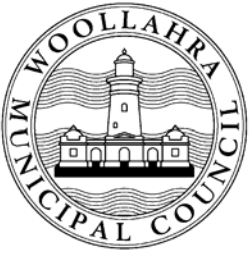


Urban Planning Committee



Agenda: *Urban Planning Committee*

Date: *Monday 16 May 2011*

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).

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.

Delegated Authority (“D” Items)

- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of the Minutes of its Meetings.
- 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 above.
- Statutory reviews of Council's Delivery Program and Operational Plan.

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

12 May 2011

To: Her Worship The Mayor, Councillor Isabelle Shapiro ex-officio
Councillors Chris Howe (Chair)
Lucienne Edelman (Deputy)
Nicola Grieve
Ian Plater
David Shoebridge
Malcolm Young
Toni Zeltzer

Dear Councillors

Urban Planning Committee Meeting – 16 May 2011

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 **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 16 May 2011 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 2 May 2011	1
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Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	Draft Woollahra LEP 1995 (Amendment No. 66) – Heritage Items – 1064.G (Am 66)	2
	*Annexures 1-15 Distributed Separately	
R2	Assessment of the Current controls Applying to the Residential 2(a) Zone & Residential 2 (B) Zone Interface – 900.G	22

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 2 May 2011**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 2 May 2011 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 2 May 2011 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: R1 Recommendation to Council

Subject: **Draft Woollahra LEP 1995 (Amendment No.66) - Heritage Items**

Author: Chris Bluett - Manager Strategic Planning

File No: 1064.G (Am 66)

Reason for Report: To present the assessment of submissions received during public exhibition of the Draft LEP.
To make recommendations on amendments to the planning proposal (Draft LEP)
To obtain Council's decision to proceed with the Draft LEP process.

Recommendation:

- A. That the Planning Proposal for heritage items in Darling Point, Edgecliff, Paddington, Point Piper, Vacluse, Watsons Bay and Woollahra be varied by:
- (i) deleting reference within the listing of No.12 Albert Street, Woollahra, to the group item with No.14 Albert Street, Woollahra,
 - (ii) deleting reference within the listing of No.14 Albert Street, Woollahra, to the group item with No.12 Albert Street, Woollahra,
 - (iii) deleting reference within the listing of No.19 Jersey Road, Woollahra, to the group item with Nos.17, 21 and 23 Jersey Road, Woollahra,
 - (iv) deleting reference within the listing of No.21 Jersey Road, Woollahra. to the group item with 17, 19 and 23 Jersey Road, Woollahra,
 - (v) deleting No.8 Victoria Street, Watsons Bay from the list of heritage items.
- B. That the Planning Proposal for heritage items in Darling Point, Edgecliff, Paddington, Point Piper, Vacluse, Watsons Bay and Woollahra, contained in **annexure 14** of the report to the Urban Planning Committee meeting on 16 May 2011, as varied by A, above, be referred to the Department of Planning and Infrastructure.
- C. That the heritage inventory sheets contained in **annexure 2**, as amended by the sheets in **annexures 11, 12 and 13**, all of which are contained in the report to the Urban Planning Committee meeting on 16 May 2011, be adopted and used in the assessment of development applications for the subject properties.

1. Background

Draft Woollahra LEP 1995 (Amendment No.66) (the Draft LEP) is the culmination of lengthy and detailed studies of potential heritage items located across the Municipality. These studies form part of the Council's ongoing program of heritage investigations which were commenced in the early 1980s with the Woollahra Heritage Study. The studies were:

1. Review of potential heritage items for the Watsons Bay Heritage Conservation Area. This project was a further stage to the preparation of a DCP for the Watsons Bay Heritage Conservation Area. The study was carried out by Noel Bell Ridley Smith + Partners.
2. Review of potential heritage items for the Woollahra Heritage Conservation Area. This project was a further stage to the preparation of a DCP for the Woollahra Heritage Conservation Area. The study was carried out by Graham Brooks and Associates.

3. Contemporary Heritage Items in Woollahra. This project generally spans the period 1950-c.1980 and seeks to address, in part, an imbalance in the representation of properties listed as items in Woollahra LEP 1995. Currently, a large proportion of properties listed as items were constructed in the nineteenth century and inter-war period. The study was carried out by Clive Lucas, Stapleton and Partners Pty Ltd.

Each study resulted in the production of heritage inventory sheets for the proposed items. The Contemporary Heritage Item project provides the majority of proposed items within the Draft LEP. The consultants for that project also provided a report¹ which included notes on their interviews with the item's architect, where possible, and a short biography of each architect.

In the course of investigating the potential items, consultation was carried out with property owners. Each owner was provided with a copy of a draft heritage inventory sheet and invited to make a written submission.

A series of reports setting out the findings of each study and submission from property owners was presented to the Council's Urban Planning Committee. Many property owners and their representatives addressed the Committee when their items were being considered.

Following consideration of each study by the Urban Planning Committee, the Council resolved to prepare a draft LEP to list nominated properties as heritage items in Woollahra LEP 1995. On 8 August 2005 the Council also resolved to prepare a draft LEP to list two properties in Jersey Road as individual items and four properties in Jersey Road as a heritage item group. Three detailed reports assessing the cultural heritage significance of these properties were prepared by a consultant to assist the Council in its considerations.

A single draft LEP consolidating the decisions was prepared and placed on public exhibition. The list of proposed items is contained in the table below.

Street address		Description of item
Albert St, Edgecliff	12	St Joseph's Church – church and grounds – Albert St heritage item group (see also 14 Albert St, Edgecliff)
Albert St, Edgecliff	14	St Joseph's Friary – building and grounds – Albert St heritage item group (see also 12 Albert St, Edgecliff)
Cliff St, Watsons Bay, within road reservation		Cobbled sandstone road archaeology
Cooper St, Paddington	8a	House and grounds
Dunara Gardens, Point Piper	4	House and grounds
Edgecliff Rd, Woollahra	70-78	Reddam College and grounds (former Holy Cross School)
Edgecliff Rd, Woollahra	219	Seventh Day Adventist Church – church and grounds
Edgecliff Rd, Woollahra	313a	Gainsborough – residential flat building and grounds
Fitzwilliam Rd, Vacluse	32B	Wentworth Memorial Church – church and grounds
Fullerton St, Woollahra	16	Fearnan – house and grounds
Hampden Ave, Darling Point	10	House and grounds
Hargrave St, Paddington	88	House and grounds
Jersey Rd, Woollahra	19	Selby House - house, stables and grounds – Jersey Rd heritage item group (see also 17, 21 and 23 Jersey Rd, Woollahra)
Jersey Rd, Woollahra	21	Orama - house, stables and grounds – Jersey Rd heritage item group (see also 17, 19 and 23 Jersey Rd, Woollahra)
Kilminster Ln, Woollahra	5	House and grounds
Marine Pde, Watsons Bay	8	Tea Gardens - kiosk and grounds

¹ Clive Lucas, Stapleton and Partners Pty Ltd, 2005, *Woollahra Contemporary Buildings Heritage Study: background information to the study*

Street address		Description of item
Milton Ave, Woollahra	20	House and grounds
Ocean St, Woollahra	7	Temple Emanuel – synagogue complex of buildings and grounds
Ocean St, Woollahra	90	Building – former council chambers
Pacific St, Watsons Bay	10-12	Caldale - house and grounds
Pacific St, Watsons Bay	14	Boongaree – house and grounds
Robertson Pl, Watsons Bay	15	Warrawee – semi-detached house and grounds – Robertson Pl heritage item group (see also 17 Robertson Pl, Watsons Bay)
Robertson Pl, Watsons Bay	17	Thalassa – semi-detached house and grounds – Robertson Pl heritage item group (see also 15 Robertson Pl, Watsons Bay)
Salisbury St, Watsons Bay	8	Kerrisford – building, palisade fences and grounds
Sutherland St, Paddington	88	House and grounds
Victoria St, Watsons Bay	8	House and grounds
Wallis St, Woollahra	10	House and grounds
Wallis St, Woollahra	84	Tralawera – semi-detached house and grounds – Wallis St heritage item group (see also 86 Wallis St, Woollahra)
Wallis St, Woollahra	86	Dela Kaba – semi-detached house and grounds – Wallis St heritage item group (see also 84 Wallis St, Woollahra)
Windsor St, Paddington	159	House and grounds

2. Preparation of Draft LEP

The Draft LEP was prepared in the manner required by the *Environmental Planning and Assessment Act 1979* (the Act) and the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

Consultation under section 62 of the Act was carried out with:

- the Heritage Branch NSW Department of Planning – for the purpose of obtaining comments on all proposed heritage items and group heritage items
- Waverley Council – for the purpose of obtaining comments on those items on land adjoining the Waverley LGA
- Randwick Council- for the purpose of obtaining comments on those items on land adjoining the Randwick LGA.

The Heritage Branch limited its comments to the manner in which the items should be listed in the Draft LEP. It did not oppose the listing of any items. Randwick Council raised no objection to the proposed listing of the items and offered support to the conservation of “important items of built and environmental heritage, particularly in respect of items from the late 20th century.” No comments were received from Waverley Council.

A certificate under section 65(1) of the Act was issued under delegated authority by the Council’s Director of Planning and Development on 23 October 2009.

3. Public exhibition

Public exhibition was initially proposed for the period 30 October 2009 to 18 December 2009. However, due to a publication error by the Wentworth Courier, the process was restarted on 9 December 2009. The exhibition concluded on 19 February 2010.

Notice of the exhibition was placed in the Wentworth Courier editions of 9 December and 16 December 2009 and 13 January, 20 January, 27 January, 3 February, 10 February and 17 February 2010. Notification letters were sent to the Heritage Branch, Waverley and Randwick Councils, the owners of proposed items and the owners of land adjoining and in the vicinity of the items.

The owners of proposed items were sent a copy of the heritage inventory sheets for their properties. An information brochure was included with the notification letters sent to the owners of proposed items and adjoining and surrounding land owners.

Exhibition of the Draft LEP was conducted in the Council's Customer Services foyer. The Draft LEP and supporting material were also placed on the Council's website.

A copy of the exhibited Draft LEP is contained in **annexure 1**. The heritage inventory sheets for each item, which formed part of the exhibition material, are contained in **annexure 2**.

4. Submissions

Eight submissions have been received (**annexure 3**). The submissions fall within five categories.

(i) General support for the listing properties

- 70-78 Edgecliff Road, Woollahra - Reddam College and grounds (formerly Holy Cross College) – submission by neighbouring resident
- All items – Randwick Council

(ii) General support for listing property subject to changes

- Support for all items. Requested minor change to inventory sheet for Cliff Street item – submission by Woollahra History and Heritage Society
- 32B Fitzwilliam Road, Vaucluse – Wentworth Memorial Church and grounds. Requested change to curtilage of item – submission by consultant for owners

(iii) Concern about impact of listing property

- 8 Salisbury Street, Watsons Bay – *Kerrisford* building, palisade fences and grounds

(iv) Opposition to listing properties

- 8 Victoria Street, Watsons Bay – house and grounds - submission by owners of property
- 4 Dunara Gardens, Point Piper – house and grounds – submission by neighbouring resident

(v) Issues regarding accuracy of an inventory sheet

- 7 Ocean Street, Woollahra - *Temple Emanuel* – synagogue complex of buildings and grounds. Requested change to inventory sheet – submission by consultant for owner

A response to each submission is provided in **annexure 4**. In addition to those responses, further comments for the proposed items at 8 Victoria Street, Watsons Bay, 32B Fitzwilliam Road, Vaucluse, and 7 Ocean Street, Woollahra, are provided in sections 4.1, 4.2 and 4.3 below.

4.1 No.8 Victoria Street, Watsons Bay

4.1.1 Background

No.8 Victoria Street, Watsons Bay, was constructed in 1973 and forms part of the Contemporary Heritage Item project. The exhibited heritage inventory sheet for the item is provided in **annexure 2**. The level of heritage significance is identified as being moderate at the local level.

4.1.2 Submission

The submission has been made by the owners of the property who are also the building's architects (**annexure 3**). The owners disagree with the proposed listing as a heritage item. They consider support could be given to listing the building as a contributory item in the future if late twentieth century architecture became of heritage value in the Watson's Bay Heritage Conservation Area. They submit it is premature to confirm heritage listing.

The owners disagree with numerous statements and conclusions within the heritage inventory sheets about the building's heritage assessment and its statement of heritage significance. Their comments are supported by a detailed submission. A response to points raised in the submission is provided in **annexure 4**.

4.1.3 Consideration of submission

A number of points may be observed from the submission.

- There is a very measured and fair critique of the consultant's assessment of aesthetic significance and in particular the influences on the building's design.
- There are valid questions about the building's representative value as a good example of late twentieth century modern architecture and as a good example of architects' work
- Comments by the owners in their submission are markedly different to their statements provided in the inventory sheet. Notably, the submission tends to downplay the building's qualities. In part, this appears to be a response to elements of the assessment contained in inventory sheet. However, there is also an underlying concern of the owners that a listing would inhibit freedom to modify the house. Such comments are commonly found within submissions to proposed heritage item listings.
- The owners are highly critical of the building's external appearance and therefore question the degree of aesthetic significance attributed to the building.
- Certain comments in the submission do not have a bearing on establishing significance of the building. For instance, the building's consistency with the context of Watsons Bay is not relevant to determining its level of significance for the purpose of listing as a heritage item.

The owners, as architects and designers of the house, are well qualified in making constructive comments about the proposed listing. The strength of their submission lies in the comments about the aesthetic and representative value of the building. In particular, the owners are critical of the mix of architectural styles attributed to the building's design and appearance. This raises questions about the selection of the building as a good example of late twentieth century modern style architecture which is worthy of listing as a heritage item.

No issues arise about the architectural status of the architects. However, there is a question about whether the building is a good representative example of their work. In this regard, the heritage inventory sheet briefly states "The building is a good example of the architecture of Colin Still." Unfortunately, no comparative analysis of the architects' works, particularly residential works, appears to have been documented. Such analysis is commonly used in the heritage assessment process.

In view of the competing opinions about the building's significance, we commissioned Louise Thom to carry out a review of the submission (**annexure 5**). As part of her review Ms Thom inspected the building and spoke to the owners. Ms Thom's conclusion and recommendation were:

Conclusion

The submission made by Colin and Irene Still provides information which brings into question the proposed listing. It raises pertinent heritage issues which potentially undermine some of the heritage values assigned to the property. These questions are:

1. Is the building a good example of late twentieth century modern architecture in the Woollahra Municipality?
2. Is the building listable if only its interior is of merit?
3. Is the building a good example of Colin Still's architecture and is it representative of his architectural career.

Recommendation

Do not proceed with listing the property as a heritage item until the above questions have been satisfactorily answered and the significance of the property has been adequately proven through a more informed comparative process.

As a further part of the review process we examined two documents produced by the consultants who carried out the Contemporary Heritage Item project in order to revisit the methodology used in the study. These two documents were:

- Clive Lucas, Stapleton and Partners Pty Ltd, 2005, *Woollahra Contemporary Buildings Heritage Study: background information to the study*
- Quinlisk, M, 2009, *Heritage and Contemporary Architecture: engaging with the architects as part of local heritage listing*²

Both documents provide information about the study and allow an understanding of the how investigations were carried out. For instance Quinlisk mentions:

The importance of each architect whose work was included in the study was also carefully considered, in terms of his body of work, its influence on other Australian architects, and whether his body of work was widely recognised (on a state, national or international level).³

The background report provided very little additional information to that contained in the heritage inventory sheets. It did not assist with details on other works undertaken by Colin Still and how the house at No.8 Victoria Street compares with those works in terms of architectural importance. Whilst the background report and the heritage inventory sheets mention a house in Queen Street, Woollahra, which also won a RAIA Merit Award, no comparative analysis was provided.

² Meg Quinlisk was part of the team from Clive Lucas, Stapleton and Partners Pty Ltd.

³ Quinlisk, M, 2009, *Heritage and Contemporary Architecture: engaging with the architects as part of local heritage listing*, p.2

4.1.4 Conclusion

After carefully examining the submission, the inventory sheets and the consultant's reports, we consider there is insufficient justification to list the building. As part of this conclusion we particularly note the conflicting views expressed by the consultants and the owners about the aesthetic and representative significance of the building. This is a relevant point because the proposed listing identifies the building as having only moderate local significance. We consider the comments provided by the owners and conclusions they reach are well-founded and consequently we do not recommend listing the building.

4.1.5 Recommendation

Delete the heritage item from the schedule in the Draft LEP.

32B Fitzwilliam Road, Vacluse

4.2.1 Background

No.32B Fitzwilliam Road, Vacluse, comprises all land in Lot 1 Deposited Plan 871485. The land rises steeply from Fitzwilliam Road. The Wentworth Memorial Church is positioned on the crest of the site and a church hall is located on the Fitzwilliam Road frontage. A vehicular accessway rises from Fitzwilliam Road, to the left and rear of the church hall, stopping at the foot of the rock escarpment on which the Church is built.

The land is currently listed as a heritage item in Schedule 3 of Woollahra LEP 1995 under the description of *grounds and native vegetation of Wentworth Memorial Anglican Church*. The proposed listing for 32B Fitzwilliam Road is described as *Wentworth Memorial Church – church and grounds*. The listing applies to all land in Lot 1 DP 871485. The exhibited heritage inventory sheet is provided in **annexure 2**.

4.2.2 Submission

A submission dated 4 February 2010 relating to the listing was made by Paul Davies Pty Ltd, Architects and Heritage Consultants, on behalf of the Anglican Parish of Watsons Bay (**annexure 3**). The main points of the submission are listed below:

- The Parish supports the proposed listing of the Wentworth Memorial Church, but requests that the boundaries of the listing be confined to the lot on which the Church is located in a proposed land subdivision contained in DA 09/0439, which was lodged on 26 August 2009.
- The NSW Heritage Council has considered the place for State heritage value and concluded that the land proposed for subdivision and containing the church hall should not be heritage listed.
- The proposed LEP and associated statement of heritage significance do not include the church hall indicating the building and its immediate setting are not intended as part of the listing of the church, yet the listing covers the whole of the current title.
- The Parish has been faced with decreasing use of the church, closure of the church hall and ongoing issues of site and building maintenance.
- Support by the Heritage Council and its officers for a reduced curtilage around the church is based on two principles:
 - it has been agreed the church hall has modest heritage value and the main reason for listing the site lies in the church, its prominent setting and link to Wentworth

- the whole site has limited future use for the parish and a subdivision which retains the setting and integrity of the church will facilitate the ongoing use of the site as church.

4.2.3 Consideration of submission

The submission seeks an amendment to the draft heritage item so that the curtilage for the church matches the land subdivision originally proposed in DA 09/0439.

DA 09/0439 sought consent to subdivide Lot 1 in DP 871485 into two Torrens Title lots. Lot 11 of the proposed subdivision had a frontage to Fitzwilliam Road and site area of 820m². Lot 11 contained the church hall and its immediate setting. Lot 12 contained the Church, its forecourt, the vehicular access and a stairway to the forecourt. A right of way was included over the vehicular driveway on Lot 12 allowing access to Lot 11. A copy of the subdivision proposed in DA 09/0439 is provided in **annexure 6**.

DA 09/0439 was refused by the Council on 2 August 2010 for two reasons:

1. *The proposed subdivision would have a significant adverse impact upon the heritage significance (including the social, cultural, historic and religious significance) of the grounds of the Wentworth Memorial Church, the Wentworth Memorial Church and the Wentworth Mausoleum. Further, a conservation management plan has not been submitted with the development application. Accordingly, the proposal is considered to be unsatisfactory with regard to the provisions of Clauses 28 and 27 of Woollahra LEP 1995.*
2. *The proposal is not in the public interest.*

An appeal against the refusal was lodged in the Land and Environment Court by the Anglican Parish of Watsons Bay. The applicant submitted an amended plan to the Court involving several changes:

- The boundaries of proposed Lot 12 were increased to include the existing retaining wall, commemorative plaques and flagpole.
- Consequently, the northern and eastern boundaries and the site area of Lot 11 were reduced.
- The right of way over Lot 12 was deleted.

The appeal was held on 15 and 16 November 2010. The Court upheld the appeal and granted consent to the development application subject to conditions. A copy of the judgement dated 26 November 2010 is provided in **annexure 7**.

Various matters raised in the submission were also considered by the Court. Therefore, it is reasonable to ask what weight may be placed on the Court's decision in assessing the submission to the Draft LEP and determining whether the Draft LEP should be amended. When considering this question several aspects of the judgement can be explored for their possible relationship to the proposed listing.

- Emphasis placed on support by NSW Heritage Office for a curtilage plan for the Church building. Should the Heritage Office's curtilage plan be accepted as a determining factor in establishing the land boundaries for the proposed listing?
- Conclusions on the heritage significance of the church hall. What relevancy should be placed on the church hall when determining the land boundaries of the proposed listing?
- Amount of native vegetation remaining on the site. Is the native vegetation an influence on the land boundaries of the proposed listing?

- Consideration given to the heritage significance of the whole site (i.e. the grounds). Was reasonable consideration given to the significance of the whole site?

4.2.3.1 Emphasis placed on NSW Heritage Office's curtilage plan

The Court placed great emphasis on the acceptance by the NSW Heritage Office of a curtilage plan for the Church building.⁴ The plan was included with material placed on exhibition by the Heritage Office in 2006 following receipt of a nomination from the Royal Australian Institute of Architects (NSW Chapter) (RAIA) to list the Church building on the State Heritage Register. The curtilage was similar to proposed Lot 12 of the subdivision plan dated 1 July 2005 which was submitted with DA 09/0439.⁵

From records available to us, it appears the nomination from the RAIA was limited to the Church building. The nomination included draft inventory sheets which were adapted from sheets prepared for Woollahra Council by Clive Lucas, Stapleton and Partners Pt Ltd. Notably, the adapted version omitted the consultant's recommendation that the proposed listing apply to all land in Lot 1 DP 871485.

We are unable to establish whether the RAIA provided a curtilage map with the nomination. However, a draft curtilage plan, produced by the Heritage Office, was included in the material placed on public exhibition from 15 November 2006 to 9 January 2007. (**annexure 8**)

It is likely the exhibited draft curtilage plan was the product of discussions between the Anglican Church and the Heritage Office. A report produced by the Heritage Office following exhibition of the nomination contains statements about the discussions and curtilage. (**annexure 9**)

Owner submissions

The Anglican Archdiocese of Sydney Property Trust noted that it had previously opposed the proposed listing but following negotiations between the Heritage Office and Parish representatives, it advises that it supports listing subject to exclusion of the Church Hall; flexibility regarding movable heritage in relation to the expression of liturgical worship; and flexibility regarding the future use and adaptation of the church.

Discussions with representatives of the Anglican Property Trust, the Parish of Watsons Bay, and the Heritage Architect, Paul Davies, to discuss the effects of listing, redundancy, and management issues, took place in October, November and December 2006 and January 2007.⁶

Listing curtilage

The indicative curtilage for the listing will enclose the State significant components of the item, as illustrated in the draft curtilage plan in Annexure B.⁷

The indicative curtilage excludes the earlier c.1933 church hall which presents to Fitzwilliam Road. Whilst the former church hall is historically connected to the Wentworth Estate and represents a phase in the historical development of the estate, the RAIA's nomination is limited to the Wentworth Memorial Church.

⁴ See Anglican Parish of Watsons Bay v Woollahra Municipal Council [2010], paragraphs 41, 44 and 46.

⁵ Another version of the subdivision plan provided with the DA material is dated 3 October 2006.

⁶ Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, pp.392-393.

⁷ The curtilage plan mentioned here is the same as the plan distributed for public comment – refer to **annexure 7**.

The Anglican Church does not support the inclusion of the church hall within the proposed State listing and has indicated that it may divest itself of the redundant church hall.

The church hall is within the boundary of the local heritage listing of the “grounds and native vegetation of Wentworth Memorial Anglican Church” on the heritage schedule of the Woollahra Local Environmental Plan (LEP) 1995. Woollahra Council has advised that this LEP listing applies to the grounds and vegetation only, and excludes the buildings (Wentworth Memorial Church and the former Church Hall). Council has confirmed that it is considering listing the Wentworth Memorial Church (but not the Church Hall) as an individual item on its Local Environmental Plan.

The proposed curtilage for State Heritage Register listing includes the Wentworth Memorial Church and its setting including the access way from Fitzwilliam Road.

The curtilage as recommended is supported by the Anglican Church Diocese of Sydney and the Anglican Parish of Watsons Bay.⁸

Woollahra Council was notified of the intention to list the Church on the State Heritage Register in a letter dated 16 November 2006 (**annexure 7**).

In a letter dated 21 December 2006 we informed the NSW Heritage Council that:

- Woollahra Local Environmental Plan 1995 Schedule 3 – heritage items – currently identifies the whole of Lots 1, 2 and 3 in DP 871485 as heritage items.
- Council had made a decision to list the Wentworth Memorial Church building as a local heritage item.
- Council had not received information to warrant the consideration of removal of any part of the site from Woollahra LEP 1995 Schedule 3 – heritage items.

On 7 February 2007 the Heritage Council State Heritage Register Committee resolved to recommend to the Minister for Planning that the Church be listed on the State Heritage Register. The exhibited curtilage plan formed part of the recommendation. Extracts from the Committee meeting minutes are provided as **annexure 10**.

The Minister for Planning did not support the listing. Council was informed of the decision in a letter dated 16 April 2008. No reasons for the Minister’s decision were provided.

We do not consider the Court’s emphasis on the Heritage Office’s consideration and acceptance of a curtilage plan for the Church is relevant to determining the extent of the proposed listing in the Draft LEP. We say this for three reasons.

1. We consider the Heritage Office’s rationale for establishing the curtilage, as set out in its report, has deficiencies.
2. The Heritage Office has indicated that the exclusion of the church hall and part of Lot 1 DP 871485 for the State listing nomination “has no bearing on the validity of the local heritage listing.”⁹
3. The Minister for Planning refused the nomination for listing on the State Heritage Register.

⁸ Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, pp.393-394.

⁹ Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, p.414.

1. Deficiencies in Heritage Office's report

In regard to the first reason we submit the following points.

- The report did not explore or did it record whether the Heritage Office had objectively considered the possibility of establishing a curtilage for the Church which matches the boundaries of Lot 1 DP 871485.
- A balanced argument on the significance of the whole site versus the needs of the land owner has not been presented. There is no discussion on the significance of the whole site and the possibility of retaining all the land in Lot 1 DP 871485 within the Church's curtilage. On the other hand, there are lengthy statements about the land owner's needs, including comments about the likely sale of that part of the site excluded from the Church building's proposed curtilage.
- In reading the report and meeting minutes, the curtilage appears to have been determined for the following reasons:
 - acceptance that the RAIA's nomination did not include the church hall and therefore a curtilage which excludes the land on which the hall is located would be reasonable,
 - the Anglican Church's support for the listing subject to exclusion of the church hall (and associated land), which would be sold,¹⁰
 - the current LEP listing excludes the Church building and hall,
 - the proposed LEP listing does not include the church hall (this reflects a lack of understanding of the proposed local listing),
 - a view by the Heritage Office that the church hall does not demonstrate potential State significance.¹¹
- Absence of the church hall from the RAIA's nomination and Woollahra Council's current and proposed LEP listing is not an indication that a reduced curtilage is justified. This is explained very simply by the fact that:
 - the RAIA's nomination for State listing focussed on the Wentworth Memorial Church building and its fabric,
 - the current LEP listing is only concerned with the grounds and native vegetation,
 - the proposed LEP listing is based on the contemporary items study which was commissioned to investigate buildings designed and constructed in a certain period. The church hall falls outside the study period. However, the study did recommend that the listing apply to the whole of Lot 1 DP 871485.
- There is an apparent misinterpretation of the current LEP listing. The listing is described in the LEP as the *grounds and native vegetation of Wentworth Memorial Anglican Church*. However, the summary page from the Heritage Office's report describes the statutory listing as "Woollahra LEP 1995 (Applies to landscape only)".¹² The landscape section of the report focuses on vegetation.¹³

¹⁰ Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, p.394, and minutes of meeting of the State Heritage Register Committee 7 February 2007, item 6.1, paragraph 3.

The Anglican Church did not claim economic hardship. This is understandable because the Church had successfully negotiated the exclusion of a substantial part of the site from the listing, which it indicated might be sold in the future.

¹¹ Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, p.414

¹² Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, p.392

¹³ Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, p.395

- The full facts of the Council's contemporary heritage study and proposed listing have not been expressed to the Heritage Council. This is evident from the discussion contained in the report to the State Heritage Register Committee which concludes that because the church hall was not contained in the consultant's recommendations for the Church, the hall and the land on which it sits are not significant.

2. State listing nomination has no bearing on validity of local listing

In regard to the second reason, we note the Heritage Office's comments about the relationship of the proposed State listing to the existing LEP listing. In effect, the Heritage Office is saying that listing descriptions within an LEP and the State Heritage Register do not need to be consistent. This might occur where a whole site and its built components satisfy the heritage assessment criteria for local significance but only particular elements meet the criteria for State listing. It is more common, however, for the whole of a local listing to lack the level of significance to warrant inclusion on the State Heritage Register.

The Heritage Office concluded that exclusion of the church hall and part of Lot 1 DP 871485 would not invalidate the Council's current LEP listing, which applies to all land in Lot 1 DP 871485. We therefore, consider it would be acceptable for Woollahra Council to maintain its proposal to list all of the land within Lot 1 DP 871485 in the Draft LEP, particularly as the whole site has been assessed as having local significance.

3. Minister for Planning's refusal of the nomination

In regard to the third reason we submit that the decision of the approval authority, being the Minister for Planning, cannot be ignored. It is inappropriate to conclude that despite the Minister's decision, the proposed nomination with its reduced site curtilage should be the benchmark for other proposals and future decisions.

The proposal to list the Church and grounds as a local item is a new case which should be considered with the benefit of updated information and equal participation from interested parties.

4.2.3.2 Conclusions on the heritage significance of the church hall

The Court noted "there is no heritage reason why the Hall could not be demolished."¹⁴ This conclusion formed part of the basis for the Court's opinions about a suitable curtilage for the Church and consequently its acceptance of the subdivision application. In forming its opinion about the hall's heritage significance the Court had regard to:

- evidence from Mr Robert Staas, heritage architect, and Mr Chris Betteridge, landscape heritage consultant, both of whom were engaged by the applicant,
- evidence for the Council's Strategic Heritage Officer, Ms Reilly,
- the report from the Council's Heritage Officer to Council on 19 July 2010,
- the heritage inventory sheet for the Wentworth Memorial Church prepared by Clive Lucas, Stapleton and Partners Pty Ltd,
- the consideration by the NSW Heritage Office of a curtilage for the church.

The Court noted that none of the evidence, except that of the Council's Strategic Heritage Officer, "found that the Hall had sufficient significance to warrant its retention."¹⁵

¹⁴ Anglican Parish of Watson Bay v Woollahra Municipal Council [2010] NSW LEC, paragraph 48, p.7.

¹⁵ Anglican Parish of Watson Bay v Woollahra Municipal Council [2010] NSW LEC, paragraph 44, p.7.

We do not consider this aspect of the Court's determination should be relied up as support for amending the heritage listing for the Wentworth Memorial Church as proposed within the Draft LEP. We say this for several reasons.

First, as mentioned in section 4.2.1 of this report, the Draft LEP listing is based on results from the contemporary items study which was carried out by Clive Lucas, Stapleton and Partners Pty Ltd. The study was commissioned to investigate buildings designed and constructed in a certain period. The church hall falls outside the study period. Therefore, we consider the absence of a reference to the church hall in the heritage assessment and statement of significance for the Wentworth Memorial Church is not an indication that the church hall or the land on which it is located lacks heritage significance. Importantly, however, we note the consultant's recommended that the listing for the Church apply to the whole of Lot 1 DP 871485.

Secondly, we have previously noted the deficiencies of the report prepared by the NSW Heritage Office (refer to section 4.2.1, above). In addition to our previous comments we note that neither the Heritage Office's report to the State Heritage Register Committee nor the minutes of the Committee's meeting contain statements that the church hall lacks heritage significance. In particular, the Heritage Office's report simply noted:

- the absence of reference to the church hall in the RAIAs nomination,
- the Anglican Church's opposition to the inclusion of the church hall within the proposed State listing,
- the absence of reference to the church hall in the current and proposed LEP listing,
- the redundant use of the church hall.¹⁶

We also note the NSW Heritage Office was not considering the significance of the church hall and its listing on the State Heritage Register.

Irrespective of the Court's conclusions about the significance of the church hall, and its opinion that the hall could be demolished, it is still open to the Council to include the whole of the land in Lot 1 DP as a local heritage item. The heritage significance of the building known as the church hall and the land on which that building is located may be considered as separate matters.

It is common for a site to be listed as a heritage item but for certain features or buildings on that site to be excluded from the listing. It is also common for a site of heritage significance to be subdivided and for new development in the form of buildings to be constructed on the subdivided parcels.

4.2.3.3 Amount of native vegetation remaining on the site

The amount of native vegetation on the site has changed since the site was assessed as part of the Woollahra Heritage Study of 1984. The Court formed a view, based on evidence provided by Mr Chris Betteridge, a landscape heritage consultant engaged by the appellant, that the "absence of substantive vegetation, beyond the Hoop Pine, supports the proposed subdivision."¹⁷

Lack of native vegetation is not pivotal to the assessment of significance upon which the proposed listing is based. This is because the proposed listing refers to the term grounds without specific mention of elements within those grounds. However, the amount of native vegetation is a matter which should be reviewed for the current LEP listing.

¹⁶ Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007, pp.392 - 394, p.396.

¹⁷ Anglican Parish of Watsons Bay v Woollahra Municipal Council [2010] NSW LEC 1326, paragraph 45, p.7

4.2.3.4 Heritage significance of whole site

In recognition of the heritage significance of the land, the proposed listing applies to the whole of Lot 1, DP 871485. This approach was recommended by Clive Lucas, Stapleton and Partners Pty Ltd.

The Court accepted the exhibited Draft LEP as a relevant consideration.¹⁸ In doing so, however, the focus was on the church hall or more importantly its absence from the proposed listing and exhibited heritage inventory sheet. The Court did not consider the significance of the land, being the whole site as contained in Lot 1 DP 871485, or did it consider the impact of the subdivision on that significance. Instead, the Court noted that “the exhibited Draft LEP and the accompanying report on the heritage significance of the site [the heritage inventory sheets] prepared by Mr Stapleton did not suggest that the Hall has any significance which would require its protection.”¹⁹

There seems to be a conclusion by the Court that because the hall is not included in the Draft LEP listing, the hall and the land on which it is located, is not significant. To support this conclusion the Court again refers to the curtilage plan accepted by the NSW Heritage Office for the State Heritage Register nomination made by the RAIA in 2006 and the similarity of that curtilage plan with the proposed subdivision development application.

We have previously commented on the limitations of the contemporary heritage item study carried out for the Council by Clive Lucas Stapleton and Partners Pty Ltd. Furthermore, we consider the Heritage Office’s curtilage plan is not relevant to the assessment of submissions relating to the Draft LEP. Our reasons for this opinion have been set out in other sections of this report.

The Court’s approval of the subdivision plan does not prevent the Council from listing both lots thereby maintaining the local heritage significance of the site. There are numerous examples in Woollahra where heritage significant sites have been subdivided. Babworth House in Darling Point and Kilmory in Point Piper are two recent cases involving Torrens and Strata Title subdivision. In both cases, the heritage significance of the buildings, landscape features and site configuration were recognised in the listing for the entire property.

4.2.4 Conclusion

There are common themes running through the submission to the Draft LEP and the Court judgement for the appeal on DA 09/0439, notably references to:

- support for a reduced curtilage given by the NSW Heritage Council for the nomination of the church to the State Heritage Register
- lack of significance of the church hall
- redundant use of the church hall
- decreased use and eventual cessation in services within the church
- difficulties faced by the Parish in maintaining the church and grounds.

¹⁸ This was not a matter of discretion. Section 79C of the Act requires the consent authority, in this case the Court, to consider an exhibited Draft LEP when determining a development application.

¹⁹ Anglican Parish of Watsons Bay v Woollahra Municipal Council [2010] NSW LEC, paragraph 46, p.7.

Having carefully examined the submission, the Court judgement and other relevant documentation we consider the extent of the proposed heritage listing should be retained. Our reasons for reaching this conclusion are:

- The high reliance placed on the Heritage Office's curtilage plan to justify the subdivision and removal of the church hall is, in our opinion, questionable in view of the identified deficiencies of the Heritage Office's report to the State Heritage Register Committee.
- The rationale for the Heritage Office's curtilage plan was not investigated by the Court, but merely accepted on face value.
- The Minister's decision to not direct the listing of the Church on the State Heritage Register was not considered.
- The Court's assessment of the Draft LEP was, in our opinion, superficial. In particular, significance of the whole site and its strong association with William Charles Wentworth were not examined.
- The declining patronage of the Church at Vaucluse, inability to secure a viable use for the church hall and issues with site and building maintenance are genuine concerns for the Parish. However, they are not matters used in assessing the heritage significance of the Church buildings and grounds. Similarly, the desire of the Parish to sell part of the site to fund conservation works is not a criterion for assessing heritage significance but might form part of the conservation management for the site. We note, however, that commitment towards conservation works on the Church and grounds has not been demonstrated through such means as a detailed conservation management plan. We also note that an argument against listing or for a reduced curtilage has not been made on the grounds of economic hardship.

In the process of analysing the submission and preparing evidence for the Court case, the Council's Strategic Heritage Officer has carried out additional research into the heritage significance of the Church and grounds. Aspects of this research should be added to the heritage inventory sheet to clarify and embellish the statement of significance, the description of the item and the assessment of heritage criteria.

4.2.5 Recommendation

1. Retain the proposed item listing.
2. Amend the heritage inventory sheets as shown in the **annexure 11**.

4.3.1 Background

The proposed listing is described as *Temple Emanuel – synagogue complex of buildings and grounds*. The exhibited heritage inventory sheet is provided in **annexure 2**.

The site was the subject of DA 09/0355 which was originally lodged on 14 July 2009 and amended on 9 February 2010. The application, as amended, involved substantial alterations and additions including:

- Demolition of the existing Neuweg Sanctuary building (providing seating for 250 people) at the front of the property on Ocean Street. Construction of a new community building incorporating:
 - a basement level with staff car parking for 14 vehicles accessed from Ocean Street, rainwater tanks, on-site detention tank, and Ritual Bath with foyer.
 - a ground floor with meeting rooms, reception area and office space
 - a cantilevered first floor level with a administration areas and offices

- Alterations and additions to the existing administration and education building adjacent to the existing Progressive Synagogue (Temple Emanuel) to become a Renewal Minyan Building, including the following changes:
 - partial demolition to allow a new meditation space (Renewal Minyan) and new toilet facilities on the ground floor,
 - removal of the existing administrative space on the first floor and replacement with classrooms and toilet facilities,
 - passenger lift and staircase servicing the basement, ground and first floors.
- Restoration of the Main or Progressive Synagogue including a new courtyard, new child care centre rooms and a new Renewal Minyan Synagogue.
- Construction of a new Conservative Synagogue in the south eastern corner of the site, partially sunk below existing ground level and comprising seating for 327 people (or 660 people on High Holy days).
- New child care facilities comprising the following:
 - demolition of the existing single-storey child care centre building,
 - redesign of the current classroom facilities at the rear of the Progressive Synagogue,
 - two additional classrooms on the roof of the Conservative Synagogue,
 - alterations and additions to the existing cottage fronting Woods Avenue to provide refurbished staff and office facilities,
 - retention of 60 child care centre places, with 15 children 0-2 years old and 45 children 3-5 years old, hours of operation being 8:30am-3:30pm with 12 staff,
 - establishment of a grassed roof above the Conservative Synagogue primarily for play area for the child care centre.
- Construction of a new concrete security 'blast' wall, measuring 2.8m-3.2m in height and 0.5m thick, along Ocean Street, part of the southern boundary alongside 5 Ocean Street, part of the northern and western boundary alongside 11 Ocean Street and the Kilminster Lane frontage.
- Removal of ground level parking (informal parking for 15 cars) near the Ocean Street entrance.
- Establishment of courtyards, forecourts, landscaping and paving throughout the site.
- Removal of 22 trees varying in height between 3.5m and 20m and planting of 58 new trees as part of the landscape plan
- Other ancillary structures across the site, including rainwater tanks, on-site detention (OSD) tanks, sub floor plant room space and several ponds, including one in the courtyard between the two synagogues.
- A new elevated driveway ramp from Woods Avenue to the child care centre.²⁰

A draft Conservation Management Plan for Emanuel Synagogue (June 2009), prepared by Weir Phillips, Architects and Heritage Consultants, formed part of the development application documentation.

The application was granted consent on 5 May 2010 by the Joint Regional Planning Panel subject to conditions which modified the development in a number of ways including:

- Relocation of the new community/administration building away from the Synagogue and the forecourt in order to improve sightlines to the Synagogue. A by-product of the relocation is a reduced encroachment on the forecourt.

²⁰ Extract from Development Application Assessment Report to Joint Regional Planning Panel/ Sydney East Region, meeting of 5 May 2010.

- Deletion of the blast wall and gate fronting Ocean Street, thereby minimising impact on the streetscape and reducing impact on sightlines to the Synagogue.

The approved works, if carried out in full, would result in numerous changes to the significance of the site. Most notably, the consent would result in:

- Demolition of the Neuweg Synagogue.
- Construction of a new two storey community/administration building with basement parking level on the site of the demolished Neuweg Synagogue and partly over the existing forecourt area.

4.3.2 Submission

A submission received from Weir Phillips on behalf of the congregation of the Emanuel Synagogue sets out a number of comments on the draft heritage inventory sheets. A copy of the submission is provided in **annexure 3**.

The submission focuses on factual and technical changes to:

- The name of the item.
- Current use of the complex of buildings.
- The statement of significance and assessment of significance.
- Aspect of the design and description of the Neuweg Synagogue.

The submission includes opinions about the significance of the Neuweg Synagogue and its value as a good representation of the work of its designer, Aaron Bolot.

A response to points raised in the submission is provided in **annexure 4**.

4.3.3 Consideration of submission

In general we agree with many of the points raised in the submission. Accordingly, the heritage inventory sheets have been amended to accommodate suggestions contained in the submission. The sheets have also been amended to include notations about the work approved by DA 355/2009.

In regard to comments about the significance of the Neuweg Synagogue, we consider the building may not be an exceptional design when compared with other buildings designed by Aaron Bolot. However, the building forms part of the complex of buildings and spaces on the site. It contributes to the history of the site and it is appropriate to say the building is an example of the work of Aaron Bolot. As to whether it is “an accomplished” work is a matter of opinion and interpretation.

We consider the Neuweg Synagogue is an accomplished work not so much in the meaning of a building of exceptional design merit when compared with other buildings designed by Bolot, but in the sense of the way in which it respectfully relates to Lipson’s synagogue and addresses the forecourt and street.

We therefore consider references to the Neuweg Synagogue as exhibited should be retained, although notations about the works approved by DA 355/2009, which include consent to demolish the building, have been added to relevant sections of the heritage inventory sheets. Because the works have not been carried out this provides a transitional approach to the listing process.

The revised heritage inventory sheets with highlighted changes are provided in **annexure 11**.

4.3.4 Conclusion

The submission makes many relevant comments about the description of the item and the content of the heritage inventory sheets. In response to these comments we agree that the item's description should be slightly changed and certain amendments to the sheets should be made.

It is reasonable to also amend the inventory sheets to acknowledge the approval to DA 355/2009, which if activated will lead to a range of physical changes to the buildings on the site.

Notwithstanding the merit of the submission and the approval of DA 355/2009, we consider the proposed listing should be retained.

4.3.5 Recommendation

- Retain the proposed item listing.
- Amend the item's description to read *Emanuel Synagogue – synagogue complex of buildings and grounds*
- Amend the heritage inventory sheets as shown in the **annexure 11** in response to the submission from Weir Phillips, Architects and Heritage Consultants.

Conversion of Draft LEP into a planning proposal

As a consequence of amendments to Part 3 of the Act²¹, we were advised by the Department of Planning on 29 September 2010 of the requirement to convert the Draft LEP into a planning proposal. A planning proposal is now the starting point for the LEP process. Certain savings and transitional provisions accompanying the amending legislation enable Draft LEPs that have already been exhibited to be brought into the new Part 3 regime.

We prepared a detailed planning proposal and submitted it to the Department of Planning (**annexure 14**). On 23 November 2010 we received notice from the Deputy Director-General Plan Making and Urban Renewal that the Draft LEP had been formally brought under the new provisions of Part 3 of the Act. The recommendation of this report therefore refers to a planning proposal rather than a Draft LEP.

In the same notice the Department informed us that based on advice from the Heritage Branch, the proposed heritage item groups should be removed from the schedule of items and listed as separate items. Consequently, this would affect the following proposed heritage item groups:

12 and 14 Albert Street, Edgecliff
17, 19, 21 and 23 Jersey Road, Woollahra
15 and 17 Robertson Place, Watsons Bay
84 and 86 Wallis Street, Woollahra

We sought clarification from the Department because the use of heritage item groups is currently occurring within Woollahra LEP 1995 with prior acceptance from the Heritage Branch. The proposed groups would be consistent with that practice. Notwithstanding its previous support, the Heritage Branch now requires removal of the proposed heritage item group references because they are no longer considered accepted practice. The Heritage Branch considers the proposed items will receive adequate protection due to their individual listing and current location within existing heritage conservation areas.

²¹ Part 3 of the Act contains provisions for preparing local environmental plans.

The schedule of heritage items will be amended to reflect comments from the Heritage Branch.

Summary of amendments

Amendments to the exhibited Draft LEP (now the planning proposal) and to the heritage inventory sheets arising from our consideration of submissions and comments from the Heritage Branch are set out in the table below.

Exhibited proposed item address	Amendment
12 Albert Street Woollahra	Delete reference in the Draft LEP to group item with 14 Albert Street.
14 Albert Street Woollahra	Delete reference in the Draft LEP to group item with 12 Albert Street.
Cliff Street, Watsons Bay, within road reservation	Amend the inventory sheet by adding a note to the physical description section about the presence of the cobbled sandstone surface along Cliff Street to the north of Victoria Street.
32B Fitzwilliam Road, Vacluse	Amend the inventory sheets by: <ul style="list-style-type: none">changing the item's name to match the item description in the Draft LEP – <i>Wentworth Memorial Church – church and grounds</i>adding supplementing information on the statement of significance, physical description and assessment of heritage criteria to clarify aspects about the significance of the whole site,updating the section on modifications to reflect consent granted to DA 09/0439 for subdivision of the Lot 1 DP 871485.
19 Jersey Road, Woollahra	Delete reference in the Draft LEP to group item with 17, 21 and 23 Jersey Road, Woollahra.
21 Jersey Road, Woollahra	Delete reference in the Draft LEP to group item with 17, 19 and 23 Jersey Road, Woollahra.
7 Ocean Street, Woollahra	In the Draft LEP schedule, amend the address and title of the item to read: Ocean Street, Woollahra, <i>7-9 Emanuel Synagogue – synagogue complex of buildings and grounds</i> Amend inventory sheets by: <ul style="list-style-type: none">changing the item's name and address to match those on the Draft LEP schedule,changing the current use and owner's name,altering the statement of significance, physical description and assessment of heritage criteria in response to comments and information provided by the owner's consultantupdating the section on modifications to include consent granted to DA 09/355 for demolition and alterations and additions.including references to DA 09/355 in relevant sections.
8 Victoria Street, Watsons Bay	Delete from Draft LEP.

The schedule of proposed heritage items, which formed part of the planning proposal, as varied by the changes set out in the above table is provided in annexure 15.

Conclusion

The preparation of the Draft LEP has involved detailed studies and considerable consultation with property owners and other interested parties. Due to its complexities, the process has been carried out over a long period. Recent changes to the Act have required the conversion of the Draft LEP into a planning proposal, which has further extended the process.

We have undertaken a thorough consideration of all submission, several of which required further investigations. We have also taken into consideration development applications applying to two of the proposed items and requirements from the Heritage Branch. Consequently, we consider amendments should be made to Draft LEP and to the associated heritage inventory sheets. Following these amendments being carried out we consider the Draft LEP can be submitted to the Department of Planning and Infrastructure.

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

ANNEXURE

1. Exhibited Draft Woollahra LEP 1995 (Amendment No.66) – Heritage Items
2. Exhibited heritage inventory sheets
3. Submissions
4. Response to submissions
5. Report from heritage consultant Louise Thom
6. Proposed subdivision plan of Wentworth Memorial Church site – DA 09/0439
7. Judgement of the Land and Environment Court – Anglican Parish of Watsons Bay v Woollahra Municipal Council, 26 November 2010.
8. Letter from Heritage Office 16 November 2006.
9. Report of Heritage Office to Heritage Council of NSW State Heritage Register Committee, 7 February 2007.
10. Extract from minutes of meeting of the State Heritage Register Committee, 7 February 2007.
11. Amended heritage inventory sheet for 32B Fitzwilliam Road, Vaucluse.
12. Amended heritage inventory sheet for 7-9 Ocean Street, Woollahra
13. Amended heritage inventory sheet for Cliff Street, Watsons Bay, road archaeology.
14. Planning Proposal – Heritage Items in Darling Point, Edgecliff, Paddington, Point Piper, Vaucluse, Watsons Bay, Woollahra – October 2010.
15. Planning proposal schedule of proposed heritage items showing variations

Item No: R2 Recommendation to Council
Subject: **Assessment of the Current Controls Applying to the Residential 2(A) Zone and Residential 2(B) Zone Interface**
Author: Brendan Metcalfe, Strategic Planner
Tom Jones, Urban Design Planner
File No: 900.G
Reason for Report: To report on whether the current planning controls for the Residential 2(a) zone and Residential 2(b) zone interface are adequate.

Recommendation:

- A. That Council note that the existing controls in the Woollahra Local Environmental Plan 1995 for the Residential 2(a) zone and Residential 2(b) zone interfaces are appropriate and do not need amending.
- B. That as part of the comprehensive development control plan project the setback zones attached as **Annexure 2** to the report to the Urban Planning Committee of 16 May 2011 are applied to Residential 2(b) zoned land within the Edgecliff Road and Wallaroy Road area.
- C. That a two storey desired future character be specified for the Residential 2(b) zoned battle axe blocks within the Edgecliff Road and Wallaroy Road area as part of the comprehensive development control plan project.

1. Background

At the Council meeting of 11 September 2006 the following notice of motion (NoM) was adopted:

That a report be prepared and brought to the appropriate committee of Council and the Strategic Planning Working Party examining the current controls applying in the transition areas forming the boundary between 2(a) and 2(b) Zones in the Municipality.

Such report to consider whether existing controls are adequate and what, if any, additional controls should be adopted to provide for grading or stepping development in such transition areas with reference to height, FSR and setbacks in particular.

2. Councillors' concerns

Reasons for the investigation

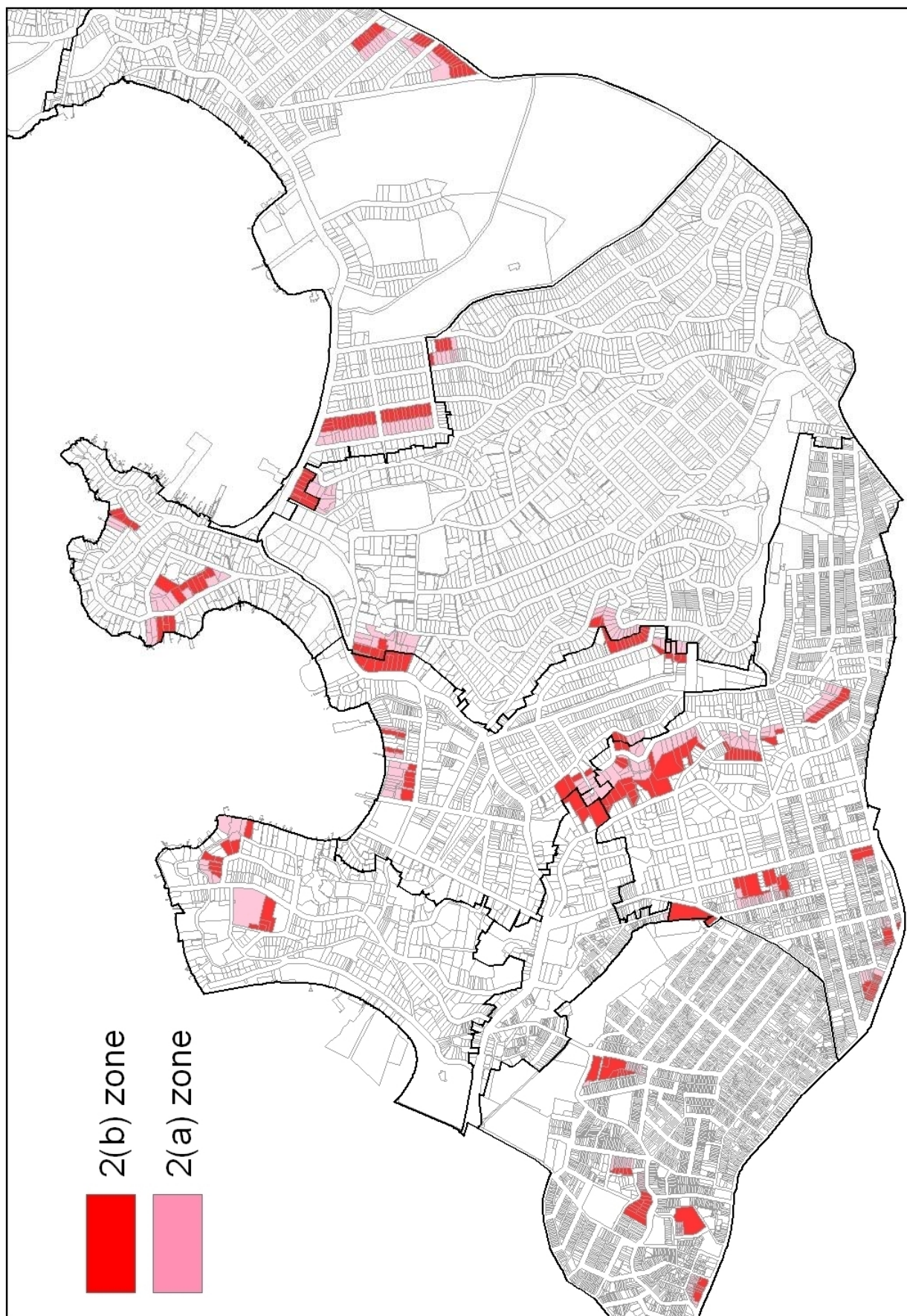
Council requested a report on the Residential 2(a) zone and Residential 2(b) zone interface to protect the amenity of properties in the Residential 2(a) zone from residential flat building (RFB) development in the adjoining Residential 2(b) zone.

At the time Council requested the report, a development application for an RFB at 20 Roslyndale Avenue, Woollahra, had been refused by Council and was being appealed in the Land and Environment Court (L&EC). The development application, known as the Billgate case, was in the Residential 2(b) zone immediately adjoining the Residential 2(a) zone and is discussed further in parts 4.1 and 4.2.2 of this report.

3. Assessment of the Residential 2(a) zone and Residential 2(b) zone interface

Locations of Residential 2(a) and Residential 2(b) zone interfaces

In response to Council's NoM of 11 September 2006 we identified that there are 36 locations where the Residential 2(a) zone immediately adjoins the Residential 2(b) zone across the Municipality. These zone interfaces exist in all suburbs in the Municipality except for Vaucluse and Watsons Bay, as shown in Map 3.1.



Map 3.1: The 36 Residential 2(a) zone and Residential 2(b) zone interface locations

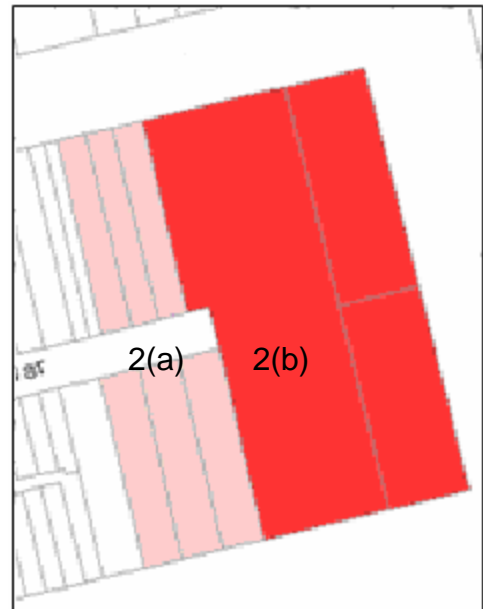
3.1 Types of zone interface

There are four types of Residential 2(a) zone and Residential 2(b) zone interface:

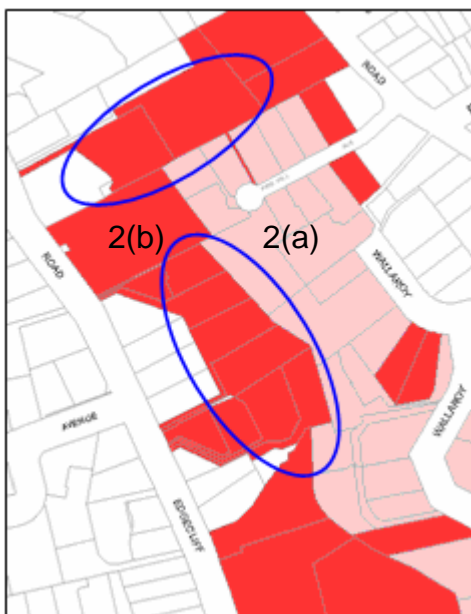
1. Common rear boundary
2. Common side boundary
3. Battle axe blocks in Residential 2(b) zone on the rear boundary of Residential 2(a) zone
4. Side boundary to rear boundary



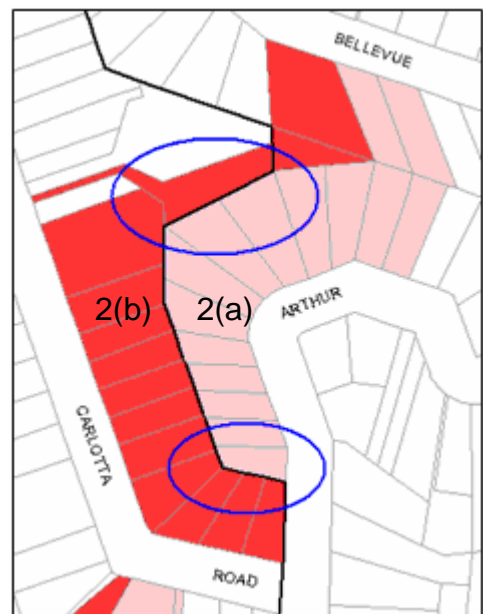
Common rear boundary



Common side boundary



Battle axe blocks in the Residential 2(b) zone on the rear boundary of the Residential 2(a) zone



Side boundary to rear boundary

Of the four types of zone interface, a common rear boundary is preferable because the combined open space of the two rear setbacks provides greater building separation. Battle axe blocks in the Residential 2(b) zone are the most problematic for protecting amenity in the Residential 2(a) zone. Battle axe blocks often have a shorter block depth which reduces the rear setback, and in some instances the battle axe blocks have a different orientation to the surrounding lots which creates a side to rear boundary arrangement.

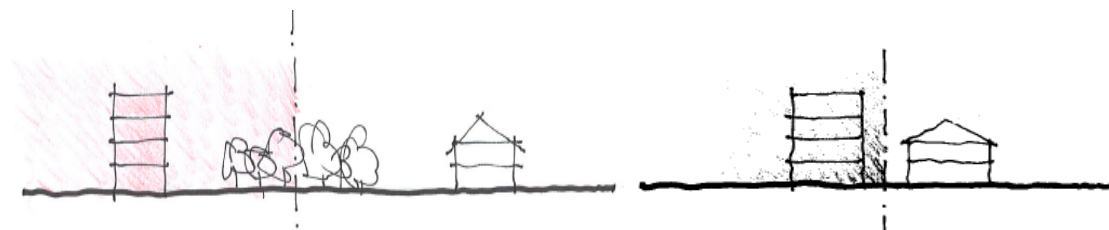
3.2 Assessing the potential amenity impacts in the Residential 2(a) zone from development in the Residential 2(b) zone

The zone interfaces were assessed against four potential amenity impacts on the Residential 2(a) zone. These potential impacts are:

1. Reduced visual privacy
2. Reduced acoustic privacy
3. View loss
4. Overshadowing.

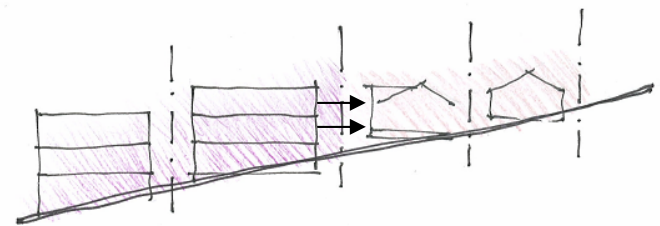
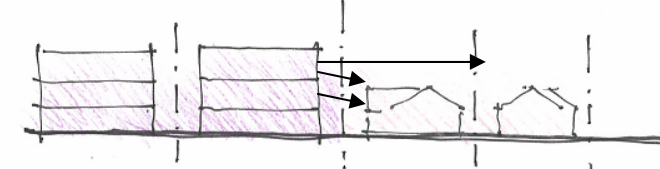
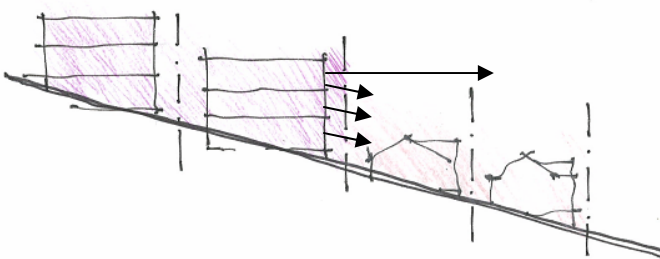
The characteristics of land at the zone interface affect the potential for amenity impact. These characteristics which include lot size, topography, orientation and aspect are discussed below.

Lot size is directly proportional to amenity. Larger lots result in greater setbacks, increased opportunity for landscaping and better building separation, which increases acoustic and visual privacy as illustrated below.



Lot size: Development in the Residential 2(b) zone directly adjoining the Residential 2(a) zone on large lots (left) and small lots (right) as viewed from the street frontage

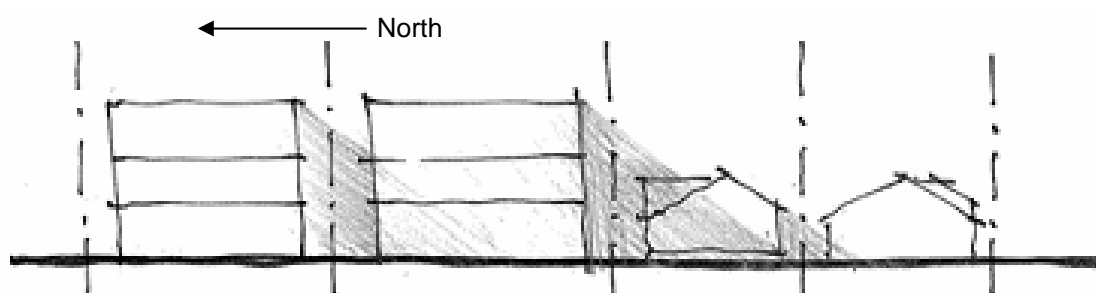
The topography at the zone interface affects the degree of impact on visual privacy, overshadowing and view loss. These impacts are illustrated and discussed below.

	Topographic location	Potential for overlooking
	Residential 2(b) zone below the Residential 2(a) zone	Slight
	Residential 2(b) zone level with the Residential 2(a) zone	Moderate
	Residential 2(b) zone above the Residential 2(a) zone	High

Topography and potential privacy and impacts (overlooking) Residential 2(b) zone (left) relative to Residential 2(a) zone

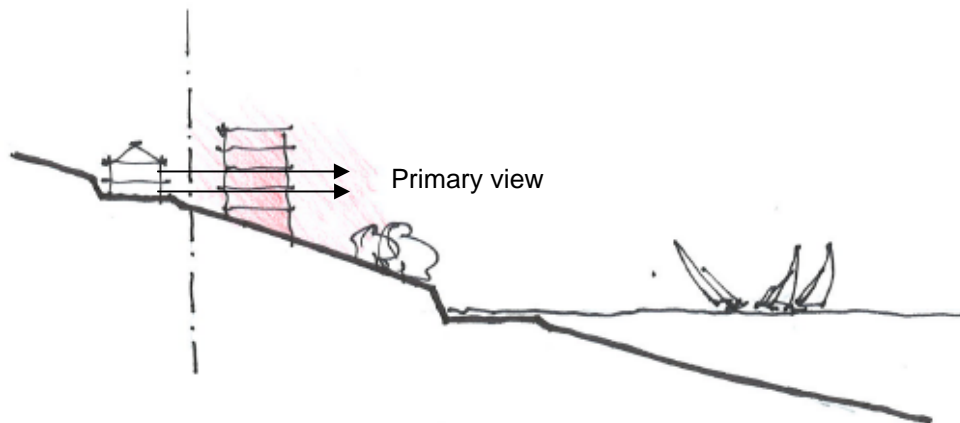
The topography at the zone interface can affect overshadowing, but the orientation and aspect of lots have the largest bearing on the potential of buildings in the Residential 2(b) zone to overshadow land and buildings in the Residential 2(a) zone.

Where the Residential 2(b) zone is to the north of the Residential 2(a) zone, the potentially higher, denser development will have a greater impact. Where the Residential 2(b) zone is to the south the impact is slight.



Overshadowing: Potentially greater amenity impacts exist where the Residential 2(b) zone (left) is to the north of the Residential 2(a) zone

View loss may occur where the Residential 2(b) zone is in the view path of the Residential 2(a) zone. Particularly where the height of buildings downhill and towards the primary view has not been limited to allow for view sharing, as illustrated below.



Potential view loss: Residential 2(a) zone (left) above the Residential 2(b) zone

4. The Edgecliff Road and Wallaroy Road area

We assessed the 36 zone interface locations in the Municipality against the potential amenity impacts of visual privacy, acoustic privacy, view loss and overshadowing. The Edgecliff Road and Wallaroy Road area was identified as the only location where development in the Residential 2(b) zone has the potential to significantly affect amenity on the adjoining Residential 2(a) zone.

A site inspection of the Edgecliff Road and Wallaroy Road area was carried out on 21 December 2010. The inspection confirmed that development in the Residential 2(b) zone has the potential to affect amenity in the Residential 2(a) zone through:

- overshadowing
- reducing visual privacy and
- reducing acoustic privacy.

A description of the area, its current development controls, the potential amenity impacts and proposed planning controls follows in sections 4.1 to 4.4.

4.1 The locality

The Edgecliff Road and Wallaroy Road zone interface is illustrated in map 4.1. It is characterised by:

- RFBs in the Residential 2(b) zone on Edgecliff Road
- dwelling houses on battle axe blocks in the Residential 2(b) zone accessed from Edgecliff Road and Roslyndale Avenue, above Wallaroy Road
- large dwelling houses in the Residential 2(a) zone in Wallaroy Road and Pine Hill Avenue.

The Residential 2(b) zoned land contains ten battle axe blocks that immediately adjoin the Residential 2(a) zone. These blocks have a common rear boundary or a side boundary to rear boundary interface with the Residential 2(a) zone. The blocks have narrow access handles of between three and six metres wide providing access to dwelling houses.

The area slopes considerably from west to east. From Edgecliff Road to Wallaroy Road there is a fall of approximately 35 metres. From the battle axe blocks in the Residential 2(b) zone to Wallaroy Road there is a fall of approximately 20 metres.

Established deep soil plantings have created a landscape corridor along most of the zone interface. The landscaping provides privacy by screening the Residential 2(a) zoned properties from the Residential 2(b) zoned properties.

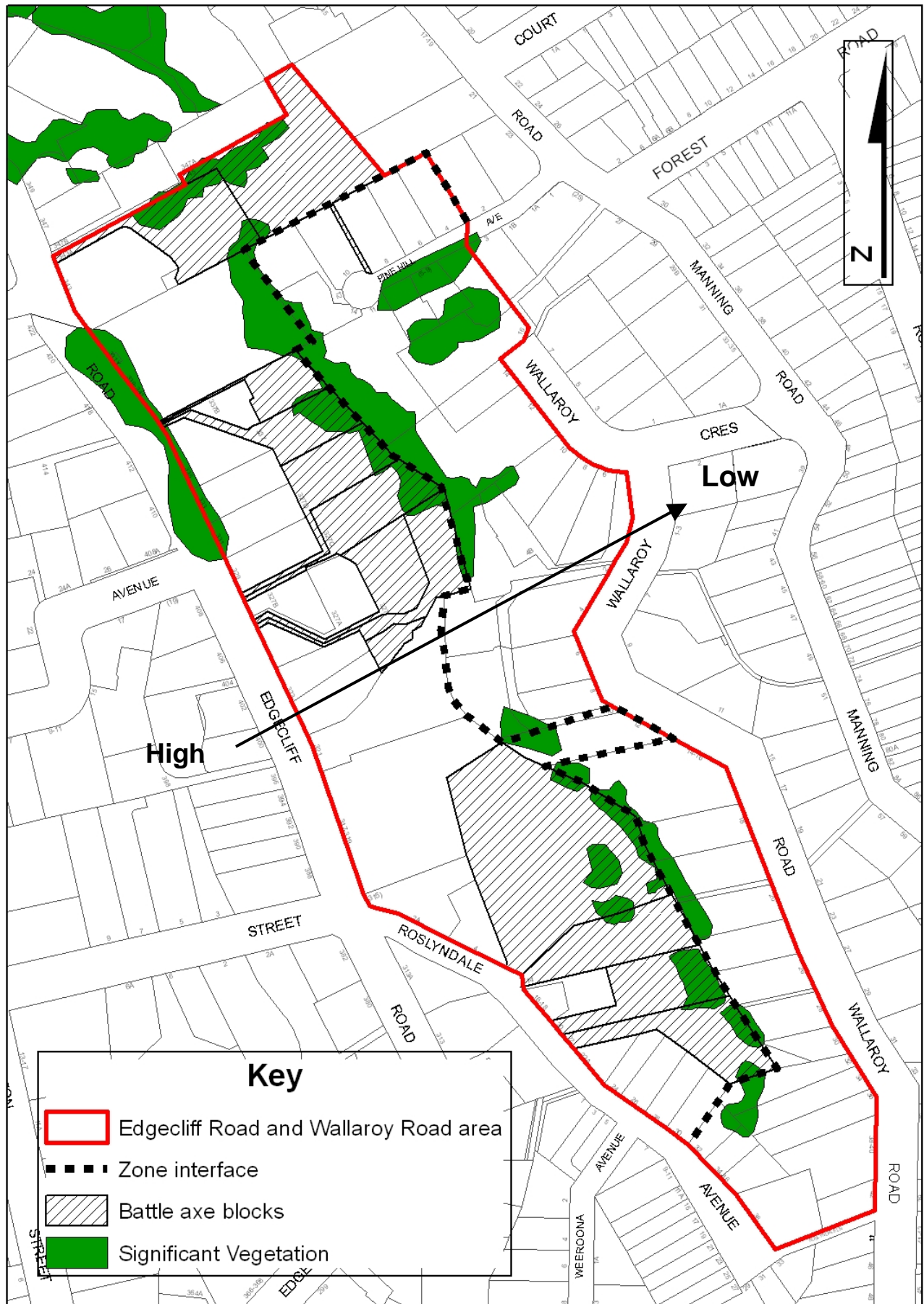
One of the battle axe blocks in this area is 20 Roslyndale Avenue, Woollahra, which is the site of the Billgate development application. The application was for an RFB containing three apartments. The application did not comply with the 15 metre minimum frontage for RFB development required by clause 10B of Woollahra Local Environmental Plan 1995 (Woollahra LEP 1995). Instead the application relied upon a *State Environmental Planning Policy 1 –Development Standards* objection for approval. Council refused the application because it did not comply with:

- frontage, height, stormwater and heritage provisions of the Woollahra LEP 1995
- rear and side setbacks, deep soil landscaping, privacy controls, or driveway access and parking requirements of the Residential Development Control Plan (2004) (Residential DCP).

The applicant appealed Council's decision in the L&EC. The impact of the proposed development on the privacy of properties in the Residential 2(a) zone below 20 Roslyndale Avenue was examined during the case. The appeal was subsequently dismissed by the L&EC upholding the Council refusal. A dwelling house was constructed with consent on the site in 2010.



Location shot: RFB development on Edgecliff Road behind dwelling houses on Wallaroy Road



Map 4.1: The Edgecliff Road and Wallaroy Road area

4.2 Relevant development controls

4.2.1 Woollahra Local Environmental Plan 1995

The Woollahra LEP 1995 sets a height limit of 9.5 metres for all properties in the Edgecliff Road and Wallaroy area. A maximum floor space ratio (FSR) of 0.625:1 applies to the Residential 2(b) zoned land and 0.55:1 to the Residential 2(a) zoned land. Heritage items are located at 6-12 Roslyndale Avenue, 14 Roslyndale Avenue and 2 Wallaroy Road.

RFBs are not permitted on battle axe blocks in this area because they do not comply with the minimum frontage required by clause 10B of the Woollahra LEP 1995. Clause 10B restricts RFBs containing up to three apartments to sites with a minimum frontage of 15 metres. No minimum site area requirements apply in this situation. For RFBs containing four or more apartments, clause 10B requires sites to have a minimum frontage of 21 metres and a minimum lot size of 930m².

Clause 10B and clause 10A which details the objectives of clause 10B are attached as **Annexure 1**.

4.2.2 Development control plans

The area is covered by three development control plans, the Residential DCP, the Woollahra Heritage Conservation Area DCP and the Hawthornden DCP.

Under Part 4 of the Residential DCP, the maximum height of RFBs in the Wallaroy Precinct is three storeys, and the building form must follow the slope of the land and minimise impact on the existing landform. The Residential DCP requires a minimum rear setback of 25% for RFBs and dwelling houses.

In *Billgate Pty Ltd vs. Woollahra Municipal Council [2007] NSWLEC 399* the applicant proposed a rear setback of 25% or 12.5 metres for an RFB at 20 Roslyndale Avenue, Woollahra. The setback complied with the Residential DCP, but Commissioner Tuor found the setback was not sufficient to maintain an acceptable level of amenity to properties in the Residential 2(a) zone below on Wallaroy Road. This was due to the steeply sloping land and the potential of the RFB to reduce privacy of the dwellings below.

The Hawthornden DCP applies to 6-12 Roslyndale Avenue which is a heritage item in the Woollahra LEP 1995. The Hawthornden DCP contains site specific control such as curtilage and setbacks to retain the heritage significance of Hawthornden. These controls also protect the amenity of the adjoining Residential 2(a) zone.

4.2.3 Planning principle for privacy

The L&EC planning principle for privacy refers to *Meriton v Sydney City Council [2004] NSWLEC 313*. This case states that:

Numerical guidelines for the separation of dwellings exist in the Australia-wide guideline, *AMCORD*²²; as well as in the NSW-specific *Residential Flat Design Code* attached to SEPP 65²³. *AMCORD* recommends a separation of 9m between habitable rooms.

²² AMCORD – Australian Model Code for Residential Development

²³ SEPP 65 – State Environmental Planning Policy – Design Quality of Residential Flat Development

The *Residential Flat Design Code* recommends increasing separation between buildings as they get taller. For buildings up to three storeys, it suggests 12m between habitable rooms and balconies, 9m between a habitable and non-habitable room, and 6m between non-habitable rooms.

This planning principle also states that privacy can be achieved through building separation. The distance between buildings should be set based on the density, use and design of the developments.

4.3 Potential impacts

The characteristics of the Edgecliff Road and Wallaroy Road area that compound potential amenity impacts in the Residential 2(a) zone from development in the Residential 2(b) zone are:

- the steeply sloping topography which potentially reduces acoustic and visual privacy of properties in the Residential 2(a) zone
- the position of the Residential 2(b) zoned lots, some of which are to the north of the Residential 2(a) zone and some of which are to the west of the Residential 2(a) zone, increasing the potential for overshadowing
- the battle axe subdivision pattern in the Residential 2(b) zone, which reduces building separation from the Residential 2(a) zone properties.

The potential for development of RFBs in the Residential 2(b) zone at this zone interface is currently restricted because:

- clause 10B of the Woollahra LEP 1995 contains a development standard for a minimum frontage of 15 metres, and although this is not a prohibition for RFB development it requires a SEPP 1 objection to be varied
- Council has established its position, through the Billgate case, that variation to the minimum frontage standard to permit RFB development on battle axe blocks is not appropriate at this zone interface
- Commissioner Tuor agreed with Council's position dismissing the Billgate appeal for an RFB on a battle axe block, partly because the application that did not comply with clause 10B of the Woollahra LEP 1995
- properties fronting Edgecliff Road are generally occupied by RFBs making amalgamation with the battle axe blocks unlikely
- the battle axe blocks in the Edgecliff Road and Wallaroy Road area are currently occupied by substantial dwelling houses, six of which have recently been constructed or altered
- two heritage items in the Residential 2(b) zone occupy a large portion of the zone interface area, including Hawthornden which has a site specific DCP that excludes RFBs from the desired future character of the site.

4.4 Refining the planning controls in the Edgecliff Road and Wallaroy Road area

Setbacks

In the short term, the amenity of properties in the Residential 2(a) zone is protected for the reasons outlined in part 4.3 above. In the longer term, clause 10B may need to be reviewed to comply with the Standard Instrument LEP which often excludes clauses limiting the development potential of certain land.

To preserve amenity in the long term, following a review of clause 10B we recommend that as part of the comprehensive DCP project a setback zone is introduced. The setback zone attached as **Annexure 2** will apply to the battle axe blocks in the Residential 2(b) zone at the rear primary boundary²⁴ and will protect the amenity of the adjoining Residential 2(a) zone by increasing minimum building separation.

The setbacks were considered on a site by site basis and setback zone depth were set based on the site context of each lot. We do not propose a setback zone for Hawthornden as it has a site specific DCP that effectively protects the amenity of properties in the Residential 2(a) zone.

Two setback zone depths are proposed, 12 metres and 18 metres. Key factors for determining the location and depth of setback zones are:

- Commissioner Tuor's comments regarding rear setbacks in the Billgate case
- the planning principle for privacy and recommended building separation distances
- the steeply sloping topography of land at the zone interface
- the deep soil landscaping providing screening at the zone interface which should be retained
- the location of existing buildings at the zone interface in the Residential 2(a) zone and the Residential 2(b) zone
- clause 10B potentially being revised during the preparation of Council's new LEP under the Standard Instrument.

Height and floor space ratio

The current 9.5 metre height limit and 0.625:1 FSR of the battle axe blocks were tested with the proposed setback zones. Testing showed that this combination of controls produced development forms that retained amenity of properties in the Residential 2(a) zone immediately adjoining the battle axe blocks.

Although the current height and FSR with the setback zones maintained amenity in the Residential 2(a) zone, there is an inconsistency between the height limit in the Woollahra LEP 1995 and the Residential DCP.

The Woollahra LEP 1995 specifies a 9.5 metre height limit for the Residential 2(b) zone in the Edgecliff Road and Wallaroy Road area. This height limit is intended to permit two storey development. However, Part 4 of the Residential DCP states that RFBs in the Wallaroy Precinct are to be a maximum of three storeys. This is inconsistent with the Woollahra LEP 1995. Having considered the topography of the area we find that three storey development cannot be achieved on the steeply sloping Residential 2(b) battle axe blocks within a 9.5 metre height limit because of the need to substantially cut and fill land.

This inconsistency between the height of buildings in the LEP and the desired future character in Council's DCPs should be addressed during the preparation of Council's new LEP and comprehensive DCP so that a two storey height limit applies.

5. Conclusion

Our assessment concludes that the planning controls for the 36 Residential 2(a) zone and Residential 2(b) zone interfaces in the Municipality are currently appropriate and suitably protect the amenity of properties in the Residential 2(a) zone from RFB development in the Residential 2(b) zone.

²⁴ The primary boundaries are generally the street and the rear boundaries. These are the boundaries towards which habitable rooms are usually orientated.

The Edgecliff Road and Wallaroy Road area was identified as the only location with potential to significantly affect the amenity of buildings and land in the Residential 2(a) zone. For the reasons outlined in part 4.3 above, the current controls applying to this site protect amenity in the adjoining Residential 2(a) zone.

In the long term, preparation of the new LEP under the Standard Instrument may require review of clause 10B of the Woollahra LEP 1995. For land in the Edgecliff Road and Wallaroy Road area and as part of Council's new LEP and comprehensive DCP projects, we recommend the following controls changes:

- applying a rear setback zone to the battle axe blocks in the Residential 2(b) zone and
- specifying a two storey desired future character for the battle axe blocks in the Residential 2(b) zone in the DCP.

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Annexures:

1. Woollahra LEP 1995 clause 10B
2. Setback zones for the Edgecliff Road and Wallaroy Road area

POLITICAL DONATIONS DECISION MAKING FLOWCHART FOR THE INFORMATION OF COUNCILLORS

