



# Council Meeting

Monday, 11 April 2022  
6.30pm

## Minutes

Unconfirmed

# Ordinary Council Meeting

Monday 11 April 2022

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## Ordinary Council Meeting

### Minutes of the Meeting held using teleconferencing technology on 11 April 2022 at 6.32pm.

Present: Her Worship the Mayor, Councillor Susan Wynne ex-officio (Not 12.3)

Councillors: Isabelle Shapiro (Deputy Mayor) (Chair 12.3)  
Sean Carmichael  
Peter Cavanagh  
Luise Elsing  
Nicola Grieve  
Mary-Lou Jarvis  
Harriet Price  
Lucinda Regan  
Matthew Robertson  
Richard Shields  
Mark Silcocks  
Sarah Swan  
Merrill Witt  
Toni Zeltzer

Staff: Zubin Marolia (Manager - Property & Projects) – via Zoom  
Sue Meekin (Director – Corporate Performance)  
Patricia Occelli (Director – Community & Customer Experience) – via Zoom  
Sue O'Connor (Governance Officer)  
Tom O'Hanlon (Director – Infrastructure & Sustainability) – via Zoom  
Richard Pearson (Development Manager – Strategic Properties)  
Scott Pedder (Director – Planning & Place) – via Zoom  
Craig Swift-McNair (General Manager)  
Helen Tola (Manager – Governance & Council Support)  
Anne White (Manager – Strategic Planning) – via Zoom

Also in Attendance: Niall McSweeney Council Consultant  
Wayne Redman Council Consultant

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**Note:** The Mayor Councillor Wynne vacated the Chair for Item 12.3 and Deputy Mayor Councillor Shapiro assumed the Chair.

## 1. Opening

The Mayor declared the Ordinary Council Meeting of <enter date> open and welcomed Councillors, staff and members of the public who are watching and listening to this evenings meeting.

## 2. Prayer

The Mayor read the Prayer:

Almighty God, you have given us a beautiful place to live in. We pray for your gift of wisdom that the decisions of this Council may benefit those we serve.

Be with us in our deliberations that this Municipality may know your blessing. Amen.

## 3. Acknowledgement of Country (Gadigal People and Birrabirrigal People)

The Mayor read the following Acknowledgement of Country:

*I would like to acknowledge that we are here today on the land of the Gadigal and Birrabirrigal people, the traditional custodians of the land. On behalf of Woollahra Council, I acknowledge Aboriginal or Torres Strait Islander people attending today and I pay my respects to Elders past, present and emerging.*

## 4. Acknowledgement of the Sovereign of the Day (Queen Elizabeth II)

The Mayor read the following Acknowledgement of the Sovereign of the Day (Queen Elizabeth II):

*I also acknowledge Queen Elizabeth II.*

## 5. Confirmation of Minutes

<b>Item No:</b>	5.1
<b>Subject:</b>	<b>CONFIRMATION OF COUNCIL MINUTES - 28 MARCH 2022</b>
<b>Author:</b>	Sue O'Connor, Governance Officer
<b>File No:</b>	22/67201
<b>Purpose of the Report:</b>	The Minutes of the Council of 28 March 2022 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.
<b>Alignment to Delivery Program:</b>	Strategy 11.1 Facilitate community led decision-making that is open, honest and ethical and benefits the broader community.

(Silcocks/Elsing)

### 79/22 Resolved:

THAT the Minutes of the Council Meeting of 28 March 2022 be taken as read and confirmed.

*Note: In accordance with Council's Code of Meeting Practice a Division of votes is recorded on this matter.*

#### **For the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Elsing  
Councillor Grieve  
Councillor Jarvis  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Silcocks  
Councillor Swan  
Councillor Witt  
Councillor Wynne  
Councillor Zeltzer

#### **Against the Motion**

Nil

15/0

## 6. Leave of Absence and Apologies

Nil

## 7. Declarations of Interest

Councillor Regan declared a Non-Significant, Non-Pecuniary Interest in Item 12.3 (Cross Street Car Park Redevelopment Project – Selection of Development Partner) as her husband and/or their self-managed super fund have invested in one of the proponents investment products from time to time. They are not however connected with the proposal. Councillor Regan remained in the meeting, participated in debate and voted on the matter.

The Mayor, Councillor Wynne declared a Significant, Non-Pecuniary Interest in Item 12.3 (Cross Street Car Park Redevelopment Project – Selection of Development Partner) as she knows the proponent and a number of staff that work there and given that this is a commercial decision. The Mayor, Councillor Wynne vacated the Chair, did not participated in debate or vote on the matter.

## 8. Late Correspondence

**Note:** Council resolution of 27 June 2011 to read late correspondence in conjunction with the relevant Agenda Item 9 (Petition), GM's 12.1, 12.2 & 12.3.

## 9. Petitions Tabled

**Petition No:** 1  
**From:** Susan Shaw  
**Tabled by Councillor:** Swan

**Note:** Late correspondence was tabled by Councillor Swan.

The Petition was in terms,

*"Petition the Councillors of Woollahra Municipal Council to:*

- *support the improvement of the Double Bay Cross Street Car Park and as part of this, a commitment to a cinema in Double Bay; and*
- *support this concept for a refreshed cultural entertainment offer for Double Bay which has long suffered without a deeper more diverse night-time offer beyond pubs and bars!"*

**(Swan/Jarvis)**

### 80/22 Resolved:

THAT the petition lie on the table for fourteen (14) days and referred relevant Council Department.

**Note:** *In accordance with Council's Code of Meeting Practice a Division of votes is recorded on this matter.*

#### **For the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Grieve  
Councillor Jarvis  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Silcocks  
Councillor Swan  
Councillor Witt  
Councillor Wynne  
Councillor Zeltzer

#### **Against the Motion**

Councillor Elsing  
Councillor Price  
Councillor Regan

**12/3**

## 10. Mayor Minutes

Nil

## 11. Public Forum

Nil

## 12. General Manager and Officer's Report

**Item No:** 12.1  
**Subject:** **ADDITIONAL SPECIAL VARIATION TO RATES 2022-23 APPLICATION**  
**Author:** Paul Ryan, Chief Financial Officer  
**Approvers:** Sue Meekin, Director Corporate Performance  
Craig Swift-McNair, General Manager  
**File No:** 22/65422  
**Purpose of the Report:** To seek Council's endorsement to submit an application for an Additional Special Variation to Rates for 2022-23  
**Alignment to Delivery Program:** Strategy 11.4: Maintain Council's strong financial position.

**Note:** Late correspondence was tabled by Council's Director Corporate Performance, Sue Meekin.

**Note:** The Council amended Part A and added Part D of the Resolution.

**(Cavanagh/Silcocks)**

**81/22 Resolved:**

THAT Council:

- A. Note the information as included in this Additional Special Variation to Rates 2022-23 Application report.
- B. Request the General Manager submit an application, (including any additional supporting documentation required), to the Independent Pricing and Regulatory Tribunal (IPART) for a permanent Additional Special Variation (ASV) to Rates of 1.3% for 2022-23 before the due date of 29 April 2022, noting that:
  - i. Council's 2021-22 Long Term Financial Plan assumed a Rate Peg of 2% (including population factor),
  - ii. The Additional Special Variation application of 1.3% under section 508 (2) of the *Local Government Act 1993*, if approved by IPART, would increase income by \$550,888 in 2022-23 and would remain in Council's revenue base for future years,
  - iii. The additional 1.3% is required to ensure Council is able to meet the obligations set for 2022-23 as outlined in Council's Integrated Planning and Reporting (IP&R) documentation, and
  - iv. Council has considered the impact on ratepayers and the community in 2022-23 and in future years if the special variation is approved and considers that it is reasonable.
- C. Note that whilst the establishment of the ASV process is welcomed in addressing the impact of the historically low rate peg determination by IPART for 2022-2023 of 0.7%, this process is effectively only restoring the rate peg amount that Council's in NSW had been expecting to receive for 2022-2023 of around 2%. This means that the underlying financial sustainability issues that Council has been working through for some time still remain and will continue to be a focus moving forward.
- D. Include providing information to the public on the proposed ASV.

*Note: In accordance with Council's Code of Meeting Practice a Division of votes is recorded on this matter.*

**For the Motion**

**Against the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Elsing  
Councillor Grieve  
Councillor Jarvis  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Silcocks  
Councillor Swan  
Councillor Witt  
Councillor Wynne  
Councillor Zeltzer

Nil

**15/0**

Unconfirmed



**Item No:** 12.2  
**Subject:** **ADVICE OF THE WOOLLAHRA LOCAL PLANNING PANEL - PLANNING PROPOSAL - HERITAGE LISTING OF 53 & 55 DRUMALBYN ROAD, BELLEVUE HILL**  
**Authors:** Flavia Scardamaglia, Strategic Heritage Officer  
Anne White, Manager - Strategic Planning  
**Approver:** Scott Pedder, Director - Planning & Place  
**File No:** 22/42236  
**Purpose of the Report:** To provide Council with the advice of the Woollahra Local Planning Panel. To obtain Council's approval to proceed with the planning proposal to list 53 and 55 Drumalbyn Road, Bellevue Hill as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra Local Environmental Plan 2014.  
**Alignment to Delivery Program:** Strategy 4.3: Protect our heritage, including significant architecture and the natural environment.

**Note:** Late correspondence was tabled by Anthony Boskovitz & Zoltan Kovacs.

**Motion moved by Councillor Zeltzer  
Seconded by Councillor Shapiro**

- A. THAT Council note the advice provided by the Woollahra Local Planning Panel on 17 March 2022 for the planning proposal to list 53 and 55 Drumalbyn Road, Bellevue Hill as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra Local Environmental Plan 2014.
- B. THAT Council endorse the planning proposal to heritage list 53 and 55 Drumalbyn Road, Bellevue Hill as contained in **Attachment 5** of the report to Council of 28 March 2022, and resolve to forward this to the Department of Planning and Environment with a request for gateway determination to allow public exhibition.
- C. THAT Council request the Minister for Planning and Public Spaces (or delegate) authorise Council as the local plan-making authority in relation to the planning proposal, to make the local environment plan under section 3.36 of the *Environmental Planning and Assessment Act 1979*.
- D. THAT Council endorse investigating the potential State significance of 55 Drumalbyn Road, Bellevue Hill and if found to have State significance, progress a nomination to the State heritage register.
- E. THAT the Mayor writes to the NSW Heritage Council notifying them that 55 Drumalbyn Road, Bellevue Hill may be of State significance.
- F. THAT consistent with the adopted Woollahra Heritage Gap Analysis, Council progress the heritage program with a proactive approach to heritage identification and conservation including a Modern Heritage study.

**Amendment moved by Councillor Silcocks  
Seconded by Councillor Price**

- A. THAT Council note the advice provided by the Woollahra Local Planning Panel on 17 March 2022 for the planning proposal to list 53 and 55 Drumalbyn Road, Bellevue Hill as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra Local Environmental Plan 2014.

- B. THAT Council defers consideration of the planning proposal to heritage list 53 and 55 Drumalbyn Road, Bellevue Hill as contained in **Attachment 5** of the report to Council of 11 April 2022, until Council has an opportunity to hear from all interested parties and to enable Councillors to undertake a site inspection.

**The Amendment was put and lost.**

*Note: In accordance with Council's Code of Meeting Practice a Division of votes is recorded on this matter.*

**For the Motion**

Councillor Price  
Councillor Silcocks

**Against the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Elsing  
Councillor Grieve  
Councillor Jarvis  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Swan  
Councillor Witt  
Councillor Wynne  
Councillor Zeltzer

2/13

**The Motion was put and carried.**

**(Zeltzer/Shapiro)**

**82/22 Resolved:**

- A. THAT Council note the advice provided by the Woollahra Local Planning Panel on 17 March 2022 for the planning proposal to list 53 and 55 Drumalbyn Road, Bellevue Hill as local heritage items in Schedule 5 and on the Heritage Map of the Woollahra Local Environmental Plan 2014.
- B. THAT Council endorse the planning proposal to heritage list 53 and 55 Drumalbyn Road, Bellevue Hill as contained in **Attachment 5** of the report to Council of 28 March 2022, and resolve to forward this to the Department of Planning and Environment with a request for gateway determination to allow public exhibition.
- C. THAT Council request the Minister for Planning and Public Spaces (or delegate) authorise Council as the local plan-making authority in relation to the planning proposal, to make the local environment plan under section 3.36 of the *Environmental Planning and Assessment Act 1979*.
- D. THAT Council endorse investigating the potential State significance of 55 Drumalbyn Road, Bellevue Hill and if found to have State significance, progress a nomination to the State heritage register.
- E. THAT the Mayor writes to the NSW Heritage Council notifying them that 55 Drumalbyn Road, Bellevue Hill may be of State significance.
- F. THAT consistent with the adopted Woollahra Heritage Gap Analysis, Council progress the heritage program with a proactive approach to heritage identification and conservation including a Modern Heritage study.

*Note: In accordance with Council's Code of Meeting Practice a Division of votes is recorded on this matter.*

**For the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Elsing  
Councillor Grieve  
Councillor Jarvis  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Swan  
Councillor Witt  
Councillor Wynne  
Councillor Zeltzer

**Against the Motion**

Councillor Silcocks

**14/1**

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Unconfirmed

**Item No:** 12.3  
**Subject:** **CROSS STREET CAR PARK REDEVELOPMENT PROJECT - SELECTION OF DEVELOPMENT PARTNER**  
**Author:** Richard Pearson, Development Manager  
**Approver:** Tom O'Hanlon, Director - Infrastructure & Sustainability  
**File No:** 22/59811  
**Purpose of the Report:** For Council to make a determination on the development partner following the EOI and RFDP processes.  
**Alignment to Delivery Program:** Strategy 4.5: Enhance the form and function of the local business centres.

**Note:** Late correspondence was tabled by Paul Kantor.

**Note:** Councillor Regan declared a Non-Significant, Non-Pecuniary Interest in this Item, as her husband and/or their self-managed super fund have invested in one of the proponents investment products from time to time. They are not however connected with the proposal. Councillor Regan remained in the meeting, participated in debate and voted on the matter.

**Note:** The Mayor, Councillor Wynne declared a Significant, Non-Pecuniary Interest in this Item, as she knows the proponent and a number of staff that work there and given that this is a commercial decision. The Mayor, Councillor Wynne vacated the Chair, did not participated in debate or vote on the matter.

**Note:** The Mayor, Councillor Wynne vacated the Chair for Item 12.3 and Deputy Mayor, Councillor Shapiro assumed the Chair.

**(Shields/Regan)**

**83/22 Resolved:**

THAT in accordance with Section 10A of the *Local Government Act 1993* the Committee resolve to enter into Closed Session with the press and public excluded to consider the Confidential Report. These matters are to be considered in Closed Session in accordance with 2(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

*Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.*

**For the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Grieve  
Councillor Jarvis  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Silcocks  
Councillor Swan  
Councillor Witt  
Councillor Zeltzer

**Against the Motion**

Councillor Elsing

**13/1**

**Adopted**

**In Closed Session**

**Note:** The Committee discussed the confidential report and drafted resolution.

**(Shields/Carmichael)**

**Resolved:**

THAT the Committee move into "Open Session".

**Adopted**

**In Open Session**

**(Shields/Zeltzer)**

**84/22 Resolved:**

THAT Council:

- A. Appoint the Pallas Group/Assembly Funds Management/Fortis Development Group (Fortis) consortium as its development partner for the Cross Street Car Park Redevelopment Project.
- B. Note that if Council resolves in line with Recommendation A above, Council Officers will enter into negotiations with Fortis to improve its on-site public domain offering and connectivity and its dwelling mix and architectural design.
- C. Note that following the action included in Recommendation B above, officers will enter into negotiations for a Heads of Agreement and a Project Development Agreement, which will not be inferior to the current Fortis offer and will set out the terms of engagement.
- D. Note that approval of the Office of Local Government (OLG) will be required prior to entering into contractual arrangements with the development partner in accordance with the OLG's Public Private Partnership Guidelines and that a submission will be prepared accordingly.
- E. Note that a future Planning Proposal will be required to support the additional height and density proposed by the development partner and this will be subject to independent assessment by Council's Planning & Place Division.
- F. Note that further reports to Council will be submitted reporting on negotiated improvements and seeking endorsement of the Heads of Agreement and Project Development Agreement later in 2022.
- G. Note that the report remain will confidential until finalisation of the Project Development Agreement with the preferred development partner.
- H. Commits to no car parking on Steyne Park temporarily or otherwise during the construction of the Carpark.

**Note:** *In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.*

***For the Motion***

Councillor Carmichael  
Councillor Cavanagh  
Councillor Jarvis  
Councillor Shapiro  
Councillor Shields  
Councillor Swan  
Councillor Zeltzer

***Against the Motion***

Councillor Elsing  
Councillor Grieve  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Silcocks  
Councillor Witt

***7/7***

**The Motion was Carried on the casting vote of The Deputy Mayor, Councillor Shapiro.**

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Unconfirmed

## 15. Councillor Reports/Councillor Updates (Section 8.4)

**Note:** Councillor Reports/Councillor Updates are to be confined to condolences, congratulations, presentations and matters ruled by the Chair to be of extreme urgency (in accordance with Section 8.4 of Council's Code of Meeting Practice).

**General Item No:** 15.1 Rose Bay Sub Branch Anzac Day  
**Tabled by:** Councillor Shapiro

### Councillor Shapiro advised:

Thank you, Madam Mayor. I was delighted to represent you yesterday at an early Anzac Day March and celebration of the Rose Bay RSL Sub Branch. This is the annual march from the RSL to the memorial at Lyne Park. We were truly blessed with a beautiful sunny day and it was led by the Scots College Pipe Band with cadets carrying the flag and the Navy was also out in full. We also had representation from Cranbrook School and Rose Bay Public School, who laid wreaths.

There was an outstanding speech by a year 12 student from Scots College, Matthew Rimbo, which was superb on every level. As I mentioned, HMAS Watson was well represented, we also had attendance of the Honourable Dave Sharma MP, the Honourable Gabrielle Upton MP, the Commander of HMAS Watson, Warren Bechly, the Inspector James Knox of NSW Police and Michael Fisher, President of Rose Bay Rotary. It was a wonderful day and I might add, Lyne Park is looking superb and there were remarks on the quality of the gardening. So please Mr O'Hanlon pass that onto your team it looked magnificent particularly with the sun shining.

I was really very honoured to represent you and Council.

### The Mayor, Councillor Wynne in response:

Thank you Councillor Shapiro. I appreciate you stepping in, I was sad to have missed that but I am so glad that the day went well.

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**General Item No:** 15.2 Tingira Challenge  
**Tabled by:** Councillor Jarvis

### Councillor Jarvis advised:

Similarly Madam Mayor, I was pleased to represent you on Saturday at the Tingira Challenge, which is a paddle race that has been going for a number of years and it was the first occasion that the inaugural women's short course paddle trophy was awarded. It was a paddle of 8 kms, in my view that is hardly short, given Shark Island is 1.5kms away and that is about all I can manage.

It was great to see so many woman out competing in this sport and it was fitting that it was held at Tingira Memorial Park, 'Tingira' being an aboriginal word meaning 'open sea' and of course Tingira itself is named itself in honour of HMAS Tingira which was the Naval Vessel training ship moored off Rose Bay between 1912 and 1927. So thank you for that, it was a delight to be there and wonderful to see people using our beautiful harbour around Rose Bay.

### The Mayor, Councillor Wynne in response:

Thank you Councillor Jarvis. I appreciate that and thank you very much I am very grateful.

**General Item No:** 15.3 Congratulations to Jo Jansyn on becoming a Councillor on Bayside Council  
**Tabled by:** Councillor Elsing

**Councillor Elsing advised:**

Thank you very much Madam Mayor. I would wanted to give recognition to one of the Woollahra staff members Jo Jansyn, who I understand has been made a Councillor on Bayside Council and I think I mentioned previously the previous staff member who had left Council who became a Councillor on another Council the other week. So I would like to extend my congratulations to Jo Jansyn and also I think it's fair for us to pick up some of the kudos of that extension of her career as she has been exposed to us and to the Council and that we haven't set too bad an example for her to want do it.

So ask that you write to her in the same manner that you did to the previous staff member that became a Councillor that I mentioned.

**The Mayor, Councillor Wynne in response:**

I will happily. Thank you Councillor Elsing.

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**General Item No:** 4 Doggie Day Out  
**Tabled by:** Councillor Shields

**Councillor Shields advised:**

Thank you Madam Mayor. I attended on Sunday 3 April 2022 representing you and the Deputy Mayor at the 'Doggy Day Out', which was a fantastic event supported by Woollahra Council. I just wanted to acknowledge the men and woman from Rotary Rose Bay branch who also took a leadership role in putting the day on. It was an amazing day and I was given the very difficult task of judging the best doggy trick and I'm very happy that Teddy Wynne was not present, because I would have to have ruled you out Madam Mayor if Teddy was there, however I think Teddy would have done very well in the dog competition.

All jokes aside it was an amazing day, the sun was out and over the course of the day I would say there would be close to 1,000 people there and it was a great way to bring the community together. Any excuse to bring the community together is a wonderful day.

**The Mayor, Councillor Wynne in response:**

Thank you very much, Councillor Shields. Teddy was actually there, sadly COVID has impacted some of my activities but he reported that it was a fabulous day as well. Thank you to everyone involved in those activities.

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**General Item No:** 5 Incident on 5 April 2022  
**Tabled by:** Councillor Swan

**Councillor Swan advised:**

Thank you Madam Mayor. I would like to acknowledge the incident that occurred on the 5 April 2022 outside Council Chambers. I understand that there was an unfortunate incident involving a young person and I just want to reiterate the importance that this has on our focus on mental health, especially with young people following from COVID, I think there are a lot of young people suffering. I would like to extend my sympathy to all staff involved and that might have been exposed to that difficult circumstance and also want to express my thanks to the emergency services which dealt with the situation in an expert and efficient way and ended in a positive resolution to the matter.

**The Mayor, Councillor Wynne in response:**

Thank you Councillor Swan. It is very kind of you it did have a big impact on staff it when from 7.30am in the morning to 1.30pm in the afternoon. Staff and the emergency services were absolutely incredible in how they handled that.

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**General Item No:** 6 Planning Proposal - Oxford Street  
**Tabled by:** Councillor Robertson

**Councillor Robertson asking:**

This is a condolence for heritage and a congratulations for our Council staff as well as 'The Paddington Society' and an opportunity to again extend my thanks to Councillor Elsing who along with myself and The Paddington Society addressed the City of Sydney last week in relation to their planning proposal for Oxford Street and I understand that that planning proposal has been approved by the City of Sydney Council this evening.

Now I just want to say Madam Mayor that we are looking at the prospect of an interface of 9.5m on the Woollahra Council side of Oxford Street in that little wedge that abutts the City of Sydney down in Paddington and 20m on the other side (as a permissible building envelope). This is quite a staggering response to heritage and that brings me to my congratulations to staff who did put in a submission on behalf of Woollahra Council, that was critical of the planning proposal. I have to say I have read that report twice and the update material that was provided by Anne White, Manager Strategic Planning and her team, and it is a credit to them, the level of depth and detail that they go to explain what is a preferable approach to creating a uplift to conservation area is to be commended. It saddens me that the advice and recommendation has not been taken on board by the City of Sydney Council.

I also want to extend my thanks to 'The Paddington Society' and their members who are really only working across one area here that is read in the building typology as Victorian terraces and there are still going to be actual direct impacts on Paddington by this proposal. So I thank 'The Paddington Society' for their detailed submissions, they are a committed group of volunteers many of whom have a whole range of expertise that they bring to the floor for the betterment of our built environment and our community and I thank them for that. I can only hope Madam Mayor the we can continue to work partnership with City of Sydney Council and to be a positive influence on that Council and many others as I believe the calibre of work undertaken by our staff and commitment as a Council really does put us at the forefront or best practice when it comes to heritage conservation.

**The Mayor, Councillor Wynne in response:**

Thank you very much, Councillor Robertson.

**General Item No:** 7 Condolences to the Fischl Family  
**Tabled by:** The Mayor, Councillor Wynne

**The Mayor, Councillor Wynne advised:**

I want to extend my condolences to the Fischl Family. Gerry Fischl husband of Eva Fischl passed away on Thursday. Many of you would know the Fischl House at Jewish Care, in his name sake. He was 92 years old, an extraordinary resident and member of the Jewish community who gave tirelessly and he will be sadly missed by many in the Municipality, by his family and his extended family. My condolences.

Unconfirmed

## 16. Notices of Motion

**Item No:** 16.1  
**Subject:** NOTICE OF MOTION - DENSITY ADVOCACY  
**From:** Councillors Luise Elsing and Lucinda Regan  
**Date:** 04 April 2022  
**File No:** 22/65248

**Motion moved by Councillor Elsing  
Seconded by Councillor Regan**

THAT Council resolve:

- A. Note that the increase in population density if parklands, school sites and infrastructure are excluded from land mass in the Woollahra Local Government is from 4,851 people per km<sup>2</sup> to 6,567 people per km<sup>2</sup>,
- B. Advocate in writing that the revised calculation of population density of 6,567 people per km<sup>2</sup> should be used when:
- (a) calculating appropriate new dwelling numbers for the Woollahra Local Government Area ("WLGA"), and
  - (b) determining any other strategic matters relevant to the WLGA such as infrastructure and service delivery,
- to the relevant authorities including:  
Department of Environment and Planning  
Greater Sydney Commission  
NSW Member for Vaucluse, Gabrielle Upton MP  
NSW Minister for Planning, Anthony Roberts MP, and
- C. Make publicly available copies on Council website of correspondence to the relevant authorities.

**The Motion was put and lost.**

**Note:** *In accordance with Council's Code of Meeting Practice a Division of votes is recorded on this matter.*

***For the Motion***

Councillor Elsing  
Councillor Grieve  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Silcocks  
Councillor Witt

***Against the Motion***

Councillor Carmichael  
Councillor Cavanagh  
Councillor Jarvis  
Councillor Shapiro  
Councillor Shields  
Councillor Swan  
Councillor Wynne  
Councillor Zeltzer

7/8

***The Motion was Lost.***

**Item No:** 16.2  
**Subject:** **NOTICE OF MOTION - FURTHER STRENGTHEN EXCAVATION CONTROLS**  
**From:** Councillors Luise Elsing, Lucinda Regan and Mark Silcocks  
**Date:** 06 April 2022  
**File No:** 22/67109

(Elsing/Silcocks)

85/22 Resolved:

THAT Council Note:

- A. Council's commitment in the DCP to limiting excavation to that which might reasonably be required for car parking and domestic storage requirements, and to allow the building to respond to the site topography in an appropriate manner,
- B. Changes made to the DCP<sup>1</sup> and in progress for the LEP requiring a hydrological report in certain circumstances and imposing the requirement of insurance as a condition of consent,
- C. The proposed withdrawal of the Design and Place State Environmental Planning Policy, and
- D. Community concern with sufficiency of current controls to deal with excavation and groundwater issues on site.

Resolve THAT:

Council staff prepare a report on further limiting excavation and use of rezoning to strengthen existing controls to minimise the impacts of groundwater drawdown and adverse hydrogeological consequences on surrounding properties and infrastructure (both during and after construction) as a consequence of underground structures, in the Woollahra LGA (having regard to the withdrawal of the Design and Place SEPP) including recommendations for consideration at the relevant standing committee and full Council.

*Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.*

**For the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Elsing  
Councillor Grieve  
Councillor Jarvis  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Silcocks  
Councillor Swan  
Councillor Witt  
Councillor Wynne  
Councillor Zeltzer

**Against the Motion**

Nil

**15/0**

<sup>1</sup> E2.2.10 Groundwater (hydrogeology) Introduction Council will require geotechnical and hydrogeological reports for development applications which include below ground structures. Any proposed development with below ground structures must consider the sub-surface conditions and the effects of construction on surrounding properties. In addition, those which are likely to extend below the level of seasonal fluctuations in the groundwater table, must also consider the effect of any changes induced in the sub-surface water levels and the groundwater flow patterns on surrounding properties. Unless site specific information exists to the contrary, excavations deeper than 1m must be assumed to have this potential to intersect the groundwater level and shall be considered as below ground structures. Council's principal objective is to ensure that earthworks and associated groundwater dewatering, during and after construction, will not have any adverse impacts on:  Environmental functions and processes  Neighbouring uses  Cultural and heritage items  Any features of the surrounding land and infrastructure that could be impacted by geotechnical and hydrogeological changes. Typically, adverse geotechnical impacts may include vibration induces settlements from construction methods and equipment and inadequate support of adjacent land during and after construction. Typically, adverse hydrogeological impacts may include settlement induced by changes in the groundwater level and seepage problems.

## 17. Questions With Notice

(Shapiro/Zeltzer)

86/22 Resolved:

THAT the Questions with Notice be received and noted.

*Note: In accordance with Council's Code of Meeting Practice a Division of votes is recorded on this matter.*

**For the Motion**

**Against the Motion**

Councillor Carmichael  
Councillor Cavanagh  
Councillor Elsing  
Councillor Grieve  
Councillor Jarvis  
Councillor Price  
Councillor Regan  
Councillor Robertson  
Councillor Shapiro  
Councillor Shields  
Councillor Silcocks  
Councillor Swan  
Councillor Witt  
Councillor Wynne  
Councillor Zeltzer

Nil

15/0

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**QWN:** 17.1  
**From:** Councillor Robertson  
**Subject:** Questions with Notice - Canopy Cover

**Note:** Late correspondence was tabled by Andrew Simpson, Tree Management Team Leader.

**Councillor Robertson asking:**

A recent report in the Sydney Morning Herald (<https://www.smh.com.au/national/most-sydney-councils-losing-urban-forest-cover-how-green-is-your-neighbourhood-20220316-p5a55h.html>) which quoted statistics from the Urban Forests in NSW & ACT report published by the Centre for Urban Research (RMIT) & Greener Spaces Better Places - revealed that canopy cover in the Woollahra LGA is at 34.9% based on 2020 data.

I understand that when developing its canopy controls and changes to FSR controls, Council relied upon canopy mapping data from 2016. What percentage of canopy coverage did that data identify for the Woollahra LGA and what is the difference between this percentage and the 2020 figure of 34.9%? Can this 2020 figure be broken down into R2 and R3 zonings as was the 2016 data?

In summary, has Woollahra sustained a loss or grown its canopy between 2016 and 2020 and what reasons are attributable to this?

Does Council have any plans to undertake further canopy mapping?

What measures are in place to monitor Woollahra's canopy going forward?

### **Team Leader Open Space & Trees in response:**

In developing the canopy control we relied upon a data set provided free to all Councils by NSW DPIE, called SEED Mesh Block. The 2016 Mesh Block data showed the canopy cover for the Woollahra LGA at 28%.

More recently, the NSW Government released the 2019 SEED Mesh block data. I have searched this data, which indicates that in 2019 the Woollahra LGA canopy cover was at 30.67%.

Mesh Blocks are a mapping layer which are based on the NSW Digital Cadastral Database & NSW Land Zoning from the Australian Bureau of Statistics. Mesh Blocks are made up of boundaries of properties, roads, rail, & water and are defined by the number of properties in each block.

The SMH article shows a canopy cover figure of 34.9% in 2020. However, this percentage is based on data gathered as part of the Greener Spaces Better Places research where an i-Tree analysis methodology was used (which is different than the SEED Mesh block data). I-Tree uses a random plot analysis of one thousand samples throughout the LGA to categorise canopy, shrub, grass and hard surfaces.

Importantly, due to the different methods of calculating canopy cover, a comparison between years should not be made based on these two data sets as the methodology for collecting the data is vastly different.

What is important is a comparison over time, but using a single methodology.

#### Our approach

Recently, Council acquired a Nearthmaps mapping tool which provides us with tree canopy information. After researching various programs and methods we have chosen Nearthmap because of its unique artificial intelligence program for identifying tree canopy data based on raw imagery. This tool is currently being used by our GIS & Tree Teams to gather data in developing the Urban Forest Strategy (UFS).

An analysis of changes in tree canopy comparing historical and existing tree canopy cover is being made by using aerial images from 2010, 2016 & 2022. All zoning typologies (amongst other queries) will be analysed to determine their existing canopy as a percentage of the entire LGA and also the change over the period.

*In summary, has Woollahra sustained a loss or grown its canopy between 2016 and 2020 and what reasons are attributable to this?*

We will have an understanding of the change in canopy cover within the period 2010, 2016 & 2022 once the analysis is complete.

The reasons for any change to the canopy cover will be complex and will form a key part of the scope of developing the UFS.

*Does Council have any plans to undertake further canopy mapping?*

The historical change analysis will provide a sound platform for which to base the UFS on. The strategy will include a recommendation for further canopy monitoring. The results of the current analysis will inform the timeframe for the next review.

*What measures are in place to monitor Woollahra's canopy going forward?*

The Nearthmaps AI canopy mapping tool can be used to proactively monitor the Woollahra urban forest now and into the future.

**QWN:** 17.2  
**From:** Councillor Elsing  
**Subject:** Questions with Notice - Design and Place State Environmental Planning Policy

**Councillor Elsing asking:**

**Questions**

1. What are the ramifications of the NSW Planning Minister Mr Roberts withdrawing (effective immediately) the directive order to consider flood, fire risks before building?
2. Can we make representations as to the effect of the directive order reversal on our community?
3. What are the ramifications of the NSW Planning Minister Mr Roberts not progressing with Design and Place State Environmental Planning Policy under consideration for apartments and homes?
4. Can we make representations as to the effect of the above reversal on our community?
5. Can we prepare a report of where we can strengthen controls to pick up issues dropped by not progressing the Design and Place SEPP?

**Background**

**Directive to consider flood, fire risk revoked by NSW Planning and Environment Minister who announced that he is not progressing the Design and Place State Environmental Planning Policy**

The Sydney Morning Herald reported on 22 March 2022 that the NSW Planning Minister Mr Roberts MP scrapped an order to consider flood, fire risks before building.

*“Mr Roberts last week revoked a ministerial directive by his predecessor Robert Stokes outlining nine principles for sustainable development, including managing the risks of climate change, a decision top architects have branded “short-sighted” and hard to understand.*

*Mr Roberts’ move coincides with expectations the government will also scrap or substantially change the new Design and Place State Environmental Planning Policy (SEPP) under consideration for apartments and homes. The policy stresses sustainability, quality and liveability by requiring, for example, better ventilation.*

*Luke Achterstraat, NSW executive director of the Property Council of Australia, supported Mr Roberts’ move. With NSW facing a shortage of about 100,000 dwellings, the council backed any measure that sought to reduce red tape and activity that would “unblock” the planning system.*

*“The added significance of why we support the Minister’s announcement is that he has doubled down on housing supply and affordability, and has recognised the industry has been in an elongated process of policy reform.”*

*“The future of building on floodplains will also form part of the inquiry into the NSW disaster that has left nine people dead and thousands with damaged homes.”*

Better Planning NSW initiated a petition to NSW Planning Minister Anthony Roberts and Premier Dominic Perrottet including the following recommendations of the Total Environment Centre<sup>2</sup>:

1. Continue to develop the Design and Place SEPP<sup>3</sup> with its crucial environmental safeguards for present and future urban populations with gazettal by mid-2022.

<sup>2</sup><https://www.tec.org.au/dont-let-developers-wreck-sydney-now-and-in-the-future>

<sup>3</sup>[https://assets.nationbuilder.com/boomerangalliance/pages/4172/attachments/original/1647917987/DP\\_SEPP\\_Briefing\\_Community\\_and\\_Environment\\_071021\\_sm.pdf?1647917987](https://assets.nationbuilder.com/boomerangalliance/pages/4172/attachments/original/1647917987/DP_SEPP_Briefing_Community_and_Environment_071021_sm.pdf?1647917987)

2. Ensure that best practice is achieved (and is not discretionary) for cooler suburbs and buildings, green space, net zero, BASIX, tree canopy retention and expansion with deep soil needs, electric vehicle ready apartments, and resilience to killer urban heat, fire and floods.
3. Factor community health, sustainability and biodiversity protection into economic reviews of new policies, taking account of the long term impacts and benefits.
4. Require net zero emission statements and objective and credible data (not greenwash from developer consultants).
5. Achieve waste minimisation and water efficiency.

**Manager Strategic Planning in response:**

1. **What are the ramifications of the NSW Planning Minister Mr Roberts withdrawing (effective immediately) the directive order to consider flood, fire risks before building?**

On 2 December 2021, the NSW Government released *The Minister's Planning Principles: A Plan for Sustainable Development*. This ministerial directive outlined nine principles for sustainable development, including managing the risks of climate change such as disaster resilience.

It was intended that the planning principles be applied to guide future strategic planning policies, including state environmental planning policies and local environmental plans.

The planning principles did not contain or implement any new or amended planning provisions for sustainable development and consent authorities were not required to consider the planning principles when determining development applications.

The planning principles commenced on 1 March 2022. It was intended for the principles to be given legal effect by way of a Ministerial Direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*. However, on 14 March 2022, the NSW Planning Minister Anthony Roberts revoked the planning principles and they were withdrawn from the website of the Department of Planning and Environment.

Notwithstanding Minister Roberts' decision, the existing mechanisms within the planning system that guide sustainable development in NSW continue to operate. These include *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy (Resilience and Hazards) 2021*, and bushfire, sustainability and flood planning controls contained in local environmental plans and development control plans.

2. **Can we make representations as to the effect of the directive order reversal on our community?**

Yes. Should Council resolve to make representations regarding the effect of Minister Roberts' decision, Council staff would prepare necessary correspondence to give effect to that resolution.

3. **What are the ramifications of the NSW Planning Minister Mr Roberts not progressing with Design and Place State Environmental Planning Policy under consideration for apartments and homes?**

The *Draft State Environmental Planning Policy (Design and Place) 2021* (Draft Design & Place SEPP) was exhibited in late 2021.



The Draft Design & Place SEPP aimed to encourage greater flexibility, higher design quality and sustainability, and reduce complexity in the planning system. It sought to repeal and replace *State Environmental Planning Policy (State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development 2002 (SEPP 65)* and *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)*.

On 5 April 2022, Minister Roberts' announced that the State Government would not proceed with the Draft Design & Place SEPP. Therefore, there will be no changes to the existing provisions contained under SEPP 65 and its accompanying Apartment Design Guide.

However, it is understood that the NSW Government does intend to progress updates to enhance sustainability standards for energy, water use and thermal performance of homes under the BASIX system.

The NSW Government also intends to consider further resilience and land use planning measures that may arise from the independent inquiry into floods. This inquiry is currently being conducted by Professor Mary O'Kane AC and Michael Fuller APM and recommendations are due to the NSW Government on 30 June 2022.

**4. Can we make representations as to the effect of the above reversal on our community?**

Yes. Should Council resolve to make representations regarding the effect of Minister Roberts' decision, Council staff would prepare the necessary correspondence to give effect to that resolution.

**5. Can we prepare a report of where we can strengthen controls to pick up issues dropped by not progressing the Design and Place SEPP?**

Should Council resolve to prepare a report to investigate potential amendments to Council's existing planning controls to incorporate relevant provisions proposed in the Draft Design and Place SEPP, Council staff would prepare such a report.

However, it should be noted that under section 3.28 of the *Environmental Planning and Assessment Act 1979*, in the event of any inconsistency between the provisions of an environmental planning instrument (e.g. *Woollahra Local Environmental Plan 2014*), a State Environmental Planning Policy will prevail.

This clause has the effect of restricting a council's ability to impose planning provisions that contain standards more onerous than those contained in State Environmental Planning Policies.

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**QWN:** 17.3  
**From:** Councillor Elsing  
**Subject:** Questions with Notice - Resilience through Planning – Control Review

**Councillor Elsing asking:**

**Questions**

1. When is the report in the Council resolution dated 26 April 2021 which "*advises on mechanisms that can be utilised to prohibit excavation and dewatering in the most impacted zones in the Double Bay Floodplain (see the Double Bay Settlement zones in Figure 2 of the report to the Environmental Planning committee of 12 April 2021) including investigating*" rezoning coming to Council?

2. Please set out the process by which Council staff continually review and update controls to ensure the community is well protected against issues like hydrological issues, for example protecting biodiversity, carbon emissions (supporting meeting Council targets), air pollution including through traffic emissions, tree canopy, heat and any other issues related to current climate catastrophes?
3. Noting the time line for changes for the “Earthworks and Associated groundwater dewatering – proposed enhanced provisions” from February 2019 to date without completion what steps can be put in place to accelerate changes needed to accommodate increased development, existing conditions (floodplains) and changes to the environment?
4. Has consideration been given to including applicant insurance condition of consent as a control? The advantage of a control is that applicants would be alert upfront to the requirement for insurance, if needed. The disadvantage of a condition of consent is that it is discretionary.
5. How does the insurance condition work? Are neighbours a party to the insurance policy? Can further information be provided on when and how the insurance requirement operates?

## Background

### Flood Plains

Councillors Elsing and Regan asked a question with notice with regard to adequate controls for flood plains reported in Council minutes for 14 February 2022 (Resilience through planning – Flood Prone Land). Set out below is an extract for the response regarding the WLEP and DCP:

*These controls are continually reviewed and updated by Council staff to ensure the community is well protected against hydrological issues. For example, Council recently updated Chapter E2 of the DCP to include new requirements for developments that may impact on groundwater. A planning proposal on the same issue is also being progressed, which was recently placed on public exhibition.*

*The NSW Government’s ‘Flood Prone Land Package’ encourages a merit-based approach to flood planning, meaning both the traditional 1:100 year flood and rarer events are considered. This approach is already being used at Woollahra Council.*

### Groundwater dewatering

Following a notice of motion passed at a council meeting on 25 February 2019<sup>4</sup> Council commissioned the *Hydrogeological Geotechnical Impacts Groundwater and Geotechnical Assessment Report prepared by GHD Pty Ltd* dated 2020.

The Environmental Planning Committee (EPC) considered the report at the meeting on 12 April 2021. Council resolved (unanimously) on 26 April 2021 - THAT staff prepare a report which advises on mechanisms that can be utilised to prohibit excavation and dewatering in the most impacted zones in the Double Bay Floodplain (see the Double Bay Settlement zones in Figure 2 of the report to the Environmental Planning committee of 12 April 2021) including investigating:

- a. Amending the Local Environmental Plan (LEP),
- b. Amending the Development Control Plan (DCP), and
- c. Rezoning.

The DCP was amended on 6 December 2021 and the LEP amendment is in progress<sup>5</sup>.

<sup>4</sup> [https://www.woollahra.nsw.gov.au/\\_data/assets/pdf\\_file/0010/199432/Council\\_Minutes\\_-\\_25\\_Feb\\_2019.pdf](https://www.woollahra.nsw.gov.au/_data/assets/pdf_file/0010/199432/Council_Minutes_-_25_Feb_2019.pdf)

THAT Council:

A. Staff meet with concerned Double Bay residents and outline the approval process that was undertaken in relation to the DA and dewatering at 4 - 8 Patterson Street, Double Bay and other sites that have been approved to undertake dewatering in Double Bay.

B. Follow up with the NSW Department of Primary Industries to ascertain the results of their enquiries into this issue.

C. Obtain a report from an expert hydro geologist (and/or other appropriate expert) informing Council as to whether there are any short, medium or long-term impacts or risks associated with excavation, subterranean building and dewatering in the Double Bay area on the structural and geological integrity of Double Bay residential and commercial buildings, with a view to informing any amendments required to existing planning controls.

<sup>5</sup> Council exhibited on 9 February 2022 a planning proposal to amend the WLEP to enhance existing provisions to minimise the impact of dewatering from the construction of underground structures and ensure that there are no adverse impact on any surrounding properties (both during and after constructions). Proposed changes to be considered at EPA on 4 April 2022 (these changes complement revisions to the DCP which came into force on 6 December 2021).

**Manager Strategic Planning in response:**

- 1. When is the report in the Council resolution dated 26 April 2021 which “advises on mechanisms that can be utilised to prohibit excavation and dewatering in the most impacted zones in the Double Bay Floodplain (see the Double Bay Settlement zones in Figure 2 of the report to the Environmental Planning committee of 12 April 2021) including investigating” rezoning coming to Council?**

On 11 October 2021, Council’s Environmental Planning Committee considered a report on earthworks and dewatering provisions, including responding to a Council resolution from 26 April 2021 to investigate mechanisms to prohibit excavation and dewatering in the most impacted zones in the Double Bay settlement zones.

On 25 October 201, Council resolved (in part):

- E. THAT Council staff provide a further report on how we can limit excavation and dewatering in the most impacted zones in the Double Bay Floodplain (see the Double Bay Settlement area in Figure 1 of the planning proposal attached to the Environmental Planning committee of 11 October 2021) and Rose Bay Floodplain (for example limiting the volume of excavation).*

Council staff are in the process of preparing a further report on this matter which will be presented to a future meeting of Council as resources permit.

- 2. Please set out the process by which Council staff continually review and update controls to ensure the community is well protected against issues like hydrological issues, for example protecting biodiversity, carbon emissions (supporting meeting Council targets), air pollution including through traffic emissions, tree canopy, heat and any other issues related to current climate catastrophes?**

Councils planning provisions and controls are reviewed and updated on an ongoing basis. These updates often arise through the implementation of endorsed strategic plans and policies including the *Greater Sydney Region Plan* and *Eastern City District Plan* (Greater Sydney Commission 2018), the *Woollahra Local Strategic Planning Statement 2020*.

They also arise as matters that are important to our community through mechanisms such as the advice of the Woollahra Local Planning Panel or Notices of Motion supported by Council. For example, the planning proposal to introduce floor space ratio controls for specific types of residential development and new urban greening provisions.

Emerging climate issues are highlighted through the implementation of other Council initiatives and ongoing consultation with nearby councils. Moving forward this will include Council’s recently finalised Climate Change Risk Assessment and Adaptation Plan.

- 3. Noting the time line for changes for the “Earthworks and Associated groundwater dewatering – proposed enhanced provisions” from February 2019 to date without completion what steps can be put in place to accelerate changes needed to accommodate increased development, existing conditions (floodplains) and changes to the environment?**

On 25 February 2019, Council considered a Notice of Motion relating to concerns raised by residents about cracking and structural movement in dwellings in Double Bay. It was subsequently resolved that Council obtain a report from an expert hydro-geologist to understand the impacts associated with excavation and dewatering in Double Bay with a view that this report inform future amendments to Councils planning controls.

Since that time, Council staff have progressed the following projects to strengthen Council's planning provisions to minimise the impact of groundwater drawdown and ensure there are no adverse hydrogeological impacts on surrounding properties or infrastructure:

- i. Amendments to the objectives and controls of the Woollahra DCP 2015. These enhanced provisions came into force on 6 December 2021.
- ii. A planning proposal to amend Clause 1.2 Aims of Plan and Clause 6.2 Earthworks of the Woollahra LEP 2014. This planning proposal was exhibited from 9 February 2022 to 11 March 2022. The post exhibition report was considered by the Environmental Planning Committee at its meeting of 4 April 2022.

If endorsed by Council at its meeting of 26 April 2022, the planning proposal will be finalised and a request set to the Planning Secretary to make the local environmental plan.

- 4. Has consideration been given to including applicant insurance condition of consent as a control? The advantage of a control is that applicants would be alert upfront to the requirement for insurance, if needed. The disadvantage of a condition of consent is that it is discretionary.**

*Council staff do not support the inclusion of a condition of consent as a planning consideration. The controls in the Woollahra LEP 2014 and the Woollahra DCP 2015 should guide future development, whilst the condition of consent will mitigate potential impacts.*

*Council's Development Control Team have prepared a standard condition of consent to require an appropriate insurance policy (where relevant) and this has been included in Council's standard development application conditions of consent. Where relevant, this condition will be applied to development with below ground structures.*

#### **D.2 Insurance cover in case of potential damage to adjoining properties**

*A significant subsidence or collapse of any one of the adjoining properties may have a severe impact in the Applicant's financial ability to personally pay for repairs. Accordingly, an insurance policy shall be purchased to cover any damage and up to full loss and re-instatement of the properties at ##. The policy shall cover any loss of access to these properties in the event damage is so severe access is lost/significantly hampered the residents may need equivalent alternate accommodation during repairs/restitution. The cover shall be in the order of 20,000,000 dollars (or an appropriately agreed amount between effected property owners and the Applicant) to ensure adequate cover for the benefit of any one or all the owners affected.*

- 5. How does the insurance condition work? Are neighbours a party to the insurance policy? Can further information be provided on when and how the insurance requirement operates?**

*A copy of the condition is included above, and the affected properties will be annotated in this condition.*

*The certifier responsible under the Act will then be responsible for ensuring that the conditions of consent are met.*

**QWN:** 17.4  
**From:** Councillor Elsing  
**Subject:** Questions with Notice - Local Character Area

**Councillor Elsing asking:**

**Questions**

1. When will the Special Character Report come to Council?
2. What is the current status of the Low Rise and Medium Density Housing Code?
3. Given public consultation etc what is the likely time line for implementation of any changes to the Woollahra LEP?
4. Can staff please consider the Canada Bay Planning Proposal Feb 2022 in the report?

**Background**

**November 2021**

On 11 November 2021<sup>6</sup> Council unanimously resolved to request staff to:

- A. undertake an assessment of land areas (including all residential zones) in the municipality that are important to the local character and natural and visual environment of the municipality (including those in sightlines from Sydney Harbour), with a view to identifying those areas where it is important to retain the dominance of landscape over built form and enhance the local character and amenity of the area,
- B. have regard to (but without limitation) the “Scenic Protection Areas” identified in the Mosman Local Environmental Plan 2012 by way of benchmarking of the assessment to be undertaken in 1 above; and
- C. prepare a report to Council on measures that can be taken through Council’s planning powers (including any amendment to the Woollahra Local Environmental Plan 2014), to regulate development in such areas so that the character of these areas are retained and the general dominance of landscape over built form is maintained, such report to also consider measures that may be taken to exclude these areas from the Low Rise and Medium Density Housing Code and other codes of the State Environmental Planning Policies.

Reference was made in support of the 11 November 2021 NOM to:

- Mosman Local Government Area is planning instruments including “Scenic Protection Area” and “Scenic Protection Map”. The gist being that development consent must not be granted unless the consent authority is satisfied that: (a) measures will be taken, including in relation to the location and design of the proposed development, to minimise the visual impact of the development to and from Sydney Harbour, and (b) the development will maintain the existing natural landscape and landform, and
- The report prepared by UTS which recommended, amongst other things, that application of the Low Rise and Medium Density Housing Code given the significant concerns raised by council officers about the potential impact of the Code on local character. The UTS Report contemplates that Councils may identify areas as being of “Special Local Character” such that they should be excluded from the Code.
- The character of many historic areas in suburbs like Rose Bay, Bellevue Hill, Double Bay, Point Piper and Vaucluse in the Woollahra municipality do not enjoy the heritage and conservation protections of suburbs like Woollahra, Paddington and Watsons Bay, yet have an important contribution to the fabric of the municipality. Many residential areas in these suburbs, particularly those close to Sydney Harbour and open spaces such as parklands, are dominated by homes in landscaped settings. It is imperative that this character be retained in these areas so that there is a general visual dominance of landscape over built form.

<sup>6</sup> [https://www.woollahra.nsw.gov.au/\\_data/assets/pdf\\_file/0018/210933/Council\\_Minutes\\_-\\_11\\_Nov\\_2019.pdf](https://www.woollahra.nsw.gov.au/_data/assets/pdf_file/0018/210933/Council_Minutes_-_11_Nov_2019.pdf)

## February 2022

Reference is now made to the planning proposal dated February 2022 to amend the Canada Bay Local Environmental Plan 2013<sup>7</sup> to progress the implementation of Canada Bay Council's Eastern Sydney District Plan, the Canada Bay Local Strategic Planning Statement and the Canada Bay Local Housing Strategy by introducing Local Character Areas that have character that is to be maintained for areas that the community has identified as having an established, unique and special local character that should be maintained.

### Manager Strategic Planning in response:

#### 1. When will the Special Character Report come to Council?

In 2019, the Department of Planning and Environment (DPE)<sup>8</sup> prepared a [Discussion Paper – Local Character Overlays](#) which identified a proposed approach for introducing local character overlays into the Standard Instrument Local Environmental Plan.

In November 2020 the draft local character clause and overlay were placed on public exhibition for comment. The proposed clause would allow for the insertion of local character statements into LEPs using a standardised approach and could lead to partial exclusions of certain State Environmental Planning Policies. However, Council staff have been advised that this matter has not progressed and is still under consideration by the DPE.

Council staff note that that Central Coast Council, Mosman Council, Randwick Council, Canada Bay, Upper Lachlan Council and Waverley Council are all progressing work in this "space". However, none of these have progressed into the relevant LEP.

From August 2021 to October 2021, Council staff exhibited a Local Character Discussion Paper which encouraged residents to share their ideas on local character in their area. This work was intended to be the inception and upfront engagement of Woollahra's Local Character Overlays.

Since that time, Council staff have consulted with staff from other Council's including Randwick Council. Despite expending significant Council resources on preparing Local Character Overlays, they have been notified by the DPE that the LEP is not the correct pathway for implementing local character controls. This is contrary to the initial advice provided by the DPE in 2019/2020.

Council staff are progressing our work on Special Character with a view to consulting with Councillors in the second half of 2022 with a draft Special Character Statement.

#### 2. What is the current status of the Low Rise and Medium Density Housing Code?

The Low Rise Housing Diversity Code (formerly the Low Rise Medium Density Housing Code) applies to the Woollahra LGA and falls under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

Whilst documents exhibited with the Local Character Provisions in 2020/2021 noted that there may be changes to the Codes SEPP to exclude limited local character areas from the application of the Low Rise Housing Diversity Code, we are not aware of any Council that has been granted an exemption from the application of these provisions.

<sup>7</sup> <https://www.collaborate.canadabay.nsw.gov.au/local-character-areas>

<sup>8</sup> The Department of Planning and Environment was formerly known as the Department of Planning, Industry and Environment.

**3. Given public consultation etc what is the likely time line for implementation of any changes to the Woollahra LEP?**

It is not possible to provide an accurate estimation of when the Woollahra LEP 2014 may be amended to integrate local character provisions at this time.

The progression of a planning proposal to amend the Woollahra LEP 2014 is dependent on matters outside of Council's control, such as the introduction of a local character policy framework by the DPE.

We note that there have been attempts by Woollahra Council and other councils, such as Randwick and Canada Bay, to progress independent planning proposals to introduce local character provisions into local environmental plans. However, these planning proposals have either not been supported by the DPE or remain under assessment.

As mentioned above, the DPE have recently advised that local environmental plans are not the correct pathway for implementing local character provisions. Accordingly, there is currently no DPE - endorsed statutory pathway to include local character in local environmental plans.

**4. Can staff please consider the Canada Bay Planning Proposal Feb 2022 in the report?**

Council staff have consulted with Canada Bay Council Strategic Planning staff in relation to their planning proposal to introduce new Local Character Areas into the *Canada Bay Local Environmental Plan 2013*. The planning proposal is currently with the DPE for assessment.

However, in light of the recent decision from the DPE applying to Randwick Council, it is considered highly unlikely that the Canada Bay planning proposal will progress.

Council staff will continue to liaise with our colleagues at Canada Bay and other NSW Councils for updates as these important projects progress.

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There being no further business the meeting concluded at 9.15pm.

**We certify that the pages numbered 1 to 30 inclusive are the Minutes of the Ordinary Meeting of Woollahra Municipal Council held on 11 April 2022 and confirmed by the Ordinary Meeting of Council on 26 April 2022 as correct.**

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**General Manager**

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**Mayor**