

Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 29 January 2007*

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

25 January 2007

To: The Mayor, Councillor Keri Huxley, ex-officio
Councillors Geoff Rundle (Chair)
 Isabelle Shapiro (Deputy Chair)
 John Comino
 Christopher Dawson
 Wilhelmina Gardner
 David Shoebridge
 John Walker

Dear Councillors

Urban Planning Committee Meeting – 29 January 2007

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 29 January 2007 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	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 18 December 2006	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Unauthorised & Illegal Works & Uses – 885.G ENF	2
R2	Draft Paddington Heritage Conservation Area Development Control Plan 2006 – 899.G	33
R3	Draft Woollahra Section 94A Development Contributions Plan 2005 (Amendment No. 1) – 1180.G	51
R4	Draft Development Control Plan for Advertising & Notification of Development applications & Applications to Modify Development Consents (Amendment No. 1) – 1074.G Part 2	59

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 18 December 2006**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 18 December 2006 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 18 December 2006 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: **Unauthorised and illegal works & uses**
Author: Tim Tuxford, Manager - Compliance
File No: 885.G ENF
Reason for Report: To respond to the Notice of Motion adopted at the Council meeting of 1 May 2006 with regard to "Unauthorised and illegal works and uses".
To present a revised Enforcement Policy for Council's approval.

Recommendation

1. That the Council adopt the 'Enforcement Policy' attached to the report of the Manager – Compliance as **annexure 2**, to replace Council's current 'Policy on Unauthorised Uses, Buildings & Works' adopted on 12 July 1999.
2. That the Council note and endorse the current activities and services provided by the Council's Compliance Section in the control and management of unauthorised and illegal works and uses.

1. Reason for the report

The report is in response to the following Notice of Motion adopted by Council at its meeting of 1 May 2006;

"That a report be presented to the Urban Planning Committee on the following;

- *Council's means of identifying and prosecuting unauthorised and illegal works and uses.*
- *Council's financial and legal position in relation to the way we manage these processes.*
- *There be an audit of development consents that have been granted for more than 18 months without a construction certificate being issued.*
- *Recommendations on how Council can best prevent and control the extent of unauthorised works and uses."*

The Notice of Motion was moved by Councillor Huxley and was seconded by Councillor Dawson.

The report also provides a new Enforcement Policy for the Council's consideration, which is recommended to replace Council's current 'Policy on Unauthorised Uses, Buildings & Works'.

2. Background

The enforcement of planning laws and development consents is a problem that has faced all councils and local communities for many years. In an attempt to address this ongoing issue Woollahra Council created a specialised Compliance Team in January 1998 and adopted a formal enforcement policy, titled 'Policy on Unauthorised Uses, Buildings and Works', on 12 July 1999.

Council's formal enforcement policy was largely prepared by Phillips Fox Solicitors in consultation with staff. The stated purpose of the policy was;

- “- to provide a legal and administrative framework to assist Council in making decisions in its enforcement functions;*
- to specify the criteria which the Council will take into consideration when deciding :*
 - (a) if enforcement or prosecution action is necessary; and*
 - (b) the most appropriate type of action;*
- to ensure that Council acts consistently, decisively and effectively in the exercise of its enforcement functions;*
- to provide information to the public about the Council’s role and policy on enforcement; and*
- to ensure that the enforcement process is conducted with maximum speed and minimal delay.”*

Council’s ‘Policy on Unauthorised Uses, Buildings & Works’ as adopted on 12 July 1999 is attached as **annexure 1**.

At the time of adopting the above policy, Council’s Compliance Section was primarily the Building team and included the following members;

- Team Leader;
- Three (3) Area Building Officers;
- Development Compliance Officer; and
- Fire Control Officer.

Since that time the Compliance Section has changed significantly and now incorporates not only Building but Environmental Health and Regulatory Services. The Building team now includes the following positions;

- Team Leader;
- Five (5) Area Building Officers;
- Two (2) Assistant Building Officers;
- Development Compliance Officer; and
- Fire Control Officer.

Retaining and attracting qualified and experience Building staff has been a significant problem in recent times due to the shortage of suitably qualified professional staff. Since June 2005 Council has lost six qualified Building Officers including the following five senior officers;

- Alastair Visch –Waverley Council
- Luke Oldfied – private industry
- Kristian Kauter – change of career
- Norm Wong – retired
- Robert Lawrence – Auburn Council

Since December 2006 two of the area Building Officer Positions have been filled on a temporary basis by recently qualified officers and an Assistant Building Officer’s position has been vacant. It is estimated that in the past 12 months, while utilising casual and contract staff, Council lost the equivalent of one full-time qualified Building Officer.

In July 1998, the current system of private certification of building and development work commenced in New South Wales. This meant that Council's were no longer the sole authority responsible for the approval and supervision of building and development works. Suitably accredited private certifiers were able to be appointed to undertake the following functions that were previously the sole responsibility of local councils;

- *“issue construction certificates, certifying (among other things) that the proposed work will comply with the Building Code of Australia (BCA);*
- *issue compliance certificates specifying that conditions of consent have been satisfied or that work complies with the plan and specification, or nominating the classification of a building under the BCA;*
- *issue complying development certificates, certifying that nominated development proposals comply with standards and criteria in Council's local environmental plans (LEP) and development control plans [where the Council's LEP allows these certificates, they can be issued instead of obtaining a development consent from Council];*
- *issue strata certificates to enable registration of strata plans;*
- *conduct inspections of building works during their construction; and*
- *act as a principal certifying authority (PCA) responsible for, among other things, issuing occupation certificates specifying that buildings are safe to occupy and subdivision certificates specifying a subdivision can proceed to registration (private certifiers may only issue subdivision certificates where the Council's LEP permits their involvement).”¹*

Furthermore, accredited certifiers were given the discretion to accept or reject certain matters, which were previously subject to Council approval. An example of this change in authority is reflected in Clause 161 of the *Environmental Planning & Assessment Regulation 2000*, which states the following;

“161 Certifying authorities may be satisfied as to certain matters: section 1090

(1) This clause applies to the following matters:

(a) any matter that relates to the form or content of the plans and specifications for the following kind of work to be carried out in connection with the erection of a building or the subdivision of land:

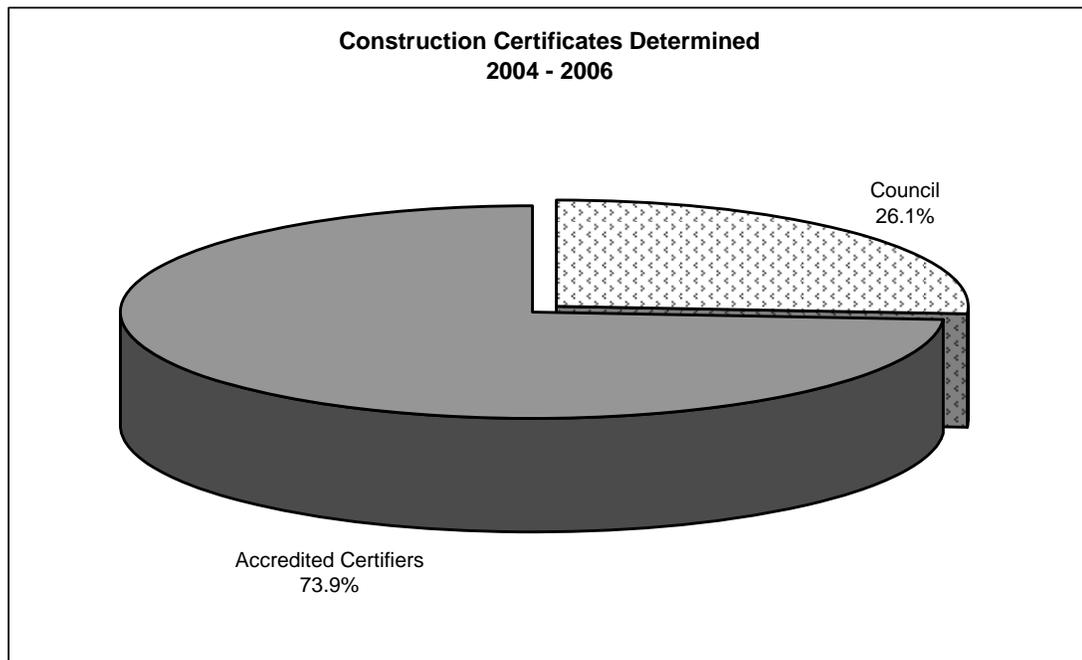
- (i) earthwork,*
- (ii) road work, including road pavement and road finishing,*
- (iii) stormwater drainage work,*
- (iv) landscaping work,*
- (v) erosion and sedimentation control work,*
- (vi) excavation work,*
- (vii) mechanical work,*
- (viii) structural work,*
- (ix) hydraulic work,*
- (x) work associated with driveways and parking bays, including road pavement and road finishing,*

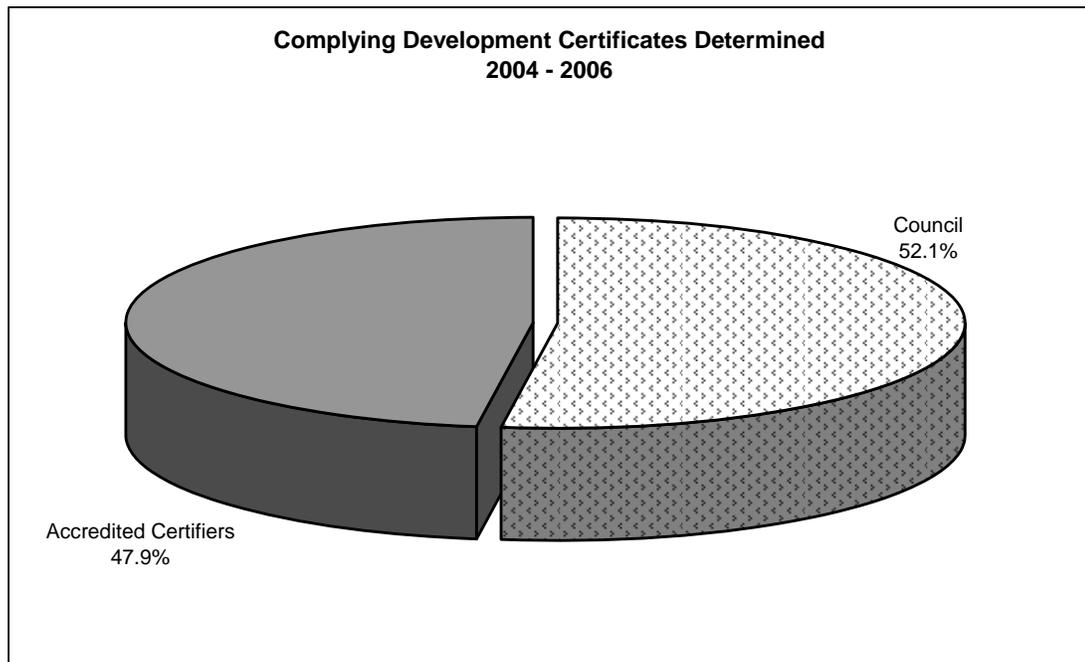
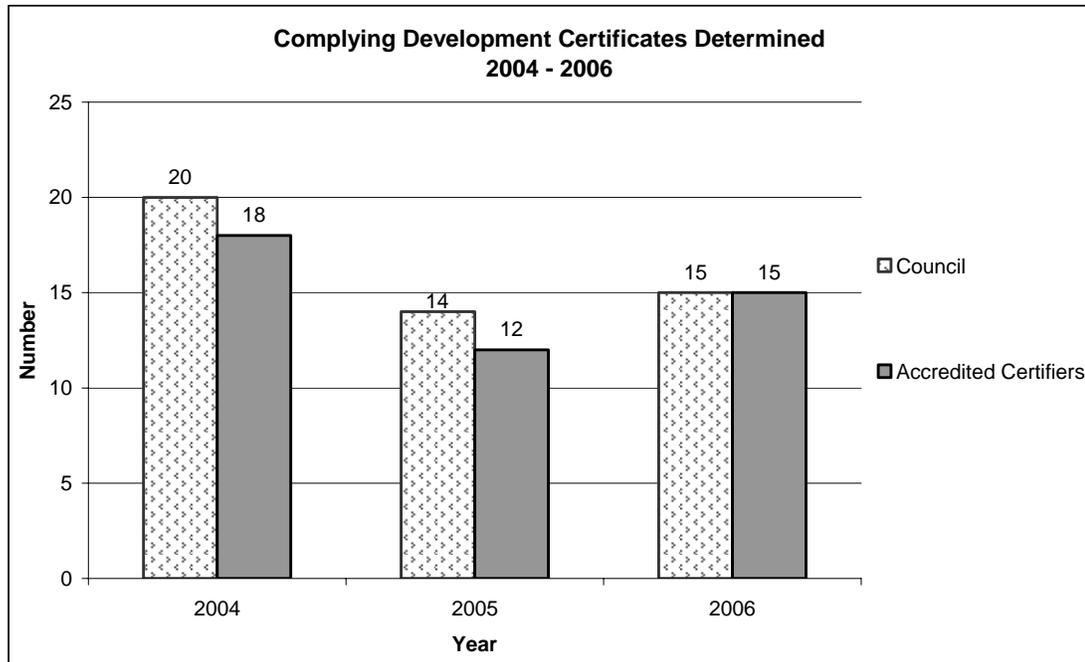
(b) any matter that relates to the external finish of a building.

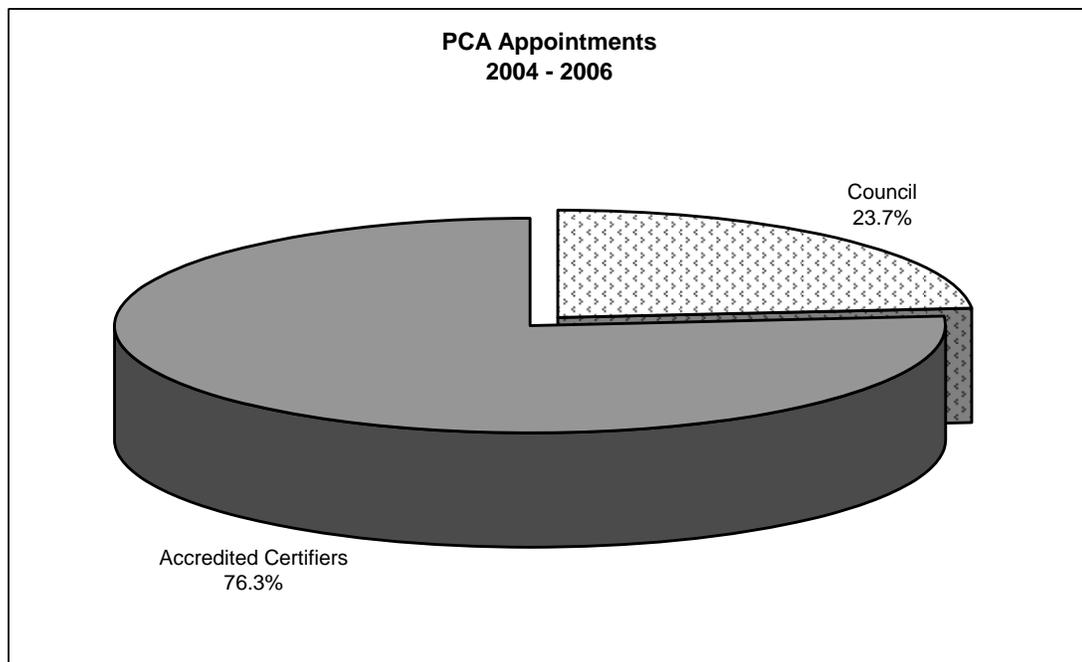
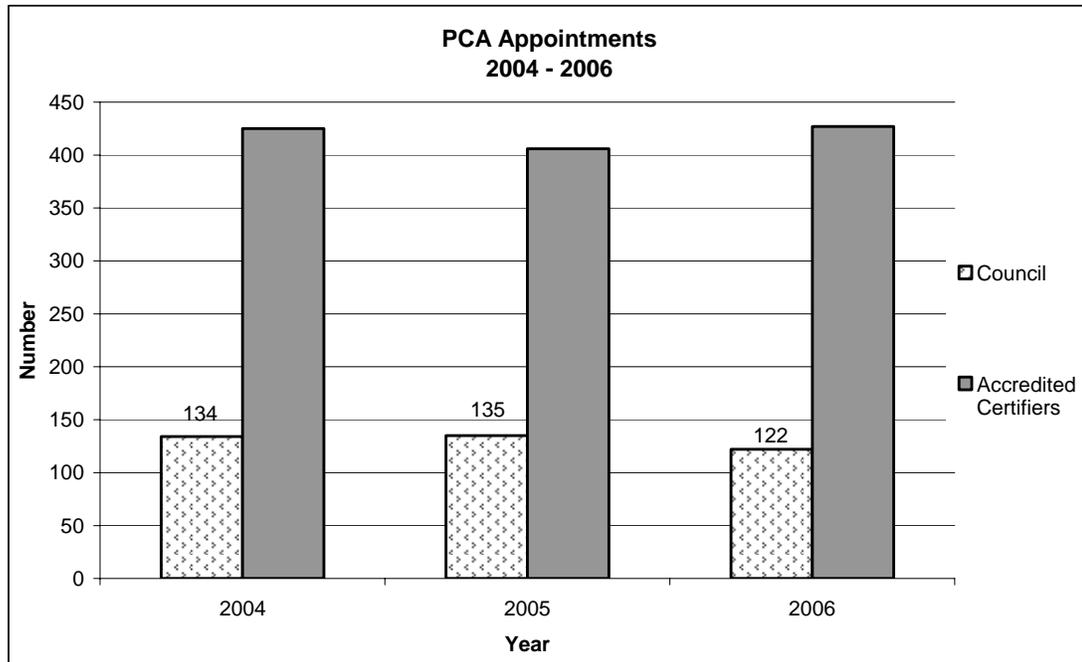
(2) Any requirement of the conditions of a development consent that a consent authority or council is to be satisfied as to a matter to which this clause applies is taken to have been complied with if a certifying authority is satisfied as to that matter.”

¹ Building Professionals Board website, www.bpb.nsw.gov.au/public/index.shtml.

The implications of the above changes are illustrated in the following graphs, which show how the primary responsibilities have been allocated between the private accredited certifiers and Council over the past three (3) years.







Over the years, the NSW Ombudsman has also recognised the problems facing local government with regards to the enforcement of planning laws and development consents and in June 2002 the NSW Ombudsman's 'Enforcement Guidelines for Councils' were released. The Ombudsman stated that the guidelines were "developed to help councils act promptly, consistently and effectively in response to allegations of unlawful activity."²

² NSW Ombudsman 'Enforcement Guidelines for Councils', 2002, Page iii.

3. Review of Council's Policy on Unauthorised Uses, Buildings and Works

As stated above, the Council's current policy has been in use since July 1999 and it has been an effective and useful document, assisting staff on setting priorities and deciding how best to handle individual matters. However, the Policy does not canvas in any depth several of the important issues raised by the Council's Notice of Motion dated 1 May 2006 nor does it fully cover the areas addressed by the NSW Ombudsman's 'Enforcement Guidelines for Council'. Accordingly, in responding to the Council's Notice of Motion, it was considered appropriate to review and update the Council's current policy document on the subject.

The draft version of the replacement policy document titled 'Draft Enforcement Policy' is attached as **annexure 2**. The document is a significant reworking of the current policy, however it is presented in such a way to show the changes from the existing policy document which is attached as annexure 1.

While the policy still focuses on unauthorised and illegal works and uses, the information contained in it has been broadened to permit it to more readily relate to any enforcement type action taken by the Council. If the proposed changes to the policy are adopted, it is recommended that the policy be renamed 'Enforcement Policy' to reflect its broader application.

The major changes being recommended to the current 'Policy on Unauthorised Uses, Buildings and Works' are;

- Renaming of the policy to 'Enforcement Policy';
- Clarification and broadening of the Purpose, Policy Objective and Application of the policy;
- Expansion of the definitions and the inclusion of the term "*unlawful activity*", as defined by the NSW Ombudsman;
- A detailed Background section, largely addressing the first point of Council's Notice of Motion dated 1 May 2006 including;
 - how unlawful activities may be identified;
 - what members of the public can expect if they lodge a request or complaint;
 - importance of procedural fairness and natural justice; and
 - the options for dealing with unlawful activities, including criminal and civil proceedings and how to decided between the two;
- Expansion of the matters that Council will consider before deciding whether to take enforcement action so as to provide more guidance to staff; and
- Improved guidelines on deciding what method of enforcement should be commenced.

4. Council's means of identifying and prosecuting unauthorised and illegal works and uses

There are a variety of ways the Council will become aware of unauthorised and illegal works and uses, from the proactive actions of staff to the receipt of complaints or requests from members of the public.

As identified in the above graphs, the Council is appointed the Principal Certifying Authority (PCA) for approximately 24% of all building and development projects that commence. In this role the Council is required to undertake various critical stage inspections, which allow individual jobs to be proactively monitored.

Where Council is not appointed the PCA, Section 81A of the *Environmental Planning & Assessment Act 1979* requires the PCA to notify Council no later than two (2) days before the commencement of any building work, of his/her appointment. In addition, the person having the benefit of a development consent which proposes building works must notify the Council of their intention to commence the erection of the building at least two (2) days prior to that work commencing. On receipt of the above notifications, the Council undertakes a pre-commencement inspection checking that all preliminary development consent conditions have been satisfied.

From 2004 to 2006, between 220 and 270 building certificate applications and 100 hoarding applications were lodged with Council each year. Before determining these applications our building staff must inspect the individual properties that they relate to and a primary consideration is whether or not the works on the site comply with the current approvals of Council.

Staff outside the Building team will also identify unauthorised and illegal works, including breaches of development consent. Such staff includes, but is not limited to, the following;

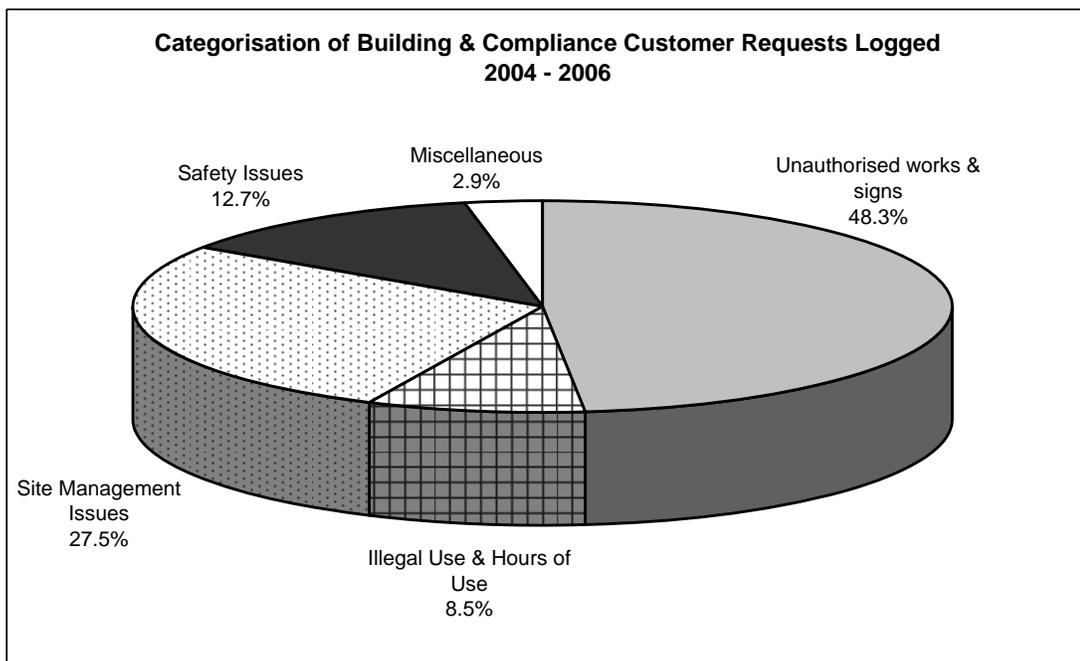
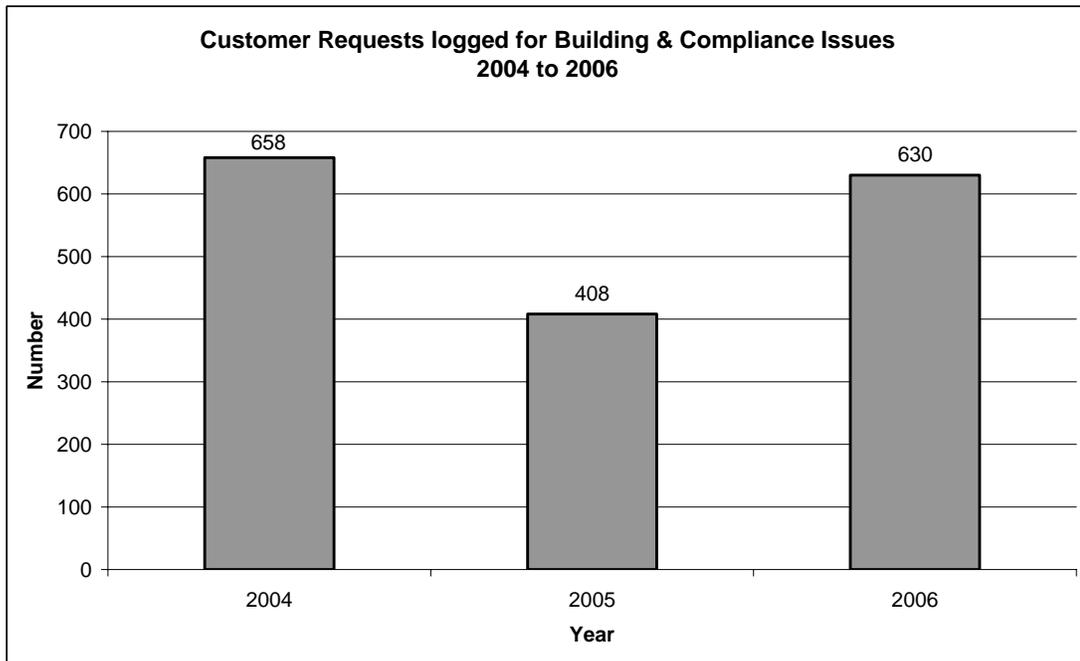
- Development Control staff during the assessment of development applications;
- Rangers undertaking routine patrols of footpaths and roadways; and
- Tree Management staff while assessing Tree Preservation Order applications.

With nearly 75% of all building and development work occurring in the Municipality being under the direct control and supervision of private PCAs and the fact that not all unauthorised and illegal works and uses are associated with approved developments, members of the community are a critical element in identifying potential unauthorised and illegal works and uses. Therefore, it is important to have simple systems in place that readily capture and track the concerns of the community. It is considered that Council's existing electronic Customer Request System achieves this objective, being available to all staff members to record requests and have those requests automatically referred to the appropriate section of Council for quick action.

As shown on the following graphs, Council's Customer Request System is an important tool in identifying and tracking potential unauthorised and illegal works and uses, with nearly 1,700 building related matters logged between 2004 and 2006. These requests can be categorised as follows;

- **Unauthorised works & signs** (48.3%);
- **Illegal use & hours of use** (8.5%);
- **Site management issues** (27.5%), including;
 - discharges;
 - sediment control;
 - dust control;
 - site noise;
 - hours of work;
 - road and footpath obstructions;
 - footpath damage; and

- **Safety Issues** (12.7%) including;
 - damage to adjoining properties
 - unsafe work and structures.



The different options available to Council for dealing with unauthorised and illegal works and uses are explained in section 2.3 of the 'Draft Enforcement Policy' (annexure 2) and include;

- Taking no action;
- Counseling the offender;
- Issuing a formal letter of warning;
- Commencing criminal proceedings, which include;
 - issuing penalty infringement notices (PIN);
 - issuing Court Attendance Notices (CAN);
 - prosecution before the Local Court; or
 - prosecution before the Land & Environment Court in its summary jurisdiction (Class 5); and
- Commencing civil proceedings which include;
 - Notices and Orders;
 - Class 4 proceedings before the Land & Environment Court; and
 - Injunctive proceedings for matters causing, or with the reasonable potential to cause serious environmental harm.

Guidelines for deciding which option to take are also provided in the draft policy document.

During 2006 Council;

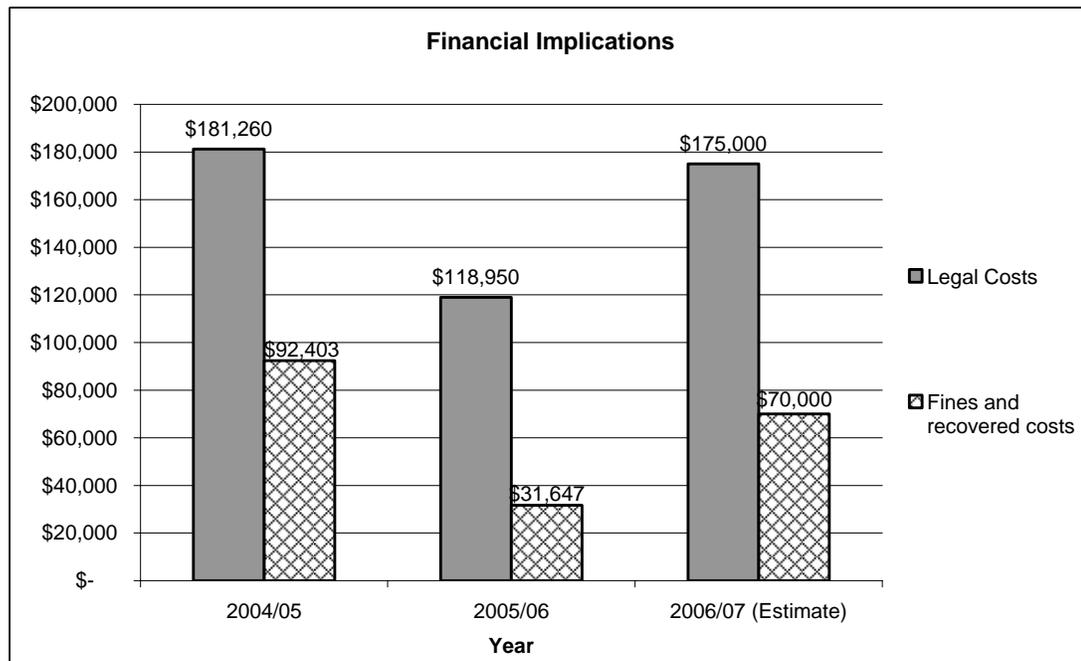
- issued over 270 formal breach letters, warnings, Notices and Orders relating to unauthorised and illegal works and uses;
- issued over 140 penalty infringement notices for breaches of the *Environmental Planning & Assessment Act 1979*, including development occurring without consent and contrary to consent;
- two Local Court prosecution proceedings and four Land & Environment Court Class 5 proceedings were commenced. The Land & Environment Court proceedings remain outstanding, having commenced in September 2006 and are currently listed for directions and plea on 23 February 2007; and
- four Land & Environment Class 4 proceedings were commenced.

Since 2004, Council has had one successful Land & Environment Court prosecution for unauthorised works and three successful Local Court prosecutions for unauthorised works, resulting in the following penalties, respectively;

- \$30,000 fine plus \$25,000 legal costs;
- \$11,000 fine and \$3,500 legal costs;
- \$20,000 fine plus \$5,000 legal costs; and
- \$25,000 fines plus \$15,000 legal costs.

5. Council's financial and legal position in relation to the way we manage these processes

The direct financial costs for initiating enforcement action for unauthorised and illegal works and uses are shown on the following graph, noting that the 2006/07 figures are estimates only following the recent December 2006 budget review.



The above graph shows that there are significant costs incurred in the commencement of enforcement action through either the Land & Environment Court or Local Court and the recovery of these costs is limited especially for civil Class 4 proceedings in the Land & Environment Court.

In Class 4 proceedings the Council is generally seeking an order of the Court requiring an offender to do or refrain from doing something, such as comply with a development consent or statutory Order. In such proceedings the primary objective is to obtain a benefit for the community and not to take punitive action against the defendant and the awarding of costs is limited.

Also, it is not uncommon for Class 4 proceedings to commence and for the matter to be resolved before it proceeds to a hearing or for consent Orders to be agreed to between the parties. Again under these circumstances the opportunity for Council to recover its costs is limited.

Nevertheless, Council's 'Policy on Unauthorised Uses, Buildings and Works' provides the Council's formal position on the recovery of costs in the Land & Environment and Local Courts and this has been carried over, without change, into the 'Draft Enforcement Policy'.

As explained in the 'Draft Enforcement Policy', the Council has an overriding duty to act fairly and ensure the principles of procedural fairness and natural justice are adhered to at all times. Further the commencement of enforcement action by Council is a discretionary function and the draft policy document aims at ensuring this discretion is applied fairly, reasonably and consistently.

There is no statutory obligation on the Council to commence enforcement proceedings or to take a particular action, with the circumstances of each case needing to be considered against the heads of consideration provided in Part 3 of the draft Policy. This includes balancing the public interest or benefit against the costs of a particular action.

Council's decision to commence enforcement action or not for a breach of the *Environmental Planning & Assessment Act 1979* or development consent, does not fetter an individuals rights to commence action. Section 123 of the Act permits any person to commence their own proceedings for an order to remedy or restrain a breach of the Act.

6. Audit of development consents that have been granted for more than 18 months without a construction certificate being issued

At the time of introducing Council's Section 94A 'Fixed Development Consent Levy' in mid 2006, it was identified that only approximately 58% of all development consents granted by Council had an approved construction certificate recorded. The reasons for there being no approved construction certificate could include the following;

- No building works proposed - Not all development consents include building work, therefore a construction certificate is not required. Consents that are solely for a change of use, change of approved hours, demolition or site remediation work do not require a construction certificate;
- Development consent has not been acted upon – There is generally a lag time between the granting of development consent and its enactment. Also, some development consents are never activated and lapse after five (5) years;
- Illegal commencement of building works, without a construction certificate; and
- Administrative error – Errors may occur where a construction is not recorded by Council. The error could be the result of Council failing to record a construction certificate or a failure on the accredited certifier's part to submit the approved construction certificate to Council within two (2) days after the date of determination, as required by Clause 142(2) of the *Environmental Planning & Assessment Regulation 2000*.

In response to Council's Notice of Motion dated 1 May 2006, a random sample of 20 development applications that were lodged during 2003 and had development consent granted between January and May 2004 but which did not have a construction certificate recorded by Council, were reviewed. The results of the audit review are provided below;

- Work had not commenced on 16 developments consents, therefore no construction certificates were required;
- One development consent related to site remediation work and did not require a construction certificate;
- One consent had a privately issued Construction Certificate and a Notice of Commencement/PCA Appointment form was filed on Council's development application file, however the information had not been recorded in Council's computer system;
- Work had commenced pursuant to one development consent, even though there was no Construction Certificate or Notice of Commencement recorded on Council's computer system or located on Council's files. However, Council's records indicated that the \$8,000 damage security deposit had been paid and the signs displayed on the construction site provided the details of the private PCA. The accredited certifier stated that he had forwarded the required documentation to Council before the commencement of any works and subsequently provided Council with another copy; and

- Work was complete pursuant to one development consent, even though there was no Construction Certificate or Notice of Commencement recorded on Council's computer system or located on Council's files. Following further investigation it was determined that a construction certificate had been approved by an accredited certifier prior to the commencement of the works, however the documentation had not been received by Council. All required documentation was subsequently submitted to Council.

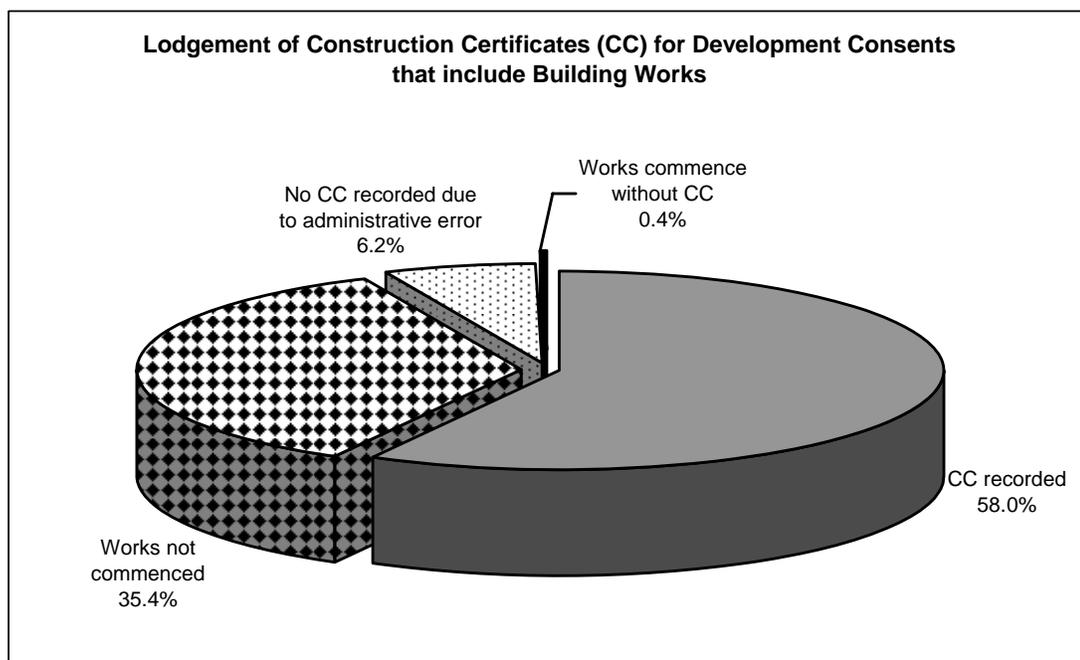
While the above audit did not uncover any building works that had commenced without an approved construction certificate, it disclosed that 90% of development consents without construction certificates were operating correctly and 10% may have commenced without fully complying with Section 81A of the *Environmental Planning & Assessment Act 1979* and Clause 142 of the Regulations.

Furthermore, investigations by the Compliance Section over the past 12 months have disclosed five sites that have commenced work without an approved construction certificate and/or appointment of a PCA. This represents approximately 0.7% of all construction certificates determined in 2006.

Interpolating the above findings and observations, it is considered that the following assumptions are reasonable;

- At any point in time Construction Certificates are submitted for 58% of all development consents that include building works;
- At any point in time works have not commenced for 35.4% of development consents that include building works;
- At any point in time Construction Certificates are not recorded for 6.3% of development consents that include building works due to an administrative error by the accredited certifier or Council; and
- At any point in time works commence on 0.4% of development consents that include building works without the prior approval of a construction certificate.

The above assumptions are represented on the following graph.



7. Recommendations on how Council can best prevent and control the extent of unauthorised works and uses

A number of strategies are provided in the NSW Ombudsman's 'Enforcement Guidelines for Council' to help prevent unauthorised and illegal works and uses or to deal with it in a more positive and cost effective way. The strategies listed in the guidelines include the following;

- **Imposing sensible and enforceable conditions.** Conditions should be enforceable, effective and timely. Council's conditions of development consent generally meet this recommendation;
- **Avoiding delays** in responding to complaints about unauthorised and illegal works and uses. Also Council should encourage their staff from all areas to report suspicions or concerns. These elements are a fundamental part of Council's current approach to dealing with unauthorised and illegal works and uses;
- **Keeping records of existing use rights.** Council's historic development consent records are extensive and even though they are stored off-site, they are readily accessible. Furthermore, in recent times all of Council's development consents are linked to Council's computerised property information system, which permits research on recent use rights and development consents to occur without the need to retrieve the physical files;
- **Educating the community** including information about planning and building obligations, the restrictions that apply and when development consent is required. It is considered that such information is currently readily available to the community either in hardcopy brochures, guidelines, checklists and policy documents or electronically via the internet. A new section on Building and Compliance will be posted on our new website shortly. It will significantly improve the information we currently provide on the building process, our requirements, building safety, fire safety and unauthorised work. In addition, Council provides a Planning Duty Officer during office hours to assist with enquiries on planning and building obligations;
- **Taking a reasonable approach** in exercising discretion, as this will encourage people to try and resolve problems as they arise or come to notice. Both the Council's existing 'Policy on Unauthorised Uses, Buildings and Works' and the 'Draft Enforcement Policy', provide guidelines on how the Council will use reasonable and consistent discretion;
- **Doing regular inspections.** As the appointed PCA on approximately 24% of all building and development projects Council does undertake mandatory inspections of these sites, as required by Clause 162A of the *Environmental Planning & Assessment Regulation 2000*. Also as the PCA Council nominates the additional inspections that it requires to be carried out to safeguard the community and to ensure that the development proceeds in accordance with the development consent.
- **Monitor compliance.** With over 75% of all development and building projects in the Municipality under the control of private PCAs and considering the Council's limited resources, it is difficult for the Council to proactively monitor all development sites. Nevertheless, on receipt of the notification of the commencement of building works, the Council undertakes a pre-commencement inspection checking that all preliminary development consent conditions have been satisfied.

Council also encourages members of the community to report any concerns that they have with regard to unauthorised and illegal work and uses and these concerns are recorded and tracked through Council's Customer Request System.

It is considered that the Council's existing services and practices generally satisfy the above strategies recommended by the NSW Ombudsman and Council should maintain its current level of service.

In considering what further measures the Council can take to prevent and control the extent of unauthorised works and uses, it is important to note that Council has limited resources and a variety of building functions to fulfill. Also, Council is, as are most local councils, finding it difficult to retain and attract suitably qualified and experienced staff. Therefore, it is necessary to set priorities and guidelines for determining how and when to commence enforcement action and to ensure such action is fair, reasonable and consistent at all times.

Furthermore, there is no way Council can prevent an individual from committing an offence, however Council's response to individual offenders will hopefully deter future offenders.

Accordingly, a key element in preventing and controlling the extent of unauthorised works and uses in our area is to have a policy document that provides clear, unambiguous guidance to staff and helpful information to the community. In this regard it is considered that the Council's current 'Policy on Unauthorised Uses, Buildings & Works', needs to be replaced by the broader more detailed 'Draft Enforcement Policy'.

Conclusion

The issue of unauthorised and illegal building works and uses is a continuing problem that has faced all Councils for many years. Currently over 56% (or 320 matters per year) of all customer requests investigated by Council's Building team relates to unauthorised and illegal works and uses. This systemic problem, while hard to prevent, does need to be controlled and managed in a reasonable and consistent manner.

It is considered the Council's current practices and approach to handling unauthorised and illegal works and uses does satisfy the NSW Ombudsman's guidelines and should be maintained. Where necessary, and appropriate, Council has successfully taken punitive action against the perpetrators of unauthorised and illegal works and uses. However, where a remedy was required civil action has been initiated including Notices and Orders and Class 4 proceedings in the Land & Environment Court.

It is considered the Council's current 'Policy on Unauthorised Uses, Buildings & Works', while being an effective and useful document when it was introduced, needs to be updated to better guide staff on, and explain to the community, the various discretionary enforcement action that is available and how this action will be consistently applied. Therefore it is recommended that Council adopt the revised and expanded 'Enforcement Policy'.

Tim Tuxford
Manager - Compliance

Allan Coker
Director Planning and Development

ANNEXURE

1. Policy on Unauthorised Uses, Buildings and Works adopted on 12 July 1999.
2. Draft Enforcement Policy

Item No: R2 Recommendation to Council
Subject: **Draft Paddington Heritage Conservation Area Development Control Plan 2006**
Author: Jodi Ayre – Strategic Heritage Officer
File No: 899.G
Reason for Report: To respond to a Council decision made on 18 December 2006.

Recommendation

- A. THAT the information brochure circulated to all properties in the Paddington Ward be noted.
- B. THAT the composition of the peer review panel be noted and the workshops be co-ordinated as outlined in the project timeline contained in **annexure 4**.
- C. THAT a further report be brought to the Urban Planning Committee at the conclusion of the workshops with the peer review panel, to report on the expert advice received in relation to Clause 4.1.1 and 4.1.3 of the Draft Heritage Conservation Area Development Control Plan 2006.

1.0 Background

The Urban Planning Committee (UPC) considered a report on the outcome of the public exhibition period of the Draft Paddington Heritage Conservation Area Development Control Plan 2006 on 18 December 2006.

The Committee's recommendation was then considered by the Council as a Matter of Urgency. On 18 December 2006 the Council made the following decision:

- A. THAT consideration of the Draft Paddington Heritage Conservation Area Development Control Plan 2006 be deferred until the meeting of the Urban Planning Committee to be held on 12 February 2007.
- B. THAT an Executive Summary be prepared and circulated to the owners of the properties in the Paddington Ward on or before 31 January 2007 identifying the salient matters in the DCP.
- C. THAT a report be brought to the Urban Planning Committee on 29 January 2007 in respect to the establishment of a peer and community group reviewing the DCP and with the mechanism of being able to hold workshops on the issues raised in relation to the draft DCP as it presently stands.
- D. THAT the scope of the peer and community review be limited to the issues that have been raised, both existing and during the consultation process, as a community concern.

2.0 Circulation of information to the all properties in the Paddington Ward

Part B of the resolution required an information brochure to be prepared and circulated to all properties in the Paddington Ward. A copy of the brochure is contained in **annexure 1**. The brochure provides an executive summary of the process Council has undertaken to review the controls for Paddington, an outline of the recent public exhibition period and the two salient matters which were raised in the public submissions. The content of the information brochure was reviewed by the Mayor, Cr Keri Huxley, prior to circulation.

The information brochure is scheduled to be circulated to all properties in the Paddington Ward in the week commencing 29 January 2006. This is in accordance with the resolution which required *circulation of the brochure on or before 31 January 2006*. The company engaged by Council to undertake the letter box drop is *A Family Affair*. This company was recommended by Council's Communications Manager. Related costs are outlined in Section 4 of this report.

2.1 Further information

Public exhibition of the Draft Paddington Heritage Conservation Area Development Control Plan 2006 was undertaken during the period 29 September 2006 to 10 November 2006, inclusive. In the report to the UPC dated 18 December 2006, the scope of public exhibition was outlined:

The exhibition took place in the Council's main offices in Double Bay, within the Customer Service area. Copies of the Draft DCP were made available free of charge. A copy of the Draft LEP, an explanatory note and a brochure were placed on the Council's website.

Public notice of the exhibition was placed in the Wentworth Courier editions on 27 September, 4 October, 11 October, 18 October, 1 November and 8 November 2006.

The Mayoral column in the Wentworth Courier edition of 4 October 2006 also contained information about the Draft DCP and its public exhibition.

Notice of the public exhibition was sent to the following organisations:

- *City of Sydney Council*
- *The Paddington Society*
- *The National Trust of Australia (NSW)*
- *The Woollahra History and Heritage Society*
- *The Heritage Office of NSW*

The information brochure circulated to Paddington Ward property owners outlines opportunities to gain further information on the Draft DCP and the process. All documents are available in Council's Customer Service area. The contact details for Chris Bluett, Manager – Strategic Planning, and Jodi Ayre, Strategic Heritage Officer, are provided on the brochure.

A page relating to the Draft DCP has also been uploaded on Council's website in the 'public notices' section. This page contains pdf versions of all the documents referenced in the information brochure. The version of the Draft DCP which was included in the UPC report dated 18 December 2006 is the version which is on the website.

3.0 Peer and Community group review and mechanism for workshops

As required by Part C of the Council decision made on 18 December 2006, this report outlines the progress made to establish a peer and community group review of the DCP and the mechanism for being able to hold workshops on the issues raised in relation to the draft DCP as it presently stands.

The submissions received during the public exhibition period highlighted two main issues. They are:

- Restrictions on excavation – Clause 4.1.6 (**annexure 2**).
- Restrictions on internal change and on demolition of interior cross walls to the principal building form – Clause 4.1.1 (**annexure 3**).

In accordance with Part D, further consultation through the workshop and peer review panel will be specifically focused on the two matters identified above.

3.1 Identification of peer review panel members

The following experts have been approached for their professional experience in the two issues which Council is to review.

- **Susan MacDonald – Director - Policy and Heritage Management, NSW Heritage Office**
Susan was appointed as the Assistant Director in 2002, and Director in March 2006. Prior to joining the Heritage Office in 1998 Susan spent 10 years working as a conservation architect in England in the private and public sector. She has a particular interest in 20th century heritage and has co-authored and edited three books on the subject. Susan is a member of DOCOMOMO's international specialist technical committee and a former Executive Committee member of Australia ICOMOS.³
- **Howard Tanner – Director, Tanner Architects**
Howard Tanner is a committee member of the Royal Australia Institute of Architects National Council and the former Chair of the NSW Heritage Council. Mr Tanner is the Director of Tanner Architects, a multi-disciplinary architecture firm specialising in conservation and adaptive re-use.
- **Dr Felix Barda – Civil Engineer, Alba and Associates Pty Ltd**
Dr Barda is a qualified civil engineer with experience in the areas of excavation. He has knowledge of the Paddington area through involvement in past projects and is aware of the geotechnical and structural issues associated with excavating below the principal building form.

All of the above experts have indicated their interest and tentative availability to be involved in the peer review panel. **Annexure 4** contains the project timeline for the review panel. As indicated, there are three meetings identified for the panel.

³ NSW Heritage Office, <http://www.heritage.nsw.gov.au>

- Workshop 1 Inaugural meeting – Council staff to introduce the Draft DCP, provide background information and outline the requirements of the review panel.
- Workshop 2 Review panel to provide feedback to Councillors and staff.
- Workshop 3 Council staff to present the Draft DCP with alterations as required.

A period of time between the first and second workshops will be required by the panel members to review the information provided. A period of time between the second and third workshops will be required by Council staff to review the Draft DCP in light of the peer advice received.

3.2 Community group consultation

To date, community groups have been involved in the review of the Paddington DCP 1999 and development of the Draft DCP. The Paddington Working Party included representatives from the Paddington Society, the Woollahra History and Heritage Society and the National Trust of Australia (NSW). The representatives were:

Peter and June Poland	<i>Woollahra History and Heritage Society</i>
Bill Morrison	<i>The Paddington Society</i>
John Richardson	<i>National Trust of Australia (NSW)</i>

The Paddington Working Party provided a forum for the community group representatives to ensure the broader community interests were represented in the Draft DCP. The issues raised by the community group representatives during the Paddington Working Party meetings have been addressed in the Draft DCP. This included issues related to excavation and the protection of significant building fabric and features.

The Woollahra History and Heritage Society provided a written submission to the public exhibition period of the Draft DCP. This submission, Submission 1 dated 8 October 2006, noted the Society's involvement with the preparation of the DCP and:

The Society is confident the Draft DCP will fulfil the objectives of the Plan and support's Council's intention to adopt the Draft DCP.

3.3 Role of the workshops

The workshop will comprise three meetings with the peer review panel. The composition of the review panel has been outlined above. The review panel will be requested to provide advice to Council on the two salient matters that were raised during the public exhibition period. The limitation of the issues which Council is seeking advice will ensure the workshop remains focused.

The workshops will be coordinated by Council's Strategic Heritage Officer, and chaired by a nominated chairperson. A preliminary agenda for the three workshops is contained in **annexure 5**.

As the peer review panel includes members from different academic and professional backgrounds, the panel may not necessarily reach a consensus on the issues related to Clause 4.1.1 and 4.1.6. However, the expert advice provided through the workshops, will enable Council to consider the clauses contained in the Draft DCP and determine whether modifications may be necessary. **Annexure 5** contains a preliminary agenda for the three workshop meetings of the peer review panel. It is anticipated that the meetings will last for approximately two hours.

The role of the workshop will be to provide a forum for further consultation with a peer review panel. All the relevant background information and an understanding of public issues raised in relation to the two salient matters will be provided. At the first workshop the panel members will be provided with the following background information:

- Paddington Development Control Plan 1999
- Draft Paddington Heritage Conservation Area Development Control Plan 2006 (with alterations as contained in Annexure 8 of the UPC report dated 18 December 2006)
- UPC Report dated 28 August 2006
- UPC Report dated 18 December 2006
- Information brochure – public exhibition (Sept 2006)
- Information brochure – public information (Jan 2007)

The primary aim of the second workshop will be to gain further expert technical advice to Council on the practical issues related with excavation and internal changes to principal building forms. Following the second workshop, revisions may be required to the two clauses in the Draft DCP.

The third workshop will be a presentation to the panel of any modifications deemed necessary to the Draft DCP following the expert advice from the peer review panel. The proposed modifications will then be presented to the Urban Planning Committee.

4.0 Identification of income and expenditure

4.1 Circulation of the information brochure

A Family Affair has been engaged to carry out the letter box drop delivery of the information brochures to all properties in the Paddington Ward. Using Council's GIS system it has been determined that there are approximately 6,150 dwellings within the Paddington Heritage Conservation Area (including parts of Edgecliff and Woollahra which are included in the HCA boundary).

The cost to deliver the information brochure is \$45 + GST per 1000 brochures. The total cost of the letter box drop will be \$304.50.

4.2 Peer review panel

Hourly rates have been requested from the experts proposed to be involved in the peer review. Varying hourly rates have been obtained. These rates vary from \$200 - \$275 /hr + GST.

The time required for a member of the peer review panel to be involved in the workshops is estimated at two hours per workshop, a total of three workshops to be held. Time to review the background documentation and Draft DCP will vary.

5.0 Conclusion

The project timeline developed to address the requirements of the 18 December 2006 Council decision, indicates that the work required will take approximately three months to implement. In that time, the issues to be reviewed in the workshop process with the peer review panel will be limited to the two issues which were highlighted during the public exhibition period.

At the conclusion of the three workshops, a report will then be prepared to the UPC to outline the issues raised by the panel and recommendations for modifications to the Draft DCP. For this reason, it is considered unnecessary to report to the UPC on 12 February 2006 as required by Part A of the Council resolution 18 December 2006.

Allan Coker
Director – Planning and Development

ANNEXURES

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| Annexure 1 | Information brochure circulated to all properties in the Paddington Ward |
| Annexure 2 | Extract from the Draft DCP – Excavation Clause 4.1.6 |
| Annexure 3 | Extract from the Draft DCP – Controls for internal changes and cross walls
Clause 4.1.1 |
| Annexure 4 | Indicative project timeline |
| Annexure 5 | Preliminary agenda for workshop meetings |

Item No: R3 Recommendation to Council
Subject: **Draft Woollahra Section 94A Development Contributions Plan 2005 (Amendment No.1)**
Author: Chris Bluett - Manager Strategic Planning
File No: 1180.G
Reason for Report: To report on the public exhibition of the Draft Development Contributions Plan
To obtain the Council's approval of the Draft Development Contributions Plan

Recommendation

THAT the Draft Woollahra Section 94A Development Contributions Plan 2005 (Amendment No.1) as exhibited and contained in annexure 2 of the report to the Urban Planning Committee meeting of 29 January 2007 be approved and come into effect on the date notice of the approval is published in the Wentworth Courier.

1. Background

At its meeting on 27 November 2006 the Council was informed of a direction issued by the Minister for Planning, the Hon. Frank Sartor MP, under section 94E of the *Environmental Planning and Assessment Act 1979* (the Act) (**annexure 1**). The direction, which took effect on 1 December 2006, specified the maximum percentage of a section 94A levy that can be required by a condition of consent for a development application or a complying development application using three cost thresholds:

- (a) Proposed cost of development \$100,000 or less – no levy
- (b) Proposed cost of development between \$100,001 and \$200,000 – 0.5% levy
- (c) Proposed cost of development more than \$200,000 – 1% levy.

The direction also prohibited a condition for a levy being imposed on consents for certain types of development.

Woollahra's current section 94 development contributions plan allows the Council to impose a condition of consent for one percent of the proposed cost of development, but not a lesser percentage. This means the Council cannot impose a condition of consent for the 0.5% levy until such a provision is contained in the development contributions plan. An amendment to the current plan was recommended.

On 27 November 2006 the Council resolved:

- A. That a draft section 94A development contributions plan be prepared to amend Woollahra Section 94A Development Contributions Plan 2005 in the manner set down in the advice from Dr Lindsay Taylor, from Lindsay Taylor Lawyers, dated 22 November 2006, a copy of which was attached as an annexure to the Officer's Report to the Council meeting on 27 November 2006.

- B. That no amendments, other than those required by part A, be made to the Woollahra Section 94 Contributions Plan 2002 or the Woollahra Section 94A Development Contributions Plan 2005 at this time.
- C. That a further report on development contributions towards public car parking in the Double Bay Commercial Centre be prepared and submitted to the Corporate and Works Committee after the report from the consultant's undertaking work on the business management strategy for the Double Bay Commercial Centre has been received.
- D. That the report include a review of the current and future car parking requirements compared to the forecast requirements in the current Section 94 Plan and costing for the construction of any new car parks, including the alternative of increasing the capacity of the Cross Street carpark
- E. That the further report be brought back to the Committee in or before March 2007.
- F. That the Mayor write to the Minister for Planning expressing Council's concerns that it had not received formal notification of his announcement of 10 November 2006 which is to come into effect on 1 December 2006, being four days hence.

Items C, D and E will be the subject of a further report. In regard to item F, a letter to the Minister for Planning was sent on 1 December 2006.

2. Public exhibition

The Draft Development Contributions Plan (Draft Plan) (**annexure 2**) was prepared and placed on public exhibition over the period 29 November 2006 to 17 January 2007. The exhibition took place in the Council's main offices in Double Bay, within the Customer Service area. Copies of the Draft Plan were made available free of charge. A copy of the Draft Plan and an explanatory sheet were placed on the Council's website.

Notice of the public exhibition was placed in the Wentworth Courier editions of 29 November, 6 December, 13 December and 22 December 2006, 10 January and 17 January 2007.

3. Submissions

No submissions were received.

4. Next stages

Clause 31 of the *Environmental Planning and Assessment Regulation 2000* sets out the next stages in the process. The Council may:

- approve the Draft Plan in its exhibited form
- approve the Draft Plan with such alterations as the Councils sees fit
- not proceed with the Draft Plan.

Public notice of the Council's decision must be made within 28 days of the decision. Where the Council decides not to proceed with a Draft Plan the notice must set out the reasons for the decision.

A development contributions plan comes into effect on the date that public notice of its approval appears in a local newspaper or on a later date specified in the notice.

No alterations are considered necessary to the exhibited Draft Plan.

5. Conclusion

The Draft Plan has been prepared and exhibited in the manner required by the Act and Regulation. No submissions have been received. No alterations to the exhibited Draft Plan are proposed. We recommend approval of the Draft Plan as exhibited.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

ANNEXURE

1. Officer's report to Council meeting on 27 November 2006
2. Draft Woollahra Section 94A Development Contributions Plan 2005 (Amendment No.1)

Item No: R4 Recommendation to Council
Subject: **Draft Development Control Plan for Advertising and Notification of Development Applications and Applications to Modify Development Consents (Amendment No.1)**
Author: Chris Bluett - Manager Strategic Planning
File No: 1074.G Part 2
Reason for Report: To report on the public exhibition of the Draft DCP.
To obtain Council's approval of the Draft DCP.

Recommendation

THAT the Draft DCP for Advertising and Notification of Development Applications and Applications to Modify Development Consents (Amendment No. 1) as exhibited and contained in annexure 3 of the report to the Urban Planning Committee meeting of 29 January 2007 be approved and come into effect four weeks after the date of approval.

1. Background

A report on amendments to the DCP for Advertising and Notification of Development Applications and Applications to Modify Development Consents was considered by the Urban Planning Committee (UPC) on 14 August 2006 (**annexure 1**). The principal amendment involved new provisions for site notices for development applications.

The matter was deferred at the Council meeting on 28 August 2006 to enable a further report to the UPC on alternative types of site signs.

A further report was considered by the UPC on 25 September 2006 (**annexure 2**). The Council's decision on 9 October 2006 was:

1. THAT Council resolve to prepare an amended *Development Control Plan for Advertising and Notification of Development Applications and Applications to Modify Development Consents* in accordance with clause 22 of the *Environmental Planning and Assessment Regulation 2000 (the Regulation)*.
2. THAT the draft amended *Development Control Plan for Advertising and Notification of Development Applications and Applications to Modify Development Consents*, annexure 2 to the report to the Urban Planning Committee on 25 September 2006, be placed on public exhibition for a minimum period of 28 days in accordance with clause 18 of the *Regulation* subject to:
 - (a) Clauses 4.4.2(i) and 4.5.2(h) being amended to read as follows:

A statement that "The supply of personal information is voluntary. If personal information is not provided, Council may be limited in dealing with a submission. Submissions, summaries of submissions, and/or names and addresses of people making submissions will be included in publicly available reports to Council or Committee Meetings."

- (b) Clauses 4.4.2(j) and 4.5.2(i) being amended to read as follows:

A statement that “In accordance with section 18(1)(b) of the Privacy and Personal Information Protection Act 1998 (NSW), you are advised that all submissions received by Council in relation to any matter will be placed on the appropriate Council file, may be available on our web site and may be disclosed to Councillors, Council Officers, consultants to Council or members of the public. Pursuant to section 12 of the Local Government Act 1993 the Council is obliged to disclose inspection of its documents, including any submission you may make. People may also make application for access under the Freedom of Information Act 1989.”

3. THAT a report on the public exhibition process and any submissions received be prepared and submitted for consideration of the Urban Planning Committee at the completion of the public exhibition period.
4. THAT the Site Notices be in Council’s corporate colours and be of portrait format.

2. Public exhibition

The Draft DCP (**annexure 3**) was prepared and placed on public exhibition over the period 22 November 2006 to 20 December 2006. The exhibition took place in the Council’s main offices in Double Bay, within the Customer Service area. Copies of the Draft DCP were made available free of charge. A copy of the Draft DCP and the current DCP, with proposed amendments inserted (**annexure 4**), were placed on the Council’s website.

Notice of the public exhibition was placed in the Wentworth Courier editions of 22 November, 29 November, 6 December, 13 December and 22 December 2006.

3. Submissions

No submissions were received.

4. Next stages

Clause 21 of the *Environmental Planning and Assessment Regulation 2000* sets out the next stages in the process. The Council may:

- approve the Draft DCP in its exhibited form
- approve the Draft DCP with such alterations as the Councils sees fit
- not proceed with the Draft DCP.

Public notice of the Council’s decision must be made within 28 days of the decision. Where the Council decides not to proceed with a Draft DCP the notice must set out the reasons for the decision.

A DCP comes into effect on the date that public notice of its approval appears in a local newspaper or on a later date specified in the notice.

No alterations are considered necessary to the exhibited Draft DCP. We suggest, however, that the commencement date be set for four weeks after the approval date. This will allow necessary time to purchase the notice boards and associated material.

5. Conclusion

The Draft DCP has been prepared and exhibited in the manner required by the Act and Regulation. No submissions have been received. No alterations to the exhibited Draft DCP are proposed. We recommend approval of the Draft DCP as exhibited.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

ANNEXURES

1. Report to Urban Planning Committee Meeting 14 August 2006.
2. Report to Urban Planning Committee 25 September 2006
3. Exhibited Draft DCP
4. Current DCP with proposed amendments