



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 23 June 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

19 June 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 – 23 June 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 23 June 2008 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 10 June 2008	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Draft NSW Housing Code and Draft NSW Commercial Building Code – Exempt and Complying Development Codes	2
R2	4 Victoria Street, Watsons Bay – 1080(G) WB	33

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 10 June 2008**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 10 June 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 10 June 2008 be taken as read and confirmed.

Les Windle
Manager – Governance

Item No: R1 Recommendation to Council

Subject: **Draft NSW Housing Code and Draft NSW Commercial Building Code - Exempt and Complying Development Codes**

Author: Jacquelyne Jeffery - Team Leader Strategic Planning
Chris Bluett - Manager Strategic Planning
Tim Tuxford - Acting Director Planning and Development
Patrick Robinson - Manager Development Control

File No:

Reason for Report: To inform Council of the Draft NSW Housing Code and Draft NSW Commercial Building Code.
To obtain Council's endorsement of a submission to the State Government on the draft codes.

Recommendation

- A. That Council endorse the submission to the Department of Planning on the Draft NSW Housing Code and Draft NSW Commercial Building Code as contained in annexure 1 of the report to the Urban Planning Committee meeting on 23 June 2008.
- B. That the Committee's recommendation proceed to the Council meeting on 23 June 2008 as a matter of urgency due to the requirement to lodge submissions by 4 July 2008.

Background

Exempt and complying development

Exempt and complying development was first introduced in NSW in July 1998 through amendments to Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act). Exempt development is development of a specified class or description that is of minimal environmental impact [section 76(2)]. Exempt development does not require consent. Complying development is development that meets specified predetermined development standards [section 76A(5)]. Consent for complying development is issued in the form of a complying development certificate by a council or an accredited certifier.

In April 2000 the Council adopted the Woollahra DCP for Exempt and Complying Development. This DCP allows specified types of exempt and complying development selectively across the Municipality. Certain development types are excluded from environmentally sensitive lands such as heritage items, heritage conservation areas and foreshore building line areas. Particular development types may occur on land comprising a heritage item or in heritage conservation areas, but only if they meet strict development criteria.

At the State level, *SEPP No.60 Exempt and Comply Development* was introduced in March 2000. The Policy does not apply to Woollahra and has limited application to metropolitan Sydney. The main application is to regional NSW.

Release of draft codes for exempt and complying development – first stage

On 8 May 2008 the NSW State Government released for public comment the first stage of its State-wide codes for exempt and complying development. Explanatory documents released at the same time state various reasons for the codes. These include:

- simplifying the assessment and approval process for development
- providing certainty for homeowners and neighbours, in relation to housing
- increasing the number of development proposals dealt with as complying development across the State from 11% to 50% within four years.

The codes are packaged into two categories: the Draft NSW Housing Code and the Draft NSW Commercial Building Code. In total, six draft codes have been released in the first phase:

Housing codes – complying development
Detached single storey dwelling houses on lots of 600m ²
Alterations and additions to single storey dwelling houses on lots of 600m ²
Internal alterations to detached two storey dwelling houses on lots of 600m ² or more
Housing code – exempt development
Exempt development – residential and rural zones

Note: The titles do not fully describe the nature of development in each code. For instance, the code for alterations and additions includes demolition of single storey dwellings, swimming pools, bed and breakfast accommodation and fences and retaining walls.

Commercial building code – complying development
Complying development – commercial premises, industrial uses, advertising structures
Commercial building code – exempt development
Exempt development – business and industrial zones

Public exhibition of the first stage releases concludes on 4 July 2008.

Current exclusions from codes

1.3.1 Complying development codes

The Draft Housing Code and Draft Commercial Building Code mention that complying development cannot be carried out on land in environmentally sensitive areas. There are two categories of environmentally sensitive areas. The first comprises coastal waters, coastal lakes, wetlands, aquatic reserves, littoral rainforests, state conservation areas, fauna, flora and geological preservation areas, and critical habitat areas. The second category comprises:

- a heritage item
- land within a heritage conservation area
- flame zones on bushfire prone land
- flood prone land
- land identified in an environmental planning instrument or development control plans as:
 - a buffer area
 - coastal erosion hazard
 - difficult site
 - ecological sensitive area
 - environmentally sensitive land
 - foreshore area
 - within a foreshore building line
 - foreshore scenic protection area

protected area
scenic area
scenic preservation area
scenic protection area
special area
subject to an acquisition clause.

Five of the exclusions listed in the second category occur in the Woollahra Municipality. They are: heritage items, land within a heritage conservation area, land within a foreshore building line area, land within a foreshore scenic protection area and land subject to an acquisition clause.

The harbour foreshore scenic protection area, which applies to a large part of the Municipality closest to the foreshore, is not specifically listed but it is logical, based on the nature of lands described, to argue its inclusion within the terms “scenic protection area” or “foreshore scenic protection area”. This opinion is also supported by the method of defining environmentally sensitive land within State environmental planning policies. In such cases it is sufficient for an LEP description to contain words which are cognate with the words used in the SEPP exclusions.

We have asked the Department of Planning to confirm our opinion. The Department has declined to do so, but did indicate that it has excluded foreshore lands due to the difficulty of producing complying development codes for land where view impacts occur. We understand that the Department may release for comment further draft codes relating to environmentally sensitive areas.

Based on the description and nature of excluded lands it is our opinion that the current release of draft complying development codes would not apply to the Municipality. This point is made in our submission. We also request specific recognition of the harbour foreshore scenic protection area as an environmentally sensitive area within the complying development codes.

1.3.2 Exempt development codes

Both Draft Codes state that exempt development cannot be carried out on certain environmentally sensitive land. These are generally the first category lands described in section 1.3.1, above. Additionally, certain types of exempt development do not apply to a heritage item or have restricted operation for a heritage item. Taking these two categories into account, the exempt development will apply to the majority of the Municipality, with minor exclusions for heritage items.

Release of further codes

The April 2008 Community Guide, published by the Department of Planning, lists 21 codes, six of which are currently on exhibition. No timetable has been given for the release of the remaining codes.

The Department’s April 2008 Community Guide provides the following table of proposed codes.

Proposed complying development codes – residential	
House type	Lot size
Single storey new house	>600m ²
Single storey house alterations and additions	>600m ²
Single storey new house	450-600m ²
Single storey house alterations and additions	450-600m ²
Single storey new house	200-450m ²
Single storey house alterations and additions	200-450m ²

Proposed complying development codes – residential	
House type	Lot size
Terrace house	200-450m ²
Terrace house alterations and additions	200-450m ²
Two storey new house	>600m ²
Two storey house internal alterations and additions	>600m ²
Two storey new house	450-600m ²
Two storey house alterations and additions	450-600m ²
Two storey new house	200-450m ²
Two storey house alterations and additions	200-450m ²
Duplex (two storey)	200-450m ²

Proposed complying development codes – commercial/industrial	
Land use	Type of development
Industrial	Change of use
	Internal alterations
	Small new buildings
Commercial/retail	Change of use
	Internal alterations
	Small new buildings

How the codes will come into effect

All codes for exempt and complying development will come into effect through the operation of proposed *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. The draft SEPP has not been released at this stage. Under sections 39(2) and (3) of the Act public exhibition of the draft SEPP is not mandatory, but may occur if the Minister for Planning is of the opinion that matters within the draft plan are of significance for environmental planning for the State.

We assume that the SEPP will include provisions enabling the codes to prevail over existing or future exempt and complying development provisions in other environmental planning instruments and development control plans. The Draft NSW Building Code mentions that:

Local variations may be made to the code standards by further amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Additional categories of exempt and complying development for particular local government areas may also be made by such an amendment or by amending the applicable local environmental planning instrument. (p.4. NSW Commercial Building Code, May 2008)

We assume that the exempt and complying provisions within LEPs or DCPs may continue where they are not inconsistent with the SEPP. Hence, a council may introduce additional types of exempt and complying development. This approach will be continued with new principal plans prepared under the Standard Instrument.

Submission on codes

A comparison of Woollahra's existing exempt development provisions against those in the Draft Codes is provided in **annexure 1**. An analysis of the two sets of provisions was used in preparing the submission, which is contained in **annexure 2**. As a matter of principle we do not support the State mandated exempt and complying codes. We consider that exempt and complying development has merit as a way of streamlining the planning assessment process, but only where adequate recognition is given to good environmental outcomes and where community input to the planning process is not disadvantaged. In particular, aspects of the draft complying development codes are contrary to a primary object of the Act which is "to provide increased opportunity for public involvement and participation in environmental planning and assessment".

The key points of the submission are summarised below.

Complying development

1. A strong opposition, as a matter of principle, to the concept of the complying development codes as proposed in chapters 2, 3, 4 and 6 of the Draft NSW Housing Code due to:
 - the lack of recognition given to local conditions and character,
 - mandating a standard future built character without proper investigations and observation of local context,
 - potential long term impact to the built and natural environment with:
 - loss of important local character features
 - impact on residential amenity
 - impact on stormwater drainage capacity for sites
 - loss of site area for vegetation, particularly deep soil planting for larger shrubs and trees.
 - inconsistency with objective 5(c) of the Act which seeks to provide increased opportunity for public involvement and participation in environmental planning and assessment.
2. Recognition that the Municipality is excluded from the operation of the complying development codes as it is totally covered by environmentally sensitive areas. On this point it will be argued that the harbour foreshore scenic protection area is one of the environmentally sensitive areas.
3. The Council reserves its right to make further submissions on the release of draft complying codes that may apply to the Municipality.

Exempt development

A strong opposition, as matter of principle, to the exempt development provisions in the form they are proposed in the codes due to:

- unsuitable types of development identified as exempt development,
- inadequate consideration of environmentally sensitive areas, particularly heritage conservation areas and foreshore building line areas,
- lack of recognition given to the cumulative impact of exempt development on a site and the consequent inconsistency with the definition of exempt development as being development of minimal environmental impact,
- inconsistency with sustainability objectives and the consequent inconsistency with the definition of exempt development as being development of minimal environmental impact.

Conclusion

The Draft Codes contain exempt and complying development provisions that, in our opinion, have potential for negative environmental impact at local and broader levels. Whilst the complying development codes do not apply to the Woollahra Municipality at this stage, it is expected that further releases will be prepared for certain environmentally sensitive areas such as heritage conservation areas and the foreshore and harbour foreshore scenic protection areas. The detail of those codes is not known, but based on the nature of the exhibited Draft Complying Development Codes, concern about the impact on those sensitive areas is justified.

Expansion of the exempt and complying development categories will erode community input to the planning process, particularly in the case of development proposals. We see this to be a major inconsistency with a key object of the Act which seeks to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Chris Bluett
Manager Strategic Planning

Tim Tuxford
Acting Director Planning and Development

Jacquelyne Jeffery
Team Leader Strategic Planning

Patrick Robinson
Manager Development Control

Annexures

Comparison of Woollahra's exempt development provisions and exempt provisions in the Draft Codes – CIRCULATED SEPARATELY

Submission on Draft NSW Housing Code and Draft NSW Commercial Building Code.

Item No: R2 Recommendation to Council
Subject: 4 VICTORIAT STREET, WATSONS BAY
Author: Susan O'Neill - Strategic Heritage Officer
File No: 1080 [G] WB
Reason for Report: To report to the Council on correspondence sent to the owner of 4 Victoria St, Watsons Bay, following Council's resolution that it intends to list 4 Victoria St, Watsons Bay as an item.

Recommendation:

THAT a draft local environment plan be prepared to amend Woollahra Local Environmental Plan 1995, by including 4 Victoria St, Watsons Bay as a heritage item in Schedule 3.

1. Background

No. 4 Victoria Street, Watsons Bay is currently identified as a *contributory* item within the Camp Cove Village Precinct in the Watsons Bay Heritage Conservation Area.

In October 2006 a report was considered by the Urban Planning Committee on the findings of the heritage assessments of a number of properties identified as potential heritage items within the Watsons Bay Heritage Conservation Area. On 23 October 2006, Council decided that 4 Victoria Street be deferred from consideration for listing as a heritage item or confirmation as a contributory item in the Watsons Bay Heritage Conservation Area Development Control Plan, as the case may be, so as to allow for further discussions with Council's Heritage staff and submissions from the owners of the property.

A letter was sent by Council to the owners of 4 Victoria St, Watsons Bay requesting an inspection of the property on behalf of the members of the Urban Planning Committee and informing the owners that they would be given two weeks notice of the Committee's meeting date when the Committee would consider the heritage significance of their property. No response was made by the owners of 4 Victoria Street. The property was viewed from the street by members of the Urban Planning Committee at 5pm on 14 April 2008. Following the inspection, the Committee considered a report on the proposed listing (**annexure 1**).

At its meeting on Monday 28 April 2008, Council resolved:

- D. THAT, in principle, Council intends to list 4 Victoria St, Watsons Bay as a heritage item in the Watsons Bay Heritage Conservation Area Development Control Plan subject to hearing submissions from the owner of the property and other interested parties.

2. Consultation

The owners were advised of Council's decision of 28 April 2008, by letter, dated 22 May 2008 (**annexure 2**). The letter advised the owners that the Urban Planning Committee will consider a submission or presentation by them or by a consultant on their behalf, on Monday 23 June 2008 and that a written submission should be received by Council one week prior to the Urban Planning Committee meeting.

3. Conclusion

Council has not received a written submission from the owners of 4 Victoria Street, Watsons Bay. If it is the Council's intention to list the property as a heritage item, a suitable recommendation has been provided.

Susan O'Neill
Strategic Heritage Officer

Chris Bluett
Manager, Strategic Planning

ANNEXURES:

1. Urban Planning Committee Report '4 Victoria St and 18 Cliff St, Watsons Bay' 14 April 2008
2. Letter sent to Mr & Mrs Bayliss, owners of 4 Victoria Street, Watsons Bay regarding Council's decision to list their property as a heritage item and advising them that they may make a presentation to the Urban Planning Committee at their meeting on Monday 23 June 2008.