting on the SHR.
14 January 2014	Discussions with the Heritage Division regarding the nomination process: <ul style="list-style-type: none"><li>• The submitted nomination and a recommendation prepared by the Listings Team at the Heritage Division would be presented to the SHR Committee;</li><li>• The SHR Committee would make a recommendation to the Heritage Council regarding the potential listing of the item on the SHR;</li><li>• If the recommendation is for listing on the SHR it would be advertised for 28 days, allowing public submissions;</li><li>• The Listings Team would prepare a report on the submissions and make a presentation to the full Heritage Council to decide whether the item should be recommended for gazettal by the Minister.</li></ul>
24 March 2014	Email from the Heritage Division received with the proposed exemptions to accompany the application to the SHR Committee.  We were advised at this time that the recommendation to be presented to the SHR Committee cannot be released to us until it is sent to the SHR Committee members.
22 April 2014	Letter dated 15 April 2014 from the Director of the Heritage Division ( <b>Annexure 3</b> ) notifying of the Heritage Council's Notice of Intention to consider listing the Rose Bay Sea Wall, Promenade and its setting on the SHR. The letter included a proposed curtilage for the item that does not reflect the nomination submitted to the Heritage Council in December 2013. Submissions close 16 May 2014.  Phone call to the Heritage Division requesting access to the report presented to the SHR Committee that resulted in the nomination advertised. A Heritage Officer from the Listings Team at the Heritage Division advised that the report needs to be approved by the Manager of the Listings Team before it can be released.
24 April 2014	Phone call to the Manager of the Listings Team requesting the report and reasons for the altered nomination. The advice received was that approval from the Director of the Heritage Division was required before releasing the report.
29 April 2014	Phone call to the Manager of the Listings Team, again requesting the report and recommendations. Access to the report was again denied as she was still waiting clarification from the Director.
30 April 2014	Phone call from a Heritage Officer in the Listings Team advising us that the report was not to be released under direction from the Director of the Heritage Division. She also informed us that changes to policy meant we are unable to make a representation at the Heritage Council meeting when a decision regarding the listing will be made.

## 2. Heritage Council Notice of Intention to consider listing on the State Heritage Register

On 15 April 2014 the Heritage Council advertised a Notice of Intention to consider listing the Rose Bay Sea Wall, Promenade and its setting on the SHR. On 22 April 2014 Council staff received a letter, dated 15 April 2014, advising that the draft nomination would be placed on public exhibition from 16 April 2014 to 16 May 2014.

The nomination on exhibition includes a substantially amended inventory sheet and curtilage endorsed by the SHR Committee following a recommendation from staff at the Heritage Division Listings Team (**annexure 4**)

Council was not given prior notice of the extensive changes to the nomination and was not afforded the opportunity to make a submission at the SHR Committee meeting. Council was not notified of the outcome of this meeting.

A comparison between the nomination by Council and the draft nomination currently on exhibition (**annexure 5**) indicates that the following parts of Council's nomination have been modified:

- Name of item - changed from Rose Bay Promenade and its Setting to Rose Bay Sea Wall Promenade and its Setting.
- The nominated curtilage for the item – substantially reduced to include only the sea wall, promenade, adjacent section of New South Head Road and the waters of Rose Bay that are immediately adjacent to the sea wall (within a few meters).
- Statement of significance –text completely deleted; new statement inserted.
- Historical notes – minor changes.
- Historical themes (state and local) – deleted; no replacement text.
- Criteria for assessing heritage significance:
  - Historical significance (SHR criterion (a)) – text completely deleted; new text added.
  - Historical association significance (SHR criterion (b)) - text completely deleted; new text added.
  - Aesthetic significance (SHR criterion (c) - text completely deleted; new text added.
  - Social significance (SHR criterion (d) – text completely deleted; criterion deleted from draft nomination.
  - Technical/Research significance (SHR criterion (e) – text completely deleted; criterion deleted from draft nomination.
  - Rarity (SHR criterion (f) - text completely deleted; criterion deleted from draft nomination.
  - Representativeness (SHR criterion (g) - text completely deleted; new text added.
  - Integrity Assessment – text completely deleted, assessment deleted from draft nomination.

Council staff were unsuccessful in their numerous attempts to gain access to the report by the Listings Team to the SHR Committee. Heritage Division staff have not provided Council staff with a written or verbal explanation, justifying the changes made to the nomination, particularly the substantially reduced curtilage which removes the waters of Rose Bay.

In the absence of justification for the changes made to Council's nomination, the following parts of the draft nomination on exhibition are disputed:

- the assessment of significance against the SHR Criteria, in particular Criteria (d) Social significance; and
- the nominated curtilage associated with the item (**Figure 1**).



Figure 1. Draft curtilage for the Rose Bay Sea Wall and Promenade currently on exhibition.

### 3. Submission

Council has the opportunity to make a submission to the Heritage Council before 16 May 2014. It is recommended that the submission express general support for the nomination to list the Rose Bay Sea Wall, Promenade and its setting on the SHR. However, the removal of social significance from the assessment and the greatly reduced curtilage need to be addressed, as they do not reflect the state heritage significance of the item identified by Council.

#### 3.1 Assessment of significance

The nomination submitted by Council was the result of a thorough assessment of significance against the SHR Criteria in accordance with the guidelines for inclusion and exclusion outlined in the NSW Heritage Manual. The detailed investigations carried out by Council concluded that the waters of Rose Bay were integral to the historic, associative, aesthetic and social state heritage significance of the Rose Bay Promenade.

The following analysis of the Heritage Council draft nomination, currently on exhibition, provides comment on the assessment of significance and resulting proposed curtilage for the item prepared by Heritage Division staff. These comments may inform and be included in Council's submission to the Heritage Council.

**Heritage Council draft nomination:**

**Criteria (a) Historical significance**

*The Rose Bay sea wall, promenade and its setting is of potential state heritage significance as it is one of the earliest and largest civic improvement scheme[s] for pedestrians and motorists. [I]t clearly demonstrates the increasing uptake of private motor transport in the early 1920s. Its significant historic use for the pursuit of leisure and harbourside activities continues to the present day.*

**WMC Comment:**

The assessment under this criterion is supported in part.

The draft nomination outlines the importance of the promenade as a large civic improvement scheme facilitating the pursuit of harbourside activities, and acknowledges a direct relationship between the sea wall, promenade and its setting in this historic use.

However, reference to 'viewing the bay' has been removed from the text. Council's assessment of the historical significance of the promenade as a vantage point from which to appreciate the waters of Rose Bay and Sydney Harbour was integral in the decision to include the waters of Rose Bay in the nominated curtilage.

The proposed curtilage includes only a very restricted 'setting', limited to the width of New South Head Road and the waters of Rose Bay that are immediately adjacent to the sea wall (within a few metres). This restricted 'setting' does not represent the historic setting for the promenade and sea wall. A greater area of the waters of Rose Bay should be included in the curtilage to acknowledge the historical significance of the promenade as a vantage point from which to appreciate the waters of Rose Bay.

Many of the historically significant leisure activities associated with the Rose Bay promenade and sea wall involve use of the Bay. These include aquatic sports, yachting and motor boating. The promenade is utilised as a point of access, facilitating participation in water based leisure activities in the bay, such as fishing, small craft sailing, kayaking and canoeing. The promenade also functions as an important viewing platform from which spectators can revel in activities such as yachting and motor boating. Designed as a piece of infrastructure that would encourage participation in leisure and harbourside activities, the Rose Bay Promenade relies upon the body of water adjacent to the sea wall (the waters of Rose Bay) to facilitate these significant uses.

One of the earliest and largest civic improvement schemes for pedestrians and motorists in the State of NSW, the Rose Bay promenade was designed in a manner that enabled motorists and pedestrians to appreciate the natural qualities of Rose Bay. The low balustrade of the promenade traditionally affords lines of sight from motorcars to the body of water adjacent to the sea wall (the waters of Rose Bay). This design element, creating a visual connection between the promenade and the water of Rose Bay for both pedestrians and motorcars, defined the success of the civic improvement scheme and its resulting use for land based leisure activities.

The proposed curtilage does not adequately acknowledge the historical significance of land or water based leisure activities associated with promenade.

***Heritage Council draft nomination:***

***Criteria (b) Associative significance***

*The item[']s potential state heritage significance is enhanced through its association with noted engineer and architect Herbert Ross whose architectural partnership with Ruskin Rowe was one of the largest architectural offices in Sydney producing well regarded building designs such as the former Government Savings Bank, the Royal Automobile Club and the former Ushers Hotel.*

**WMC Comment:**

The assessment under this criterion is supported.

Ross and Rowe Architects were responsible for the design of balustrades at the Rose Bay Promenade and Bondi Beach, both of which facilitate an experience of the water for pedestrians and motorists. The cultural landscape created at Bondi Beach is comparable to that created by the promenade construction at Rose Bay. Just as the beach (including the water) at Bondi Beach is integral to the state significance of the item, the waters of Rose Bay are integral to the state heritage

significance of the Rose Bay Sea Wall and Promenade.

The heritage significance of the Rose Bay Sea Wall and Promenade would be greatly diminished without the waters of Rose Bay.

***Heritage Council draft nomination:***

***Criteria (c) Aesthetic significance***

*The sea wall, promenade and its setting [have] potential state heritage significance for [their] aesthetic values as an early and at the time unique integrated civic improvement design with low lying balustrades, parking bays and other features in the Inter War Free Classical style designed in such a way as to allow the pleasure of viewing the expanse of Rose Bay by both pedestrian and motoring visitors.*

**WMC Comment:**

The assessment under this criterion is supported in part.

However, reference to the significance of the landscape setting, including the trees that are planted in the verges of New South Head Road, has been removed from the text. The weeping figs that line the verges are believed to be original plantings associated with the Herbert Ross design, and make a substantial contribution to the character of the civic precinct. Removal of any reference to the significance of these plantings from the assessment of aesthetic significance is not supported.

The Rose Bay Promenade and Sea Wall is an aesthetically distinctive landmark feature within Sydney Harbour. The promenade, sea wall, balustrade and associated features were designed by notable architect Herbert E. Ross in the Inter-war Free Classical style in a way that facilitates the ongoing enjoyment of the waters of Rose Bay for local, inter-state and international visitors.

The revised assessment of aesthetic significance acknowledges that the promenade was designed to 'allow the pleasure of viewing the expanse of Rose Bay by both pedestrian and motoring visitors'. The 'expanse' of Rose Bay, includes the waters of Rose Bay. However, no reference is made to the water in the revised assessment of aesthetic significance. Without the waters of Rose Bay, the aesthetic values of the Promenade, including the low lying balustrades and parking bays, would not exist as they are today. The revised assessment does not acknowledge the substantial contribution made by the waters of Rose Bay to the aesthetic significance of the civic precinct as a cultural landscape.

The proposed curtilage does not acknowledge the role of the waters of Rose Bay as a driving force behind the architectural form of the promenade, or the substantial contribution the waters of the Bay make to the aesthetic significance of the civic precinct.

***Heritage Council draft nomination:***

***Criteria (d) Social significance***

Omitted from the nomination currently on exhibition.

**WMC Comment:**

Deletion of this criterion is not supported.

An investigation into historic newspaper articles through Trove (National Library Australia) indicates that the Rose Bay Promenade has potential state heritage significance for its use as a viewing platform for social activities in the bay undertaken by a number of groups including the Motor Yacht Club of NSW and Woollahra Sailing Club. The documentary evidence describing activities carried out in the waters of Rose Bay where the Promenade has provided an important viewing area for a variety of community groups with members from across the state of NSW should be further investigated before this criterion is omitted from the nomination.

The Rose Bay Promenade is of state heritage significance as a place where visitors can walk or drive past and enjoy expansive views across the largest bay in Sydney Harbour. The promenade is a popular destination for local, interstate and international visitors wanting the opportunity to appreciate views of Rose Bay and beyond. The Promenade has provided this opportunity for the people of NSW since 1926 and continues to draw people from around the world. On any day the variety of people enjoying the Rose Bay Promenade includes a cross section of people of all age groups including local, inter-state and international visitors.

The distinctive curve of the sea wall and balustrade marking the edge of the largest bay in Sydney Harbour has state significance as a recognisable destination for people visiting the harbour city. Evidence of this can be seen daily in the vibrant tourist activity at the Promenade. This includes Hop-On-Hop-Off Bus Tours that run every 30 minutes between 8.30am and 5pm with a designated stop at the Rose Bay Promenade to allow visitors to experience the Harbour from this significant vantage point. Other tourist buses on route to Watsons Bay and Bondi pass by the promenade on a daily basis.

The draft nomination does not acknowledge the social significance of the Rose Bay Promenade, as a tourist destination and also a place with which community groups have special associations. It is acknowledged that the association many community groups have with the Promenade and Sea Wall may only be of local significance. However, these associations should be recognised and included in the assessment of significance.

***Heritage Council draft nomination:***

***Criteria (e) Technical/research significance***

Omitted from the nomination currently on exhibition.

**WMC Comment:**

It is acknowledged that any technical research significance is likely to be low and at a local level. Therefore omission from a state listing is considered reasonable.

***Heritage Council draft nomination:***

***Criteria (f) Rarity***

Omitted from the nomination currently on exhibition.

**WMC Comment:**

Deletion of this criterion is not supported.

Deletion of this criterion is inconsistent with the assessment made under historical significance, identifying the Promenade and Sea wall as '*one of the earliest and largest civic improvement scheme[s] for pedestrians and motorists*'. It is recommended that comparative analysis with other early and large harbor-side civic improvement schemes in Sydney/across the State of NSW, should be undertaken before this criterion is omitted from the nomination.

***Heritage Council draft nomination:***

***Criteria (g) Representativeness***

*The item has potential state heritage values as an intact and good representative example of a 1920s civic improvement scheme designed in the Inter War Free Classical style and using trees representative of street and park plantings of the 1920s.*

**WMC Comment:**

The assessment under this criterion is generally supported.

However, it is noted that reference to the scheme as a local government project has been removed from the text.

### 3.2 Curtilage

A detailed investigation into an extended curtilage for the item was carried out as part of the nomination process. In accordance with the Heritage Office Guidelines for Heritage Curtilage (1996) a review of the visual catchment area and the identified significance were used to inform an appropriate curtilage that reflects the state heritage significance of the item.

In the nomination made by Council this was translated into an appropriate extended curtilage that incorporated the body of water of Rose Bay. Even without the inclusion of criteria (d), the nomination currently on exhibition indicates that the waters of Rose Bay are integral to the state heritage significance of the Rose Bay Sea Wall and Promenade. The proposed curtilage by the Heritage Council, currently on exhibition, is not consistent with the assessment of state heritage significance currently on exhibition.

## 4. Conclusion

The Rose Bay Sea Wall, Promenade and its Setting have heritage significance at a state level for historic, historical association, aesthetic and social heritage values. It would be appropriate to make a submission to the Heritage Council that provides further justification that:

- the item has state heritage significance under criteria (c) social significance;
- the body of water of Rose Bay is integral to the state heritage significance of the item; and
- the curtilage on exhibition should be amended to reflect the assessment of significance, which would involve incorporating the waters of Rose Bay.

The Heritage Division were not forthcoming when asked to provide justification for the changes made to Council's nomination. It would be appropriate for Council to write to the Minister for Heritage expressing concern that, in failing to provide justification for why Council's nomination

was substantially modified, or provide any opportunity for Council to make a presentation to the Heritage Council, the Heritage Division have not been transparent, or inclusive in their decision making.



Amelia Parkins  
Strategic Heritage Officer

Chris Bluett  
Manager Strategic Planning

**Kate Harrison**  
**Heritage Officer**

Allan Coker  
Director Planning and Development

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**ANNEXURES:**

- Annexure 1      SHR nomination as submitted by Council
- Annexure 2      Report to Urban Planning Committee 28 October 2013
- Annexure 3      Letter from Heritage Council dated 15 April 2014
- Annexure 4      Heritage Council nomination on exhibition
- Annexure 5      Inventory sheet comparing Council's nomination with that currently on exhibition

**Item No:** R2 Recommendation to Council  
**Subject:** **Timber Cottages In Paddington**  
**Author:** Amelia Parkins - Strategic Heritage Officer  
**File No:** 1080.G  
**Reason for Report:** To respond to a notice of motion adopted by Council on 23 September 2013.  
To provide advice on the means of strengthening protection of timber cottages in Paddington.

## Recommendation

- A. That the amendments set out in **annexure 2** to the report to the Urban Planning Committee on 12 May 2014 be incorporated within the Comprehensive DCP.
- B. That the DA Guide be amended to include the additional information and requirements identified in section 5.1 of the report to the Urban Planning Committee on 12 May 2014.

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## 1. Introduction

A recent Land and Environment Court judgement (**annexure 1**) upheld an appeal against Council's refusal of a development application involving the demolition of a single-storey timber cottage in Paddington and the construction of a new dwelling house. That decision has raised concerns about the effectiveness of existing controls in protecting timber cottages. As a result, Council seeks to strengthen heritage protection for timber cottages in Paddington with a view to ensure the future protection and conservation of these significant buildings within the Paddington Heritage Conservation Area (HCA).

On 23 September 2013 Council adopted the following notice of motion:

*That Council request staff to prepare a report-*

- a) investigating all options for strengthening heritage protections for timber cottages in Paddington;*
- b) recommending the best option for providing such protection; and*
- c) recommending how such an option be best implemented with urgency, including any associated costs.*

This report provides an initial response to the Council's resolution and recommends certain actions aimed at strengthening protection for timber cottages. A further report will be prepared following the analysis of survey work which is currently nearing completion.

## 2. Methodology

The methodology used to prepare our responses involves the following actions.

***Examine the Land and Environment Court appeal*** known as Dove and Lee Investments Pty Ltd v Woollahra Municipal Council to understand the rationale behind the judgment.

**Examine other relevant appeals in the Land and Environment Court** in order to identify possible improvements to the current Woollahra planning controls

***Identify the relevant existing legislative planning framework*** which applies to timber cottages in order to gauge how it influences:

- local planning controls, and
- the degree of protection that can be provided for timber cottages.

The legislative framework comprises two acts:

- a) The *Environmental Planning and Assessment Act 1979* (the Act) under which the following planning instruments are made:
  - State environmental planning policies – relevantly *SEPP (Exempt and Complying Development Codes) 2008*
  - Local environmental plans – relevantly Woollahra LEP 1995 and Draft Woollahra LEP 2013. The Draft LEP has been prepared using the template document known as *Standard Instrument – Principal Local Environmental Plan*.
- b) The *Heritage Act 1977* which provides for:
  - Interim heritage orders
  - State significant heritage items listed on the State Heritage Register.

***Examine the existing local policy framework*** comprising the following Woollahra DCPs to identify current policy for timber cottages:

- Paddington HCA DCP
- Woollahra HCA DCP
- Watsons Bay HCA DCP
- Woollahra Residential DCP

***Examine DCPs from other Councils***, notably Leichhardt, Marrickville, North Sydney and the City of Sydney.

***Investigate the information required for development applications***, in particular the requirements specified in the Council’s DA Guide that might apply to substantial works to timber cottages.

***Conduct fieldwork involving a survey of existing timber cottages in Paddington*** and then analyse development applications to determine when and how alterations to the cottages occurred. This part of the process will be reported to the Urban Planning Committee at a later date.

### **3. Discussion**

#### **3.1 Dove and Lee Investments Pty Ltd v Woollahra Municipal Council**

The Land and Environment Court appeal for 8 Hargrave Lane, Paddington, known as Dove and Lee Investments Pty Ltd v Woollahra Municipal Council, involved the Council’s refusal of a development application for the demolition of a single storey timber cottage and outbuilding in the Paddington HCA and the construction of a contemporary infill building with pool and single garage in their place.

Three heritage experts were involved in the hearing. The judgement records that:

There was considerable agreement between the experts, including agreement on the extent of fabric that requires repair and that the timber cottage is a contributory item to the Paddington HCA. They also agree that, as a general principle, buildings which contribute to conservation areas, including the Paddington HCA, should be retained and conserved. (paragraph 21, p.9)

[The Paddington HCA DCP uses the term contributory building rather than contributory item. The DCP defines contributory building as “a building and its setting which due to its materials,

detailing, finishes, scale, form, siting and landscaping makes a positive impact and contribution to the streetscape character and to the cultural significance of the heritage conservation area.”]<sup>2</sup>

Notably the experts also agreed that the building did not warrant listing as a heritage item under the NSW Heritage Manual Guidelines [p.15]. The Guidelines establish seven criteria for assessing heritage significance. They are: historical, historical association, aesthetic, social, technical/research, representativeness and rarity. The building could not successfully meet the seven criteria to a level of heritage significance needed for listing.

The main area of dispute between the experts was whether reconstruction of the cottage, to make it habitable and compliant with the Building Code of Australia (BCA), would result in meaningful conservation and whether the extent of reconstruction required would alter its significance as a contributory building in the HCA. [The Burra Charter defines reconstruction as “*returning a place to a known earlier state and is distinguished from restoration by the introduction of new material.*”]<sup>3</sup>

Five areas of disagreement between the expert witnesses were listed in the judgement:

1. The contribution the cottage makes to the Paddington HCA.
2. Whether the cottage is habitable and BCA compliant.
3. [The] amount of existing fabric that can remain.
4. Costs to undertake necessary work.
5. Appropriateness of a garage to Hargrave Lane.

(paragraph 22, p.9)

The fifth item dealt with the replacement building and is not a matter for this report.

Having heard the opinions of the experts on the areas of disagreement and having visited the site, the commissioner formed the following conclusions:

- The potential retention of the cottage is the starting point in any consideration of the development application. However, it does not follow that a contributory item in the Paddington HCA should be “preserved” for this reason alone.
- The condition of the building and other aspects needed to be considered and in this regard it is necessary to establish how the extent of reconstruction affects the building’s significance as a contributory item.
- The cottage could not be reasonably used as a dwelling without significant reconstruction and repairs.
- The cottage’s original elements were limited to the roof pitch and frame, form, two chimneys, stone base and room layout except for the kitchen and bathroom.
- The amount of works required to make the building habitable and to meet BCA requirements would compromise the integrity of the building to the extent that it would no longer make a contribution to the HCA.
- The amount of new works required would in effect be a [substantial] reconstruction and would not be a meaningful or appropriate conservation outcome for the cottage.
- The decision on whether the cottage could be demolished should not depend on the cost of works required to retain it.
- The demolition of the cottage would have a small negative impact on the heritage significance of the HCA but the negative impact would not be so significant to warrant refusal of the DA.

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<sup>2</sup> Paddington Heritage Conservation Area DCP 2008, p.144.

<sup>3</sup> The Burra Charter, 2013, The Australia ICOMOS Charter for Places of Cultural Significance, p.2

The judgment did not indicate that Council's policy documents were in any way deficient. The determining factors in the decision that the cottage could be demolished were largely outside the scope of the DCP.

The critical determining factors focused on the amount of original fabric remaining, the condition of that fabric and the amount of change needed to upgrade the building to meet fire safety standards and current day living standards. Ultimately, it was considered that the building would lose its contributory value to the HCA due to the amount of change and upgrading required.

The determining factors were informed by a number of supplementary documents (in addition to those currently required with the DA submission). These included a fabric analysis report and a BCA and fire safety compliance report. We consider these reports can assist with the assessment of similar proposals for other timber cottages. Therefore, we recommend amending our requirements for information to be lodged with DAs.

The post-case report from the solicitors acting on behalf of Council advised that '*We do not consider that there are any significant changes required to the DCP (other than to mention more specifically the timber dwelling houses within some of the objectives)*'. This aspect will be discussed in a following section of the report.

### 3.2 Other relevant appeals

Two other appeals were examined to establish whether they could assist with improvements to our local controls and processes.

#### ***Helou v Strathfield Municipal Council (2006)***

The appeal involved the proposed demolition of a contributory cottage of masonry construction in the Abbotsford Road Conservation Area. The heritage value of the property was not disputed. The appeal focused on whether the costs of the necessary repairs to rectify present and likely future damage caused by cracking due to movement of the building's footings were so uneconomic that the demolition should be permitted.

The appeal resulted in the creation of a planning principle which was used by the Commissioner in determining the case and which has been subsequently used by the Court in other appeals including Dove and Lee.

We have incorporated the planning principle in our DA assessment procedures.

The planning principle requires six questions to be addressed when assessing whether demolition should be allowed.

1. What is the heritage significance of the conservation area?
2. What contribution does the individual building make to the significance of the conservation area?

The starting point for these questions is the statement of significance of the conservation area. This may be found in the relevant LEP or in the heritage study that led to its designation. If the contributory value of the building is not evident from these sources, expert opinion should be sought.

3. Is the building structurally unsafe?

Although lack of structural safety will give weight to permitting demolition, there is still a need to consider the extent of the contribution the building makes to the heritage significance of the conservation area.

4. If the building is or can be rendered structurally safe, is there any scope for extending or altering it to achieve the development aspirations of the applicant in a way that would have a lesser effect on the integrity of the conservation area than demolition?

If the answer is yes, the cost of the necessary remediation/rectification works should be considered.

5. Are these costs so high that they impose an unacceptable burden on the owner of the building? Is the cost of altering or extending or incorporating the contributory building into a development of the site (that is within the reasonable expectations for the use of the site under the applicable statutes and controls) so unreasonable that demolition should be permitted?

If these costs are reasonable, then remediation/rectification (whether accompanied by alteration and/or extension or not) should be preferred to demolition and rebuilding.

6. Is the replacement of such quality that it will fit into the conservation area?

If the replacement does not fit, the building should be retained until a proposal of suitable quality is approved.

Using these questions, the judgment concluded that refusing the demolition of the existing dwelling would not impose an unreasonable financial burden on the applicant compared with the cost of demolition and rebuilding. The appeal was dismissed.

#### ***Harbour Court Construction Pty Ltd v Woollahra Municipal Council (2004)***

This case involved a proposal to demolish an existing, contributory, single-storey timber building within the Fletcher Street Precinct of the Woollahra heritage conservation area. The issues discussed included the degree of repair or restoration required to render the cottage fit for residential usage and whether carrying out this work would destroy the heritage value of the property. The economic hardship of retaining and repairing the cottage was also discussed.

It was decided that even though refusing the application to demolish the cottage would not guarantee its retention and restoration, it did not give more weight to an economic argument. It was determined that heritage significance is independent of economic considerations and the case was dismissed.

This case makes an important statement that the economic hardships of retaining and conserving a contributory building, especially where there is scope for sympathetic development on the site, is independent of the building's heritage significance and is not a reason for demolition.

### **3.3 Existing legislative planning framework**

The existing legislative framework provides both opportunities and constraints for the protection of timber cottages in Paddington. The Act and the Heritage Act 1977 contain the most relevant planning and heritage provisions.

### **3.2.1 The Act – establishing a hierarchy of planning instruments**

The Act governs the content and preparation of environmental planning instruments applying at the State and local levels. It establishes a hierarchy of planning legislation. For instance, where a State environmental planning policy and a local environmental plan apply to land, the SEPP will normally prevail unless otherwise specified in one of the instruments. This is particularly relevant where an LEP requires development consent for certain work but a SEPP allows that work to be carried out as exempt or complying development.

There are several SEPPs which contain exempt and complying development provisions that are applicable to buildings in a HCA and to heritage items. For the purpose of this report we confine our comments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) because that instrument is most relevant to the subject topic.

#### ***State Environmental Planning Policy (Exempt and Complying Development Codes) 2008***

The Codes SEPP allows works to occur as exempt or complying development for buildings within a HCA in various ways and to varying degrees. Whilst the Codes SEPP does not allow the entire demolition of a period timber cottage in a HCA, it does permit internal and external alterations or additions as either exempt or complying development. Notably, under the Housing Alterations Code, demolition of internal walls, floors and other fabric is permitted as complying development for residential accommodation, including timber cottages, in a HCA.

The Codes SEPP has limited application for local heritage items. A small range of exempt development can occur to local items whilst complying development is dependent on how the item is described and how the land on which the item is located is described and mapped. For example, if only part of a building is described in a listing, certain complying development could apply to the balance of the building. Similarly, if a site is not fully described in a listing, complying development may occur on that part of the land not mentioned in the listing.

Overall, the Codes SEPP is a major constraint for heritage management at the local level for buildings in HCAs. Therefore, it is necessary to recognise that changes the Council may wish to introduce to local legislation and policy documents to protect timber cottages could have limited effect due to the overriding operation and authority of the Codes SEPP which removes a requirement for assessment through the DA process.

#### ***Standard Instrument – Principal Local Environmental Plan***

The content of new LEPs is governed by the *Standard Instrument – Principal Local Environmental Plan*. The Standard Instrument provides for HCAs, heritage incentives and the listing of heritage items. However, because of its use as a State-wide template for new LEPs, the Standard Instrument has limited scope for change. New model clauses are added from time to time. Additional clauses that apply to a specific local government area can be added by a council to its LEP, although that option is very limited due to the intention of the State government to standardise LEPs.

Draft Woollahra LEP 2013 has been prepared using the Standard Instrument. The Draft LEP contains HCAs and heritage items. These areas and items have been carried over from the current Woollahra LEP 1995. Several local clauses have been included, but these have yet to be endorsed by the Parliamentary Counsel.

Further HCAs, expansions to existing HCAs and new local heritage items can be added to the LEP in future. These additions must be based on proper heritage assessment to establish significance. All additions to the LEP are made through planning proposals and follow a statutory process under the Act which allows public consultation with land owners and other interested parties.

Our ability to add more local clauses is not known, particularly as we are not aware of the Parliamentary Counsel's willingness to allow the current set of proposed clauses in the Draft LEP.

### **3.2.2 The Act – establishing the purpose and status of DCPs**

An amendment to the Act introduced in 2012 altered the purpose and status of DCPs in substantial ways. The relevant section of the Act is reproduced, in part, below.

#### **74BA Purpose and status of development control plans**

- 1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:
  - a) giving effect to the aims of any environmental planning instrument that applies to the development,
  - b) facilitating development that is permissible under any such instrument,
  - c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.

In response to this amendment we have structured the Draft Woollahra LEP 2013 so that there is a link between the aims of the LEP, the objectives of each land use zone and the provisions of the new Comprehensive DCP. In particular, we have included an objective in each land use zone which states: "To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood." Within the Comprehensive DCP desired future character statements are provided for each precinct and heritage conservation area. We have suggested changes to the desired future character statement for the Paddington HCA to strengthen protection for single storey buildings (see below in section 5.1 and **annexure 2**).

### **3.2.3 Heritage Act 1977**

The Heritage Act 1977 provides opportunities for the protection of places of cultural significance including listing on the State Heritage Register (SHR) or in emergency situations placing an interim heritage order on a property.

#### ***SHR***

The SHR is a list of buildings of State heritage significance. The Heritage Act includes clauses for the protection of items listed on the SHR. To be listed on the SHR an item must satisfy at a state level the seven heritage assessment criteria set out in NSW Heritage Manual Guidelines. It is unlikely that timber cottages in Paddington will have the required level of heritage significance to warrant listing on the SHR.

#### ***Interim heritage orders***

The Heritage Act has provisions for an emergency order, known as an interim heritage order (IHO), to protect a place that is under threat of demolition or unsympathetic alteration. Councils, including Woollahra, have the delegations to place an IHO on places that are not already listed as a heritage item or are not located within a heritage conservation area. Our report to the Urban Planning Committee on 10 February 2014 set out the purpose of IHOs and the conditions applying to their use. We noted:

Interim heritage orders allow for the short-term protection of places that may be of heritage significance and are under threat. The order allows council time to make an assessment of the significance of the property and make a decision whether it should be formally considered for local or state heritage listing.

Interim heritage orders can only be used when council has grounds for considering that a property may be of at least local significance and is being or is likely to be harmed. It should not become the sole form of heritage management in the local area and cannot be used as a tool to block development.

Whilst our delegation does not apply to buildings in a HCA, we understand the Council could make a request to the Minister for Heritage for an IHO to a place in the HCA.

### 3.4 Existing Woollahra DCP policy framework for timber cottages

#### ***Paddington HCA DCP***

References to timber cottages are made in various statements, objectives and clauses both in general and specific ways. The main controls relating to timber cottages fall within *clause 4.3.1 Single-storey buildings*.

The DCP contains definitions for contributory building and significant building but does not nominate individual buildings at particular addresses under these titles.

#### ***Woollahra HCA DCP***

This DCP approaches the protection and conservation of timber cottages in a similar way to the Paddington DCP through the use of a set of building type objectives and controls for single-storey houses. However, the Woollahra HCA differs from the Paddington HCA in several ways. First, the area is divided into precincts. Second, the DCP contains specific precinct character statements, objectives and controls, some of which address timber cottages. Third, the DCP contains a schedule which lists each property in the HCA by its street address, precinct, architectural period and status as either a heritage item or contributory item.

#### ***Watsons Bay HCA DCP***

This DCP is also precinct-based. It contains precinct controls and general development controls. Within the precinct sections each property is identified by street address, building type and heritage status as either a heritage item or a contributory item. [Heritage items and contributory items are defined to be significant items].

Building type description includes single-storey construction and single-storey weatherboard construction. The precinct controls and, more specifically, the controls for significant items address timber cottages.

#### ***Woollahra Residential DCP***

This DCP provides controls for residential development outside the main HCAs and the commercial centres. It also provides controls for nine small HCAs, of which the Bell Street HCA is most relevant due to the presence of timber cottages.

### 3.5 DCPs used in other Councils

We examined DCPs from Leichhardt, Marrickville, North Sydney and the City of Sydney which contain provisions for single storey detached cottages. The objectives and controls in those DCPs varied in detailed. In general, they covered a similar scope of controls to those provided in the Paddington HCA DCP.

#### 4. Conclusions from research and investigations carried out to date

The conclusions from our research and investigation are summarised below.

- (a) The retention and conservation of period timber cottages will continue to be difficult because of the high quantity of degradable material used in their construction, the stringent fire safety requirements and limitations on local planning controls.
- (b) The decision of the Court in *Dove and Lee v Woollahra* was strongly influenced by three matters being:
  - the amount of original fabric remaining in the building
  - the condition of that fabric
  - the amount of change needed to upgrade the building to meet fire safety standards and current day living standards.
- (c) The matters mentioned in (b) are difficult to control through local planning measures or, in the case of fire safety standards, are beyond the scope of an LEP and DCP.
- (d) The Act and other legislation restrict the content of LEPs and DCPs thereby reducing options to protect timber cottages.
- (e) SEPPs such as the Codes SEPP can override local controls and further impact on the protection of timber cottages. For instance, removal of internal original fabric can occur through the complying development provisions of the Codes SEPP.
- (f) Controls in a DCP or an LEP cannot require the regular and proper maintenance of timber buildings to address their deterioration.
- (g) The comments made in *Dove and Lee v Woollahra* regarding the condition of the building raise concerns about the practice of demolition by neglect. This is particularly relevant to timber buildings. The Council has limited ability to control this practice. The tools available to it are provided through the notices and orders procedures of the Act and are generally restricted to cases where public and personal safety are evident.
- (h) An LEP or DCP cannot regulate statutory provisions of the BCA such as the fire rating of a building. However, it would be possible for a DCP to specify that in meeting the BCA requirements, preference should be given to materials that are consistent with traditional materials and finishes.
- (i) A reconstructed timber cottage can still make a reasonable positive contribution to a HCA. However, the quantity of new materials and changes to the building's form will affect that contribution. We do not consider it is necessary or appropriate to comment about the quantity of change to these buildings as a general type of control in the Paddington HCA DCP because each situation is likely to be different.
- (j) It is generally accepted in the conservation field that replica period buildings do not represent good conservation practice. Well-designed contemporary infill which meets general built form and amenity controls is preferable. The Paddington HCA DCP currently has appropriate statements, objectives and controls for infill development.
- (k) It is important to ensure that all significant building types in the Paddington HCA are provided with protection. We consider the Paddington HCA DCP provides a balanced approach to building types within Paddington. Emphasis of one building type in the main objectives of the DCP could have the effect of fragmenting the unified significance of the HCA. For this reason we do not support an amendment which introduces the singular reference to timber cottages in the main objectives. An amended objective which refers to the range of building types is suggested.
- (l) Listing of timber cottages as contributory items in the DCP, similar to the manner used in the Watsons Bay DCP would have the effect of elevating their recognition. However, such an approach would undermine the significance of the other buildings in the HCA. For this reason we do not support this option.

- (m) The listing of a building as a heritage item must be based on a proper assessment of heritage significance and should not be used to block development.
- (n) In order to improve assessment and decision making, there is scope to request additional information from applicants submitting DAs to Council.

## **5. Preferred options for improving protection for timber cottages**

In light of the conclusions, several preferred options for improving the protection for timber cottages have been identified. These options have been divided into immediate and longer term actions.

### **5.1 Immediate actions**

#### ***Amendments to Paddington HCA DCP***

Preparation of the consolidated DCP provides an opportunity to add to the existing controls for timber cottages in a way that could be implemented quickly. The proposed changes are set out in **annexure 2** and are shown in the context of the consolidated DCP chapter for the Paddington HCA.

#### ***Amendments to the DA Guide***

The DA Guide sets out information on how to complete and submit a DA. It includes checklists on information that needs to be submitted with the application. The type of information varies with the nature of the development proposal. For instance, proposals involving works to a heritage item and a building in a HCA need to be accompanied by a statement of heritage impact.

We consider the DA Guide can be amended so that it makes specific reference to works relating to timber cottages. The instructions for preparing a statement of heritage impact can be expanded to include requirements for:

- A structural report – where the focus is on nature and integrity of structural elements such as footings and other foundations, bearers, joists, beams, wall frames and roof framing. The emphasis is on the key structural components rather than secondary elements such as wall and floor coverings.
- A building fabric analysis and condition survey – which utilises the structural report as a basis and expands to cover non-load bearing elements (both internal and external). The report would provide an inventory of elements such as all structural components, doors, windows, ceilings, floorboards, gutters, downpipes, eaves, roof cladding, lighting, electric fittings, plumbing and wall cladding. The originality and condition of each component would be identified. Works required to remedy deteriorated fabric and to meet BCA standards should be identified together with indicative costs.
- Assessment of proposals against the planning principles contained in *Helou v Strathfield Municipal Council [2006] NSWLEC 66*.

#### ***Interim heritage orders***

This option is currently available to the Council, but only through a direct request to the Minister for Heritage. It would be open to the Council to pursue an interim heritage order in exceptional circumstances.

The option needs to be exercised responsibly and substantial evidence that the building may be worthy of listing as a heritage item needs to be provided.

### **5.2 Longer term actions**

#### ***Heritage items***

The possibility of buildings being listed as heritage items is dependent on establishing their heritage significance. The fieldwork being carried out to identify the remaining timber cottages and the research on how they have changed will inform recommendations on whether a building may be listed. This will need to be supplemented with historical research. Ultimately, it would be necessary to obtain full access to those buildings which are considered to have strong merit in order to gauge the originality of fabric and its condition.

### ***Interim heritage orders***

IHOs will remain an option. The conditions for their use have been mentioned above.

### ***Further amendments to the Woollahra DCP 2014***

Following the completion of fieldwork it is possible that additional amendments to the consolidated DCP can be made. Proposed changes would be reported to the Urban Planning Committee.

## **6. Costs**

Work on this project is being undertaken by internal resources and a short-term casual employee who is carrying out the fieldwork and assisting with DA research. Internal costs are being met by the current operational budget. External labour is an additional cost of approximately \$10,700 to the operational budget.

When the fieldwork and its associated research are completed we will be in a position to see whether further funds are required.

## **7. Conclusion**

Following our review of Court cases and considering the existing legislative which influences local planning controls, we conclude that Council's existing policy documents are reasonably robust.

We consider minor changes can be made to the Council's existing policy documents and DA requirements. These changes will increase awareness and protection of timber cottages in the Paddington HCA.

Further changes may become evident following the completion of the fieldwork component. If so, these will be reported to the Urban Planning Committee.

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## **Annexure**

1. Dove and Lee Investments Pty Ltd v Woollahra Municipal Council judgement.
2. Proposed amendments to Paddington HCA controls.

**Political Donations – matters to be considered by Councillors at Meetings**

