



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 5 September 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

1 September 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 – 5 September 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 5 September 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 22 August 2005	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee (Item R1)

R1	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) – 1064.G (Amendment 54)	2
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Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 22 August 2005**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 22 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 22 August 2005 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 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 respond to the Urban Planning Committee's recommendation of 22 August 2005

Recommendation:

THAT Draft Woollahra Local Environmental Plan 1995 (Amendment No. 54), as altered by the Parliamentary Counsel and contained in **Annexure 1** of the report to the Urban Planning Committee meeting of 5 September 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.

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. 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.

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.

On 22 August 2005, Council's Urban Planning Committee considered a report regarding the above advice and recommended the following:

THAT the object of clause 2(c) be reconsidered by staff and a further report submitted to the Committee in two weeks time to seek alternative methods of providing this in the amended LEP and/or negotiate further with the Parliamentary Counsel's Office as to the present clause.

2.0 ADVICE FROM DIPNR AND PARLIAMENTARY COUNSEL

Council officers have consulted further with the Parliamentary Counsel. However, because a formal opinion from the Parliamentary Counsel's office was issued on 9 August 2005, which removed clause 2(c) (**Annexure 1**), the issue of whether clause 2(c) could be re-inserted into the draft LEP in either its original or in an amended form was redirected to DIPNR's regional office.

Several alternative options were discussed with DIPNR officers.

- **Reinstatement of clause 2(c):** This was not supported by DIPNR as the proposed clause is not a planning purpose defined under the *Environmental Planning and Assessment Act 1979* (the Act). Also, the objective is unenforceable because there is no enabling provisions within the draft LEP which would allow the objective to be fulfilled.

The advice was confirmed in an e-mail dated 30 August 2005, received from Mr Ron Baker (Senior Planner) of DIPNR's Sydney Region East office who provided the following response:

As discussed, the Department would not support to the Minister, a DLEP which included a provision which purported to influence the way in which funds are to be used following the sale of land.

This is based on two principles:-

The objective is not for a planning purpose as defined in the Act

There is no "enabling" provision within the DLEP which would have the effect of allowing the objective to be implemented (in fact such a provision would be inappropriate in an LEP).

I trust that the above clarifies the Department's position.

- **Inclusion of an explanatory note:** Explanatory notes are infrequently used and are intended to provide information to assist with the legal interpretation of an LEP. They are not used as an alternative to aims, objectives, or clauses. The use of an explanatory note was not accepted by DIPNR.

- **Amendment of clause 2 of Woollahra LEP 1995:** The option of including a new objective in clause 2 of *Woollahra LEP 1995* was also discussed. Clause 2 of *Woollahra LEP 1995* lists the aims and objectives of the plan. It was suggested to DIPNR that an objective specific to the Rose Bay Public School site and in the manner originally proposed by Council's resolution of 25 July 2005 could be added to clause 2 of *Woollahra LEP 1995* by the amending draft LEP. DIPNR considered that such a proposal would not be feasible for the same reasons that apply to the proposed clause 2(c) in the draft LEP. That is, the objective is not a planning based objective and would not be able to be enacted by Council (there is no enabling provisions). Staff from DIPNR also stated that the Department could not support a draft LEP which in some way expressly implied Council or Government control over the way in which private funds were to be allocated following the sale of land (irrespective of that land being in the ownership of Government).

4.0 CONCLUSION

Following the recommendation of Council's Urban Planning Committee on 22 August 2005, the object of clause 2(c) has been reconsidered by staff and further negotiations with the Parliamentary Counsel's Office and with DIPNR representatives has taken place. A number of alternatives were put forward by Council officers in terms of including a clause that linked the sale of the subject land with the provision of a future school hall. Those options (in section 2 of this report) were not considered to be acceptable to DIPNR or to Parliamentary Counsel principally because the objective is not a planning based objective which is not covered by the provisions of the Act and would not be able to be enacted by Council.

As recommended to the Urban Planning Committee previously, we concur with the removal of clause 2(c) as proposed by the Parliamentary Counsel and now DIPNR. 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

Annexure

1. Draft Woollahra LEP 1995 (Amendment No. 54) as amended by Parliamentary Counsel.