

Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 13 August 2012*

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 (“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

9 August 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 – 13 August 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 13 August 2012 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence 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 23 July 2012	1
----	---	---

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

R1	Draft Woollahra Residential DCP 2003 (Amendment No. 4) Excavation – 1064.G	2
R2	Additional Controls for Lofts over Garages in the Woollahra Heritage Conservation Area	83

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 23 July 2012**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 23 July 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 23 July 2012 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: **Draft Woollahra Residential DCP 2003 (Amendment No.4) – Excavation**
Author: Tom Jones – Urban Design Planner
File No: 1064.G
Reason for Report: To report on the public exhibition of the Draft Woollahra Residential DCP 2003 (Amendment No. 4) – Excavation.
To obtain Council’s approval of the Draft Woollahra Residential DCP 2003 (Amendment No. 4) – Excavation.

Recommendation

- A. That the Draft Woollahra Residential Development Control Plan 2003 (Amendment No. 4) – Excavation, as contained in **annexure 6** of the report to Urban Planning Committee meeting on 13 August 2012 be approved.
- B. That the Draft Woollahra Residential Development Control Plan 2003 (Amendment No. 4) – Excavation comes into effect on the date that notice of the approval is published in the Wentworth Courier.
- C. That the Planning Proposal, regarding changes to Woollahra Local Environment Plan 1995, submitted to the Department of Planning and Infrastructure as required by Part B of the Council’s resolution of 12 December 2012 be withdrawn.

1. Background

Council is concerned about the impacts of excessive excavation. To address these, Council has decided to strengthen existing excavation controls in the Woollahra Residential Development Control Plan 2003 (RDCP).

Excavation is an integral part of development in the Woollahra Municipality due to the demand for land, steeply sloping sites and high land values. Traditionally excavation is a means by which floor area can be made available for both habitable and non-habitable purposes, such as storage, wine cellars and garaging. Excavation now increasingly accommodates a new range of uses such as home studios, media rooms, water craft storage and home gymnasiums.

Excavation is a necessary part of development, but it can have adverse short term and long term impacts in a built-up urban area such as the Woollahra Municipality.

Short term impacts during construction include:

- noise
- vibration
- dust
- property damage
- traffic associated with the movement of trucks and equipment.

Long term impacts include:

- land destabilisation
- interruption to the flow of ground water
- changes to the natural land form.

Long term impacts of excavation tend to be cumulative in nature. Excavation associated with the development of one individual lot may be justified if considered in isolation. However, the similar excavation of a number of lots in close proximity may have unacceptable negative consequences on ground water flows and the stability of adjoining properties.

Excavation also raises issues relating to ecologically sustainable development, loss of vegetation and heritage.

Council requested a report on the current controls and how the Woollahra Local Environment Plan 1995 (Woollahra LEP 1995) and the RDCP could be amended to mitigate these impacts.

On 28 November 2011 the Urban Planning Committee considered a report on excessive excavation (see **annexure 1**) and in response, Council resolved on 12 December 2011:

- A. *That the Council resolve to prepare a planning proposal under section 55 of the Environmental Planning and Assessment Act 1979 for the purpose of amending Woollahra Local Environmental Plan 1995 in the manner shown in annexure A of the report to the Urban Planning Committee dated 28/11/11. The purpose of the amendment is to limit the excavation of land associated with the development of single dwellings, dual occupancies and residential flat buildings.*
- B. *That when the planning proposal referred to in part A has been prepared it be forwarded to the Minister for Planning under the Gateway determination process contained in section 56 of the Environmental Planning and Assessment Act 1979.*
- C. *That the Council resolve to prepare a draft development control plan to amend Woollahra Residential Development Control Plan 2003, in the manner shown in annexure A of the report to the Urban Planning Committee dated 28/11/11. The purpose of the amendment is to limit the excavation of land associated with the development of single dwellings, dual occupancies and residential flat buildings.*
- D. *That Annexure A be amended to include:*
 - 1) *Objective O5.2.4 being amended to read:
To limit site excavation and minimise cut and fill to ensure that building form relates to the topography, to satisfy the principles of ecologically sustainable development, (including the energy expended in excavation and transport of material and the relative energy intensity of using subterranean areas in dwellings) and to protect the amenity of adjoining properties both during and after construction.*
 - 2) *That in respect of single dwellings, there be an additional maximum footprint control calculated from the proposed cubic meter control.*
 - 3) *That the proposed allowance for sloping sites be limited to those sites which slope up from the street access.*
 - 4) *That all excavation volumes be noted as volumes in ground.*
 - 5) *That the controls are to consider an absolute maximum in respect of single dwellings.*

2. Planning proposal

In response to parts A and B of the resolution of 12 December 2011, a planning proposal was prepared and on 2 March 2012 a request for a Gateway Determination was sent to the Department of Planning and Infrastructure (DoPI) (see **annexure 2**).

On 29 March 2012 we met with the DoPI regarding the planning proposal. The DoPI raised concerns with the planning proposal and recommended that we do not proceed with it.

The DoPI considered that the changes proposed to the Woollahra LEP 1995 were unnecessary, as they duplicate objectives and other provisions already in the *Environmental and Planning Assessment Act 1979* (the Act) and the *Environmental and Planning Assessment Regulation 2000* (the Regulation). The DoPI's position is outlined in its letter of 7 May 2012 (see **annexure 3**). The relevant parts of the Act and the Regulation referred to in the DoPI's letter are inserted below.

Environmental Planning and Assessment Act 1979 No 203

Part 1 Preliminary

5 Objects

The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) the protection, provision and co-ordination of communication and utility services,*
- (iv) the provision of land for public purposes*
- (v) the provision and co-ordination of community services and facilities, and*
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) ecologically sustainable development, and*
- (viii) the provision and maintenance of affordable housing, and*

Environmental Planning and Assessment Regulation 2000

Schedule 2 Environmental impact statements

Part 3 General provisions

7 Content of environmental impact statement

- (4) The principles of ecologically sustainable development are as follows:**
- (a) the *precautionary principle*, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:**
 - (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
 - (ii) an assessment of the risk-weighted consequences of various options,*
 - (b) *inter-generational equity*, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,**
 - (c) *conservation of biological diversity and ecological integrity*, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,**
 - (d) *improved valuation, pricing and incentive mechanisms*, namely, that environmental factors should be included in the valuation of assets and services, such as:**

- (i) *polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
- (ii) *the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
- (iii) *environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems*

Schedule 2 of the *Regulation* applies only to designated development, state significant development and Part 5 development, so would not normally apply to the excavation occurring in the Municipality.

We have considered the DoPI's advice and agree that the amendments to the RDCP can be made, and will be effective, without the Woollahra LEP 1995 amendments. Proceeding with just the RDCP amendments is also the most time effective approach to establishing new controls and we recommend that Council approve withdrawal of the planning proposal.

3. Progressing the Woollahra RDCP 2003 (Amendment No.4) – Excavation

In response to parts C and D of the resolution of 12 December 2011, a draft DCP was prepared. The Draft Woollahra Residential DCP 2003 (Amendment No. 4) – Excavation (Draft DCP) was placed on exhibition from Wednesday 13 June to Friday 13 July 2012¹ (see **annexure 4**). The public exhibition was carried out in accordance with the Act and the Regulation.

During the exhibition period, there was a weekly notice of the public exhibition in the Wentworth Courier. The Draft DCP and supporting material were available on Council's website and in the customer service area.

A total of 33 different people visited the webpage (not including internal Council visits) during the exhibition period.

The exhibition material comprised—

- Draft Woollahra Residential DCP 2003 (Amendment No 4) – Excavation
- Explanatory note
- Comparison plan – showing the difference between the current plan and that proposed in the amendment to DCP part 5.2 (Building size and location)
- Woollahra Residential DCP 2003 (Amendment No 3)
- Report to the Urban Planning Committee 28 November 2011
- Council resolution of 12 December 2011.

4. Submissions

We received four submissions in response to the exhibition of the Draft DCP. A copy of the submissions is attached (see **annexure 5**). A summary of the key issues raised and our response is provided below.

¹ The Draft DCP was initially exhibited from 9 May to 8 June 2012. However, due to a minor omission in the exhibited document, it was re-exhibited from 13 June to 13 July 2012. Those people who made submissions were informed of the new exhibition and the nature of changes to the Draft DCP.

4.1 Submission from GSA Planning

Key issues	Response	Action
<p>Savings and transitional provision is needed.</p>	<p>Savings and transitional arrangements state whether an amended DCP, or the DCP in force prior to the amendment, applies when assessing certain development applications.</p> <p>The submission requests that the draft DCP provisions not apply to DAs that have been lodged but not determined before the commencement of the amendments contained in the draft DCP. We consider this is a reasonable request because it means that planning rules are not changed during the assessment and determination process.</p> <p>We recommend that a savings and transitional provision be included in the Draft RDCP.</p>	<p>Recommended changes: Insert: <u>2.1 Amendment to clause 1.7 savings and transitional provisions.</u> <u>1.7.1 Woollahra Residential DCP 2003 (Amendment No.4) does not apply to development applications, applications to modify consents under section 96 of the Environmental Planning and Assessment Act 1979 and applications for the review of determinations under section 82A of the Environmental Planning and Assessment Act 1979 that were made prior to but not determined by or on the date of commencement of Woollahra Residential DCP 2003 (Amendment No 4)</u> Renumber amendments in clause 2 and the table of contents within the RDCP accordingly.</p>
<p>The control is too restrictive creating difficulty complying with the car parking requirements.</p>	<p>The proposed excavation controls allow for a reasonable and practical amount of excavation—enough to accommodate the on-site parking required under Council’s parking controls, as well as an additional volume to allow for storage and non-habitable rooms.</p> <p>The criteria used for developing the volumes are detailed in the report to the UPC on 28 November 2011 and suitably balance ESD considerations with the modern day demands and use of non-habitable rooms. The volume proposed does assume a unit mix in multi-unit development as required by SEPP 65. Regarding atypical site configurations the applicant would be required to justify the necessity of any non-compliance.</p> <p>It is not a requirement of Council that the maximum number of car parking space be totally accommodated underground.</p>	<p>No change to the Draft DCP</p>

Greater consideration of sloping sites.	Sloping sites are considered in control C.5.2.17C, allowing an appropriate assessment of the particular conditions of the subject site and its context. We consider it unnecessarily complex and inflexible to state the allowance for sloping sites since this would need to address numerous factors to establish an appropriate allowance.	No change to the Draft DCP
The benefits of excavation are not acknowledged.	We are aware that excavation is a necessary and, in many cases, desirable component of development. Council is concerned about excessive excavation. The Draft DCP aims to control excessive excavation, while allowing a reasonable and practical amount to ensure the potential benefits are not lost.	No change to the Draft DCP
There has been insufficient consultation. Council should consider organising a forum of building industry professionals to discuss the issues.	We have fulfilled our statutory consultation requirements under the Act regarding the public exhibition of the Draft DCP. The amendments reflect Council's request to control excavation and have been developed in consultation with Council's development assessment staff and informed by many DAs and Land and Environment Court decisions.	No change to the Draft DCP. Council will have the opportunity to assess how these controls work in practice and re-assess them in the near future as part of the new Comprehensive DCP. Further consultation with interested parties can occur during preparation and exhibition of the new DCP.

4.2 Submission from Sydney Harbour Association

This submission generally supports the principle of controlling excavation. There are, however, issues which the Sydney Harbour Association feels the Draft DCP does not fully consider or address.

Key issues	Response	Action
Issues relating to the removal or reduction of natural barriers, such as sand dunes and foreshore rock shelves that prevent landward movement of the harbour waters	Where significant excavation is proposed as part of a DA, it is assessed by Council's Technical Services Department (TSD) in accordance with Council's flooding and stormwater controls. Sea rise levels for 2050 and 2100 are also considered. Council's TSD needs to be satisfied that the proposed development will have minimal or no impact on surrounding sites, the principal site or the environment. With regard to foreshore features there are a number of planning instruments that need to be considered including the <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i>	No change to the Draft DCP

<p>The impact of below ground concrete structures on the movement and availability of ground water.</p>	<p>Where significant excavation is proposed as part of a DA, it is assessed by Council's Technical Services Department (TSD) with regard to information prepared by the applicant as required by Woollahra Municipal Council's <i>Guide for preparing Geotechnical and Hydrogeological Reports</i> and council's flooding and stormwater controls. Reports need to consider bulk excavation, risk assessment and impact on groundwater. Council's TSD needs to be satisfied that the proposed development will have minimal or no impact on surrounding sites, the principal site or the environment.</p>	<p>No change to the Draft DCP</p>
<p>Retention of excavated materials on the site. Consideration of a net removal approach.</p>	<p>The case for cut and fill (retaining excavated material on site) has been an important part of the consideration of this RDCP amendment. The potential benefits of cut and fill are reflected in the controls. The controls are particularly addressing excessive excavation. The volumes of material involved would not allow them to be reasonably accommodated on site.</p>	<p>No change to the Draft DCP</p>
<p>The use of barges to remove excavation material.</p>	<p>The option of using barges can be considered in a construction management report and/or a traffic management report. Such reports would need to detail the location of loading and unloading sites and fill sites. Landfill cannot be disposed of at sea and would generally involve multiple handling.</p>	<p>No change to the Draft DCP</p>

4.3 Submission by Council's assessment officer

Key issues	Response	Action
<p>The Draft RDCP needs to address excavation close to the boundary and particularly the issue of excavating for construction purposes beyond the limits which are imposed through the DA approval. In numerous cases excavation is occurring outside the footprint even though the construction elements such as walls and piles are eventually within or on the approved boundary setbacks.</p>	<p>We recommend a minor change to clarify the excavation controls. This is to ensure the matter is properly considered at the assessment stage and to remove any ambiguity regarding the extent of the approved excavation.</p>	<p>Recommended changes:</p> <p>C5.2.15 The building footprint is designed to minimise excavation, including cut and fill. The footprint shall adhere to the setback controls and no substantial excavation shall occur outside this footprint.</p> <p>C5.2.16 <u>The outer edge of excavation required to construct the development, including all excavation for piling and all sub-surface walls, shall not be less than 1.5m from a front, side or rear boundary.</u> [NOTE: The front, rear and side building setbacks referred to in C5.2.1, C5.2.2, C5.2.3 and C5.2.5 also apply to all parts of the building, including where it extends below ground level]</p>

		That an insert is required in the DA Guide clarifying the extent of excavation as follows: <u>Plans showing excavated levels need to indicate the full extent of excavation required for construction works beyond the finished internal wall line.</u>
--	--	--

4.4 Submission by W.T. Malouf Pty Ltd.

This submission objects to existing controls as well as the proposed amendments restricting excavation.

Key issue	Response	Action
Limiting the amount and location of excavation does not achieve the objective of ensuring a building form relates to the topography. Relationship to topography is achieved by envelope controls.	Excavation will often be required to enable a building to fit within the topography. However, this can result in the topography being substantially altered to accommodate a building rather than a building being designed to relate to the topography. Our reports to the Urban Planning Committee and the proposed amendments all recognise the benefits of excavation. It is excessive excavation that the amendments seek to address. The current building envelope controls do not address excessive excavation. They deal with boundary setbacks, building footprint and heights rather than depth of building.	No change to the Draft DCP
Excavation provides materials which would otherwise need to be quarried.	There is no evidence that significant amounts of excavated materials are used locally. Even if materials are eventually reused they are transported considerable distances to enable processing and re-use. Given the amenity impacts, and evidence of concern expressed to Council about excessive excavation, there is unlikely to be local support for the argument put forward in the submission.	No change to the Draft DCP
Below ground accommodation is more environmentally sustainable.	The proposed controls allow sufficient volume to house car parking which is suited to being accommodated below ground. We disagree with the objector that subterranean habitable rooms will use less energy. The need for continual or long periods of artificial lighting and ventilation, including energy for extractor fans in sub-surface parking and plant rooms, would account for a larger energy usage, even if the Building Code of Australia allowed subterranean rooms.	No change to the Draft DCP
The geotechnical and hydrogeological design certification and monitoring and the dilapidation surveys protect any	Both geotechnical and hydrogeological design certification and monitoring and the dilapidation surveys are important tools and will still be required where appropriate. They do not address the broad spectrum of potential impacts of excessive excavation. Furthermore, less excavation will generally equate to potentially less impact on the landform, subsurface	No change to the Draft DCP

Key issue	Response	Action
impact on adjoining property.	waterflows and damage to adjoining properties.	
Controls C5 2-12 and C5 2-16 unreasonably increase the setback of excavation from the boundary	These controls have been amended to clarify the existing control that has been misinterpreted in the past. They don't change the intent of the control.	No change to the Draft DCP. A review of Woollahra's DCPs is presently being carried out in response to the State Government's planning reforms. This will enable the current footprint controls to be reviewed and if needed amended to enable better outcomes.
Control C5 2-17 hampers good design	This is an existing control	No change to the Draft DCP. A review of Woollahra's DCPs is presently being carried out in response to the State Government planning reforms. This will enable the current habitable room control to be reviewed and if necessary amended to enable better outcomes.
Controls C5 2-17A and C5 2-17B will mean that car parking occurs above ground	The controls are framed to make sure required car parking may be accommodated below ground. However, there is no control that requires parking to be below ground.	No change to the Draft DCP.

The changes recommended above are set out in a revised Draft DCP (see **Annexure 6**) and a comparison plan (see **Annexure 7**)

3. Conclusion

The Draft DCP has been prepared in response to the resolutions of Council and exhibited as required by the Act and Regulation. Minor amendments have been made to respond to submissions.

We recommend Council approve the Draft DCP as amended in **Annexure 6**. If approved, the Draft DCP will come into effect on the date that notice of the approval is published in the Wentworth Courier.

We also recommend that the Planning Proposal be withdrawn. We are confident that the DCP can operate effectively without the Woollahra LEP 1995 amendments, and that the relevant provisions in the *Environmental Planning and Assessment Act 1979* can be relied on.

Allan Coker
Director- Planning and Development

Chris Bluett
Manager Strategic Planning

Tom Jones
Urban Design Planner

Annexures

1. Report to the Urban Planning Committee on excavation – 28 November 2011
2. Planning proposal and request for gateway determination letter from Council to the DoPI
3. DoPI response 7 May 2012
4. Draft Woollahra Residential DCP 2003 (Amendment No. 4) – Excavation as exhibited
5. Submissions
6. Draft Woollahra Residential DCP 2003 (Amendment No. 4) – Excavation as amended in response to the submissions
7. Comparison plan

Item No: R2 Recommendation to Council
Subject: **Additional Controls for Lofts Over Garages in the Woollahra Heritage Conservation Area**
Author: Sara Reilly Strategic Heritage Officer
File No:
Reason for Report: To respond to decisions of the Council requiring a report on controls for lofts over garages in the Woollahra Heritage Conservation Area.

Recommendation

That a draft development control plan be prepared to amend the Woollahra Heritage Conservation Area DCP as set out in section 5.0 of the report to the Urban Planning Committee meeting on 13 August 2012.

Introduction

Council adopted the following notice of motion on the 11 October 2010:

That Council produce a report within six months on clear controls for lofts over garages in the Woollahra Conservation Area so that the controls regarding lofts in this location are brought into accord with those applying to the Paddington Conservation Area.

Action on this decision was delayed due to priorities given to other projects within the Delivery Program and Operational Plan.

On 30 April 2012 the Urban Planning Committee considered a report on the Draft Delivery Program 2009-2013 and Operational Plan 2012-2013. Under its delegations the Committee resolved in part:

- A. That the Actions proposed for inclusion in the Draft Delivery Program and Operational Plan, relevant to the Urban Planning Committee be included in the Draft Delivery Program 2009 to 2013 and Operational Plan 2012/13 subject to the following:
- 1) The completion date of the following Actions be amended to 31 July 2012 so that these Actions are completed before the current Council enters Caretaker mode and that appropriate resources be allocated to those Actions to allow them to be completed by the amended date:
 - (i) Prepare a draft DCP to amend Woollahra Residential DCP 2003 to include new excavation objectives and controls.
 - (ii) Review planning controls for transition areas between Residential 2(a) and Residential 2(b) zones.
 - (iii) Prepare a Draft Educational Establishment DCP
 - (iv) Amend Paddington Heritage Conservation Area Development Control Plan and Woollahra Local Environmental Plan 1995 to include controls for William Street commercial uses.
 - (v) Prepare a report on clear controls for lofts over garages in the Woollahra Heritage Conservation Area so that the controls regarding lofts in this location are brought into accord with those applying to the Paddington Heritage Conservation Area.

This report responds to both decisions. In doing so, we have:

- looked at loft structures from a historical perspective,
- examined the current controls for garage loft structures in the Woollahra and Paddington Heritage Conservation Areas,
- identified the character of the Woollahra and Paddington HCAs.

The purpose of our research was to establish whether the controls for Paddington could be placed into the Woollahra HCA DCP without change or in a modified form. This report provides a summary of our research.

We also provide an overview of the court case of *Mendel v Woollahra Municipal Council*. This case is relevant because it dealt with an application for a loft over a garage in the Woollahra HCA and brought to light a number of issues with the current controls. These issues should be considered as part of the response to the decision of 11 October 2010 because they have a bearing on the type and scope of new controls for the Woollahra HCA.

2. Background

2.1 Loft structures in general

Loft structures have historical precedence in some housing types as areas above a stable or carriage building. Depending on their size and function, lofts may have housed a staff member who looked after the horses, carriages or grounds. Lofts are in principle a valid response to the function of houses both historically and architecturally under appropriate circumstances.

After World War One the motor vehicle became part of ordinary residential life, and new buildings from around 1915 onwards sometimes incorporated garage structures into or adjacent the new buildings, or in the case of residential flat buildings, incorporated multiple car parking along streetfronts or in a basement area.

Contemporary proposals to build a loft over a garage are a response to the increasing demands of some property-owners to maximise the usable space of their lots. This mostly occurs in the case of smaller Victorian or Federation lots, where it is not possible to provide additional floor space to the existing primary building, and a rear lane exists with the possibility of building a garage or extending the existing garage with a loft over the garage fronting the lane.

A loft over a garage often presents the most obvious way to provide additional floor space to a Victorian or Federation lot. The benefit of a loft over a garage is that the added floor space does not impact on the primary building, allowing height levels to remain at the typical 2 – 3 storeys for Victorian terrace dwellings or rear building alignments to be generally maintained. A loft over the garage also presents as possible guest accommodation, or a studio, workshop area or storage space, spatial uses which are not usually present in a typical Victorian or Federation dwelling.

Owners of non-Victorian terrace properties within the heritage conservation area may also seek to build a loft over a garage which is within the grounds but not directly abutting a rear lane. This is more likely to occur on a larger property or as part of a residential flat building.

The impact of lofts over garages abutting laneways has been a major issue of debate at Council due to the additional range of impacts compared with extending an existing building, and the concern over the visual and physical impact on laneways and adjoining small residential cottages.

In the Woollahra HCA there are no specific controls for a loft structure over a garage on a street frontage, as distinct from a laneway, apart from the general prohibition of the structures in the Fletcher Precinct.

The background to the development of the loft controls for the Woollahra and Paddington HCAs is summarised below.

2.2 The character of the Woollahra and Paddington HCAs

2.2.1 Woollahra HCA

Clause 2.1 of the Woollahra HCA DCP provides a description of the Woollahra HCA which includes the following points:

- a topography that is generally level but slopes along its eastern and northern boundaries,
- in the east and south-west of the HCA, regular, gridded street patterns with alternating wide streets and narrow rear lanes,
- in the north the grid expands to form much larger blocks and generally does not include lanes,
- a complex and varied subdivision pattern which directly affects the sizes of buildings constructed in different parts of the HCA. For example:
 - the Rosemont Precinct is characterised by large lots including gardens, the villas and estate remnants of the mid-Victorian period and the detached houses and flats of the inter-war period,
 - the West Woollahra Precinct is characterised by small lots and a variety of generally small-scale cottages and terrace houses,
 - the Queen Street Precinct has a mix of significant mid-to-late Victorian and Federation residential, civic and retail buildings,
 - the Nelson Precinct is characterised by highly consistent late-Victorian, Gothic style cottages of the Waimea and Woods Avenue groups, mid-Victorian houses and many inter-war flats,
 - the Harbour View Precinct comprises a collection of Federation period houses influenced by Victorian Gothic architecture,
 - the Grafton and Fletcher Precincts have a variety of Victorian and Federation timber, stone and brick cottages, detached or semi-detached houses and terrace houses.

2.2.2 Paddington HCA

Clause 2.2 of the Paddington HCA DCP describes the existing character elements of the Paddington HCA. These include:

- a topographical form shaped into a natural amphitheatre,
- a variable and intricate street, lane and pedestrian network,
- the western area is characterised by short, angled narrow roads with closed vistas and dogleg junctions
- the eastern area has more ordered subdivisions with alternating wide streets and rear lanes set out in rectangular grids,
- a generally homogeneous pattern of Victorian era row terrace housing, but with examples of single storey buildings, freestanding houses, multi-unit housing, shops, hotels and industrial buildings.

2.2.3 Paddington HCA and Woollahra HCA – comparison of their built environment

It should be noted that the Paddington HCA is acknowledged by government at all levels as having greater heritage significance than the Woollahra HCA due to its intactness and perceived homogeneity of building stock. This has been reflected in the high level of prescriptive controls within the Paddington HCA DCP, including those controls dealing with interiors, excavation and loft structures.

The main differences between the Paddington HCA and the Woollahra HCA lie in the range of building stock, subdivision patterns and topography.

The Paddington HCA has a more hilly topography than the Woollahra HCA, which creates a striking pattern of allotments and terraces and other built forms which consistently step up or down.

Generally, the mix of building types in the Woollahra HCA's streetscapes and laneways is more diverse than in the Paddington HCA. This is recognised in the Woollahra HCA DCP's use of precinct controls.

In terms of land subdivision, the Paddington HCA has a more consistent grid style pattern compared with the Woollahra HCA.

However, parts of both areas have similar street patterns and building styles. For instance, the West Woollahra Precinct (**annexure 1**) in the Woollahra HCA is similar in character to the eastern parts of the Paddington HCA. Both areas share a boundary with Jersey Road. The Fletcher (**annexure 2**) and Grafton Precincts (**annexure 3**) also display similar characteristics to the Paddington HCA with their subdivision layout.

The West Woollahra Precinct is the most similar area to Paddington in terms of subdivision and building type. The precinct is bounded by parts of Oxford Street, Jersey Road, Ocean Street and Forth Street, but excludes Queen Street. The precinct contains a predominantly Victorian subdivision pattern which includes a network of service laneways. These back streets and service lanes contain very small-scale working class cottages and terrace house groups. Many of these houses were built on lots divided from the standard lots during the initial phase of the development.

2.3 Controls for garage lofts in the Woollahra HCA

The preparation of the Woollahra HCA DCP began in October 2000 with the commissioning of consultants and was partly modelled on the Paddington HCA DCP. However, the Woollahra HCA DCP was developed following the identification of specific precincts, and includes precinct objectives and controls separate from the general controls. The precinct controls were created to 'customise' development within the diverse range of housing types and periods in the heritage conservation area, which contains Victorian terrace subdivisions, single-storey Victorian buildings, large early Victorian estates, Federation dwellings and Inter-War flat buildings.

Part of the consultant's brief for the preparation of the Woollahra HCA DCP was to investigate:

...*first floor additions over rear garages in the form of 'studios' and the consequent impact on:*

- *Lanescapes (dominating built form on the boundary);*
- *The scale relationship to the main building (ie competing building forms);*
- *The significance of the main building, particularly where the rear forms part of an unaltered group;*
- *The amenity of adjoining properties, particularly overshadowing and loss of privacy².*

Throughout the preparation of the Woollahra HCA DCP, Council and community groups were concerned about the protection of laneways and the proliferation of intrusive garage elements into the setting of small Victorian cottages. Consequently, the loft over garage controls within the Woollahra HCA DCP were developed around the protection of the rear lanescapes of Victorian subdivisions. A loft structure over a garage was limited to the West Woollahra Precinct and Grafton Precinct with Sisters Lane in the Rosemont Precinct (**annexure 4**) added in response to submissions received during the exhibition period. The control of loft structures in other precincts did not appear to be a significant concern during the preparation of the DCP.

Some of the precinct controls within the Woollahra HCA DCP contain specific garage controls, and some of the building type controls also contain specific garage controls. The Fletcher Precinct contains complex, specific controls that are designed to control the development at the rear of properties which face a primary street (Adelaide Parade, View and Fletcher Streets). Lofts are specifically excluded within this precinct.

The Woollahra HCA DCP loft controls are located within the general garage controls for development in clause 3.4.9 - Parking and garages – (**annexure 5**).

2.4 Controls for garage lofts in the Paddington HCA

Paddington's dense pattern of mainly homogenous Victorian terrace development includes an extensive network of laneways in which garages are generally permitted, should relevant criteria of the Paddington HCA DCP be met. Lofts over garages were introduced as a permitted building type in 2010 in response to increased demand for these types of structures. The background for the introduction of lofts over garage controls in the Paddington HCA is summarised below.

On 29 October 2007 Council resolved that the Paddington HCA DCP should be amended to include provisions for lofts over garages on rear lanes. It was agreed that there are limited situations where a loft over a rear lane garage is appropriate within Paddington. A mapping exercise was carried out to determine the appropriate locations and conditions for lofts over garages. The criteria included orientation, site dimensions and levels.

The project was overseen by the Paddington DCP Working Party which comprised the Paddington Ward Councillors and community representatives. The Working Party raised numerous concerns about garage loft structures:

- potential overshadowing of neighbour's properties
- loss of solar access to courtyard open space areas
- the detrimental visual impact of rows of garages and lofts to the laneway
- the loss of views of the rear elevation of terrace houses from the public domain, particularly in the case of a reasonably intact group
- whether single lofts should be allowed over a double car space
- the fall of the site increasing potential for overshadowing

² Consultant's brief for preparation of Woollahra DCP.

- maximum widths, depths and heights to limit bulk and scale
- minimum allotment size
- detailing at lot boundaries
- privacy considerations
- prescriptive fenestration controls.

A draft DCP was prepared to amend the DCP by:

- a) Providing precinct controls to limit the number of properties eligible for a loft;
- b) Providing controls to minimise bulk and scale of loft structures over rear lane garages;
- c) Providing controls to address the cumulative effect of a row of garages and loft structures along the laneway.

The draft DCP was approved on 9 August 2010 and commenced on 18 August 2010. The Paddington HCA DCP's loft objectives and controls are included as **annexure 5**.

2.5 Comparison between Paddington HCA and Woollahra HCA garage loft controls

2.5.1 General differences

Whilst the Paddington HCA DCP loft controls apply to the entire Paddington HCA, the Woollahra HCA DCP loft over garage controls apply only to three specific localities: West Woollahra and Grafton precincts and Sisters Lane. Other than a limited reference to the prohibition of a garage loft structure in the Fletcher Precinct, no controls are provided for the remaining precincts in the Woollahra HCA.³

2.5.2 Specific differences

The Paddington HCA controls are more prescriptive than the Woollahra HCA controls. For instance, the Paddington HCA controls provide details for:

- minimum allotment dimensions,
- maximum width of structures,
- minimum separation distances between the loft windows and windows on neighbouring properties
- site orientation
- maximum number of skylights
- site slope and the relationship of floor levels for the ground floor of main building and the rear of the site
- location of windows
- provision of decks, balconies and other cantilevered structures
- roof design and orientation
- access to the loft area.

Most of these details are numerically based and result in lofts of very similar appearance.

By comparison, the Woollahra HCA loft controls are more flexible and performance based. Numerical controls are limited to lofts with transverse gables, with figures specified for eave heights and site widths.

³ This statement is based on the interpretation of C13 arising from the court case of Mendal v Woollahra Municipal Council. Refer to section 3, below.

The Woollahra HCA controls provide more variety in the form and details of lofts. For instance, in the Woollahra HCA, a transverse gable form or parapet form is permitted, whereas in the Paddington HCA gable ends must face the rear lane or rear street.⁴

In the Woollahra HCA dormers are permitted, which would appear facing the laneway on a roof with a transverse gable, whereas in Paddington HCA they are not permitted.

3. Mendel v Woollahra Municipal Council 2009 NSWLEC 1113

The case involved an appeal to the Land and Environment Court against the Council's refusal in September 2008 of a development application for the construction of a loft study over an existing garage. The detached garage was located towards the rear of the site, but not directly on the rear boundary. The hearing occurred on 18 December 2008 and the judgement was handed down on 22 April 2009.

The case brought to light the ambiguity of control C13 of clause 3.4.9 of the Woollahra HCA DCP. Control C13 states:

C13 Loft structures over garages will be permitted only in the West Woollahra or Grafton Precincts or in Sisters Lane where:

- the site is not adjacent to an existing single-storey building with a laneway frontage
- the form, bulk and scale of the structure would not overwhelm the existing building on the site
- there would be no adverse impact on the amenity of the property, neighbouring properties and public open space, in terms of visual and acoustic privacy and sunlight access.
- the structure is consistent with the character of the street or laneway,
- the design does not mimic the historic detailing of adjacent significant buildings.

Control C13 can be interpreted in two ways: either that lofts are only acceptable in three locations provided conditions are met; or that if lofts are proposed in those locations, then the conditions governing their acceptability apply (and by implication, there are no specific controls for a loft over a garage in other locations).

A second point which contributes to the ambiguity of the clause occurs in Table 3.29 (Design control parking, garages and carports). Whilst not linked by reference to clause 3.4.9, the table (**annexure 4**) sets out various controls for the location, scale, form and materials of garages and carports. Specific controls are provided for "laneway garages with roof lofts (only permitted in appropriate situations in West Woollahra and Grafton Precincts and Sisters Lane)".

There are two observations from reading this table. First, the particular controls relate only to those garages which are located on laneways and which are also allowed within the three locations. Secondly, there are no controls for a loft over a garage which has a street frontage (an orientation mentioned in control C13) or for a loft over a garage outside the three nominated locations.

⁴ In the Woollahra HCA transverse gables are permitted if the site width exceeds 8.5m and a 1.2m pedestrian gate is included at the boundary.

The third and final point of ambiguity lies in objective O5 of clause 3.4.9 which states: “To limit loft structures over garages to appropriate locations.” The objective does not assist with providing an unequivocal interpretation of control 13 or Table 3.29 because the term “appropriate locations” is not explicit. Even though the objective might be seen to be linked to the West Woollahra and Grafton Precincts and Sisters Lane, which therefore meets one interpretation of control C13 and Table 3.29, it may also apply to proposals for lofts over garages which are acceptable on a merit assessment on other sites across the heritage conservation area. Hence, those proposals may be seen to meet the objective because they are in appropriate locations too.

Although the property that was the subject of the court case was in the Rosemont Precinct and thus was not directly affected by the control under either interpretation, the commissioner found that:

It was submitted on behalf of the applicant that control 13 of the DCP can not have the effect of prohibiting the proposed loft. As a matter of construction I agree that the proposed loft structure is not prohibited by this provision. None the less the impact of the proposed development on the amenity of adjoining property is a relevant matter for consideration under s79C of the Act.⁵

By this, it is understood the commissioner took the view that:

- C13 applied specific controls for loft structures over garages in the nominated precincts and street, and
- there were no controls preventing loft structures over garages in other parts of the heritage conservation area.

The commissioner also made a relevant comment about the operation of development control plans.

The Court of Appeal decision of *Zhang v Canterbury City Council [2001] NSWCA 167* requires the DCP to be given central focus and consideration in the assessment of development applications. This judgement also states that Development Control Plans are not mandatory but discretionary.⁶

There are two points made in *Zhang* which call up the intent and operation of a DCP and its relationship to an LEP.

1. One purpose of a DCP is “to make more detailed provision with respect to development to achieve the purpose of an environmental planning instrument applying to the land concerned” (section 74C(1)(a) of the Act)
2. A DCP cannot be read as prohibiting development, otherwise the provisions of the DCP would have greater force than an LEP.

In terms of point 1, the Woollahra HCA DCP contains the detailed provisions for development which may be carried out in the HCA by virtue of the provisions of Woollahra LEP 1995. Arguably, control C13 and Table 3.29 contain detailed provisions for lofts over garages in the West Woollahra and Grafton Precincts and Sisters Lane.

Point 2 has its basis in section 74C(5)(b) of the Act which states “A provision of a DCP (whenever made) has no effect to the extent that it is inconsistent with a provision of [an LEP] or its application prevents compliance with a provision of [an LEP]”

⁵ Mendal v Woollahra Municipal Council [2009] NSWLEC 1113, p.9

⁶ Mendal v Woollahra Municipal Council [2009] NSWLEC 1113, p.9

Lofts over garages are permissible development, notwithstanding the prohibition expressed in control C13, because they are considered to be ancillary components of a dwelling house which is permissible with consent in the Residential 2(a) and Residential 2(b) zones of Woollahra LEP 1995.

The acceptability of a loft over a garage can be influenced by more detailed controls set out in the DCP, although non-compliance with these controls cannot act in the same prohibitive manner as a failure to meet a non-discretionary development standard in an LEP. (assuming the non-compliance is not accepted through a successful SEPP 1 objection)

Furthermore, a clause in a DCP prohibiting a loft over a garage does not have the same effect as a provision in an LEP which prohibits development. This means that there is no requirement that a development proposal which contravenes a prohibition in a DCP must be refused.

In *Mendel*, the question of permissibility was not central to the court's determination. Ultimately, the appeal was dismissed for reasons of unacceptable overshadowing and visual bulk. Nevertheless, in their report on the case, the Council's lawyers noted:

In accordance with our instructions, our interpretation of this clause was that loft structures would be regarded as inappropriate other than in the areas referred to in that clause (West Woollahra, Grafton Precincts or Sisters Lane).

As previously advised, there is, however, ambiguity in this provision particularly in terms of whether the related clause in table 3.29 applies to all lofts over garages or only lofts over garages fronting laneways.

If Council is seeking to rely on cl 3.4.9, C 13 and table 3.29 as a reason for refusal of a proposed loft structure located outside of the areas specified in those provisions, it may have difficulty maintaining this argument in any appeal proceedings.⁷

In summary, as a consequence of this appeal the controls for garage lofts should be reconsidered. Aside from the matter of ambiguity, there is the question of allowing lofts in other precincts and providing controls to manage their impact.

4. Applying the Paddington HCA DCP controls to the Woollahra HCA

Looking at the content of *Mendel* and *Zhang* as it relates to the operation of a DCP, and taking into account comments from Council's lawyers about the interpretation of C13 and Table 3.29, several questions need to be considered in conjunction with any action required to address the Council's resolution of 11 October 2010. These questions are:

1. Is a loft over a garage an acceptable development form in all precincts or should it be limited to the two precincts and the one lane currently nominated in the DCP?
2. Is it intended that a loft over a garage be allowed on a street frontage as well as on a laneway?
3. Should the controls apply to a loft over a garage that is not directly abutting a laneway?
4. Should the Paddington HCA DCPs controls for lofts over garages be automatically applied to the Woollahra HCA.

⁷ Lindsay Taylor Lawyers, n.d., Report on Land and Environment Court proceedings

In response to point 1, we are mindful that the study brief for the Woollahra HCA DCP required the consultants to investigate lofts over garages. Using the criteria mentioned in section 2.3 of this report, the consultants concluded that lofts should be limited to the West Woollahra and Grafton Precincts. Sisters Lane was added in response to submissions received during public exhibition of the draft DCP.

We consider it is beyond the scope of this report to recommend that a loft over a garage is acceptable in all precincts. To do so, and present a new set of general or precinct-specific loft controls requires a re-evaluation of the consultant's conclusions. This will require further investigation of the HCA's built character, which includes its building types, subdivision layout, street patterns and allotment sizes.

At this stage, then, we consider the Woollahra HCA DCP should be amended to clarify that a loft over a garage is only acceptable in the three areas. This can be done through amendments to the explanation paragraphs of clause 3.4.9 – Parking and garages – and amendments to the objectives and controls of that clause. We address these matters in section 5 of this report.

In response to point 2, we consider the intention with the current controls is to allow a loft over a garage at the rear of a property and not at the property frontage. The confusion arises in C13 with the control which requires the structure to be “consistent with the character of the street or laneway.” However, Table 3.29, which contains the design controls for garages, refers to “Laneway garages with roof lofts” and requires them to be built on the rear boundary. We rectify this confusion in section 5 of this report.

In response to point 3, we consider the intention of the current controls is to deal with garages on a laneway boundary, rather than a garage which is located on another part of a site. Again the confusion arises because of the conflicting descriptions used in C13 and Table 3.29. These matters are addressed in section 5 of this report.

In response to point 4, we consider the most appropriate course is to retain the Woollahra HCA DCP controls with minor changes and add the Paddington HCA DCP controls which are relevant to the Woollahra HCA context.

Consideration of the two sets of controls has found this to be a valid approach. Some of the Woollahra HCA controls have been developed from research and understanding of the unique characteristics of Woollahra's precincts and some of the Paddington HCA loft controls are considered overly prescriptive to integrate with the diverse forms and materials of the Woollahra precincts. For example, whilst transverse gables may not be suitable to Paddington, in part because of the stepping topography, transverse garages are mostly suitable to the generally flat Woollahra HCA precincts.

5. Proposed amendments to Woollahra HCA DCP

The proposed amendments to the Woollahra HCA DCP are summarised below:

Part 3 General controls for development

Clause 3.4.9 – Parking and garages

- Include a statement in the explanation section about lofts over garages.
- Amend objective O5 to clarify where a loft structure over a garage is appropriate.
- Add objective O6 limiting the height of garage structures in the HCA.
- Add objective O7 relating to the design of a loft structure over a garage.

- Add control C5a to clarify that garages are to be single storey structures other than situations where a loft structure may be allowed in control C13,
- Amend control C13 to clarify that a loft structure over a garage is appropriate only for the West Woollahra and Grafton Precincts and in Sisters Lane
- Amend control C13 to remove the reference to loft structures over garages fronting a street.
- Amend control C13 to include a reference to compliance with controls in Table 3.29
- Amend control C13 to include relevant controls from the Paddington HCA DCP.
- Amend Table 3.29 Design controls for parking, garages and carports by:
 - simplifying the design controls for eaves and ridge heights,
 - making minor adjustments to forms and materials.

Part 6 Glossary and appendices

Appendix A Glossary

- Include definitions for “principal building form” and “street front zone”. These definitions are taken from the Paddington HCA DCP.

New objective O6 and new control C5a are provided to give a degree of control for the height of garage structures. In particular, they respond to one of the issues arising from *Mendel* relating to the controls for loft structures outside the three designated areas mentioned in control C13. We see these controls as interim measures, pending further consideration of controls for the remainder of the HCA.

The amendments are shown in context below in ~~strikeout~~ and underline text.

3.4.9 Parking and garages

Explanation

Garages built to street alignments form inappropriate intrusions to streetscapes, while the provision of new driveway crossovers often results in the removal of street trees, a reduction in the number of on-street parking spaces and the loss of sections of early stone kerbing.

The inclusion of car parking spaces, carports and garages has resulted in a reduction of soft landscaping and useable open space in the front and rear gardens of many properties in the HCA. The consequent reduction in the number of trees and the amount of permeable ground surfaces is increasing the pressure on surface stormwater drainage systems.

Council’s on-site parking requirements aim to satisfy the parking demand likely to be generated by development while discouraging unnecessary car use and site excavation resulting from the provision of excessive amounts of on-site parking.

Limiting unnecessary car use and encouraging other modes of transport, such as walking, cycling and public transport, helps to improve local amenity and to minimise pollution and the use of non-renewable energy resources.

Parking areas, garages and driveways must be designed carefully so that they do not detract from the appearance of the development and the surrounding streetscape.

Additional floor space is occasionally being sought through the provision of a loft structure over a garage. Due to potential streetscape and lanescape impacts, a loft structure is not appropriate for garages fronting a street and may be unacceptable for garages on the rear boundaries with access to a laneway. In the preparation of this plan, consideration was given to suitable locations where a loft structure would be appropriate. It was concluded that loft structures for laneway garages would be acceptable in only three areas in the HCA, being in the West Woollahra and Grafton Precincts and in Sisters Lane, but then only if the proposals meets particular criteria.

Objectives

- O1 To ensure that residential buildings, rather than vehicle access and parking structures, remain the dominant elements in the streetscape.
- O2 To ensure that on-site vehicle parking is not provided at the expense of soft landscaping and useable open space.
- O3 To maintain and enhance the character of laneways where unsympathetic earlier development, such as high brick walls and full width garages, has eroded the quality of these urban spaces.
- O4 To allow safe and convenient vehicle access and to minimise vehicle and pedestrian conflict.
- O5 To only allow limit a loft structures over a garages ~~to appropriate locations which is located on the rear boundary of a property within the West Woollahra and Grafton Precincts and Sisters Lane.~~
- O6 To limit the height of garage structures in order to minimise impact on the character of the HCA.
- O7 To ensure a loft structure over a garage is designed to sympathetically integrate with the character of laneways.

Controls

- C5a Garage structures are to be single-storey only, other than as may be allowed under C13.
- C13 A loft structures over a laneway garages will be permitted only in the West Woollahra and ~~or~~ Grafton Precincts and or in Sisters Lane ~~where, and then only if:~~
 - (a) the site is not adjacent to structure does not adjoin an existing single-storey habitable building with on another site where that building is also positioned on a laneway frontage.
Note: A garage or carport is not a habitable building.
~~the form, bulk and scale of the structure would not overwhelm the existing building on the site,~~
 - (b) there would be no adverse impact on the amenity of the property, neighbouring properties and public open space, in terms of visual and acoustic privacy and sunlight access,
~~the structure is consistent with the character of the street or laneway~~
~~the design does not mimic the historic detailing of adjacent significant buildings,~~
 - (c) the site dimensions are a minimum of 30m long and 4.25m wide

- (d) the maximum width of the loft and garage structure is 4.5m
- (e) the structure does not require the garage footprint to be extended so that the controls in clause 3.4.6 “Open space and landscaping” cannot be satisfied. Where there is an existing non-compliance with these controls, the existing private open space and deep soil landscaping is not to be further reduced,
- (f) all access to the loft is provided internally,
- (g) there are no balconies, decks, or other similar cantilevered structures,
- (h) habitable room windows within the loft with a direct sightline to the habitable room windows in the existing building on the site and neighbouring buildings have a separation distance of at least 9 metres,
- (i) a window in a gable end of a non-transverse roof or a dormer window in a transverse roof is a centrally located single double-hung sash style or inward-opening casement window of traditional proportions,
- (j) there are no dormer windows in the gable-ended roof form,
- (k) there are no windows in the gable end of a transverse roof form,
- (l) skylights, if proposed, are limited to a maximum of two per roof plane, and provided:
 - they comply with C4 in clause 3.4.8 “Roofs and skylights”,
 - each skylight does not exceed an area greater than 1.5m², and
 - roof planes do not have more than 25% transparent material,
- (m) the proposal complies with the controls for laneway garages with lofts in Table 3.29.

C13a Loft structures will not be permitted:

- (a) over garages in the street front zone,
- (b) if the subject property is part of an original row of houses, comprising an unaltered group, and the proposal demonstrates an adverse impact on this group,
- (c) if the rear of the property is orientated towards the north between NNE and NNW (true north)
- (d) over a multiple space garage.

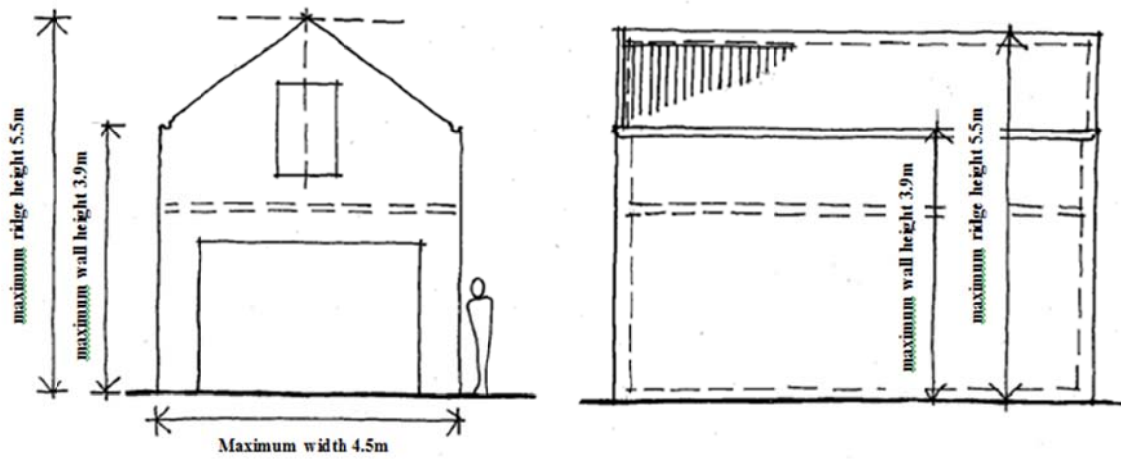


Figure 1 Gable-ended loft structure example (including dimension controls)

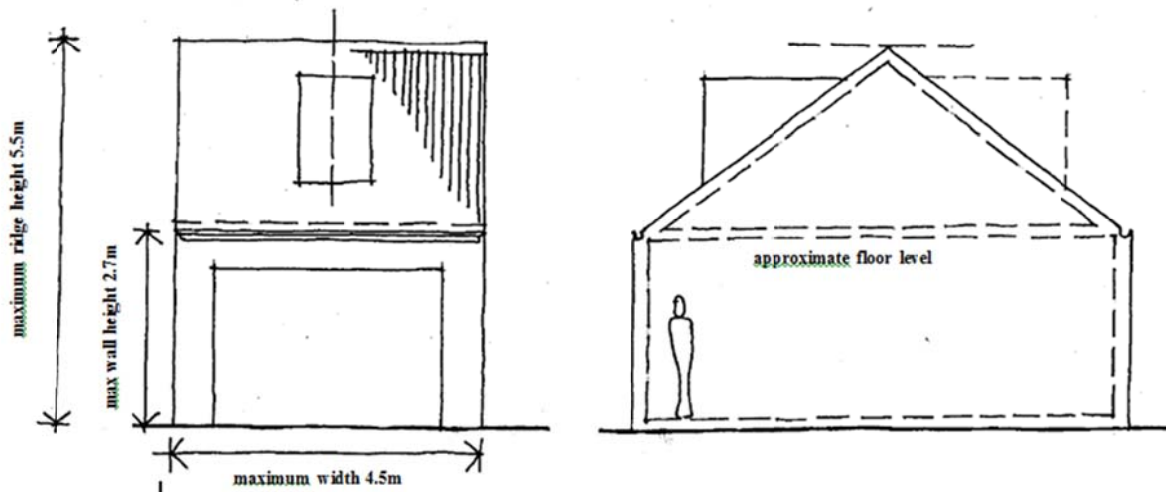


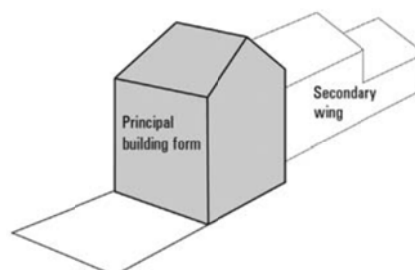
Figure 2 Transverse loft structure example (including dimension controls)

Table 3.29 Design controls parking, garages and carports – note that all dimensions are in millimetres

	Setting	Scale	Massing/Form	Materials
<p>LANEWAY GARAGES WITH ROOF LOFTS (only permitted in appropriate situations in West Woollahra and Grafton Precincts and Sisters Lane) See C13 and C13a</p>	<ul style="list-style-type: none"> ▪ Preserve original stables with lofts ▪ Do not dominate existing cottages to residential lanes ▪ Build on rear boundary ▪ Minimise ramp up to garage ▪ Contemporary design based on traditional forms and proportions, rather than the imitation of a historic design, is preferred 	<ul style="list-style-type: none"> ▪ Maximum <u>garage door height</u> 2200 ▪ Minimum <u>garage door width</u> 2400 ▪ Maximum <u>garage door width</u> 3300 ▪ <u>Maximum ridge height</u> 5500 ▪ <u>Maximum eaves height:</u> - for <u>gable ends</u> 3900 - for <u>transverse roof form</u> 2700 ▪ Maximum eaves height: - If block width is less than 6000=3900 - If block width is wider than 6000=4500 ▪ Maximum ridge height to lofts with transverse gable form =5500 with maximum eaves height 2700 	<ul style="list-style-type: none"> ▪ Minimum 470 wide pillars ▪ Maximum 600wide side pillars ▪ Single car access only ▪ Open second car space is permitted only with gates to lane ▪ Gable <u>ended</u> or <u>transverse gable</u> or <u>parapet</u>-structure only is permitted ▪ Pitch and form of roof to match appropriate traditional roof. ▪ Lofts with transverse gable roof forms are permitted only where the site width exceeds 8500, and a 1200 pedestrian gate is included at boundary. 	<ul style="list-style-type: none"> ▪ Rendered and painted brick <u>or weatherboard cladding</u> ▪ Corrugated steel roofing of traditional profile ▪ <u>Timber windows and dormers with weatherboard cladding</u> ▪ Timber gates or timber panel-lift doors with dark paint finishes ▪ Metal roller shutter permissible if set within a masonry surround

Appendix A – Glossary

Principal building form means the original front building section and main roof, which contains the main rooms (see diagram)



Street front zone comprises the front building elevation and visible roof, front yard, the side boundary fences in the front yard and the street boundary fence.

6. Expansion of loft controls to the other precincts in the Woollahra HCA

The diversity of built form within the Woollahra HCA precincts necessitates a more flexible approach to the introduction of lofts over garages than exists in the more homogenous lanescapes of the Paddington HCA.

If loft controls are to be implemented in further precincts of the Woollahra HCA, they should be tailored to suit the characteristics of the individual precincts. Neither the Paddington HCA nor Woollahra HCA loft controls are necessarily relevant or suitable to the other precincts of the Woollahra HCA, as they were designed to control continuous and dense Victorian loft development to laneways only.

It is beyond the scope of this report to investigate rolling out loft controls to all areas of the Woollahra HCA. To present a new set of general or precinct-specific loft controls requires detailed research into the built form of the HCA.

It is recommended at this stage that Council continue to seek to limit loft garages except within the controlled conditions of the three areas already specified.

7. Conclusion

The proposed amendments to the Woollahra HCA DCP controls relating to lofts over garages will bring the Woollahra HCA loft garage controls more into accord with the Paddington HCA loft garage controls, whilst still maintaining the diversity of streets and lanescapes within the Woollahra HCA.

The ambiguity of the current control C13 and Table 3.29 in clause 3.4.9 will be resolved through the proposed changes outlined in this report. These changes should be made through an amendment to the Woollahra HCA DCP.

Sara Reilly
Strategic Heritage Officer

Chris Bluett
Manager Strategic Planning

Annexures

1. West Woollahra Precinct
2. Fletcher Precinct
3. Grafton Precinct
4. Rosemont precinct (includes Sisters Lane)
5. Woollahra HCA DCP 2003 – loft controls
6. Paddington HCA DCP 2008 – loft controls

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

