



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday 28 April 2008*

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

24 April 2008

To: His Worship The Mayor, Councillor Geoff Rundle, ex-officio
Councillors John Comino (Chair)
 Claudia Cullen (Deputy Chair)
 Christopher Dawson
 Wilhelmina Gardner
 Keri Huxley
 Julian Martin
 David Shoebridge

Dear Councillors

Urban Planning Committee Meeting – 28 April 2008

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 28 April 2008 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda Part One of Two Parts

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 14 April 2008	1
D2	Building Certificates – ‘Notice of Motion’ – 26 November 2007 – 885.G Part 10	2

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

R1	Centre Management – Double Bay – 1178 & 1179.G	9
R2	Draft Paddington Heritage Conservation Area Development Control Plan – 899.G	53

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 14 April 2008**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 14 April 2008 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 14 April 2008 be taken as read and confirmed.

Les Windle
Manager – Governance

Item No: D2 Delegated to Committee
Subject: **Building Certificates – ‘Notice of Motion’ dated 26 November 2007**
Author: Tim Tuxford, Manager - Compliance
File No: 885.G Part 10
Reason for Report: This report is in response to a ‘Notice of Motion’ adopted at the Council meeting of 26 November 2007.

Recommendation:

That Council write to the Director – General of the NSW Department of Planning formally seeking an amendment of Section 149E of the *Environmental Planning and Assessment Act 1979* so that any building certificate that has been issued in reliance on an inaccurate or incorrect survey report, is set aside and in such circumstances a council **is not** prevented;

- “(a) *from making an order (or taking proceedings for the making of an order or injunction) under this Act or the [Local Government Act 1993](#) requiring the building to be repaired, demolished, altered, added to or rebuilt, and*
- (b) *from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council”.*

Reason for Report:

This report has been prepared in response to the following ‘Notice of Motion’ moved by Councillors Comino and Boskovitz and adopted at the Council meeting of 26 November 2007;

“That Council bring a report to the appropriate Committee with a view to recommending amendments to the Environmental Planning and Assessment Act relating to issue of Building Certificates. The purpose of such amendment(s) being to protect Councils against being stopped from taking action, where it is subsequently discovered the survey (on which the Building Certificate application was based) was materially incorrect revealing encroachments on Council or other property.”

As part of the December quarterly review the above matter was included as a project within Section 1.5 – Compliance of the Built Environment part of Council’s 2007/08 Management Plan.

Background:

Building certificates are generally applied for when people buy and sell property or as a mechanism to regularise unauthorised building works. The effect of obtaining a building certificate is that it generally prevents a council from making an Order under either the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*, except for fire safety matters, for a period of seven (7) years (Section 149E of the Act).

Council requires all applications for building certificates to be accompanied by an identification survey report, to confirm the location of all buildings on the property, relative to the property boundaries.

Section 149D of the *Environmental Planning and Assessment Act 1979* details the Council's obligations with regard to issuing a building certificate, stating the following;

“149D Obligations of council to issue building certificate

- (1) *The council must issue a building certificate if it appears that:*
 - (a) *there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the [Local Government Act 1993](#):*
 - (i) *to order the building to be demolished, altered, added to or rebuilt, or*
 - (ii) *to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or*
 - (iii) *to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or*
 - (b) *there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.*
- (2) *If the council refuses to issue a building certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.*
- (3) *The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building certificate.*
- (4) *The council must not refuse to issue or delay the issue of a building certificate by virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in subsection (1) (a).*
- (5) *Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.”*

Legal advice has been obtained from Dr Lindsay Taylor of Lindsay Taylor Lawyers explaining the current legal situation where a building certificate has been issued in reliance on an inaccurate or incorrect survey report. A copy of Dr Taylor's advice dated 20 March 2008 is attached as Annexure “A”.

Consideration:

As explained in Dr Taylor's advice, once a building certificate has been issued, a council is prevented from making an Order requiring a building to be demolished or modified, even if the certificate was issued in reliance on an inaccurate or incorrect survey report. Under the current legislative provisions, the building certificate would have to be set aside by a court before a council could serve an Order pursuant to the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*.

It is evident from Dr Taylor's advice that a building certificate would not automatically be set aside by a court, solely because it was issued in reliance on an inaccurate or incorrect survey report.

Under such circumstances, it is likely that the cost of taking legal action to set aside a building certificate would be borne by the Council and, as such, the community and there may not be any ability to recover such costs. Therefore, it is considered reasonable that the legislation should be amended so as not to prevent a council from taking action where a building certificate has been issued in reliance on an inaccurate or incorrect survey report.

Conclusion:

It is considered appropriate that Council write to the NSW Department of Planning formally seeking an amendment to Section 149E of the *Environmental Planning and Assessment Act 1979*, so that any building certificate that has been issued in reliance on an inaccurate or incorrect survey report, is set aside and in such circumstances a council **is not** prevented;

- “(a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the [Local Government Act 1993](#) requiring the building to be repaired, demolished, altered, added to or rebuilt, and*
- (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council”.*

Tim Tuxford
Manager - Compliance

Allan Coker
Director – Planning and
Development

Annexure:

A.Legal advice from Dr Lindsay Taylor of Lindsay Taylor Lawyers dated 20 March 2008.

Item No: R1 Recommendation to Council
Subject: Centre Management - double bay
Author: Allan Coker, Director Planning and Development
File No: 1178 & 1179.G
Reasons for Report:

1. To present for Council's adoption the Memorandum of Understanding between Council and the Double Bay Partnership.
2. To present for Council's information the draft Constitution and Rules of the Double Bay Partnership

Recommendation:

1. That Council endorse the Memorandum of Understanding (MOU) between Woollahra Council and the Double Bay Partnership committing both parties to work collaboratively together to advance Double Bay Commercial Centre through sustainable economic and social growth.
2. That the Mayor and General Manager be authorised to sign the MOU after the incorporation of the Double Bay Partnership.
3. That Council note the Constitution and Rules of the Double Bay Partnership.
4. That Council transfer matching funds, not exceeding \$200,000 to the Double Bay Partnership, when the General Manager, Mayor and the Double Bay Commercial Centre Working Party are satisfied as to the following:
 - (a) that the Constitution and Rules of the Double Bay Partnership will provide a satisfactory framework for the operation of centre management under the umbrella of the MOU.
 - (b) that the Double Bay Partnership has been incorporated as an association under the *Associations Incorporation Act 1984*
 - (c) voluntary contributions by the business community of at least \$125,000 have been received and deposited into a bank account of the Double Bay Partnership Incorporated
 - (d) that, in the event of termination of the Double Bay Partnership, the balance of any assets will be given to Council to be expended on activities for the benefit of the Double Bay commercial centre.
5. That Council establish a Review Committee with the roles and functions set out in clause 8 of the MOU.
6. That the Mayor appoint two Councillors to the Review Committee.
7. That the Double Bay Commercial Centre Working Party be wound up following the incorporation of Double Bay Partnership under the *Associations Incorporation Act, 1984*.

1.0 Background:

On 10 March 2008 the Urban Planning Committee considered a report on centre management for the Double Bay commercial centre. The report, **annexure 1** to this report, provided a short background on the development of centre management, described the consultation that had taken place with the business community, the considerations of the Double Bay Centre Management Working Party, described the proposed centre management model and outlined the steps required to set up a centre management organisation. Council, on the same evening as a matter of urgency, adopted the recommendations of the committee and resolved in the following terms:

- “1. That Council endorse in principle the Memorandum of Understanding (MOU) between Woollahra Council and the Double Partnership subject to legal advice as to the drafting, effect and status of the Memorandum of Understanding.
2. That the draft Constitution and Rules of the incorporated association, Double Bay Partnership be brought before the Urban Planning Committee at the next available meeting for consideration.
3. That, subject to 1 and 2 above, Council endorse in principle transferring funds not exceeding \$200,000 to the incorporated association Double Bay Partnership to match voluntary contributions from the business community once a threshold of \$125,000 in voluntary contributions is met.”

2. Legal Advice

Part 1 of the above resolution seeks legal advice as to the drafting, effect and status of the Memorandum of Understanding.

On 6 March 2008 I provided Lindsay Taylor Lawyers with our Urban Planning Committee reports of 13 August 2007, 26 November 2007 and 10 March 2008 as well as a copy of the Draft MOU. I asked Dr Taylor to review the MOU and advise us if there are any legal or practical issues for the council in signing this document. Dr Taylor’s advice is attached an **annexure 2**.

In his advice Dr Taylor makes the following points:

- (a) Clause 11 of the MOU confirms that it is not intended to create a contractual legal relationship with the Double Bay Partnership.
- (b) The MOU amounts to nothing more than a statement of the current commitment and intent of the parties.
- (c) There may be legal consequences if either of the parties entered into the MOU not intending to be bound by its provisions or if it did not have reasonable grounds to making the commitments in MOU.

Dr Taylor recommends that Council carefully review everything in the MOU to make sure it can and currently intends to comply with its commitments and avoids making any representation that Council will comply with the MOU in the future or that it will enter into any legally enforceable agreement. He further recommends that Council should maintain the position that compliance with the terms of the MOU is the Council’s current intention rather than its obligation and notify the Double Bay Partnership if it no longer proposes to comply with any aspect of the MOU.

In the context of this advice the MOU was carefully reviewed and amended to make it clear that it is a statement of intent and is not a legally binding agreement. Other amendments were made to make it consistent with the Constitution and Rules of the Double Bay Partnership. These amendments do not change the commitments of the parties. There is nothing in the MOU which does not accurately state council's current intention and I see no reason why we cannot sign the MOU once the Double Bay Partnership has been incorporated. A copy of the revised MOU, illustrating changes from the document presented to the committee on 10 March 2008, is attached as **annexure 3**.

3. Double Bay Commercial Centre Working Party

The fourth meeting of the working party took place on 19 March 2008. The minutes of that meeting are attached as **annexure 4**. The working party worked through various aspects of the draft constitution, as set out in section 3 of the minutes. All of the matters determined by the working party have been included in the draft and are referenced in brackets in the minutes.

Part 2 of the resolution of 10 March 2008 requires that the Double Bay Partnership Constitution and Rules are brought to the Urban Planning Committee for consideration. The Constitution and Rules are attached as **annexure 5**.

The working party considered that Council's lawyers should carry out a final review of the draft constitution before the application for incorporation is lodged with the Department of Fair Trading. The draft Constitution and Rules were therefore sent to Lindsay Taylor Lawyers. Dr Taylor was asked to advise whether there is anything in the draft constitution that would be contrary to the interests of the Council and whether the draft constitution would provide a satisfactory framework for the operation of the Double Bay Partnership under the 'umbrella' of the MOU.

It will not be necessary for the committee to carry out a detailed review of the constitution and rules since recommendation 4(a) provides that Council not transfer its funds to the Double Bay Partnership Inc unless the General Manager, Mayor and the Double Bay Commercial Centre Working Party are satisfied that it will provide a satisfactory framework for the operation of centre management under the 'umbrella' of the MOU. The legal advice from Dr Taylor will be considered in this process.

4. Conclusion

There is nothing in the advice from Dr Taylor which indicates that Council should not sign the MOU as a statement of commitment by the parties to work collaboratively to advance the Double Bay commercial centre as a cultural and commercial hub through sustainable economic and social growth. This can be done after the Double Bay Partnership has been incorporated under the *Associations Incorporation Act 1984*.

Following incorporation, Council funds may be transferred to the Double Bay Partnership Inc once the pre-conditions set out in the recommendation have been met.

Allan Coker
Director Planning and Development

ANNEXURES:

1. Report to the Urban Planning Committee on 10 March 2008
2. Legal Advice from Lindsay Taylor Lawyers
3. Amended Memorandum of Understanding
4. Minutes of the 4th meeting of the Double Bay Commercial Centre Working Party
5. Draft Constitution and Rules for the Double Bay Partnership

Item No: R2 Recommendation to Council
Subject: **Draft Paddington Heritage Conservation Area Development Control Plan**
Author: Chris Bluett - Manager Strategic Planning
File No: 899.G
Reason for Report: To report on the further public exhibition of the Draft DCP.
To obtain the Council's approval of the Draft DCP.

Recommendation

THAT Draft Paddington Heritage Conservation Area Development Control Plan 2008 as contained in **annexure 2** of the report to the Urban Planning Committee meeting on 28 April 2008 and subject to alterations listed in that report (including **annexure 5**) be approved and come into effect on the date a public notice of Council's approval is placed in the newspaper.

Background

The Draft Paddington Heritage Conservation Area Development Control Plan (Draft DCP) has been considered by the Urban Planning Committee and Council on four occasions.

UPC 28 August 2006

The report set out the review process for the Paddington DCP, including work undertaken through the Paddington Working Party. The Working Party contained Councillors, representatives from community groups and representatives from public authorities. The report contained a new draft DCP.

Council 11 September 2006

The Council resolved to place the Draft DCP on public exhibition, subject to minor alterations.

UPC 18 December 2006

The report was prepared after public exhibition of the Draft DCP, which was carried out over the period 29 September to 10 November 2006. The report contained a summary and consideration of submissions and recommended alterations to the Draft DCP.

Council 18 December 2006

Council resolved to defer the Draft DCP, distribute an executive summary of the plan to Paddington property owners and report on the establishment of a peer and community group to review certain items of the Draft DCP.

UPC 29 January 2006

The report set out the proposed composition of the Peer and Community Panel.

Council 12 February 2006

Council endorsed the Peer and Community Panel's composition and called for a further report following receipt of the Panel's advice in relation to clauses 4.1.1 and 4.1.6. The Council also resolved to invite written comments from the public to the Panel.

UPC 29 October 2007

The report (**annexure 1**) contained the outcome of the review undertaken by Peer and Community Panel, a summary and consideration of the submissions to the Panel and a revised Draft DCP.

Council 29 October 2007

The UPC's recommendation was considered by the Council on 29 October 2007 as a matter of urgency. The Council resolved:

- A. THAT Draft Paddington Heritage Conservation Area Development Control Plan 2007, as contained in annexure 10 of the report to the Urban Planning Committee meeting on 29 October 2007, be exhibited for public comment in accordance with clauses 18 to 20 of the *Environmental Planning and Assessment Regulation 2000*.
- B. That the Draft DCP exhibition be completed before 24 December 2007.
- C. That the Council limit submissions to those aspects of the plan that deal with internal changes and excavation – i.e clauses 4.1.1 and 4.1.6
- D. THAT a draft development control plan be prepared to amend the Paddington Heritage Conservation Area DCP 2007 by including provisions for loft structures over garages. The draft DCP is to be submitted to the Urban Planning Committee by 26 November 2007.

This report contains an outline of the public exhibition process. It also provides responses to submissions received during the exhibition period.

Item D of the Council's decision has been actioned by reports to the Urban Planning Committee on 26 November 2007 and 10 March 2008. Further work is being carried out with input from the Paddington Working Party.

Public exhibition process

Exhibition occurred over the period 14 November to 21 December 2007. Documents were exhibited in the Council's Customer Services foyer and on the Council's website. Notices were placed in the Council's advertising page of the Wentworth Courier on 14 November, 21 November, 28 November, 5 December, 12 December and 19 December 2007.

The exhibition notice and explanatory notes contained statements about the review undertaken by the Peer and Community Panel and an invitation for submissions on clause 4.1.1 (principal building form) and clause 4.1.6 (excavation).

Letters regarding the exhibition were sent to people who made a submission to the original exhibition in 2006 and people who had made a submission to the Peer and Community Panel.

A copy of the exhibited Draft DCP is provided in **annexure 2**.

Summary and consideration of submissions

Overview of submissions

Twelve submissions were received (**annexure 3**). A summary of the submissions and responses is provided in **annexure 4**. In general, the submissions raised similar issues to those provided in responses to the Draft DCP when it was initially exhibited in 2006. The matters contained in the latest submissions may be summarised into eight categories:

- (i) support for heritage regulations to conserve front facades
- (ii) opposition to controls for the interior of buildings and excavation on the basis that they were inflexible, restrained living conditions and were beyond Council's jurisdiction
- (iii) inflexible controls would restrict investment on restoration and modernisation of buildings
- (iv) call for internal works to be only regulated for safety reasons, including structural integrity of buildings
- (v) concern that the proposed controls are open to conservative interpretation
- (vi) criticism of the conservative interpretation Council's heritage officers have of current controls and consequent effects on assessment of applications if more restrictive controls are introduced
- (vii) concern that the revised controls for excavation and changes to the interiors have been weakened
- (viii) support for revised controls
- (ix) reservation about excavation below the principal building form.

The submissions from those people whose comments fall within categories (i) to (vi) could be classified as objections. These submissions used a similar vocabulary and expressed a similar attitude towards heritage conservation. In general, there was support for "heritage", but largely to the extent of conserving front facades and streetscape appearance. Hence, there was a call for a flexible approach for works beyond the front façade. Many objectors considered that Council should not intervene where internal works were proposed, other than to ensure structural stability of a building. Some objectors implied or directly argued that structural matters were beyond Council's role where certification by an engineer was obtained.

Reasons put forward by objectors for providing a flexible approach included:

- success of major internal demolition and excavation works to several houses
- eliminating the difficulty in establishing whether interior fabric was original and the possible need to engage a heritage specialist to do so, thereby adding to expenses and project time
- encouragement to owners and investors to carry out restoration works (in other words, strict and inflexible controls were disincentives)
- maintaining and facilitating modern lifestyles.

The objectors either implied or directly suggested removal of the proposed controls for interior works in clause 4.1.1 and the excavation controls 4.1.6. Suggestions for alternative measures were limited to reliance on conditions of consent and engineering reports.

The Paddington Society supported the revised controls, but also expressed reservations about excavation below the principal building form. The Woollahra History and Heritage Society welcomed the Council's statements about the gutting of interiors and reiterated its concern about excavation.

Council's role

The Council's role and jurisdiction in regulating the type of development covered by clauses 4.1.1 and 4.1.6 has been questioned in a number of submissions.

Conservation and enhancement of a council's area are mandated as part of a council's charter under section 8 of the *Local Government Act 1993*. The ability of a council to control development through a local environmental plan and a development control plan is set out in the *Environmental Planning and Assessment Act 1979* (the Act). Section 26 of the Act enables a LEP to make provision for the protection of the environment (which includes the built environment) and the controlling of development. The works addressed by clauses 4.1.1 and 4.1.6 are development by definition in section 4 of the Act.

Section 74C of the Act enables a council to prepare a development control plan if the council considers it necessary or desirable to make more detailed provisions for development in order to achieve the purpose of a LEP. Woollahra Council has taken the step to prepare development control plans for the Paddington Heritage Conservation Area in order to achieve the aims, objectives and other provisions of Woollahra LEP 1995.

The creation of heritage conservation areas and their management by development control measures in a LEP and DCP are therefore within the responsibility and legal rights of the Council.

The degree of regulation, which is also questioned by the objectors, is another matter open to a council through the preparation of LEPs and DCPs and their content.

Options

Following the further exhibition and receipt of submissions two options are now available for the Council's consideration. The Council may:

1. Approve the Draft DCP in its exhibited form.
2. Approve the Draft DCP with alterations in response to submissions or other consideration (re-exhibition may be required subject to the degree of alterations).

3.3.1 Approve the Draft DCP as exhibited

We consider that some alterations to the exhibited Draft DCP should be made. These changes are recommended in response to consideration of submissions. (Refer to section 3.4)

3.3.2 Approve the Draft DCP with alterations

As mentioned before, the objectors, whilst favouring controls for front facades, consider the proposed controls in clauses 4.1.1 and 4.1.6 to be restrictive and over-bearing. They put forward a "flexible approach" which would limit controls in the DCP for works to the interior of the principal building form and excavation to matters of structural stability. Hence, the package of controls and assessment criteria for interior works and excavation within the DCP and Woollahra LEP 1995 would be restricted to:

- a general control in the DCP about structural stability
- a requirement under Woollahra LEP 1995 for development consent (consent is currently needed for excavation and for the partial or complete demolition of structural walls)
- broad conservation aims and objectives in the LEP and DCP (these are existing)

- general excavation heads of consideration under clause 18 of the LEP (these are existing)
- general heritage assessment heads of consideration under clause 28 of the LEP (these are existing).

Where favourable consideration was given to applications, the Council could impose a condition of consent for dilapidation reports for adjoining properties. Any damage to adjoining buildings arising from demolition and construction is a civil matter between the developer and adjoining owners. Other conditions could be imposed for compliance with a construction management plan and compliance with a variety of technical reports including engineering, geotechnical and hydrology reports. Enforcement of these conditions could be carried out by the Council or an accredited certifier.

Under the “flexible approach” demolition and excavation would be considered on a case by case basis, as they are now. However, applicants, Council’s planners, Councillors and the Court (where appeals are lodged) would have very limited guidance on the scale of works considered to be acceptable having regard to potential impact on heritage significance, residential amenity and possible damage to properties. This was the precise reasons why the new detailed controls were prepared.

Several points should be noted in the consideration of these issues. First, the proposed controls in clause 4.1.1 for the interior of buildings only apply to the principal building form, that is, the “original front building section and main roof, which contains the main rooms.” (Defined in Part 5 of the Draft DCP). Many of the submissions seemed to be based on an understanding that the controls applied to the whole building.

Second, substantial removal of internal fabric, including structural elements, and large scale excavation are not common practices for buildings and properties in the Paddington HCA. These types of works are more evident in other suburbs developed throughout the 20th century which have larger land parcels and freestanding houses constructed with more robust materials and higher building standards. Because of the fragile nature of terrace houses and their structural relationship to other buildings in a terrace group, extensive removal of fabric and substantial excavation should be approached with caution.

This does not mean that sole reliance should be placed on engineering practices and standard conditions of consent. To do so would ignore fundamental heritage conservation principles and considerations. Engineering solutions may be available and successfully used. However, the issue is not whether works can be done, but whether in the circumstances they should be done. The Peer and Community Panel debated this issue at length with all opinions from the engineering representative, Dr Barda, the heritage professionals and the community representatives being considered. The Panel’s final recommendations represented a balanced approach which included engineering options and heritage considerations. Understandably, these recommendations did not meet the full approval of Dr Barda and The Paddington Society.

Third, Paddington is a recognised heritage conservation area of national significance and has a different status and different conditions to suburbs such as Vaucluse, Rose Bay, and Bellevue Hill which were largely developed in the 20th century. The heritage significance of Paddington is not limited to the front facades of buildings. It extends to their form and relationship to each other and to a variety of other elements and conditions, including subdivision patterns, street layout and views and vistas. Arguably, the significance of a heritage conservation area can include the interior of buildings, whether modest or elaborate. Because the broad aims and objectives for heritage conservation contained in Woollahra LEP 1995 do not distinguish between the interior and exterior of buildings, or parts thereof, it is open to the Council to prepare DCP controls that deal with parts of a building or the whole of a building.

The concept of a heritage conservation area as a place embodying land, spaces, buildings (including their components), works, the landscape and views is spelt out in the Burra Charter, which forms the philosophical basis for the current Paddington DCP and the Draft DCP. The Burra Charter advocates a cautious approach to change and states: “do as much as necessary to care for a place and to make it usable, but otherwise change it as little as possible so that its cultural significance is retained.” (Burra Charter 1999)

Comments provided in public submissions received during the exhibition periods in 2006 and 2007 and through the review by the Panel highlight the different interpretations of necessary change and the different attitudes to heritage conservation. In many respects the opinions are polarised with little scope for finding a middle ground.

Weighting up the comments put forward in the submissions with the circumstances applying to Paddington, and for reasons expressed above, we do not support removal of the revised provisions for internal changes and excavation. Also, we do not support changes that limit assessment and approval of development applications purely to matters of structural stability and conditions of consent.

Some minor changes, however, are recommended to clarify the proposed controls in clause 4.1.1. Several minor changes are recommended to address the date of the Draft DCP and revisions to the Burra Charter. No changes are recommended to clause 4.1.6.

Proposed alterations

The table below contains a summary of recommended alterations to the Draft Plan. These changes are also shown in **annexure 5**.

Clause/Part – proposed alteration	Reason for alteration
Cover page 1.2 Name of this page Document header Change the title reference to Paddington Heritage Conservation Area Development Control Plan 2008	Provide reference to year of approval.
2.4 Conservation philosophy Note 2: ICOMOS is the International Council on Monuments and Sites. It is an international organisation which is linked to UNESCO. Australia ICOMOS was established in 1976 and <u>initially</u> adopted the Burra Charter in 1979. <u>Revisions of the Burra Charter were made in 1981, 1988 and 1999. Further revisions may be made after the date of commencement of this Plan.</u>	Identify that revisions have and may be made to the Burra Charter since its original adoption in 1979.

Clause/Part – proposed alteration	Reason for alteration
<p>4.1.1 Principal building form and street front zone of significant buildings</p> <p>Explanation The loss of original and significant <u>original</u> fabric, in particular of the principal building form and street front zone, will weaken the integrity of the heritage conservation area.</p>	<p>Clarify that provisions apply to significant original fabric.</p>
<p>4.1.1 Principal building form The principal building form is the main <u>original front building section</u> within a street frontage (<u>see definition</u>).</p>	<p>Provide consistency with the definition in Part 5.</p>
<p>The principal building form, particularly the highly decorated front façade, is an aspect of exceptional significance of the heritage conservation area, facilitating the understanding of the significant development of the terraced suburb from the mid-nineteenth century onwards.</p>	<p>Moderately decorated and plain facades of some terrace house types also make a contribution to the significance of Paddington and to the rhythm of the terrace.</p>
<p>The principal building form includes the fronts, sides, rears and roofscapes of the main <u>original front building section</u>, and is often two rooms deep extending the full width of the property beneath a double-pitched roof. External elements of the facades which are of importance include balconies and decorative balustrades, fin walls and arched recesses and original doors and windows</p>	<p>Provide consistency with the definition in Part 5. It is sufficient to refer to a pitched roof.</p>
<p>Original elements which are considered of significance include, but not limited to, timber floors, fireplaces, <u>decorative plasterwork</u> and <u>distinctive joinery</u>.</p>	<p>Provide consistency with the intent of control C5.</p>
<p>Council does not support the gutting of interiors of terrace houses that contain original and significant <u>original</u> fabric.</p>	<p>Clarify that provisions apply to significant original fabric.</p>
<p>Partial demolition of internal cross walls within the principal building form may be considered where suitable interpretation of the <u>wall position of walls and room proportions</u> is provided and the structural integrity of the buildings is not compromised.</p>	<p>The objective is to retain an understanding of internal layout. Therefore a performance based approach rather than recommending specific methods is suggested.</p>
<p>4.1.1 Street front zone O8 To conserve preserve the <u>significant original heritage fabric and structural integrity</u> of terrace houses, terrace groups and free standing buildings of similar age and character.</p>	<p>Conservation includes all the processes of looking after a place. It includes preservation. Preservation means keeping fabric or a place in its existing state and is therefore more restrictive. Clarify that provisions apply to significant original fabric. Separate the issues. Structural integrity is addressed in objective O9.</p>
<p>4.1.1 Street front zone O11 To retain internal <u>significant</u> original fabric and features characteristic to a traditional terrace house.</p>	<p>Clarify that provisions apply to significant original fabric.</p>
<p>4.1.1 Interior controls Note: Council does not support the gutting of interiors of terrace house buildings that contain original and significant <u>original</u> fabric</p>	<p>Clarify that provisions apply to significant original fabric.</p>
<p>4.1.1 Interior controls C5 The <u>significant original characteristic</u> internal elements of the principal building form, in particular distinctive joinery, fireplaces and <u>decorative plasterwork</u>, are generally to be retained.</p>	<p>Clarify that provisions apply to significant original fabric. Distinguish levels of significance.</p>

Clause/Part – proposed alteration	Reason for alteration
<p>4.1.1 Interior controls C6 New openings in internal walls and floors and ceiling structures lateral to party walls must retain the structural integrity of the building and its neighbours, and retain the <u>significant</u> original ceilings and cornices. <u>Interpretation of original wall positions and room proportions should be provided.</u> and nibs defining the original wall positions. The revised structure may incorporate suitable portal frames.</p>	<p>Clarify retention of significant features. Allow performance based approach to interpretation of wall positions.</p>

Conclusion

Re-exhibition of clauses 4.1.1 and 4.1.6 resulted in submissions supporting and opposing the proposed controls for works to the interior of buildings and excavation. The objectors have criticised the prescriptive nature of the controls, other than where they relate to front facades, and suggested a flexible approach. Their approach would see changes to the interior of the principal building form and excavation works governed solely by matters of structural stability and conditions of development consent. Supporters have suggested that the controls for excavation should be stricter.

The issues raised in the submissions have been discussed and reviewed at length through Councillor workshops, numerous reports to Council and by the Peer and Community Panel. Discussion and review have been assisted by reference to many case studies.

In our view the proposed controls and the balance of the Draft DCP are reasonable because they are in the broader public interest. They are also necessary to conserve the fragile nature of terrace housing in Paddington and the significance of the heritage conservation area.

We recommend that Draft DCP as contained in **annexure 2** subject to the alterations listed in this report and in **annexure 5** be approved. The alterations are not considered to be of such magnitude that would warrant re-exhibition of the Draft DCP.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

Annexure

1. Report to Urban Planning Committee 29 October 2007
2. Draft Paddington HCA DCP as exhibited 14 November to 21 December 2007
3. Submissions
4. Summary table of submissions and comments on submissions
5. Proposed alterations to clause 1.2 – Name of this Plan, clause 2.4 – Conservation philosophy and clause 4.1.1 – Principal building form and street front zone of significant buildings