



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 25 June 2012*

Time: *6.30pm*

Outline of Meeting Protocol & Procedure:

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

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

- 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.

Delegated Authority (“D” Items)

- 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

21 June 2012

To: Her Worship The Mayor, Councillor Susan Wynne ex-officio
Councillors Malcolm Young (Chair)
Chris Howe (Deputy Chair)
Sean Carmichael
Lucienne Edelman
Nicola Grieve
Ian Plater
David Shoebridge

Dear Councillors

Urban Planning Committee Meeting – 25 June 2012

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 25 June 2012 at 6.30pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence 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 12 June 2012	1
----	---	---

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

R1	Legal Advice on the Meaning of Clause 32 (1)(B) of The WELP – 900.G	2
----	---	---

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 12 June 2012**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 12 June 2012 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 12 June 2012 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: Legal Advice on the meaning of Clause 32(1)(b) of the WLEP
Author: Patrick Robinson - Manager Development Control
File No: 900.G
Reason for Report: Resolution of Council

Recommendation:

That the Council receive and note the report and attached legal advice.

1.0 Introduction:

At its Ordinary meeting of the 14 May 2012 Council resolved to:

- a. *Obtain independent legal advice on the meaning of clause 32(1)(b) of the WLEP.*
- b. *That the advice specifically consider*
 - (i) *whether or not 'promoting awareness of the heritage item' is sufficient to meet the requirements of that clause; and*
 - (ii) *whether or not it is necessary for the applicant to demonstrate that the conservation of the property will in fact be achieved and how that will be achieved (eg. will funds raised from the event be applied towards the conservation of the property).*

Accordingly, we wrote to Mr Peter Rigg of Norton Rose Australia in the above terms on 17 May 2012. Mr Rigg provided his advice by letter dated 5 June 2012 which is attached and marked Annexure 1.

2.0 Summary of advice:

By way of background clause 32(1) of the WLEP provides dispensing powers which allow Council to grant consent to a use, otherwise prohibited in a zone, where that use relates to a heritage item. That dispensing power is subject to Council being satisfied as to certain criteria. Those criteria are:

...

- (a) *The proposed use would have little or no effect on the heritage significance of the heritage item or of any heritage item group of which the item is part, and on the amenity of the neighbouring area, and*
- (b) *The conservation of the building will be achieved by the Council granting that consent.*

Whilst the advice is self-explanatory it may be useful to set out a précis of the advice findings under the headings contained in the resolution.

2.1 The meaning of the Clause

In his advice Mr Rigg has primarily focused on the manner in which ‘Heritage Conservation Incentives’ have been interpreted by the Land and Environment Court, and in that context the meaning given to the word ‘conservation’.

Mr Rigg concludes that discussion stating that; “...*the term ‘conservation’ contained within [sic] clause 32(1)(b) should be given a wide interpretation as would be applied by ‘practical people skilled in the practical trade or industry’...* He goes on to say that “*in the decision of Engelen Moore Pty Ltd v Woollahra Municipal Council [2005] NSW LEC 491 Commissioner Murrell had regard to the Burra Charter. Commissioners Moore and Hoffman have also paid regard to the Burra Charter in two other Woollahra cases before the Land and Environment Court.*”

2.2 Whether or not “promoting awareness of a heritage item” is sufficient to meet the requirements of the clause

In answering this question Mr Rigg generally notes that; “...*it is necessary to examine the particular heritage item and other relevant circumstances. In some cases it might be sufficient to rely upon greater awareness to assist in or contribute to the conservation of a building....*”

He then turns his mind to the particular issue of “Swifts”, stating that if the proposed use “...*sought significant commercial events... the awareness benefit alone could not be said to satisfy the criteria prescribed by clause 32(1)(b).*”

Therefore he concludes that in relation to the use of Swifts for large scale commercial functions which might have undesirable impacts on the conservation of the gardens, ground out building or main building of the Item, the applicant would need to demonstrate that a significant part of the revenue of that function is applied to the restoration of the Item. Unless that is done, he advises, the pre-conditions contained in clause 32(1)(b) may not be met.

2.3 Whether or not it is necessary for the applicant to demonstrate that the conservation of the property will in fact be achieved and how that will be achieved

Mr Rigg advises that it is open to Council to adopt a wide interpretation of the meaning of this clause. He also notes however that the “pre-condition” structure of that clause also requires Council to be satisfied that the conservation of the property will be achieved. Council should therefore be provided with evidence in any application that the granting of consent “*will achieve conservation or at least assist in or contribute to conservation of the Item*”.

In providing advice as to what Council should be provided with in order to form such satisfaction he draws upon the provisions of the *Standard Instrument (Local Environmental Plans) Order 2006* (the Standard Instrument). Clause 5.10(10) of the Standard Instrument provides for “Heritage” incentives in similar terms to WLEP clause 32(1), with the salient difference being that the granting of consent must be conditional upon the proposed development being in accordance with a heritage management document which identifies all necessary conservation work being identified.

3.0 Conclusion:

In relation to the general interpretation of clause 32(1) Council is advised that “...*it would be of benefit that pre-lodgement discussions take place to understand the owner’s expectation in relation to the sharing of booking fees between conservation works and providing revenue.*”

This general advice will assist in a review of Council's current practices and procedures in respect to the general application of clause 32(1).

In the specific case of 'Swifts' it is advised that:

"Council should insist that the Swifts' DA [which is yet to be lodged] contain the same documentary material as identified by the Standard Instrument so that Council can form the necessary satisfaction under clause 32(1) of WLEP. Compliance with the submitted heritage management documents (or as amended by Council) can then be enforced by a condition of development consent."

As Councillors will be aware, consent has been granted to the owners of 'Swifts' to conduct two events. Council officers are currently in discussions with the owners of 'Swifts' in relation to lodging of a comprehensive application for any ongoing use of 'Swifts' for commercial activity. This advice will assist in informing those discussions.

Patrick Robinson
Manager Development Control

Chris Bluett
Acting Director Planning & Development

Annexures:

Annexure 1 – Legal Advice (Norton Rose Australia)

**POLITICAL DONATIONS DECISION MAKING FLOWCHART
FOR THE INFORMATION OF COUNCILLORS**

