



Urban Planning Committee

Agenda: *Urban Planning Committee*

Date: *Monday, 22 March 2004*

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:

6 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

18 March 2004

To: The Mayor, Councillor John Comino, ex-officio
Councillor L Berger (Chair)
V Corrigan
S Crawford
C Dawson
M Watts
C Wrublewski

Dear Councillors

Urban Planning Committee Meeting – 22 March 2004

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Monday 22 March 2004 at 6.00pm.**

Gary James
General Manager

Meeting Agenda

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

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 8 March 2004	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Draft Woollahra Telecommunications and Radiocommunications DCP – 894.G (DCP)	2
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Item No: D1 Delegated to Committee
Subject: **CONFIRMATION OF MINUTES OF MEETING HELD ON 8 MARCH 2004**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 8 March 2004 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Urban Planning Committee Meeting of 8 March 2004 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council
Subject: **DRAFT WOOLLAHRA TELECOMMUNICATIONS AND RADIOCOMMUNICATIONS DCP**
Author: George Losonci - Senior Strategic Planner
File No: 894.G (DCP)
Reason for Report: 1. To report on the public exhibition of Draft Woollahra Telecommunications and Radiocommunications Development Control Plan.
2. To make recommendations on future actions for the draft DCP.

Recommendation

THAT Draft Woollahra Telecommunications and Radiocommunications Development Control Plan, as contained in **annexure 3** of the report to the Urban Planning Committee meeting on 8 March 2004, be approved and come into effect when a public notice of Council's approval is placed in the newspaper.

1 BACKGROUND

At the Urban Planning Committee meeting held on 23 June 2003, a report was considered regarding the launch of a model DCP for the installation of mobile phone towers and base stations and the preparation and exhibition of a Woollahra Telecommunications and Radiocommunications DCP.

Following the report to the Urban Planning Committee meeting, Council at its meeting on 14 July 2003, resolved the following:

1. *THAT the provisions of the model Telecommunications and Radiocommunications DCP (model DCP) be endorsed by Council.*
2. *THAT a Draft Woollahra Telecommunications and Radiocommunications DCP be prepared based on the model DCP and be placed on exhibition in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.*
3. *THAT following the exhibition of the Draft Woollahra Telecommunications and Radiocommunications DCP, a further report be presented to the Urban Planning Committee.*
4. *That Council maintains its representation on the Telecommunications Working Party and liaise with EMRAA, MCR, ACIF and like organisations.*

2 PUBLIC EXHIBITION PROCESS

In response to part 2 of the above resolution, the *Draft Woollahra Telecommunications and Radiocommunications DCP* was prepared based on the model DCP and was placed on public exhibition in the manner required by the provisions of the *Environmental Planning and Assessment Regulation 2000*. The exhibition occurred for a period of 30 days from Wednesday 28 January 2004 till Friday 27 February 2004. Public notices of the exhibition were placed in the *Wentworth Courier* on the 28 January, 4 February, 11 February, 18 February and 25 February, 2004 in the manner required by the Regulation.

A copy of the exhibited version of the draft DCP is contained in **annexure 1**. The draft plan was exhibited in the Council's Customer Service area. Copies of the draft DCP were made available free of charge.

3 SUMMARY OF SUBMISSIONS AND ALTERATIONS TO THE DRAFT PLAN

During the exhibition of the draft DCP, one submission was received on behalf of the Vaucluse Progress Association (VPA) (annexure 2). The issues raised by the VPA and a response to those issues is provided below.

Copies of additional correspondence submitted with the VPA submission included previous submissions dated 20 June 2003, 23 March 2003, 7 March 2003 (2 letters) and 17 February 2003. The issues raised in the VPA's previous correspondence have been addressed in other reports to Council and are briefly summarised below.

3.1 VPA submission dated 1 February 2004 (written in response to the exhibition of the draft DCP)

Issue

Specific clarification of the status of the various heritage conservation areas (HCAs) defined in Woollahra LEP 1995 and the applicability of the *Telecommunications (Low-Impact Facilities) Determination 1997* (LIF Determination) needs to be included in the DCP.

Response

The LIF Determination establishes that low-impact facilities may be built in any area without development approval except for areas of environmental significance. An 'area of environmental significance' is defined in subsection 2.5 (7) of the LIF Determination as:

An area... if, under a law of the Commonwealth, a State or a Territory, it consists of a place, building or thing that is entered in a register relating to heritage conservation.

The LIF Determination Explanatory Statement issued by authority of the Minister for Communications and the Art clarifies the intent of this subsection with the following statement:

The reference to an area registered under a law relating to heritage conservation in the current Determination has been interpreted in its broadest sense to mean all areas of heritage conservation value. It is in the intention of the Determination to exempt places, building or things entered on a heritage register under Commonwealth, State or Territory laws (which includes interim registers and planning schemes subordinate to those laws) from installation of low-impact facilities. This amendment clarifies this intent through specification of the meaning of the word 'register'.

An alternative view on the interpretation of the LIF Determination has been put forward by WHP Planning on behalf of their client Hutchison Telecoms when Council raised the issue of low-impact facilities being constructed within the Paddington Heritage Conservation Area. The response from WHP Planning on 16 August 2001 stated:

It is noted in the letter of 31.7.01 that Council expressed the view that the installation of facilities on this building would require a development application. Your view that the facilities are not 'low-impact' under the terms of the Federal Minister's Determination is refuted. The location of the site within a HCA shown 'edged in blue' on a heritage conservation map appended to the Woollahra LEP 1995 does not meet the requirements set out in the Telecommunication (LIF) Determination 1997. Specifically, Part 2, cl2.5(7) of the Determination states that,

*An area is an area of environmental significance if, under a law of the Commonwealth, a State or Territory, it consists of a place, building or thing that is **entered in a register** relating to heritage conservation..."*

*The critical trigger is the entering of the area in a **statutory register** relating to heritage conservation. The State Heritage Register, covered under s.130 of the NSW Heritage Act, or possibly also items on the State Heritage Inventory held by the NSW Heritage Office, could be assumed to qualify for classification as an area of environmental significance in the terms set out above.*

The HCA appears not to be on either of these registers, nor is it listed in schedule 3 of the Woollahra LEP 1995. Accordingly, it is maintained that it does not qualify as an area of environmental significance under the Commonwealth Telecommunications Act 1997 and Telecommunications (LIF) Determination 1997.

Despite the view put forward by WHP Planning, the Explanatory Statement issued by the Minister above clarifies the intent of subclause 2.5 (7) of the LIF Determination and confirms that low-impact facilities within Woollahra's heritage conservation areas (HCAs) require development consent.

To clarify the interpretation of this subsection it is proposed to amend Part 1.4 of the draft DCP by including the following statement:

Under the provisions of the LIF Determination, consent from Council is required for all low-impact facilities within heritage conservation areas.

The amended version of the proposed DCP is shown in **annexure 3**.

Issue

The DCP should state Council's attitude towards the placement of facilities in public open space, and associated requirements for, and expectations of, public benefits in return for the ongoing use of the public estate for private commercial purposes.

Response

The VPA submission discusses the recent construction of low impact facilities at Johnsons Lookout and at Robertson Park. In those instances Council received a financial benefit from Optus for the location of its facility at Robertson Park. Council, however, did not accept an offer from Hutchison Telecommunications (Orange) for improvements to the reserve as part of a similar structure at Johnsons Lookout.

In the Robertson Park case, negotiations were undertaken between Council's Manager of Public Open Space and the carrier, resulting in a contribution being accepted by Council towards tree planting in the park. The VPA was kept informed of these negotiations between Council and Optus.

In the Johnsons Lookout case, the carrier offered to extend the existing stairs between the equipment shelter in the reserve and the footpath along New South Head Road. The extension of the existing stairs was not considered to be an acceptable 'public benefit'. Amongst other reasons, it was considered that Council would not benefit from the future maintenance of the stairs. It would not be appropriate for the DCP to state Council's expectations for suitable public benefits in the event of facilities being proposed in areas owned or in the control of Council. It is considered preferable to negotiate a public benefit as public land owner/manager on a case by case basis, thereby taking into account the type of facility, impact on the public place, and immediate or future public needs.

Issue

The DCP should state the terms under which Council might expect to grant landowner's consent to the lodgement of a development application for facilities to be constructed on land that is owned by Council.

Response

Landowner's consent for the lodgement of a development application is a separate issue from Council's roles in establishing development controls and in assessing and determining development applications. The purpose of the DCP is to establish Council's requirements with regard to the construction of telecommunication facilities and to ensure compliance with those requirements, irrespective of land ownership issues.

Issue

Low-use open space should not be one of the preferred land uses for the location of telecommunication facilities.

Response

Part 4.3 of the draft DCP states that applicants should adopt the precautionary approach set out in the Australian Communication Industry Forum (ACIF) Code when deciding upon a suitable location for telecommunications facilities. Preferred land use locations identified in the draft DCP include industrial areas, rural areas, low-use open space and commercial centres.

Woollahra Council contains no industrial or rural zones, and therefore reference to these two land uses have been deleted from the draft DCP (**annexure 3**).

The draft DCP deals with issues regarding the construction of facilities in less desirable locations by providing controls for siting and design. The list of desirable locations is provided as an advisory note, rather than a requirement to the carriers. The location impacts of any future proposed facilities will be assessed on a case by case basis, depending on the site's context and proximity to residential areas.

Issue

That the full text of the draft DCP be reviewed in an editorial sense before finalisation. Objectives of the draft DCP stated in section 1.5.1 should be re-written in the following manner:

- to minimise public exposure to EMR,
- to avoid the placement of facilities in community sensitive locations.

Response

A full review of the draft DCP has been undertaken and alterations have been made (**annexure 3**). The changes to section 1.5.1 suggested by the VPA have been included in the final version of the draft DCP.

3.2 VPA submission dated 20 June 2003 (written in response to UPC meeting on 23 June 2003)

Issue

Clarification on whether HCAs defined in Woollahra LEP 1995 and the applicability of the LIF Determination need to be included in the DCP.

Response

These issues have been addressed in section 3.1 of this report and the draft DCP has been altered accordingly.

3.3 VPA submission dated 23 March 2003 (written in response to UPC meeting on 24 March 2003)

Issue

Clarification that the VPA did not accept the current form of the model DCP and that a schedule of changes to the Woollahra version of the DCP as proposed by the VPA were not accepted by the working party meeting held in February 2003.

Response

The VPA's dissatisfaction with the model DCP was noted during its preparation. The issues raised by the VPA prior to the working party meeting on 27 February 2003 were discussed at that meeting and amendments to the then model DCP were made at that time.

3.4 VPA submission dated 7 March 2003 (written in response to the proposed location of a LIF at Clovelly Street, Watsons Bay)

Issue

That the construction of a mobile phone facility in Clovelly Street, Watsons Bay should have required development consent due to its location within the Watsons Bay HCA.

Response

This matter was dealt with prior to the preparation and exhibition of the draft *Woollahra Telecommunications DCP*. The draft DCP does not contain reference to previous telecommunication proposal, the means by which they were allowed, or the circumstances under which they were erected. Therefore, this aspect of the submission does not relate to the content of the draft DCP.

3.5 VPA submission dated 7 March 2003 (written to Connell Wagner regarding the proposed location of a LIF at Clovelly Street, Watsons Bay)

Issue

The VPA made a detailed submission to Connell Wagner in response to the proposed facility at Clovelly Road, Watsons Bay, a copy of which is provided to Council (**annexure 2**).

This submission by the VPA questioned whether such a facility can be constructed in a HCA without the necessity of a development application.

Response

This is a matter raised by the VPA with Connell Wagner regarding a separate proposal.

3.6 VPA submission dated 17 February 2003 (written to raise specific issues at the proposed working party meeting on 27 February 2003)

Generally, the issues raised in this submission were addressed in the working party meeting prior to the finalisation of the draft DCP. The minutes of the working party meeting were presented to an Urban Planning Committee meeting held on 24 March 2003. The Committee's recommendation to receive and note the minutes was adopted by the Council at its meeting on 7 April 2003.

Although some of the issues raised at that meeting were unable to be dealt with in the model DCP, the Woollahra specific draft DCP has been altered to reflect the issues raised including:

- a detailed re-editing the entire draft DCP.
- a revision of the objectives of the draft DCP.
- adopting the provisions of the ACIF code and making proper reference to it.
- redrafting reference to 'carriers' rather than 'applicant'.
- rationalisation of preferred land uses specific to Woollahra.

4 AMENDMENTS TO THE DRAFT DCP

Following the exhibition of the draft DCP, and in consideration of the submission's received, a number of amendments to the draft DCP are recommended. A marked up version of the draft DCP with amendments is attached (annexure 3). A brief description of the main amendments to the draft DCP is also described below.

- **1.1 Background** – remove unnecessary background information from the introduction and references to the Model DCP that is not required. Repetitive information that is mentioned in the body of the draft DCP is also removed.

- **1.3 Land to which this DCP applies and 1.4 Development and applications to which this plan applies** – has been combined under one heading titled “Land and development to which this DCP applies”.
- **1.5 Objectives of this DCP** – minor amendments to the objectives provide greater clarification and easier implementation (see part 1.4 of annexure 3).
- **1.6 Relationship with other documents** – minor amendments for purposes of clarification (see part 1.5 of annexure 3).
- **2. Lodging a development application** – this section has been removed from the draft DCP and will be transferred to Council’s development application guide (see part 1.7 of annexure 3).
- **3. Making an Application** – this section has been removed from the draft DCP and will be transferred to Council’s development application guide.
- **4. Design controls** – minor amendment to ‘4.4 Heritage and environment’ requiring submission of a development application in heritage conservation areas. Other minor typographical amendments for clarification purposes (see part 2.4 of annexure 3).
- **5. Definitions** – deletion of definition of ‘co-located facilities’ and ‘co-siting’ as they are not used in the draft DCP (see part 3 of annexure 3).
- **Appendix 1 ‘Low-impact determination’** – deleted. There is no need to have this piece of legislation form part of the draft DCP. Useful contact details are provided at the end of the draft DCP and a note is provided within the draft DCP stating the web address where a copy of the *LIF Determination* may be available from.
- **Appendix 2 ACIF Industry code for the deployment of radiocommunications infrastructure** – deleted. There is no need to have this code form part of the draft DCP. Useful contact details are provided at the end of the draft DCP that include the Australian Communications Industry Forum.
- **Appendix 3 Compliance checklist** – deleted from draft DCP. The checklist will form part of a report template to assist the assessment officers when determining such applications.

5 CONCLUSION

The controls in the draft DCP relating to low-impact telecommunication facilities are not mandatory. However, due to the level of participatory consultations between all parties, it is envisaged that the carriers will comply with these requirements provided they are consistently applied by a large number of participating councils.

Extensive consultation with representatives from various local councils and telecommunication companies was undertaken in the development of the model DCP. The Woollahra Working Party has also provided local input in to the project.

The draft DCP is consistent with the content of the model DCP but has been altered to conform to the standard Woollahra layout for such documents.

Preparation of the draft DCP has been undertaken in the manner required by the Regulation. Consideration has been given to submissions and a range of alterations is recommended to the draft DCP.

It is recommended that the alterations referred to in the body of this report and identified in **annexure 3** be incorporated into the draft DCP. The alterations respond to submissions and correct minor anomalies in the draft DCP and are not considered to be of such magnitude that would warrant its re-exhibition.

It is recommended that the Council approve the draft DCP as altered.

ALLAN COKER
DIRECTOR PLANNING AND DEVELOPMENT

GEORGE LOSONCI
SENIOR STRATEGIC PLANNER

ANITA LAKELAND
TEAM LEADER STRATEGIC PLANNING

Annexures:

1. Draft Woollahra Telecommunication and Radiocommunications DCP – as exhibited.
2. Submission from Vaocluse Progress Association dated 1 February 2004 (with attachments).
3. Draft Woollahra Telecommunication and Radiocommunications DCP – with alterations.