



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 22 August 2005*

Time: *6.00pm*

Outline Of Meeting Protocol & Procedure:

The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.

The Chairperson will commence the Order of Business as shown in the Index to the Agenda.

At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.

If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.

If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.

At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.

If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.

The Chairperson has the discretion whether to continue to accept speakers from the floor.

After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Delegated Authority (“D” Items):

To require such investigations, reports or actions as considered necessary in respect of matters contained with the Business Agendas (and as may be limited by specific Council resolutions).
Confirmation of Minutes of its Meeting.

Any other matter falling within the responsibility of the Urban Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed below:

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

Such matters as are specified in Section 377 of the Local Government Act and within the ambit of the Committee considerations.

Broad strategic matters, such as:-

- Town Planning Objectives; and
- major planning initiatives.

Matters not within the specified functions of the Committee.

Matters requiring supplementary votes to Budget.

Urban Design Plans and Guidelines.

Local Environment Plans.

Residential and Commercial Development Control Plans.

Rezoning applications.

Heritage Conservation Controls.

Traffic Management and Planning (Policy) and Approvals.

Commercial Centres Beautification Plans of Management.

Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.

Matters reserved by individual Councillors, in accordance with any Council policy on "safeguards" and substantive changes.

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

18 August 2005

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

Dear Councillors

Urban Planning Committee Meeting – 22 August 2005

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Monday 22 August 2005 at 6.00pm.**

Gary James
General Manager

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 8 August 2005	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Reclassification of Grafton Street Carpark – 610.G Carpark Part 4	2
R2	Draft Woollahra Local Environmental Plan 1995 (Amendments No. 54 – To rezone a part of Rose Bay Public School from special uses (School) to Residential 2(B) – 1064.G (Amendment 54)	9

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 8 August 2005**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 8 August 2005 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 8 August 2005 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: **Reclassification of Grafton Street Car Park**
Author: Anita Lakeland - Team Leader Strategic Planning and Zubin Marolia –
Manager Property & Projects
File No: 610.G Carpark Part 4
Reason for Report: To reclassify the public car parking station at 79-81 Grafton Street, Bondi Junction, from “community” to “operational” land.

Recommendation:

1. THAT Council give consent as landowner to Waverley Council to reclassify the public car parking station at 79-81 Grafton Street, Bondi Junction, known as Lot 12 DP 843778 and Lot 13 DP 849955 from “community land” to “operational land” in accordance with the provisions of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979.
2. THAT Council request Waverley Council to prepare a draft local environmental plan to reclassify the land from ‘community land’ to ‘operational land’.
3. THAT the recommendations of this report proceed directly to the Council meeting on 22 August 2005 as a matter of urgency due to the need to submit the application to Waverley Council for inclusion in their LEP process before 24 August 2005.

Background

Council is the owner of a purpose built car parking station known as the Grafton Street Carpark, within the residential complex located at 79-81 Grafton Street, Bondi Junction. Briefly, the history leading to the present position is as follows:

In the 1970’s, Council acquired land for the purpose of providing car parking in Bondi Junction. The land acquired was used as a simple surface car park but eventually was identified as a potential development site. Following the calling of tenders, the land was sold to a developer in 1989 with the agreement that a car park and office would be sold back to Council following redevelopment.

In March 1993, consent was granted for the erection of a mixed development including a car parking station on the site.

In relation to the classification of public land provisions of the Local Government Act, Council, in 1993, did not resolve to classify the property as the developer then owned it. Following construction in 1995, the developer, in accordance with the earlier agreement, reconveyed the carpark and an associated office to Woollahra Council. The car parking station has been in operation since 1995 providing casual and permanent parking service.

On 29 November 2002, the Governor of the State of New South Wales proclaimed a boundary alteration between Waverley and Woollahra Councils. This boundary alteration placed the subject car parking station within the Waverley Council area.

Following the proclamation and a subsequent transition period, the Minister for Local Government made a determination regarding the transfer of assets, rights and liabilities on 13 February 2003. The effect of Clause 38 of the schedule of the Minister's Determination is that the Grafton Street Car Park is to remain in the ownership of Woollahra Council.

During the transition period referred to above, it became apparent that Council had not resolved to classify the property as "operational". This would appear to have been purely an oversight, as all Council car parks have, in the past, been classified as "operational". Council's intentions regarding the classification process is evidenced by an advertisement placed in the local press in April 1994. The advertisement stated that "...Operational land is all public land that Council utilises to carry out its functions. Under the new Local Government Act, Council must advertise all its proposed operational property. Community land is all public land for social, environmental or historical purposes...". The advertisement went on to list all Council car parks, works properties and some miscellaneous lots as intended "operational" properties.

All drainage reserves, parks and open space areas were identified as being classified "community". Clearly, Council intended that there are no special restrictions on its car parking areas.

Proposal:

It is proposed that the car park, be reclassified as "operational land" under the Local Government Act 1993. In essence, the proposed reclassification process is simple and the procedures under the Environmental Planning and Assessment Act (EPA Act) would apply to the making of a local environmental plan (LEP) in order to reclassify the property with the addition of a public hearing. However, the fact that the property is not physically within this Council's area and does not serve as a facility for Woollahra Council residents creates a complication.

The reclassification of the car park to "operational land" is considered necessary to provide Council with the flexibility in the daily operation of this property. Operational land has no special restrictions other than those that apply to any piece of land. Thus, it can be managed or developed consistent with its zoning and land use provisions like any other land. The reclassification of the property will provide Council with better flexibility in a commercial sense.

At present, Council has an agreement with Premier Parking Pty Limited for management of the Carpark. This agreement expires on 30 June 2008 with an option for a further term of three years. Reclassification of the Carpark will not affect the Management Agreement.

The existing restrictions registered on the title relating to easements for granting access to fire services and the like will be retained in the reclassification.

Statutory Process

Section 27 of the LGA provides for the reclassification of public land by a LEP. The procedure under the EPA Act requires the making of an LEP to amend the relevant LEP applying to the land.

In reclassifying community land as operational land, Section 29 of the LGA requires a public hearing to be held under Section 68 of the EPA Act. As with an LEP process, a report will be submitted to Waverley Council detailing all submissions received and the outcome of the public hearing.

Waverley and Woollahra Joint Local Environmental Plan 1991- Bondi Junction Commercial Centre (WWJLEP) is the relevant LEP in this instance. However, due to the local government boundary adjustment, Waverley Council is now the responsible authority to prepare and process the local environmental plan to amend this LEP, including conducting the public hearing.

Waverley Council has been notified of Council's intention to reclassify the Carpark and a response from Waverley Council (copy attached as Annexure 2), indicates Council's request may be incorporated into their current comprehensive review of the WWJLEP. A draft LEP to amend the WWJLEP was exhibited from February to May 2005. However, the current review of the public submissions made during the exhibition period will require a re-exhibition of the draft plan, at which time our request for an additional amendment can be included.

Waverley Council has indicated this is subject to Council providing Waverley Council with the necessary draft clause to include in the revised draft WWJLEP by Wednesday 24 August. Waverley Council has also indicated they will waive the normal rezoning fee up to \$10,000. Waverley Council's timing for the comprehensive draft WWJLEP is anticipated for gazettal in February 2007.

Identification of Income and Expenditure:

It is anticipated that the cost of the rezoning process will not exceed \$10,000 and, since Waverley Council has agreed to waive the fees up to this amount, there will be no impact on Council's current adopted budget.

Conclusion:

Council did not resolve to classify the carparking station as "operational" within the terms of Section 31 (2A) of the Local Government Act. Council's philosophy in relation to car parks and works properties is that they all be classified as "operational" and, therefore, seeks to correct this anomaly.

Waverley Council can only initiate the process of reclassification after receiving consent from Woollahra Council as owner of the land. It is, therefore, recommended that Woollahra Council provide consent, as owner of the land, to commence the rezoning process and request Waverley Council to prepare a draft local environmental plan to reclassify the land.

Anita Lakeland
Team Leader Strategic Planning

Warwick Hatton
Director Technical Services

Zubin Marolia
Manager Property & Projects

Annexures:

1. Legal advice from Michell Sillar dated 22 February 2005.
2. Letter from Waverley Council dated 5 August 2005

Item No: R2 Recommendation to Council
Subject: **Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54) - To Rezone a part of Rose Bay Public School from Special Uses (School) to Residential 2(B)**
Author: George Losonci, Senior Strategic Planner
File No: 1064.G (Amendment 54)
Reason for Report: To report on a recently received Parliamentary Counsel's opinion

Recommendation

1. THAT Council agrees with the Parliamentary Counsel's opinion to remove the aim from clause 2(c) of Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54).
2. THAT Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54), as exhibited and as contained in **Annexure 1** of the report to the Urban Planning Committee meeting of 22 August 2005, be referred to the Department of Infrastructure, Planning and Natural Resources for approval by the Minister and for gazettal.

1.0 BACKGROUND

On 11 July 2005, Council's Urban Planning Committee considered a report regarding a proposal to amend Woollahra LEP 1995 to rezone part of Rose Bay Public School from Special Uses 5 – Existing (School) to Residential 2(b) and apply a maximum floor space ratio of 0.75:1.

Council, at its meeting of 25 July 2005, resolved the following:

1. *THAT noting the confirmation contained in the Department of Education and Training's letter dispatched on 5 July 2005 that 90% of the net proceeds of the sale of the excess land will be allocated to the Rose Bay Public School for the construction of a new school hall, Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54), as exhibited and as contained in **Annexure 1** of the report to the Urban Planning Committee meeting of 11 July 2005, be referred to the Department of Infrastructure, Planning and Natural Resources for approval by the Minister and for gazettal, subject to the amendment contained in Recommendation 3.*
2. *THAT Draft Woollahra Residential Development Control Plan 2003 (Amendment No. 1), as exhibited and as contained in **Annexure 2** of the report to the Urban Planning Committee meeting of 11 July 2005 be approved and come into effect upon the gazettal date of Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54).*
3. *THAT a further aim be included in the Draft LEP to read as follows:*

2(c) To provide a public benefit by allowing for the provision of sufficient funds to build a school hall at the Rose Bay Public School.

2.0 PARLIAMENTARY COUNSEL'S OPINION

As required by part 3 of Council's resolution, clause 2(c) was added to the draft LEP prior to an opinion being sought from the Parliamentary Counsel.

In an e-mail dated 3 August 2005, Mr Francis Gross (Legal Officer) of the NSW Parliamentary Counsel's office wrote the following advice concerning the inclusion of clause 2(c):

Clause 2 (c) of the Council's draft plan has been omitted from the 1st draft of our Office's version of the plan because the aim set out in that paragraph is not a planning objective covered by the EP&A Act, in particular, section 5 of that Act.

3.0 CLAUSE 2(c)

The purpose of clause 2(c), as resolved by Council, was to link the sale of the land (the subject of the rezoning) with the expected public benefit, which is the provision of the future school hall. Although this was a consideration for Council in its decision to prepare and exhibit the draft LEP, it is not an enforceable requirement.

Even if clause 2(c) were acceptable to the Parliamentary Counsel, it will not appear in the gazetted Woollahra LEP 1995. The only amendments to Woollahra LEP 1995 will be to the land use and density maps. The aims and objectives of Woollahra LEP 1995 will remain the same.

The aims of a draft LEP should be directly linked to the proposed outcomes of the draft plan. In this regard, clauses 2(a) and 2(b) of the draft LEP state:

The aims of this plan are:

- (a) to rezone land to which this plan applies from Zone No. 5 Special Uses Existing (School) to Zone 2 (b) Residential "B",*
- (b) to include a maximum floor space ratio of 0.75:1 to the land to which this plan applies,*

These two objectives are implemented by the proposed mapping amendments that form part of the plan (**Annexure 1**). However, the proposed clause 2(c) could not be implemented by the draft LEP and is not a planning-related objective.

4.0 CONCLUSION

We concur with the removal of clause 2(c) as proposed by the Parliamentary Counsel. The clause is unenforceable and is not a planning-related objective. In addition, during the preparation and assessment of the draft LEP, numerous written undertakings have been made by the Department of Education and Training stating that "90% of the net proceeds of the sale of the excess land will be allocated to the school for the construction of a new school hall."

It is therefore recommended that the draft LEP be forwarded to the Department of Infrastructure, Planning and Natural Resources for gazettal in the form amended by the Parliamentary Counsel.

George Losonci
Senior Strategic Planner

Anita Lakeland
Team Leader – Strategic Planning

Annexures

1. Draft Woollahra LEP 1995 (Amendment No. 54).