

# Environmental Planning Committee



## Agenda

Monday 2 September 2019

6.00pm

### Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee Members and/or Staff to present apologies and/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 (e.g. applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allocated 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 planning matters including those initiated at State and Federal Government level.
- Urban design studies.
- Planning proposals and local environment plans.
- Development control plans and guidelines.
- Development contribution plans.
- Heritage conservation studies, assessments and controls.
- Commercial centres' studies.
- Residential studies and strategies.
- Parks and Reserves Plans of Management (Strategies, Policies and Objectives).
- Flood Management Strategies.
- Recreation Policies and Strategies.
- Sustainability Policies and Strategies.
- Transport Strategies.
- Tree Policies and Strategies.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters requiring supplementary votes to Budget.
- Matters not within the specified functions of the Committee.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

### Delegated Authority to be determined at Committee level ("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.
- Statutory reviews of Council's Delivery Program and Operational Plan.
- Any other matter falling within the responsibility of the Environmental Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed above.

**Environmental Planning Committee Membership:** 7 Councillors

**Quorum:** The quorum for Committee meeting is 4 Councillors

# Woollahra Municipal Council

## Notice of Meeting

28 August 2019

To: His Worship the Mayor, Councillor Peter Cavanagh, ex-officio  
Councillors Susan Wynne (Chair)  
Mary-Lou Jarvis (Deputy Chair)  
Luise Elsing  
Nick Maxwell  
Matthew Robertson  
Mark Silcocks  
Toni Zeltzer

Dear Councillors,

### **Environmental Planning Committee – 2 September 2019**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Environmental Planning Committee** meeting to be held in the **Thornton Room (Committee Room)**, 536 New South Head Road, Double Bay, on **Monday 2 September 2019 at 6.00pm.**

Gary James  
General Manager

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## Meeting Agenda

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1.	Leave of Absence and Apologies	
2.	Late Correspondence	
3.	Declarations of Interest	

### **Items to be Decided by this Committee using its Delegated Authority**

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D2	Minutes of the Floodplain Risk Management Committee held on 24 July 2019 - 19/124657 .....	9
D3	Oxford Street & Paddington Working Party meeting 13 August 2019 - 19/132829 .....	107

### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	Draft Woollahra Voluntary Planning Agreement Policy - 19/125710 .....	117
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**Item No:** D1 Delegated to Committee  
**Subject:** **CONFIRMATION OF MINUTES OF MEETING HELD ON 19 AUGUST 2019**  
**Author:** Sue O'Connor, Governance Officer  
**File No:** 19/127383  
**Reason for Report:** The Minutes of the Environmental Planning Committee of 19 August 2019 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 Environmental Planning Committee Meeting of 19 August 2019 be taken as read and confirmed.



**Item No:** D2 Delegated to Committee  
**Subject:** **MINUTES OF THE FLOODPLAIN RISK MANAGEMENT COMMITTEE HELD ON 24 JULY 2019**  
**Author:** Aurelio Lindaya, Manager Engineering Services  
**Approver:** Tom O'Hanlon, Director - Technical Services  
**File No:** 19/124657  
**Reason for Report:** For the Committee to consider the recommendations of the Floodplain Risk Management Committee

**Recommendation:**

THAT the following recommendations contained in the minutes of the Floodplain Risk Management Committee held on Wednesday 24 July 2019 be adopted:

- A. *That Council thanks the Paddington community for its participation in the process to prepare the Paddington Floodplain Risk Management Study and Plan.*
- B. *That the final Paddington Floodplain Risk Management Study and Plan, dated July 2019, prepared by Catchment Simulation Solutions, be adopted, subject to George Street being included in the streets identified in the Paddington FRMSP as likely to experience significant property damage, risk to life and/or evacuation difficulties during significant rainfall events (Paddington FRMSP p2) and George St, Elizabeth Place being included in the areas identified 'At the peak of the 1% AEP flood, approximately 1,300 properties (out of 5,366 contained within the catchment) are predicted to experience depths of inundation that exceed 0.1 metres. The areas that are most significantly impacted by floodwaters include: (Paddington FRMSP p18)*
- C. *That Council requests staff to prepare a report on the water sensitive urban design projects, raised by the community through the consultation process for the draft Paddington Floodplain Risk Management Study and Plan. They include treatments at the following locations:*
  - i. *Detention tank in the roundabout at Hargrave Street and Elizabeth Street*
  - ii. *Flow path entrances to George Street.*
  - iii. *Grassed open space at the intersection of Elizabeth Street and Windsor Street*
  - iv. *Reserve at the intersection of Cascade Street and Sutherland Street – installation of underground and above ground storage, where feasible.*
  - v. *Cul-de-sacs of Royston Street and Cecil Street where storage could be installed beneath the roadway surface and flows stored before drainage to the existing stormwater system.*
  - vi. *Open space within 4-8 Hampden Street premises where underground storage could be provided.*
  - vii. *Elizabeth Place underground storage detention tank.*
- D. *That staff provide a further review and commentary on the feasibility and costings associated with the installation of a large detention tank on land adjacent to Elizabeth Place to enable Council to make a decision about the inclusion of this option in the Paddington Floodplain Risk Management Study and Plan.*

## **Background:**

The Floodplain Risk Management Committee (FRMC) has been established as an advisory committee to assist Council in the development and implementation of Floodplain Risk Management Plans. The FRMC reports to the Environmental Planning Committee.

The Floodplain Risk Management Committee consists of:

- Councillor Matthew Robertson (Chair)
- Councillor Mary-Lou Jarvis
- Councillor Mark Silcocks
- A representative from the Department of Planning, Industry and Environment
- Council's Director - Technical Services (or his delegate)
- Council's Design & Investigations Engineer
- Three local residents
- A representative from the Waverley-Woollahra State Emergency Services (SES)
- A representative from Sydney Water

## **Discussion**

The FRMC met on 24 July 2019 at 6.00pm in the Thornton Room and the meeting was chaired by Councillor Robertson. The meeting was well attended with representatives from Sydney Water, Office of Environment and Heritage (OEH), residents and Council.

The Minutes of the meeting are attached as Annexure 1.

### **Item 3.1 - Paddington Floodplain Risk Management Study and Plan**

Following on from further community consultation with the residents of the upper Paddington catchment as resolved by Council's Environmental Planning Committee in February 2019, the Paddington Floodplain Risk Management Study and Plan (FRMSP) was updated and completed.

The final Paddington FRMSP is attached under separate cover in Annexure 2.

The report and presentation on the Paddington FRMSP which was considered by the FRMC are attached as Annexure 3 and 4.

The report and presentation was generally well-received by Floodplain Committee members and, after some discussion, the Committee recommended the FRMSP be approved by Council, subject to the amendments reflected in the Minutes and in the recommendation.

The primary discussion items by residents at the FRMC meeting, which have been addressed through the recommendations, included:

#### **“Non-structural” flood mitigation options**

A representative of the Paddington Society raised concerns that almost no “soft/non-structural options” were recommended as part of the FRMSP and requested Council investigate measures which considers environmental impacts. A number of locations and soft/non-structural options were suggested.

Council's Flood Consultant and Sydney Water's representative advised the examination of environmental measures, such as Water Sensitive Urban Design (WSUD) treatments, although very important from a water quality perspective, does not provide a significant benefit from a flooding perspective. Floodplain management examines flood behaviour and proposes treatments to address significant stormwater events to reduce flood risk within the catchment rather than the more frequent storms that result in most pollution generation.

Notwithstanding the above, it was agreed that a further report on Council's environmental program and WSUD program be prepared for Council which considers the proposed locations and soft/non-structural options suggested by residents.

### **Elizabeth Place Underground Storage Detention Tank**

The Elizabeth Place Underground Storage Detention Tank proposal relates to a recent petition signed by residents of the upper Paddington Catchment requesting the purchase of portions of a number of private properties along Oxford Street for the purposes of creating a roadway and a public park off Elizabeth Place.

As part of the further consultation with upper Paddington catchment residents for the FRMSP, requests were made to include the investigation of a storage detention tank under the possible public park and/or roadway to mitigate flooding in the area.

Council's flood consultant was asked to examine the proposal from a floodplain risk management perspective in the first instance given that if the underground storage tank investigations revealed that the option had significant hydraulic benefits, a positive Benefit Cost Ratio (BCR) and was recommended for implementation as part of the FRMSP, the project would be eligible for significant grant funding (2:1) from the Department of Planning, Industry and Environment as part of the NSW Government's Floodplain Management Grants Program.

After undertaking a comprehensive assessment, Council's flood consultant did not recommend this option for implementation. Despite the option offering hydraulic and flood damage reduction benefits across a number of properties located between George Street and Cascade Street, the high implementation costs and low benefit cost ratio limits the project's viability.

The preferred flood mitigation option recommended for the upper Paddington catchment, which incorporates upgraded stormwater pipes and pits within the road reserve, has a higher benefit cost ratio and better flood mitigation outcomes for the overall upper Paddington catchment area.

### *Land Valuation*

During the FRMC, concerns were raised with the land acquisition costs used in the BCR calculation for the Elizabeth Place underground storage detention tank.

The land acquisition cost of \$18,600/m<sup>2</sup> used in the calculations for the underground storage detention basin was based on advice from Council's Property Department which considered the average market rate identified in land valuations in Paddington undertaken recently by Council.

It should be noted that land valuations do vary quite significantly as it is based on a number of factors including location, land size, condition of buildings and the planning controls applicable to the prospective properties. As the land identified for the underground storage detention basin is private property, compulsory acquisition may also influence the valuation price.

At the FRMC meeting, a local resident suggested that a figure of \$8,500/m<sup>2</sup> or lower should be the figure used based on recent property sales in the area. The resident advised that if a figure of \$8,500/m<sup>2</sup> or lower were to be used as the estimated property/ easement cost, then the BCR associated with the Elizabeth Street underground storage detention tank could be greater than one.

Council's flood consultant advised the FRMC that even if a rate of \$8,500/m<sup>2</sup> were to be adopted as the land valuation for the area, the resultant benefit cost ratio of the Elizabeth Place underground storage detention basin would still be below 1, with a BCR of 0.8.

To address the concerns raised by residents at the FRMC in relation to land valuation and to enable Council to make an informed decision on the Elizabeth Place underground storage detention tank, Preston Rowe Patterson were engaged to prepare a formal land valuation for the private land earmarked for the underground storage detention tank.

A copy of their valuation is attached as Annexure 5.

The formal land valuation indicates that the likely compensation payable for the indicative area earmarked for the Elizabeth Street underground storage detention tank is a range based on potential diminution percentages to purchase land for road, public park and underground storage flood mitigation purpose. The valuation information is summarised below:

Property	Area (m <sup>2</sup> )	(\$/m <sup>2</sup> ) (Lower Range)	(\$/m <sup>2</sup> ) (Upper Range)	Valuation (Lower Range)	Valuation (Upper Range)
436-440 Oxford Street, Paddington	281	\$7,580	\$12,633	\$2,129,980	\$3,549,873
442 Oxford Street, Paddington	109	\$4,128	\$6,881	\$449,952	\$750,029
22 George Street, Paddington	109	\$5,734	\$11,468	\$625,006	\$1,250,012
<b>TOTAL</b>				<b>\$3,204,938</b>	<b>\$5,549,914</b>

From the above valuation it is apparent that the average land acquisition cost across the properties, ranging from \$5,800/m<sup>2</sup> to \$10,300/m<sup>2</sup> is below the figure included in the Paddington Floodplain Risk Management Study and Plan (\$18,600). The relatively wide valuation range supports the statement that valuations do have the potential to vary significantly.

After reviewing the valuation for the site, Council's Engineering and Property staff recommend Council adopt the conservative upper valuation range of \$10,300 as any future purchase of private land would be subject to negotiations under the Land Acquisition (Just Terms Compensation) Act 1991 with the landowner.

The revised BCR for upper valuation of \$10,300/m<sup>2</sup> would be 0.7. (It should be noted that the revised BCR for the lower valuation of \$5,800/m<sup>2</sup> would be 0.99 or 1.0).

After considering the revised formal land valuation and carefully reconsidering all the flood mitigation options available for the upper Paddington catchment, Council's Engineers still support the preferred flood mitigation option recommended in the Paddington FRMSP for the upper Paddington catchment.








This option still affords a slightly better BCR and provides improved hydraulic performance for the overall upper Paddington catchment. The preferred option of implementing standard stormwater pipes and pits can be considered and integrated into Council's Infrastructure Renewal Program and can be carried out in a staged manner subject to funding availability and Council's future Infrastructure Renewal Program. Council would also be able to apply for grant funding for this option.

### Conclusion:

It is recommended that Council endorse the Minutes of the Floodplain Risk Management Committee meeting held on 24 July 2019 which recommends adoption of the Paddington Floodplain Risk Management Study and Plan.

### Annexures

1. Minutes of the Floodplain Risk Management Committee held on 24 July 2019 [↓](#) 
2. Paddington Floodplain Risk Management Study and Plan (*circulated under separate cover*) 
3. Report to FRMC - Paddington Floodplain Risk Management Study and Plan [↓](#) 
4. Presentation to FRMC - Paddington Floodplain Risk Management Study and Plan [↓](#) 
5. Valuation for Elizabeth Place Underground Storage Detention Tank [↓](#) 

Woollahra Municipal Council  
Floodplain Risk Management Committee Minutes

24 July 2019

## Floodplain Risk Management Committee Minutes

The meeting of the Floodplain Risk Management Committee was held in the Thornton Room, Council Chambers, Double Bay on Wednesday 24 July 2019 at 6.00 pm.

### 1. Attendance

#### Committee Members:

Councillor Matthew Robertson	Woollahra Municipal Council (Chair)
Councillor Mark Silcocks	Woollahra Municipal Council
Greg Davis	NSW Department of Planning, Industry and Environment
David Grasby	Sydney Water
Tony Gregory	Double Bay Residents Association
Nina Mistilis	Paddington Society

#### Staff:

Tom O'Hanlon	Director Technical Services
Aurelio Lindaya	Manager Engineering Services
Michael Casteleyn	Design & Investigations Engineer – Stormwater & the Environment
Robert Lam	Team Leader Development Engineering

#### Consultant:

David Tetley	Catchment Simulation Solutions
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#### Apologies:

Kim Edwards	Waverley-Woollahra State Emergency Services (SES)
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Floodplain Risk Management Committee Minutes

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**2. Minutes of Previous Meeting**

The minutes of the previous meeting held on 5 December 2018 were confirmed by Tony Gregory and Nina Mistilis.

**3. Items to be Recommended to the Environmental Planning Committee by the Floodplain Risk Management Committee for Consideration**

**Item No:** 3.1 Paddington Flood Risk Management Study and Plan

**Author:** Aurelio Lindaya, Manager – Engineering Services

Council's Flood Consultant, David Tetley from Catchment Simulation Solutions, gave a PowerPoint presentation on the Paddington Flood Risk Management Study and Plan (FRMSP).

**Note:** *Nina Mistilis and John Durack addressed the Committee.*

A summary of comments made during the addresses include:

- Residents of the upper catchment of Paddington appreciate the efforts of Council in relation to taking their concerns into consideration in the latest Paddington FRMSP.
- Residents are generally supportive of the updated flood modelling undertaken as it reflects the experiences of the upper Paddington catchment properties.
- A request to include George Street and Elizabeth Street in the areas identified in the Paddington FRMSP as likely to experience significant property damage, risk to life and/or evacuation difficulties during significant rainfall events (Paddington FRMSP – Page 2).
- Queries in relation to the Flood Hazard Categorisation for George Street and Elizabeth Street.
- Concerns that almost no “soft/non-structural options” were recommended and requests to investigate measures which considers environmental impacts - such as a detention storage on the large roundabout on the corner of Hargrave Street and Elizabeth Street and various other areas across Paddington.
- Agreement that the proposal to regrade Elizabeth Street and George Street, at Oxford Street, will lead to the flooding problem being shifted down Oxford Street into the City of Sydney, which is not acceptable in terms of floodplain management.
- Concerns in relation to the Benefit Cost Ratio (BCR) calculations adopted for the suggested underground storage detention tank identified in the private properties along Oxford Street, near Elizabeth Place.
  - Concerns were raised in relation to the proposed estimated property/easement cost of \$18,600/m<sup>2</sup>.
  - Resident's suggest that a figure of \$8,500, or lower, should be the figure used based on recent property sales in the area.
  - Resident's advised that if a figure of \$8,500, or lower, were to be used as the estimated property/ easement cost, then the BCR associated with the Elizabeth Street underground storage detention tank, could be greater than one.

Floodplain Committee members, Council's flood consultant and staff responded to each of the concerns raised. Responses are summarised below:

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- Agreement to include George Street in the streets identified in the Paddington FRMSP as likely to experience significant property damage, risk to life and/or evacuation difficulties during significant rainfall events and to include George St, Elizabeth Place in the areas identified *'At the peak of the 1% AEP flood, approximately 1,300 properties (out of 5,366 contained within the catchment) are predicted to experience depths of inundation that exceed 0.1 metres. The areas that are most significantly impacted by floodwaters include: (Paddington FRMSP p18)*
- The examination of environmental measures, such as Water Sensitive Urban Design (WSUD) treatments, although very important, does not provide a significant benefit from a flooding perspective. Floodplain management examines flood behaviour and proposes treatments to address significant stormwater events to reduce flood risk within the catchment. It was agreed that a further report on Council's environmental program and WSUD be prepared for Council.
- The Flood Hazard Categorisation is based on a standardised mathematical calculation and cannot simply be changed.
- In relation to the Elizabeth Street underground storage detention basin costings, the land valuations used in the costings were based on the average market rate identified in land valuations in Paddington undertaken recently by Council.
- It was noted that land valuations do vary quite significantly as it is based on a number of factors including location, land size, condition of buildings and the planning controls applicable to the prospective properties. As the land identified for the underground storage detention basin is private property, compulsory acquisition may also influence the valuation price.
- It was advised that even if a rate of \$8,500/m<sup>2</sup> were to be adopted as the land valuation for the area, the resultant benefit cost ratio of the Elizabeth Street underground storage detention basin would still be below 1, with a BCR of 0.8.
- The preferred flood mitigation option recommended for the upper Paddington catchment, which includes upgraded stormwater pipes and pits within the road reserve, has a higher benefit cost ratio and better flood mitigation outcomes for the overall upper Paddington catchment area.

**Resolved to Recommend:**

- A. That Council thanks the Paddington community for its participation in the process to prepare the Paddington Floodplain Risk Management Study and Plan.
- B. That the final Paddington Floodplain Risk Management Study and Plan, dated July 2019, prepared by Catchment Simulation Solutions, be adopted, subject to George Street being included in the streets identified in the Paddington FRMSP as likely to experience significant property damage, risk to life and/or evacuation difficulties during significant rainfall events (Paddington FRMSP p2) and George St, Elizabeth Place being included in the areas identified *'At the peak of the 1% AEP flood, approximately 1,300 properties (out of 5,366 contained within the catchment) are predicted to experience depths of inundation that exceed 0.1 metres. The areas that are most significantly impacted by floodwaters include: (Paddington FRMSP p18)*

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- C. That Council requests staff to prepare a report on the water sensitive urban design projects, raised by the community through the consultation process for the draft Paddington Floodplain Risk Management Study and Plan. They include treatments at the following locations:
- i. Detention tank in the roundabout at Hargrave Street and Elizabeth Street
  - ii. Flow path entrances to George Street.
  - iii. Grassed open space at the intersection of Elizabeth Street and Windsor Street
  - iv. Reserve at the intersection of Cascade Street and Sutherland Street – installation of underground and above ground storage, where feasible.
  - v. Cul-de-sacs of Royston Street and Cecil Street where storage could be installed beneath the roadway surface and flows stored before drainage to the existing stormwater system.
  - vi. Open space within 4-8 Hampden Street premises where underground storage could be provided.
  - vii. Elizabeth Place underground storage detention tank.
- D. That staff provide a further review and commentary on the feasibility and costings associated with the installation of a large detention taken on land adjacent to Elizabeth Place to enable Council to make a decision about the inclusion of this option in the Paddington Floodplain Risk Management Study and Plan.

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**4. General Business**

Nina Mistilis raised the issue of groundwater. The presence and problems associated with groundwater were discussed but it was generally accepted by Floodplain Committee members that although groundwater may be an issue in Paddington, it falls outside the remit of the Floodplain Risk Management Committee.

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**5. Date and time of the next meeting**

The date of next FPRMC has not been scheduled yet with the date to be advised.

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There being no further business, the meeting concluded at 7:50 pm.

**Aurelio Lindaya**  
**Manager Engineering Services**

### **Items to be Recommended to the Environmental Planning Committee by the Floodplain Risk Management Committee for Consideration**

<b>Item No:</b>	3.1
<b>Subject:</b>	<b>PADDINGTON FLOODPLAIN RISK MANAGEMENT STUDY AND PLAN</b>
<b>Author:</b>	Aurelio Lindaya, Manager Engineering Services
<b>Reason for Report:</b>	Adoption of the Paddington Floodplain Risk Management Study and Plan

The Paddington Flood Risk Management Study and Plan (FRMSP), prepared by Catchment Simulations Solutions (CSS), is complete. CSS worked with Council's Engineers and other stakeholders to produce a comprehensive document in accordance with the NSW Government's Floodplain Development Manual 2005.

After consideration by the Floodplain Risk Management Committee in April 2018 and Council's Environmental Planning Committee in May 2018, the draft Paddington FRMSP was placed on public exhibition from 20 June 2018 to 27 July 2018.

A total of 12,279 letters were sent out to property owners, residents and occupiers across the entire Paddington catchment area. An advertisement was placed in the Wentworth Courier, hardcopies of the report were made available at Woollahra Council's Customer Service Centres and at Woollahra Library locations in Double Bay, Paddington and Watsons Bay and information was also placed on Council's website at [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) in the 'Have your say' section.

Following public exhibition of the draft Paddington FRMSP, the matter was referred back to the Floodplain Risk Management Committee in December 2018 and Council's Environmental Planning Committee in February 2019. At these meetings concerns were raised by residents of the upper Paddington catchment in relation to lack of initial consultation in 2015, its impacts on the accuracy of the flood model and the flood mitigation options developed for the upper Paddington catchment.

Subsequently, Council endorsed a recommendation made by the Floodplain Risk Management Committee to defer the Draft Paddington Floodplain Risk Management Study and Plan for further consultation with the upper Paddington catchment residents.

#### **Consultation in 2019**

Further consultation with upper Paddington catchment residents was undertaken in February and March 2019 to address concerns raised by residents during the public exhibition of the draft Paddington FRMSP.

The upper Paddington catchment was defined as the area generally bounded by Oxford Street to the south, Jersey Road to the east, Quarry Street, Harris Street and Sutherland Avenue to the north and Cascade Street, Hopetoun Street and William Street to the west.

A total of 2779 letters and surveys were distributed to property owners and residents in the upper catchment. The goal of the questionnaire was to secure information from the community regarding their past flooding experience including information on historic floods that could be used to validate the performance of the flood model.

A total of 295 questionnaire responses were received by the closing date. This is an excellent response rate for flood related community surveys.

The responses to the questionnaire indicates that:

- Seventy respondents (i.e., 24%) reported that they had been impacted by flooding.
- The most commonly reported flooding impact was water covering roadways. However, a significant number of respondents also reported above floor flooding resulting in damage to buildings and contents. Rising damp was also a commonly reported problem.
- The area between George Street and Elizabeth Street, in particular, was identified as a flooding “hot spot”.
- Historic flood information was provided for a number of past rainfall events. The August 2015 flood was the most reported historic flood.

To validate the performance of the flood model, the historic flood information provided as part of the questionnaire responses were compared against simulated water depths generated by the flood model for the August 2015 flood.

The comparison shows that the simulated water depths (i.e., the water depths predicted by the flood model) are typically within 0.1 metres of the flood depths reported by the questionnaire respondents. It should be noted that flood models, by definition, provide likely flood scenarios and are not exact predictions. An exact replication cannot be expected owing to localised differences in modelling assumptions (e.g., blockage of stormwater inlets). Nevertheless, the comparison showed that the flood model is providing a reasonable reproduction of the community’s experiences during the August 2015 flood and indicates that the flood modelling is reliably representing flood behaviour across the upper Paddington catchment.

Overall, the outcomes of the upper catchment consultation confirmed that the flood modelling completed as part of the current study provided a good reproduction of the community’s flooding experiences and served as a reasonable basis for assessing the potential benefits of a range of potential flood risk mitigation measures.

### **Community Briefing Workshop**

A community briefing was held at the Woollahra Library in May 2019. The briefing provided an opportunity for Council and Catchment Simulation Solutions to summarise the outcomes of the additional model validation and also provided an opportunity for the community to ask any questions regarding the study.

As part of the community briefing it was uncovered that some community members may have misinterpreted some of the mapping that was included in the draft report. More specifically, the flood level difference mapping was being interpreted as floodwater depth mapping and was potentially the primary reason the residents felt the modelling results did not reflect their experiences. As a result of this, a copy of the floodwater depth mapping and a copy of the flood validation results for the August 2015 storm event was subsequently included as part of the executive summary rather than in Appendices of the report to help overcome the misinterpretation of results and provide greater community confidence in the flood model.

### **Amendments Paddington Floodplain Risk Management Study and Plan**

Amendments were made to the draft Paddington FRMSP in response to the community feedback received.

These amendments included:

- Including floodwater depth mapping and flood model validate results for the August 2015 storm event in the Executive Summary.
- Summarising the outcomes of the additional community consultation in the main body of the report and include detailed information on questionnaire responses in Appendix G of the report.
- Including the outcomes of the additional flood risk mitigation options considered in response to suggestions and feedback made by upper Paddington catchment residents. These options included:
  - Modifications to the proposed stormwater upgrade option for the upper Paddington catchment involving the installation of additional stormwater pipes and pits in the road reserve.
  - Re-grading works at the intersections of George Street and Elizabeth Street with Oxford Street.
  - Installation of a large underground storage tank in the privately owned areas at the rear of Oxford Street properties.

### **Draft Floodplain Risk Management Plan**

The report identifies 190 properties in the catchment area that are potentially exposed to flooding during the 1 in 100 year flood and estimates that currently the Paddington area experiences a total flood damage bill of \$5.9M each year, on average.

A range of flood modification, property modification and response modification measures were considered to help manage the existing flood risk. Each option was evaluated against a range of criteria to provide an appraisal of the potential feasibility of each option. This included the impact of each option on existing flood behaviour, the environment, economics and emergency response as well as the technical feasibility of each option.

Based upon the outcomes of the detailed evaluation, the options outlined below are recommended for implementation as part of the draft Floodplain Risk Management Plan for Paddington.



*High Priority Options:*

- Cecil Street flood mitigation measures;
- George Street to Cascade Street drainage upgrades;
- Re-grading/roadworks in Hopetoun Lane/Paddington Street;
- Harris Street drainage upgrade;
- Glenmore Road Regrading;
- Various community education activities including:
- Develop educational messages targeting dangerous behaviours (e.g., driving through floodwaters).
- Update Council website to include catchment specific flood information.
- Undertake discussions with the Paddington Society to disseminate flood information.
- Continue to develop social media platforms for flood safe messaging.
- Reviewing and updating Council's drainage maintenance program.

*Medium Priority Options:*

- Trumper Park floodway;
- Forbes Street to Harris Street Drainage Upgrades;
- Ocean Street and Tara Street Drainage Upgrade;
- Development Control Plan (DCP) modifications;
- CCTV inspections of potential drainage "bottlenecks"; and,

*Low Priority Options:*

- Flood insurance (Council could also assist property owners by providing property specific flood information to assist in negotiating insurance premiums).

It is expected that implementation of the plan will have a capital cost of approximately \$16 million spread across a 10-year period. In addition to the capital costs, some options will incur ongoing maintenance costs. Many of the options will also require a significant investment in time from various agencies including Woollahra Council and the State Emergency Service which are not accounted for in the overall cost estimate.

If the structural options (e.g., flood mitigation and drainage upgrades) are implemented, it is expected that the number of properties exposed to above floor flooding during a 1% AEP flood would reduce by 70 and cumulative flood damages would be reduced by around \$23 million over the next 50 years.

However, it is important to understand that implementation of the structural options will reduce the flood risk, it will not remove it completely. Therefore, it is important to implement the remaining, non-structural options to help ensure the flood damage potential is minimised across future development and re-development areas and ensure the continuing flood risk is minimised during particularly severe floods.

**RECOMMENDATION**

That the final Paddington Floodplain Risk Management Study and Plan, dated July 2019, prepared by Catchment Simulation Solutions, be adopted.



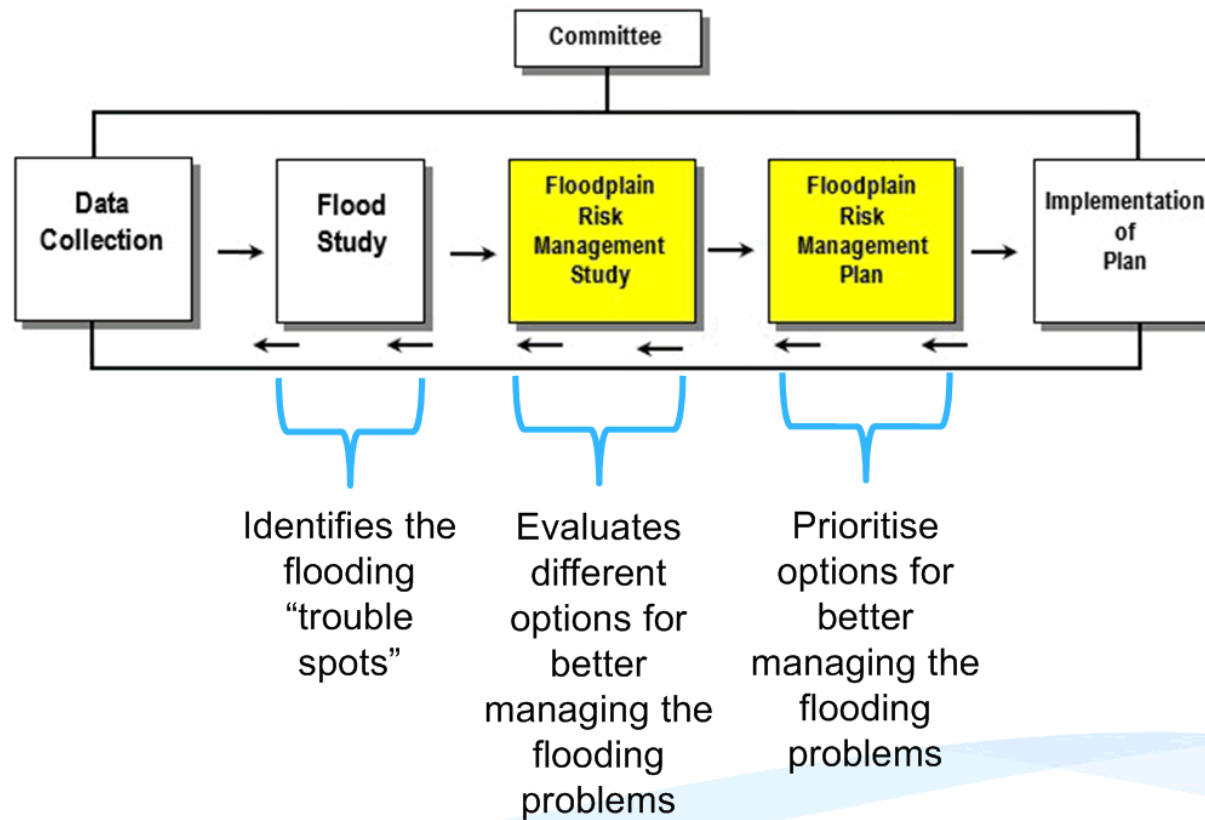
# Paddington Floodplain Risk Management Study & Plan

Floodplain Risk Management Committee Meeting  
July 2019



## Floodplain Risk Management Process

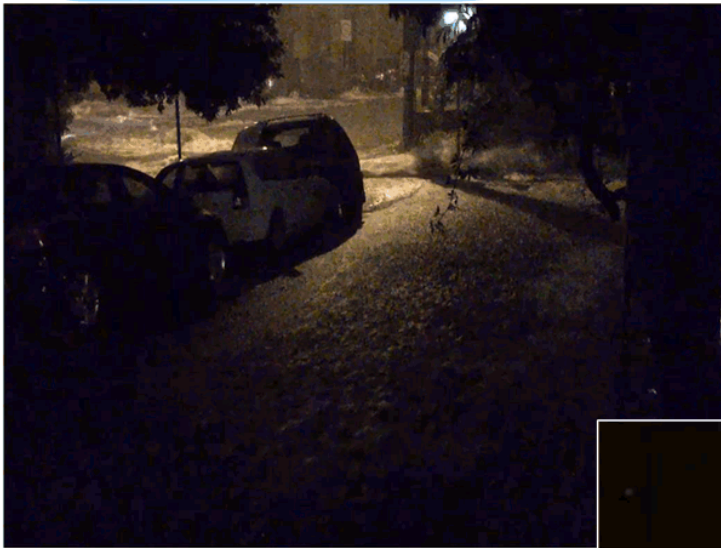
# NSW Floodplain Development Manual 2005



## Why Prepare a Flood Study and Risk Management Plan?

- A flood study helps us to:
  - Identify areas prone to flooding in various types of storms
  - Understand flood behaviour in flood-prone areas (e.g., water depths and velocities)
- A flood risk management plan helps us to:
  - Provide a “high level” assessment of potential measures to address and minimise flood risk and damage from flooding

## Examples of flooding problems across Paddington



## Computer Flood Models

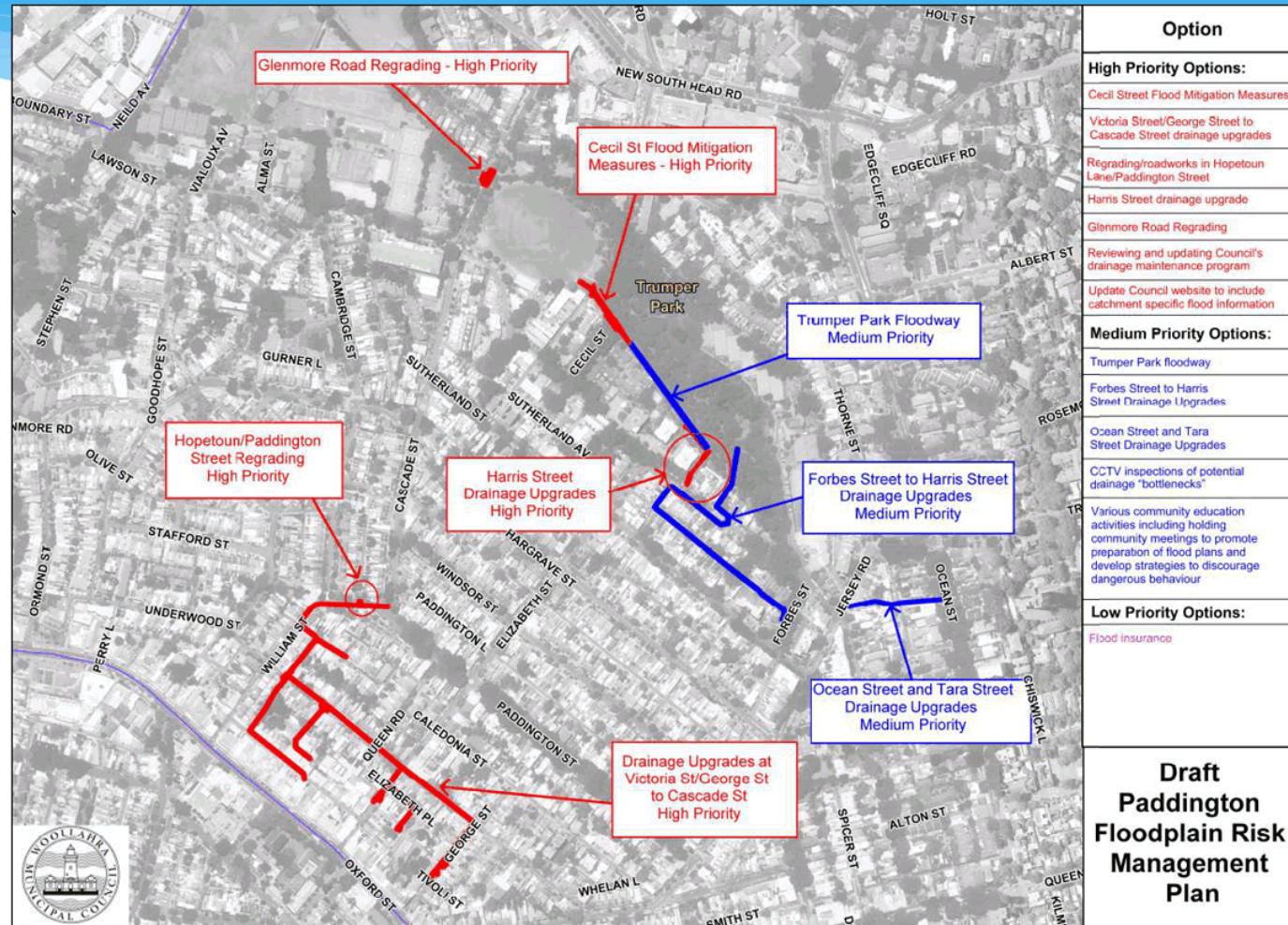
- Computer flood models are developed based on physical characteristics of the catchment (e.g., variation in terrain, stormwater system, impervious/pervious surfaces).
- Information provided by the community is not used to develop the models (it can be used to validate the results of the model).
- An exact replication of historic flood experiences cannot be expected from a computer flood model (however, we aim to reproduce historic experiences to better than 0.1m).

## Flood Mitigation Measures for Paddington

- A range of structural and non-structural flood risk mitigation measures were considered, evaluated and prioritised to help manage the existing flood risk.



## Draft Floodplain Risk Management Plan



## **December 2018 Floodplain Risk Management Committee and February 2019 Environmental Planning Committee**

### **Feedback from Upper Paddington catchment residents:**

- Upper Paddington residents felt that flood model results were not reflecting their experiences during past floods.
- As these residents did not agree with the flood model results, they did not agree with the flood mitigation measures proposed.
- Therefore, additional consultation was completed to obtain additional information on past floods and ensure model was reliably representing flood behaviour

## **Additional Consultation Completed**

- Questionnaire (March 2019)
- Community workshop (May 2019)
- Councillor briefing (June 2019)



## Outcomes of Additional Community Consultation



## Community Consultation – How We Consulted

- Letter and questionnaire distributed to 2,779 property owners and residents in the upper catchment.
- 295 questionnaire responses received – an excellent response rate.

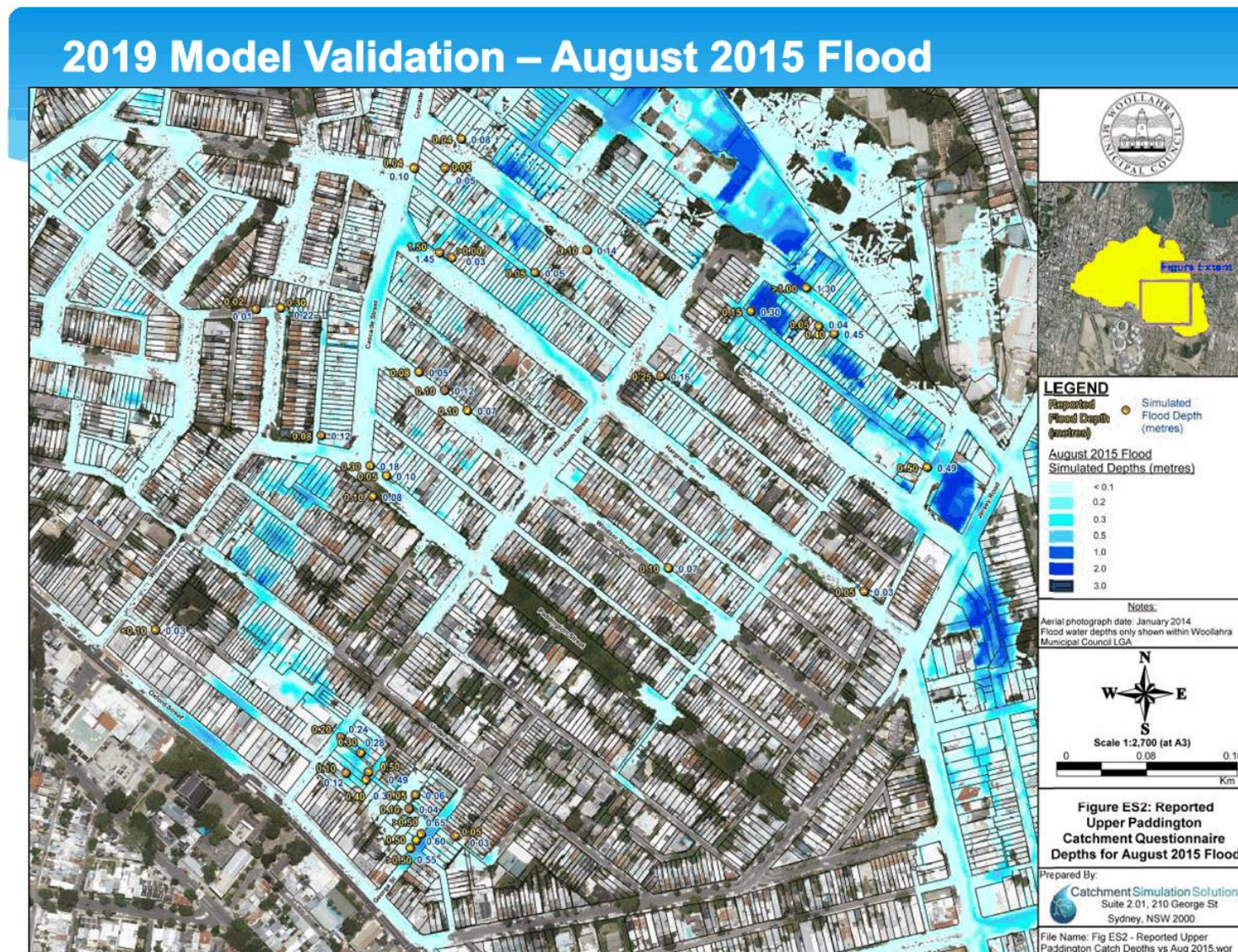
## Community Consultation – Community Experience

- 70 respondents indicated that they have been impacted by flooding (i.e., 24%).
- The most commonly reported flooding impacts were:
  - water covering roadways.
  - floodwaters entering buildings resulting in damage to the building itself as well as contents.
  - rising damp.

## Community Consultation – The Outcome

- We compared historic flood depth information against historic flood simulation results documented in Paddington Flood Study for the August 2015 flood.
- Community feedback **corroborated and validated** existing data – **increasing confidence** in the flood model results.
- Flood model typically reproduced the reported flood depths to better than 0.1m.









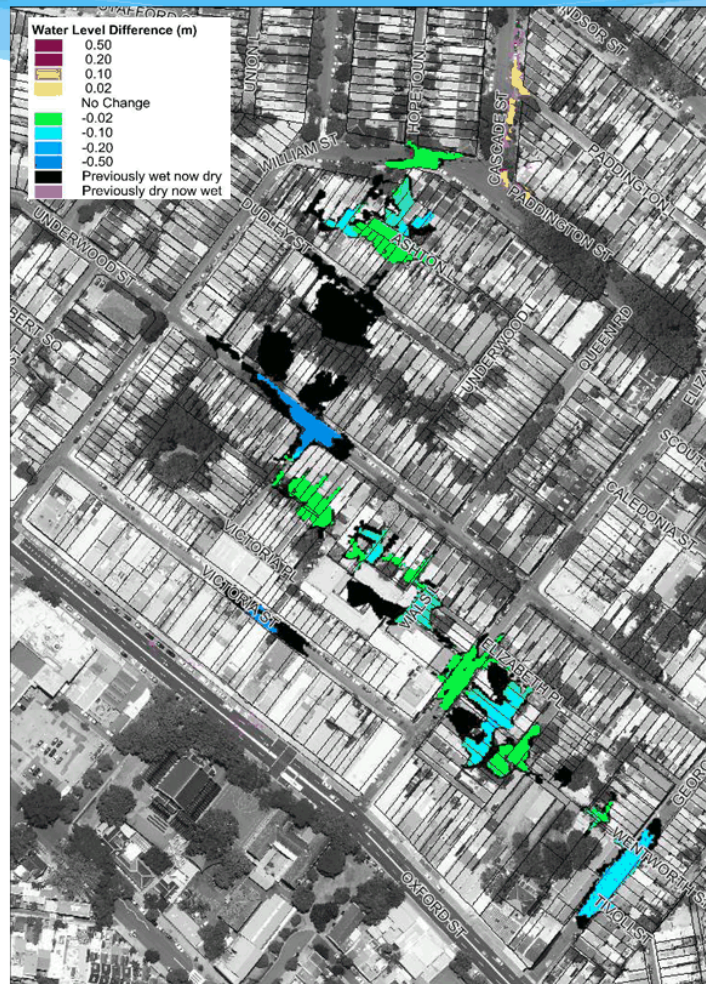
## Community Briefing



## Community Briefing

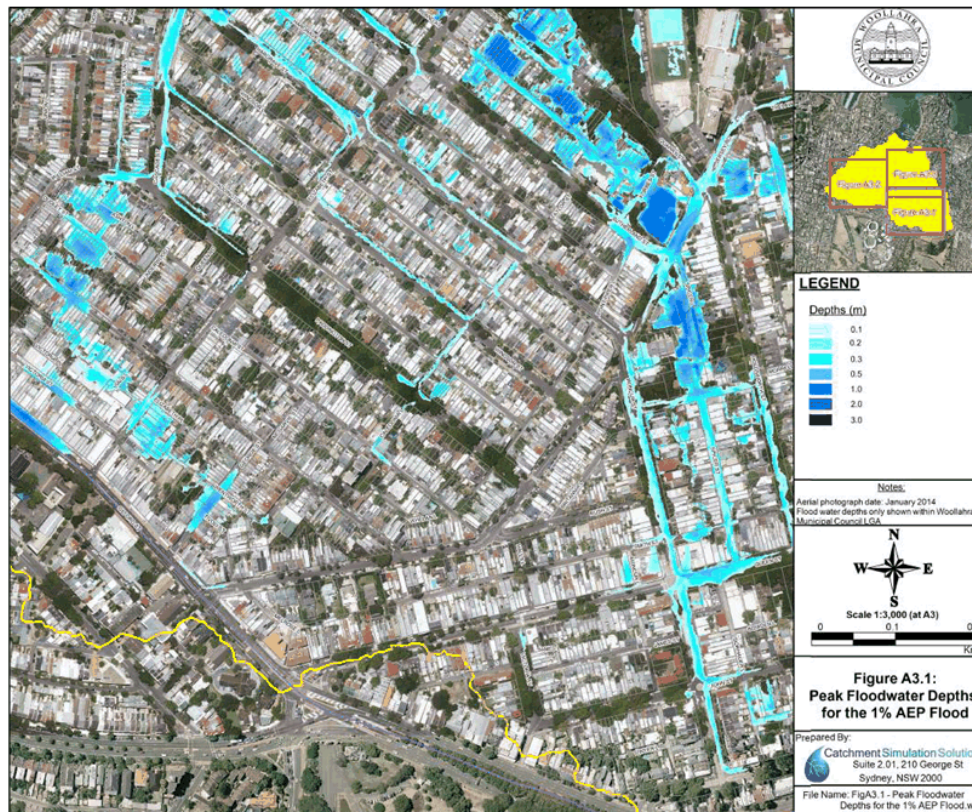
- Held at Woollahra Library on 22 May, 4pm - 7pm.
- Council and CSS “stepped through” the outcomes of the additional consultation and modelling results in detail and for the community to ask questions and raise any concerns.
- Discussion also identified why the community may have thought the flood modelling results did not reflect their experiences.

## Example of 1% AEP Flood Level Difference Map



- Difference maps show the predicted change in flood level associated with implementation of a particular flood mitigation option.

## Example of 1% AEP Floodwater Depth Map



- Shows predicted water depths for existing conditions during floods of various magnitudes





## Additional Options



## Flood Risk Management: Additional Options Investigations

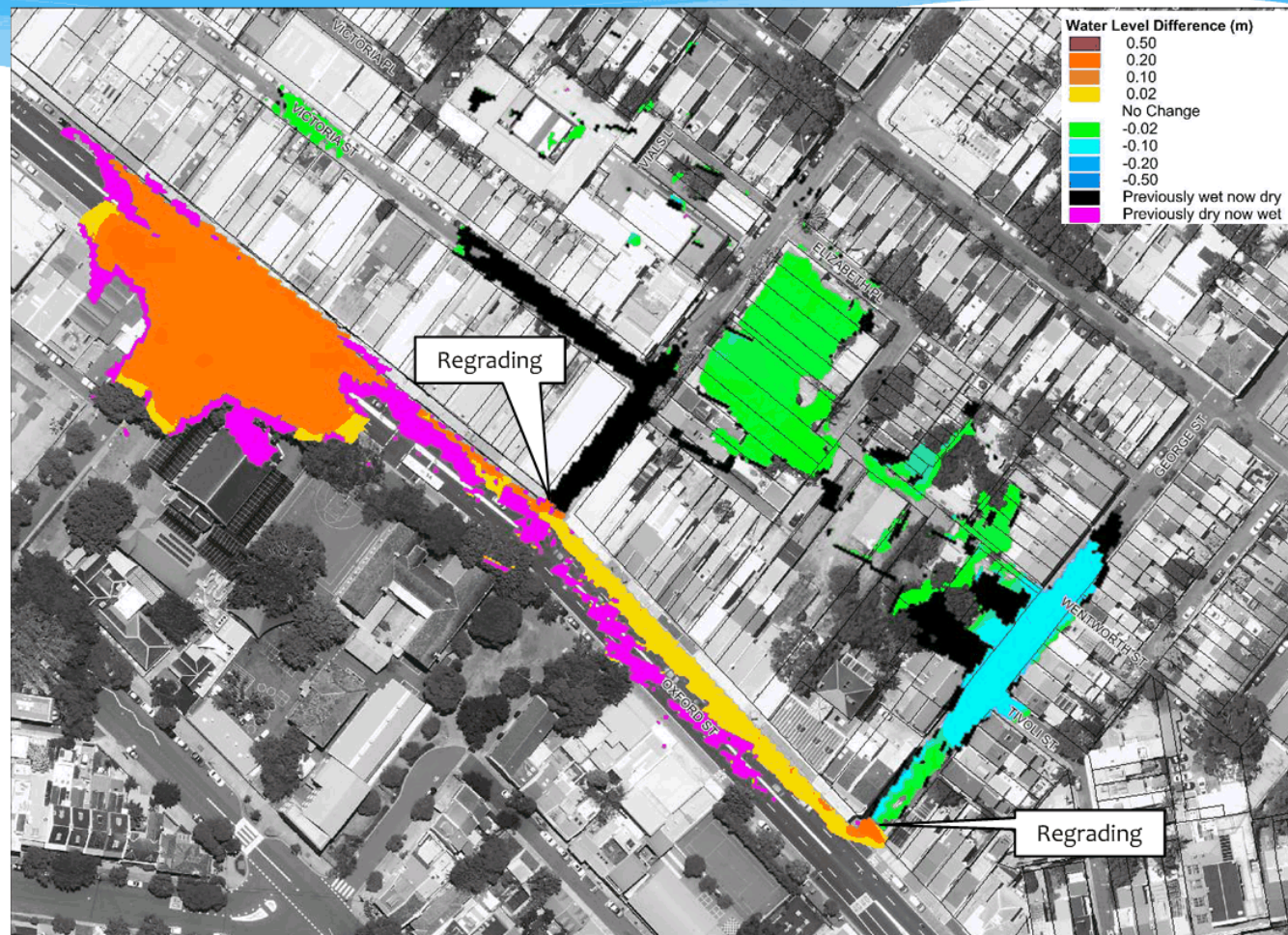
Based on questionnaire responses and feedback received at workshop, additional risk management options were investigated for the upper catchment:

- Modified stormwater upgrade option involving installation of additional stormwater pipes and pits in road reserve.
- Two additional flood risk management measures for the upper

Paddington catchment:

- Regrading near intersections of George and Elizabeth Streets with Oxford Street
- Installation of a large underground storage tank in the privately-owned areas at rear of Oxford Street properties

## Regrading – 20% AEP Flood Level Difference Map



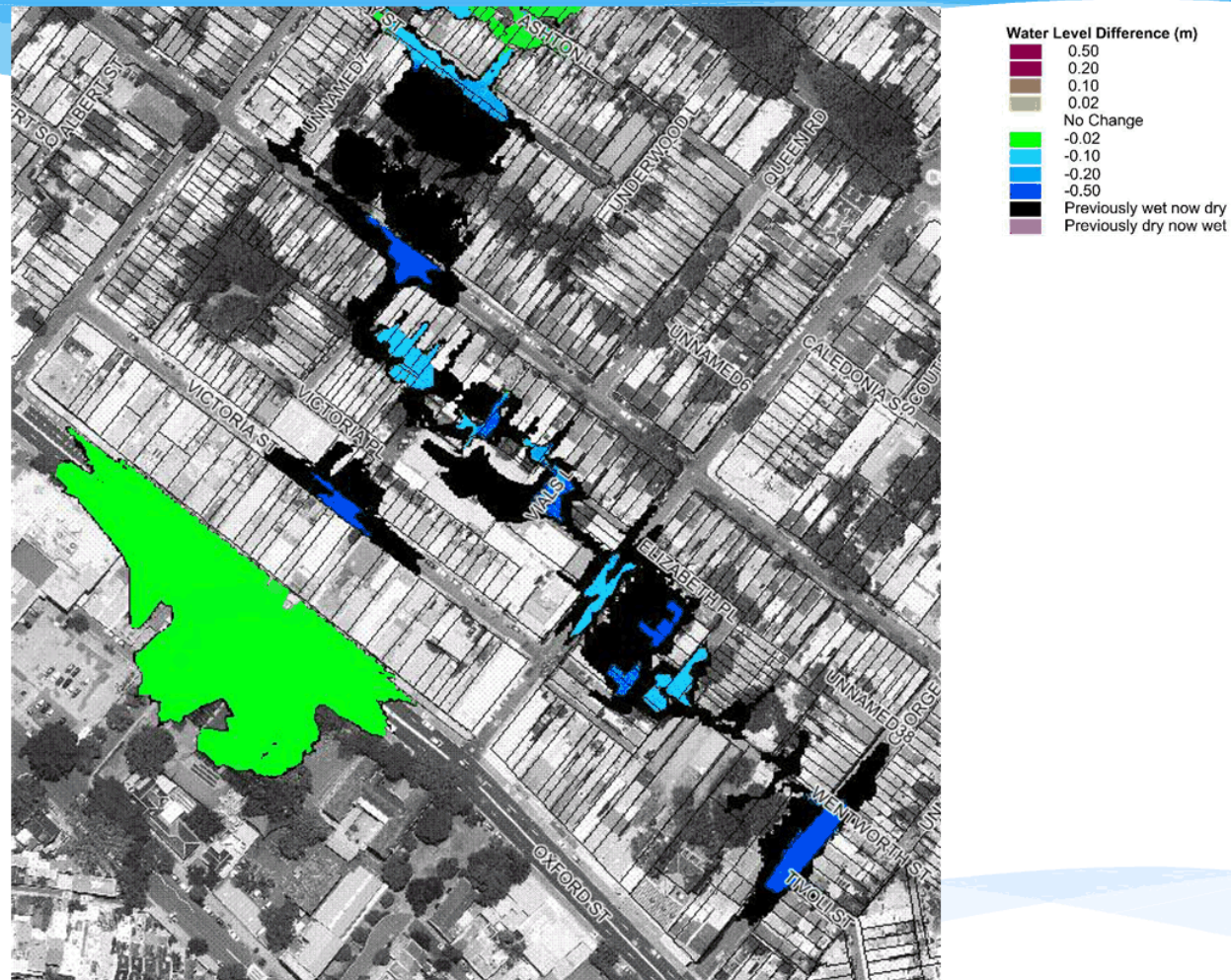


## Underground Storage – 1% AEP Flood Level Difference





## Stormwater Upgrades – 1% AEP Flood Level Difference





## Amendments Made to FRMS Report



## FRMS Report Amendments

- Floodwater depth mapping included in executive summary
- Outcomes of additional community consultation summarised in main body of report and all questionnaire responses are included in new Appendix G.
- Updates to report text to better identify the flooding problems across the upper catchment
- Additional flood risk management options documented in report (including revised stormwater upgrade option).

## Overall Outcomes

- Stormwater upgrades are still the preferred flood risk mitigation measure for the upper Paddington catchment.
- This option is still identified as a high priority option in the report.
- Once report is endorsed, Council can commence the next steps in the implementation process for this and other recommended options (e.g., apply for grant funding, design plans, further community consultation, refine cost estimates etc).



## Questions or Comments??





## INDICATIVE ASSESSMENT OF COMPENSATION PAYABLE VALUE RANGE

FOR THE PROPOSED  
FREEHOLD INTEREST  
IN PART OF THE LAND KNOWN AS

**436-440 & 442 Oxford Street and 22 George Street,  
Paddington, NSW, 2021**

FOR AND ON BEHALF OF

**Woollahra Municipal Council**

DATE PREPARED

8 August 2019




Our Ref: 840646

### **Preston Rowe Paterson Sydney Pty Limited**

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We have capital city and regional offices throughout  
Australia & New Zealand  
Independently owned and operated

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**Neal Smith** AAPI, CPV

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Professional Standards Legislation.

Indicative Assessment of Likely Compensation Payable of Value Range  
436-440 & 442 Oxford Street  
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Appendix A.....	Letter Of Instruction
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Indicative Assessment of Likely Compensation Payable of Value Range  
436-440 & 442 Oxford Street  
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## 1.0 REPORT SUMMARY

### 1.01 Instructions

---

We have been instructed by **Mr Stephen Kuhn** of **Woollahra Municipal Council** to assess the Market Value Range resulting from a purchase by agreement and/or the purchase by compulsory acquisition and assess the compensation payable under the Land Acquisition (Just Terms Compensation) Act 1991 on behalf of **Woollahra Municipal Council**. The interest to be compensated is **part** of the land known as **436-440 & 442 Oxford Street and 22 George Street, Paddington, NSW, 2021**.

We note we are of the opinion that the Market Value resulting from a purchase agreement and/or purchase by compulsory acquisition will result in the same outcome. Being a partial acquisition we have undertaken a 'before and after' method which is the preferred method of valuation, which will encapsulate the impact of the partial acquisition on each subject property. Our assessment at this stage is an indicative estimate of market value and finalisation of this report will be subject to an internal inspection and provision of all relevant documentation associated with each property in order to confirm the full extent of the impact of the acquisition in which we reserve the right to reconsider our valuation herein.

A copy of the letter instructing Preston Rowe Paterson Sydney Pty Limited in this matter is annexed hereto at **Appendix A**.

### 1.02 Date of Gazettal

---

TBA

### 1.03 Date of Inspection

---

8 August 2019.

### 1.04 Acquiring Authority

---

Woollahra Municipal Council.

### 1.05 Purpose of Acquisition

---

Flood mitigation, parklands/open space and road purposes in the Paddington area.

### 1.06 Basis of Acquisition

---

The valuation is to be in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

Indicative Assessment of Likely Compensation Payable of Value Range  
436-440 & 442 Oxford Street  
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Paddington, NSW, 2021  
Prepared for Woollahra Municipal Council



---

#### 1.07 Claimant Interest

---

**Claimant:** 436-440 Oxford Street – Crooked River Land Holdings Pty Ltd

**Interest Acquired:** Freehold Interest

**Claimant:** 442 Oxford Street – Darlon Pty. Limited

**Interest Acquired:** Freehold Interest

**Claimant:** 22 George Street – John William Durack & Robyn Louise Durack

**Interest Acquired:** Freehold Interest

---

#### 1.08 Brief Description

---

It is understood that Woollahra Municipal Council are considering a proposal to purchase land for flood mitigation, parklands/open space and road purposes in the Paddington area over the three properties. As stated earlier herein our assessment at this stage is an indicative estimate of market value range and finalisation of this report will be subject to an internal inspection and provision of all relevant documentation associated with each property in order to confirm the full extent of the impact of the acquisition. In addition we have been advised by Woollahra Council of the affected land areas and have relied upon them. In the event this was to be made available we reserve the right to reconsider our valuation herein.

##### **436 -440 Oxford Street, Paddington**

The subject property of our assessment comprises part of a regular shaped inside allotment with an approximate land area of 281 square metres. The site is zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014. The improvements comprise a strip retail building to the front with a rear vacant land component proposed to be acquired which comprise part concrete and unsealed land with a part brick and metal car port that allows for five under cover car spaces. Based on our aerial measurements the car port is approximately 103 square metres in area. On either side of the property is part brick and timber paling fencing.

Based on our market research and aerial measurements the subject property has an approximate total gross building area across all three properties of 463 square metres. Based off the Deposited Plan the overall land area is 992.7 square metres and once the acquisition takes place would result in an approximate land area of 711.7 square metres along with the elimination of the rear lane access and off street parking. We also note the acquisition may impact potential separate access for multiple tenants and therefore impacting on any potential leasing agreements in place.

In the event this information is incorrect we reserve the right to reconsider our valuation herein.

##### **442 Oxford Street, Paddington**

The subject property of our assessment comprises part of a regular shaped inside allotment with an approximate land area of 109 square metres. The site is zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014. The improvements comprise a strip retail building to the front with a rear vacant land component proposed to be acquired which comprises gravel land area with part brick and metal fencing to either side.

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Prepared for Woollahra Municipal Council



Based on our market research and aerial measurements the subject property has an approximate gross building area of 117 square metres. Based off the Deposited Plan the overall land area is 373 square metres and once the acquisition takes place would result in an approximate land area of 264 square metres along with the elimination of the rear lane access and off street parking. We also note the acquisition may impact potential separate access for multiple tenants and therefore impacting on any potential leasing agreements in place.

In the event this information is incorrect we reserve the right to reconsider our valuation herein.

#### 22 George Street, Paddington

The subject property of our assessment comprises part of an irregular battle axe shaped allotment with an approximate land area of 109 square metres. The site is zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014. The improvements comprise a residence with access from the George Street frontage and rear lane. The affected land area appears to comprise part of the backyard of the subject property in which was fenced off.

Based off the Deposited Plan the overall land area is 386.6 square metres and once the acquisition takes place would result in an approximate land area of 277.6 square metres along with the elimination of rear yard space.

In the event this information is incorrect we reserve the right to reconsider our valuation herein.

For the purpose of this assessment we have undertaken a 'before and after' method of valuation which is the accepted method used to assess likely compensation in terms of partial acquisitions. This methodology requires us to undertake a full valuation of the whole property in the before scenario prior to any acquisition and the after scenario wherein the acquisition has taken place.

#### 1.09 Indicative Assessment of Likely Compensation Payable Value Range

We are of the opinion that the **Indicative Likely Compensation Payable Range** under the Land Acquisition (Just Terms Compensation) Act 1991 for the freehold/leasehold interest in part of the property known as **436-440 Oxford Street, Paddington, NSW, 2021** is in the sum of **\$2,130,000 (TWO MILLION ONE HUNDRED AND THIRTY THOUSAND DOLLARS) - \$3,550,000 (THREE MILLION FIVE HUNDRED AND FIFTY THOUSAND DOLLARS)** as at the date hereof and subject to:-

1. Our opinion that compensation is payable regarding loss attributable to Market Value and Disturbance; we do not believe that compensation is payable regarding loss attributable to Special Value, Severance, Solatium or Increase or Decrease in the value of the remaining land;
2. An internal inspection of the subject property and provision of all relevant documentation in association with the subject property, in which we reserve the right to reconsider our valuation herein;
3. Good and marketable leasehold title, free from any encumbrances;
4. The terms and conditions contained herein; and
5. The comments and assumptions detailed herein.

Our Assessment of Likely Compensation Range is as follows:-

Indicative Estimate of Compensation Payable Value Range 436 - 440 Oxford Street, Paddington, NSW, 2021 Prepared for Woollahra Municipal Council Prepared by Preston Rowe Paterson Sydney Pty Ltd						
Subject Property	Market Value "Before"	30% Diminution (Lower)	50% Diminution (Upper)	Area M2	\$/PM2 (Lower)	\$/PM2 (Upper)
Whole Property	\$7,100,000	\$2,130,000	\$3,550,000	281	\$7,580	\$12,633

Indicative Assessment of Likely Compensation Payable of Value Range  
436-440 & 442 Oxford Street  
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#### 1.10 Indicative Assessment of Likely Compensation Payable Value Range

We are of the opinion that the **Indicative Likely Compensation Payable Value Range** under the Land Acquisition (Just Terms Compensation) Act 1991 for the freehold/leasehold interest in part of the property known as **442 Oxford Street, Paddington, NSW, 2021** is in the sum of **\$450,000 (FOUR HUNDRED AND FIFTY THOUSAND DOLLARS) - \$750,000 (SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS)** as at the date hereof and subject to:-

1. Our opinion that compensation is payable regarding loss attributable to Market Value and Disturbance; we do not believe that compensation is payable regarding loss attributable to Special Value, Severance, Solatium or Increase or Decrease in the value of the remaining land;
2. An internal inspection of the subject property and provision of all relevant documentation in association with the subject property, in which we reserve the right to reconsider our valuation herein;
3. Good and marketable leasehold title, free from any encumbrances;
4. The terms and conditions contained herein; and
5. The comments and assumptions detailed herein.

Our Assessment of Likely Compensation Range is as follows:-

Indicative Estimate of Compensation Payable Value Range 442 Oxford Street, Paddington, NSW, 2021 Prepared for Woollahra Municipal Council Prepared by Preston Rowe Paterson Sydney Pty Ltd						
Subject Property	Market Value "Before"	30% Diminution (Lower)	50% Diminution (Upper)	Area M2	\$/PM2 (Lower)	\$/PM2 (Upper)
Whole Property	\$1,500,000	\$450,000	\$750,000	109	\$4,128	\$6,881

Indicative Assessment of Likely Compensation Payable of Value Range  
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#### 1.11 Indicative Assessment of Likely Compensation Payable Value Range

We are of the opinion that the **Indicative Likely Compensation Payable Value Range** under the Land Acquisition (Just Terms Compensation) Act 1991 for the freehold/leasehold interest in part of the property known as **22 George Street, Paddington, NSW, 2021** is in the sum of **\$625,000 (SIX HUNDRED AND TWENTY FIVE THOUSAND DOLLARS)** - **\$1,250,000 (ONE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS)** as at the date hereof and subject to:-

1. Our opinion that compensation is payable regarding loss attributable to Market Value and Disturbance; we do not believe that compensation is payable regarding loss attributable to Special Value, Severance, Solatium or Increase or Decrease in the value of the remaining land;
2. An internal inspection of the subject property and provision of all relevant documentation in association with the subject property, in which we reserve the right to reconsider our valuation herein;
3. Good and marketable leasehold title, free from any encumbrances;
4. The terms and conditions contained herein; and
5. The comments and assumptions detailed herein.

Our Assessment of Likely Compensation Range is as follows:-

Indicative Estimate of Compensation Payable Value Range 22 George Street, Paddington, NSW, 2021 Prepared for Woollahra Municipal Council Prepared by Preston Rowe Paterson Sydney Pty Ltd						
Subject Property	Market Value "Before"	25% Diminution (Lower)	50% Diminution (Upper)	Area M2	\$/PM2 (Lower)	\$/PM2 (Upper)
Whole Property	\$2,500,000	\$625,000	\$1,250,000	109	\$5,734	\$11,468

#### 1.12 Pecuniary Interest Declaration

We confirm that neither Preston Rowe Paterson Sydney Pty Limited, nor its Directors nor its employees have any pecuniary interests in **436-440 & 442 Oxford Street and 22 George Street, Paddington, NSW, 2021** or **Woollahra Municipal Council**.

Indicative Assessment of Likely Compensation Payable of Value Range  
436-440 & 442 Oxford Street  
and 22 George Street  
Paddington, NSW, 2021  
Prepared for Woollahra Municipal Council



**Preston Rowe Paterson**  
International Property Consultants and Valuers

---

### 1.13 Valuer Signatories

---

Valuer

Daniel Saliba B.Prop.Econ (Hons), AAPI, CPV  
Valuer/Analyst

**Proof Read By:**

Reliance on this report should only be taken upon sighting an original document that has been signed or countersigned by a Director of Preston Rowe Paterson Sydney Pty Limited. The counter signatory verifies that this report is genuine, and issued and endorsed by Preston Rowe Paterson Sydney Pty Limited. The opinion of value expressed in this report, however, has been arrived at by the prime signatory acting as the Valuer in accordance with instructions given.

Gregory C Rowe B Bus, FAPI, CPV  
Managing Director  
Certified Practising Valuer (Plant & Machinery)



Indicative Assessment of Likely Compensation Payable of Value Range  
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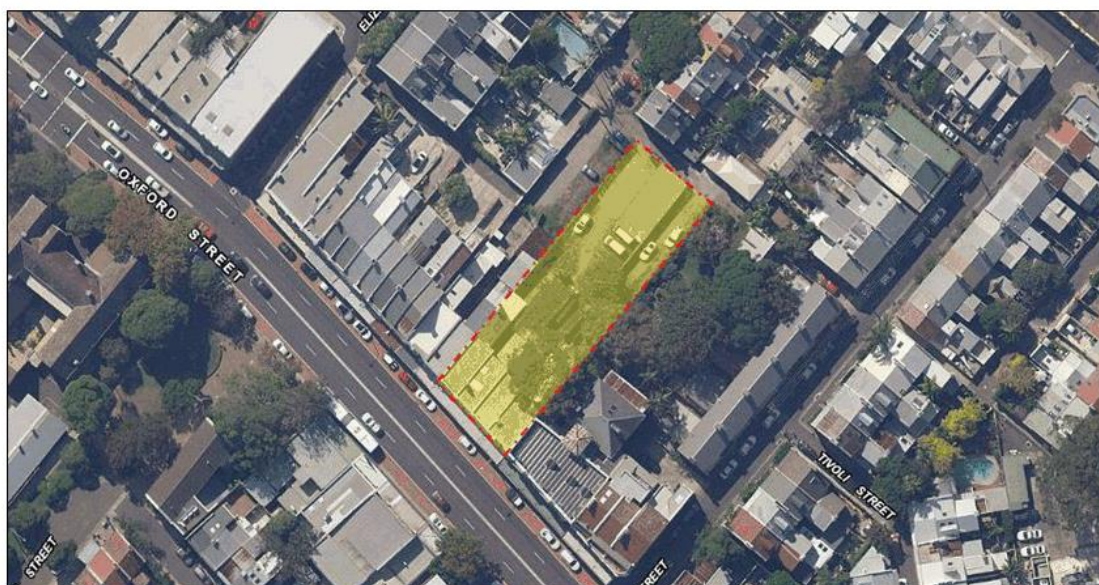
## 2.0 PROPERTY, LEASE AND FINANCIAL DESCRIPTION

### 2.01 Physical Location

#### 436-440 & 442 Oxford Street, Paddington

Both 436-440 and 442 Oxford Street are located along the north western side of Oxford Street in Paddington. The suburb of Paddington is located approximately 3.5 kilometres (by road) south east of the Sydney Central Business District.

A location plan and aerial image of the subject property are scanned below:-





Indicative Assessment of Likely Compensation Payable of Value Range  
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### 22 George Street, Paddington

The subject property is located along the western side of George Street in Paddington. The suburb of Paddington is located approximately 3.5 kilometres (by road) south east of the Sydney Central Business District.

A location plan and aerial image of the subject property are scanned below:-





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## 2.02 Surrounding Development

Surrounding development comprises predominantly strip retail development and low density residential development.

## 2.03 Proximity to Amenities and Services

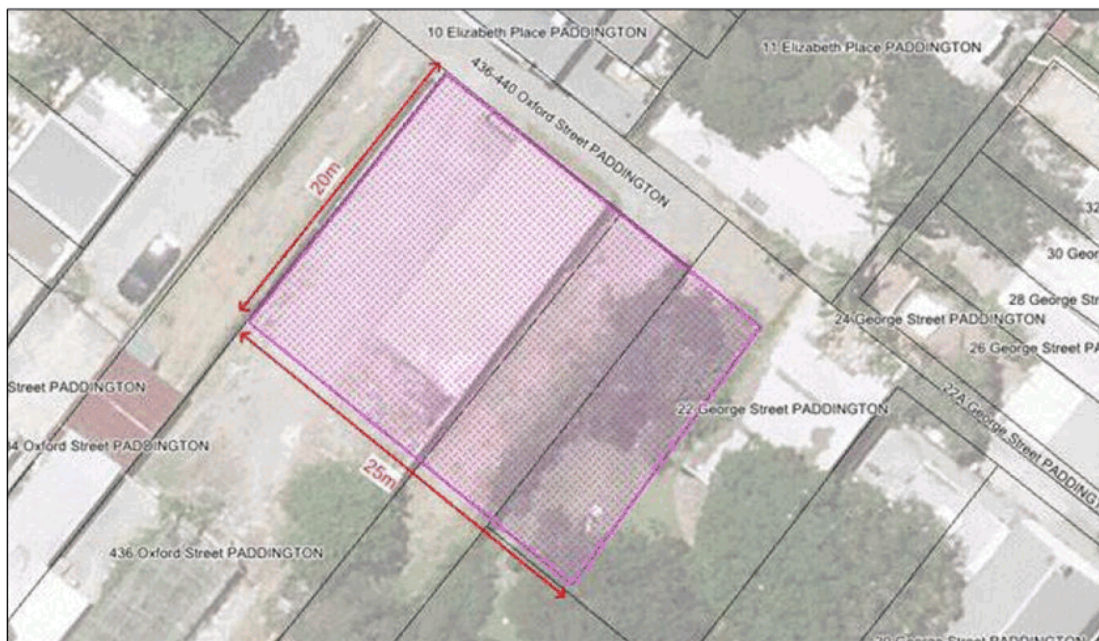
The subject property is situated in close proximity to the following amenities and services:-

- **Schools:** Glenmore Road Public School and Paddington Public School.
- **Shopping:** Surry Hills Shopping Village, Westfield Bondi and surrounding strip retail.
- **Transport:** Main arterial roads located nearby include Oxford Street and Moore Park Road. We note public bus services are available along Oxford Street and Edgecliff Station is situated approximately 950 metres north of the subject property.
- **Other:** Royal Hospital for Women and Trumper Park.

## 3.0 SITE DESCRIPTION

### 3.01 Dimensions and Area

We note the affected land area comprises three separate titles in which plans have been provided from Council below:-



We note given the subject properties comprise part of the land over three separate titles and for the purpose of this assessment we have also been provided with the individual areas by Council in order to provide three separate values. In the event this information is incorrect we reserve the right to reconsider our valuation herein.

Indicative Assessment of Likely Compensation Payable of Value Range  
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and 22 George Street  
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Prepared for Woollahra Municipal Council



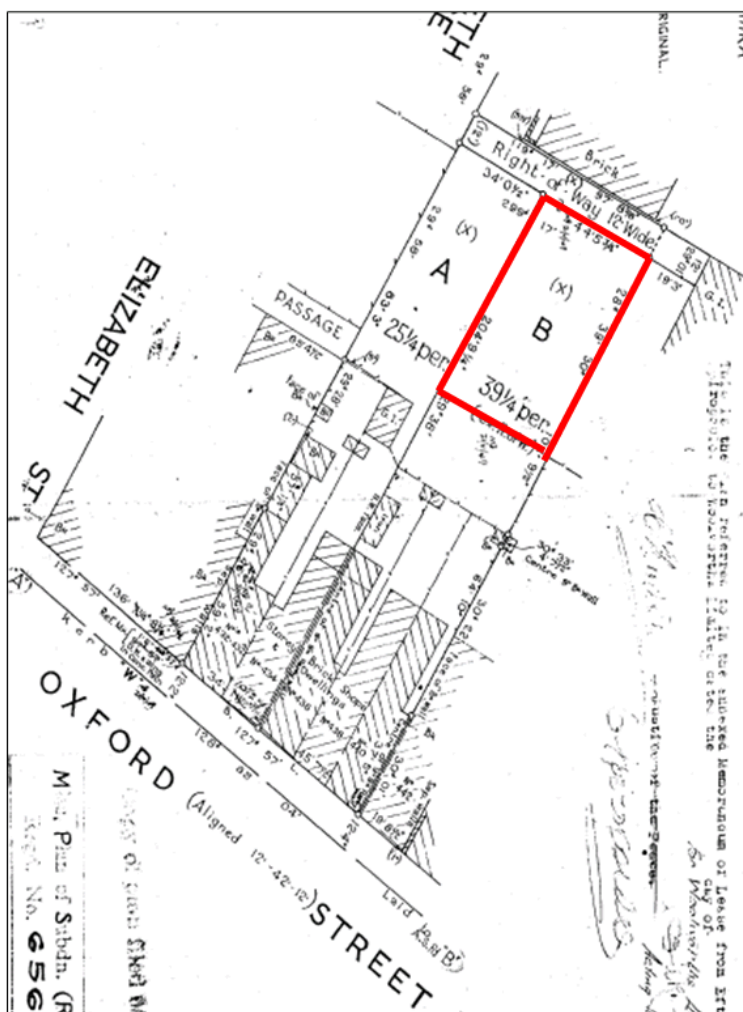
#### 436-440 Oxford Street, Paddington:-

The subject property is a regular shaped inside allotment.

The affected land area comprises approximately 281 square metres.

We note we have been advised by Woollahra Council of the potential land area to be acquired and have relied upon them. In the event a formal survey was to reveal otherwise we reserve the right to reconsider our valuation herein.

A more comprehensive understanding of site dimensions can be obtained from the Deposited Plan which has been scanned below with an indicative layout in red.



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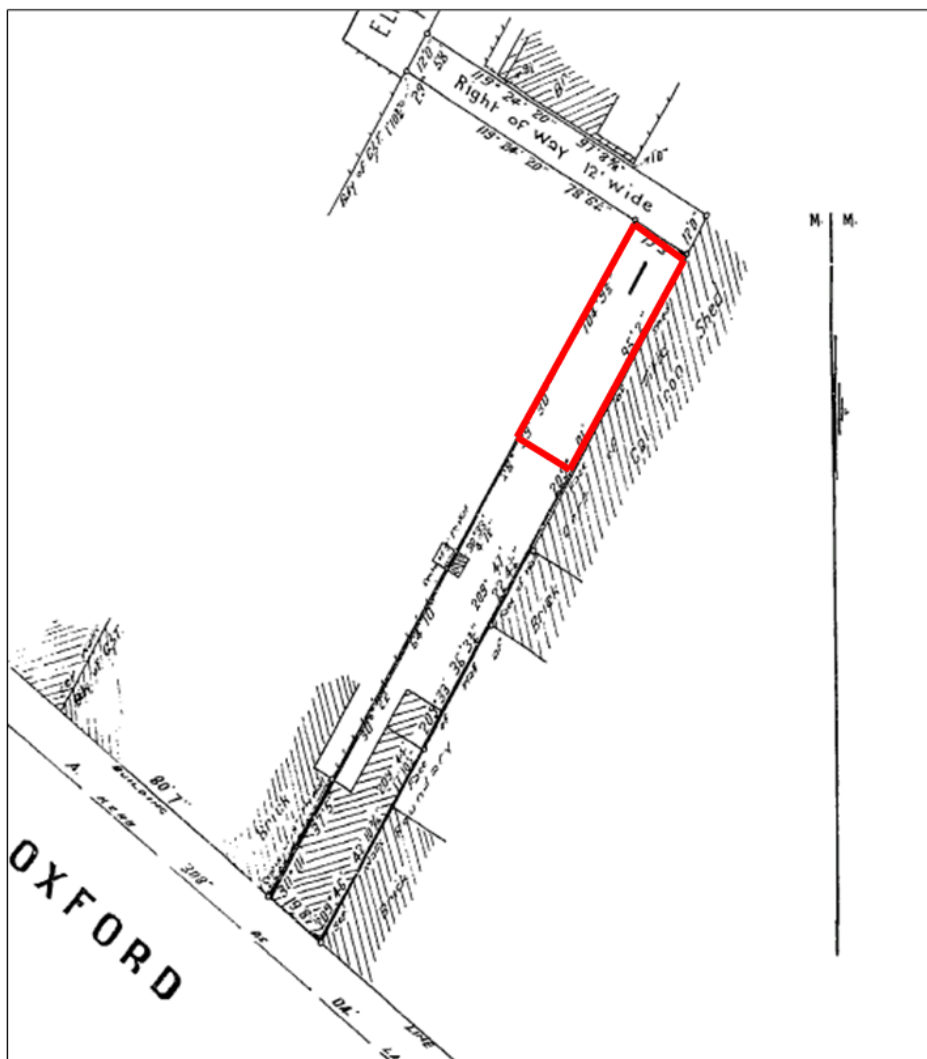
#### 442 Oxford Street, Paddington:-

The subject property is a regular shaped inside allotment.

The affected land area comprises approximately 109 square metres.

We note we have been advised by Woollahra Council of the potential land area to be acquired and have relied upon them. In the event a formal survey was to reveal otherwise we reserve the right to reconsider our valuation herein.

A more comprehensive understanding of site dimensions can be obtained from the Deposited Plan which has been scanned below with an indicative layout in red.



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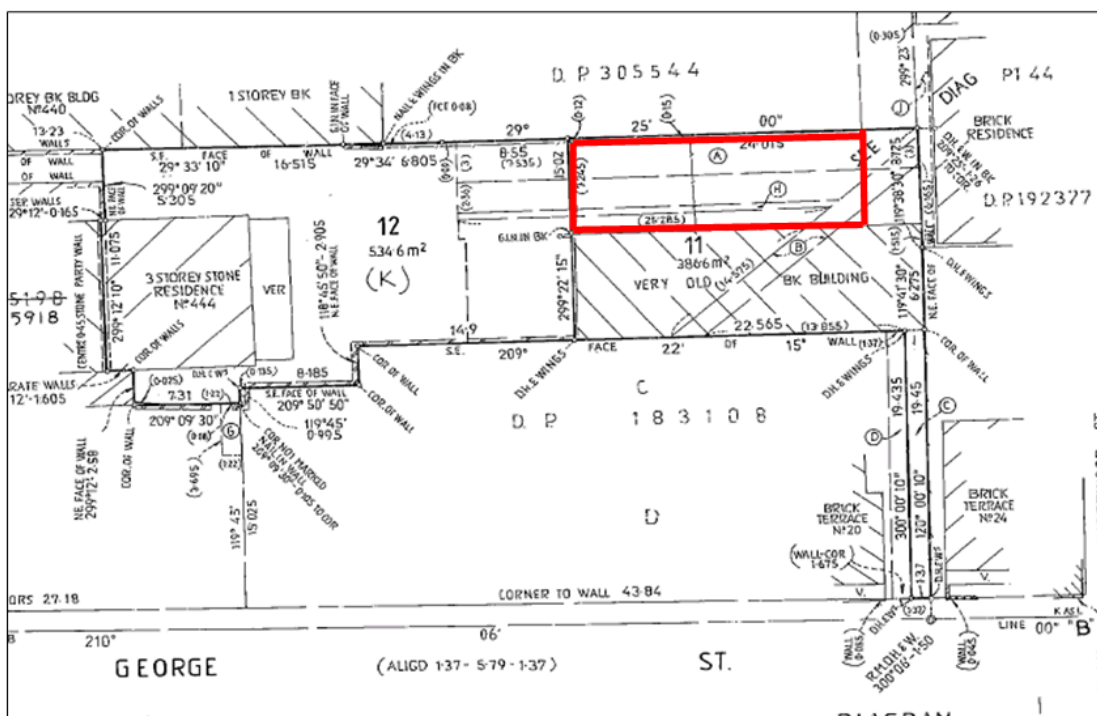
### 22 George Street, Paddington:-

The subject property is a regular shaped inside allotment.

The affected land area comprises approximately 109 square metres.

We note we have been advised by Woollahra Council of the potential land area to be acquired and have relied upon them. In the event a formal survey was to reveal otherwise we reserve the right to reconsider our valuation herein.

A more comprehensive understanding of site dimensions can be obtained from the Deposited Plan which has been scanned below with an indicative layout in red.



### 3.02 Topography and Aspect

#### 436-440 & 442 Oxford Street, Paddington

The subject land is relatively level.

The main aspect of the subject property is to the south overlooking Oxford Street.

#### 22 George Street, Paddington

The subject land is relatively level.

The main aspect of the subject property is to the east overlooking George Street and to the west overlooking Elizabeth Place.



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---

### **3.03 Roads and Access**

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Oxford Street at this location comprises a four lane bitumen sealed roadway with kerbside parking on sides, concrete kerb and guttering and walkways.

We note the rear of all three properties are accessed through Elizabeth Place via a Right of Way and comprises an unsealed road way.

### **3.04 Services**

---

We have assumed the usual utility services are available and connected to the subject land including: - water, sewerage, gas, electricity and telephone.

### **3.05 Environmental Risks**

---

Whilst at the time of inspection, we did not identify any obvious signs of environmental concern or pollution, we nevertheless draw your attention to the following:-

We have endeavoured to comment on all areas of Environmental concern based on our superficial inspection. An actual environmental audit may reveal matters that affect our valuation herein that were not readily discernible at the time of inspection.

The client acknowledges and recognises that Preston Rowe Paterson Sydney Pty Limited is not expert in identifying environmental hazards and compliance requirements affecting properties. We have however, endeavoured to superficially identify all matters of environmental concern and the effect they might have on the value of the property. However, we will not be held liable nor responsible for failure to identify all such matters of environmental concern and the impact which any environmental related issue has on the property and its value including loss arising from site contamination; or the non-compliance with any environmental laws; or costs associated with the clean up of a property in which an environmental hazard has been recognised, including action by the relevant Environmental Protection Authority to recover clean up costs pursuant to the relevant Environmental Protection Act.

### **3.06 Site Identification**

---

We have positively identified the subject property from the Deposited Plans and our physical kerbside inspection.

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## 4.0 TITLE DETAILS

### 4.01 Legal Description/Title Reference

The subject property is legally described as Lot B in Deposited Plan 365605, Lot 1 in Deposited Plan 305544 and Lot 11 in Deposited Plan 715058.

We have replicated below Folio Identifier B/365605, 1/305544 and 11/715058 for reference purposes:-

 **LAND REGISTRY SERVICES** **Title Search** 

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: B/365605

-----

SEARCH DATE	TIME	EDITION NO	DATE
7/8/2019	1:41 PM	20	30/1/2018

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.  
CONTROL OF THE RIGHT TO DEAL IS HELD BY AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED.

LAND

-----

LOT B IN DEPOSITED PLAN 365605  
AT PADDINGTON  
LOCAL GOVERNMENT AREA WOOLLAHRA  
PARISH OF ALEXANDRIA COUNTY OF CUMBERLAND  
TITLE DIAGRAM DP365605

FIRST SCHEDULE

-----

CROOKED RIVER LAND HOLDINGS PTY LTD (T AN75021)

SECOND SCHEDULE (9 NOTIFICATIONS)

-----

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 A895351 RIGHT OF WAY AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN 3.66 METRES WIDE IN DP621318
- 3 F870284 RIGHT OF CARRIAGEWAY AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN 3.66 METRES WIDE IN DP621318
- 4 F870284 CROSS EASEMENTS (S181 B CONVEYANCING ACT, 1919) AFFECTING THE PARTY WALL(S) SHOWN ON THE COMMON BOUNDARY OF LOTS A AND B IN DP365605
- 5 Q641048 RIGHT OF CARRIAGEWAY AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN 3.66 METRES WIDE IN DP621318
- 6 DP266219 EASEMENT FOR SUPPORT VARIABLE WIDTH AFFECTING THE PART(S) SHOWN SO BURDENED IN DP266219
- 7 DP1059924 RIGHT OF CARRIAGEWAY 5 METRE(S) WIDE APPURTENANT TO THE LAND ABOVE DESCRIBED
- 8 AG893020 LEASE TO CROWN HOUSE PTY LTD OF 438 OXFORD STREET, PADDINGTON. EXPIRES: 30/6/2015. OPTION OF RENEWAL: 5 YEARS.
- 9 AN75022 MORTGAGE TO AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

NOTATIONS

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UNREGISTERED DEALINGS: NIL


\*\*\* END OF SEARCH \*\*\*




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**Preston Rowe Paterson**  
International Property Consultants and Valuers

**LAND  
REGISTRY  
SERVICES**

**Title Search**



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 1/305544

SEARCH DATE	TIME	EDITION NO	DATE
7/8/2019	1:41 PM	11	11/11/2014

LAND

LOT 1 IN DEPOSITED PLAN 305544  
LOCAL GOVERNMENT AREA WOOLLAHRA  
PARISH OF ALEXANDRIA COUNTY OF CUMBERLAND  
TITLE DIAGRAM DP305544

FIRST SCHEDULE

DARLON PTY. LIMITED (T U668235)

SECOND SCHEDULE (5 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 A895351 RIGHT OF WAY APPURTENANT TO THE LAND ABOVE  
DESCRIBED SHOWN IN PLAN WITH A895351
- 3 DP266219 EASEMENT FOR SUPPORT VARIABLE WIDTH APPURTENANT TO  
THE LAND ABOVE DESCRIBED AFFECTING THE PIECE OF LAND  
SHOWN SO BURDENED IN DP266219
- 4 DP1059924 RIGHT OF CARRIAGEWAY 5 METRE(S) WIDE AFFECTING THE  
PART(S) SHOWN SO BURDENED IN DP1059924
- 5 AJ27973 LEASE TO EDDY SYLVESTE DUVAL OF GROUND FLOOR SHOP,  
442 OXFORD ST, PADDINGTON. EXPIRES: 21/10/2017. OPTION  
OF RENEWAL: 3 YEARS.

\* AN62314 VARIATION OF LEASE AJ27973 EXPIRY DATE NOW  
21/10/2020. OPTION OF RENEWAL: RELINQUISHED.

NOTATIONS

UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

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**NSW LAND REGISTRY SERVICES Title Search InfoTrack**

NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

POLIO: 11/715058

SEARCH DATE	TIME	EDITION NO	DATE
7/8/2019	1:41 PM	7	14/1/2014

LAND

LOT 11 IN DEPOSITED PLAN 715058  
AT PADDINGTON  
LOCAL GOVERNMENT AREA WOOLLAHRA  
PARISH OF ALEXANDRIA COUNTY OF CUMBERLAND  
TITLE DIAGRAM DP715058

FIRST SCHEDULE

JOHN WILLIAM DURACK  
ROBYN LOUISE DURACK  
AS JOINT TENANTS (T A140975)

SECOND SCHEDULE (8 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 A940297 RIGHT OF WAY AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 3 A940297 RIGHT OF WAY 1.37 WIDE APPURTENANT TO THE LAND ABOVE DESCRIBED AFFECTING THE PART OF LOTS C AND D IN DP183108 SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 4 Q641048 RIGHT OF CARRIAGEWAY APPURTENANT TO THE LAND ABOVE DESCRIBED AFFECTING THE LAND SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 5 Q924880 RIGHT OF WAY APPURTENANT TO THE LAND ABOVE DESCRIBED AFFECTING THE PART OF LOT 44 IN DP192377 SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 6 DP621318 RIGHT OF CARRIAGEWAY AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 7 DP621318 EASEMENT TO DRAIN WATER 0.5 WIDE AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 8 DP621318 EASEMENT TO DRAIN WATER 1.5 WIDE AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN SO BURDENED IN THE TITLE DIAGRAM

NOTATIONS

UNREGISTERED DEALINGS: DD AM810442.

\*\*\* END OF SEARCH \*\*\*

We have relied on copies of title which were searched on 7 August 2019. Should any notations have been placed on title since the date of search which defect the Valuation or Valuation Services We reserve the right to reconsider our valuation findings herein.

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#### 4.02 Registered Proprietor and Basis of Possession

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##### 436-440 Oxford Street, Paddington

Crooked River Land Holdings Pty Ltd as Sole Proprietor

##### 442 Oxford Street, Paddington

Darlon Pty. Limited as Sole Proprietor

##### 22 George Street, Paddington

John William Durack & Robyn Louise Durack as Joint Tenants

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#### 4.03 Encumbrances

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##### 436-440 Oxford Street, Paddington

1. Reservations and Conditions in The Crown Grant(s)
2. A895351 Right of way affecting the part of the land above described shown 3.66 metres wide in DP621318
3. F870284 Right of carriageway affecting the part of the land above described shown 3.66 metres wide in DP621318
4. F870284 Cross easements (S181 B Conveyancing Act, 1919) affecting the party wall(s) shown on the common boundary of Lots A and B in DP365605
5. Q641048 Right of carriageway affecting the part of the land above described shown 3.66 metres wide in DP621318
6. DP266219 Easement for support variable width affecting the part(s) shown so burdened in DP266219
7. DP1059924 Right of carriageway 5 metre(s) wide appurtenant to the land above described
8. AG893020 Lease to Crown House Pty Ltd of 438 Oxford Street, Paddington. Expires: 30/6/2015. Option of renewal: 5 years.
9. AN75022 Mortgage to Australia and New Zealand Banking Group Limited

##### 442 Oxford Street, Paddington

1. Reservations and Conditions in The Crown Grant(s)
2. A895351 Right of way appurtenant to the land above described shown in plan with A895351
3. DP266219 Easement for support variable width appurtenant to the land above described affecting the piece of land shown so burdened in DP266219
4. DP1059924 Right of carriageway 5 metre(s) wide affecting the part(s) shown so burdened in DP1059924
5. AJ27973 Lease to Eddy Sylveste Duval of Ground Floor Shop, 442 Oxford St, Paddington. Expires: 21/10/2017. Option of renewal: 3 years.

\* AN62314 Variation of lease AJ27973 expiry date now 21/10/2020. Option of renewal: relinquished.

##### 22 George Street, Paddington

1. Reservations and Conditions in The Crown Grant(s)
2. A940297 Right of way affecting the part of the land above described shown so burdened in the title diagram
3. A940297 Right of way 1.37 wide appurtenant to the land above described affecting the part of Lots C and D in DP183108 shown so burdened in the title diagram
4. Q641048 Right of carriageway appurtenant to the land above described affecting the land shown so burdened in the title diagram
5. Q924880 Right of way appurtenant to the land above described affecting the part of Lot 44 in DP192377 shown so burdened in the title diagram
6. DP621318 Right of carriageway affecting the part of the land above described shown so burdened in the title diagram
7. DP621318 Easement to drain water 0.5 wide affecting the part of the land above described shown so burdened in the title diagram 5259032 variation of site of easement as shown designated (K) in plan with 5259032
8. DP621318 Easement to drain water 1.5 wide affecting the part of the land above described shown so burdened in the title diagram

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## 5.0 ENVIRONMENTAL PLANNING

### 5.01 Zoning

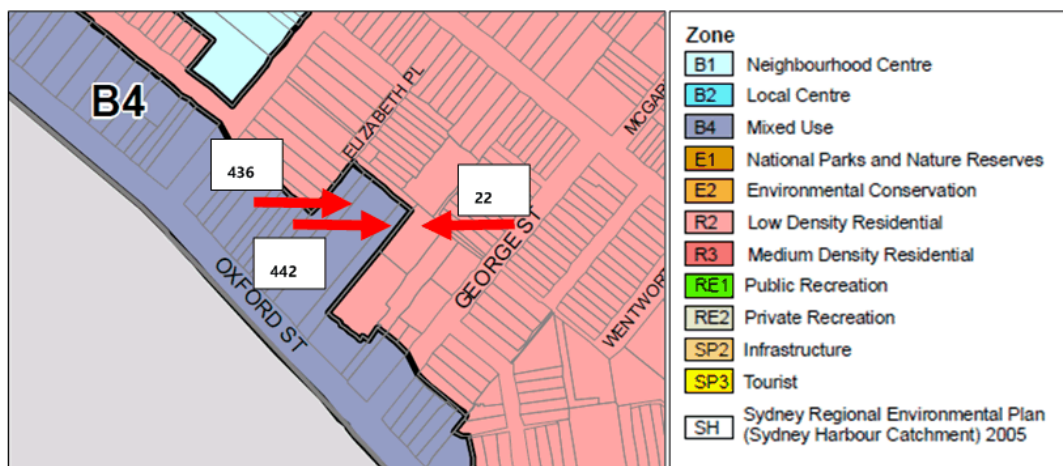
#### 436-440 & 442 Oxford Street, Paddington

Both 436-440 and 442 Oxford Street are zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014.

#### 22 George Street, Paddington

The subject property is zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.

Below is an excerpt of the zoning map:-



### 5.02 Land Uses

#### 436-440 & 442 Oxford Street, Paddington

##### B4 Mixed Use

##### 1. Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To provide active ground floor uses to create vibrant centres.
- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

##### 2. Permitted without consent

Roads.

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### 3. Permitted with consent

Boarding houses; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Dwelling houses; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Function centres; Home occupations (sex services); Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Seniors housing; Service stations; Sex services premises; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Vehicle repair stations; Veterinary hospitals.

### 4. Prohibited

Pond-based aquaculture; any development not specified in item 2 or 3.

## 22 George Street, Paddington

### R2 Low Density Residential

#### 1. Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

#### 2. Permitted without consent

Home occupations; Roads.

#### 3. Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Group homes; Home occupations (sex services); Information and education facilities; Office premises; Oyster aquaculture; Pond-based aquaculture; Public administration buildings; Recreation areas; Respite day care centres; Secondary dwellings; Semi-detached dwellings; Shops; Tank-based aquaculture.

#### 4. Prohibited

Any development not specified in item 2 or 3.

Information has been obtained verbally from representatives of **Woollahra Council** and this assessment of compensation is issued on the understanding that such information is correct. The Town Planning information should be checked by the obtaining of a Certificate under Section 149 of the Environmental Planning and Assessment Act 1979. We will not assume any liability or negligence for our reliance on the Local Authority's verbal advice.

## 5.03 Development Constraints

According to the Woollahra Local Environmental Plan 2014 the following development constraints applies to the subject property:-

### 436-440 & 442 Oxford Street, Paddington

- A maximum floor space ratio is 1:1;
- A maximum building height of 9.5 metres;
- A minimum lot size: N/A;
- Classified as Class 5 under the Acid Sulphate Soils Map;



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#### **22 George Street, Paddington**

- A maximum floor space ratio: N/A;
- A maximum building height of 9.5 metres;
- A minimum lot size: 230m<sup>2</sup>;
- Classified as Class 5 under the Acid Sulphate Soils Map;

---

#### **5.04 Development Consents**

Our online enquires with Woollahra Council website have indicated there have been no recent development applications lodged or approved over the subject property.

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#### **5.05 Heritage Notations**

No. 436 & 442 Oxford Street and 22 George Street are listed within the Paddington Heritage Conservation Area Significance: Local.

### **6.0 IMPROVEMENTS**

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#### **6.01 General Description**

We note we have not had the benefit of an internal inspection and the below descriptions are based on our kerbside inspection from the rear.

##### **436-440 Oxford Street, Paddington:-**

The subject property comprises a strip retail building to the front with surplus land to the rear. The affected land area comprises part concrete and unsealed land with a part brick and metal car port that allows for five under cover car spaces. Based on our aerial measurements the car port is approximately 103 square metres in area. On either side of the property is part brick and timber paling fencing. In the event this information is incorrect we reserve the right to reconsider our valuation herein.

##### **442 Oxford Street, Paddington:-**

The subject property comprises a strip retail building to the front with surplus land to the rear. The affected land area to the rear comprises gravel land area with part brick and metal fencing to either side.

##### **22 George Street, Paddington:-**

The subject property comprises a residence located on a battle axe lot with access from the George Street frontage and rear lane. The affected land area appears to comprise part of the backyard of the subject property in which was fenced off.



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## 6.02 Photographs



Rear of 436 Oxford Street



Rear of 442 Oxford Street



Rear of 22 George Street



View from Elizabeth place entrance



Oxford Street frontage of 436-440 & 442



22 George Street frontage

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## 7.0 OVERVIEW OF LEASES

We note we have not been provided with any leases and have undertaken this assessment on a vacant possession basis. In the event this information is incorrect we reserve the right to reconsider our valuation herein.

## 8.0 REQUIREMENTS UNDER SECTION 55, LANDS ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Under **Section 55 of the Land Acquisition (Just Terms Compensation) Act 1991**, the following relevant matters are to be considered when determining the amount of compensation:-

- a) The market value of the land at the date of its acquisition;
- b) Any special value of the land to the person on the date of its acquisition;
- c) Any loss attributable to severance;
- d) Any loss attributable to disturbance;
- e) Disadvantage Resulting from Relocation;
- f) Any increase or decrease in the value of the other land of the person as at the date of acquisition which adjoins or is severed from the acquired land by reason of carrying out of or the proposal to carry out the public purpose for which the land was acquired.

Under **Section 56** of this Act **Market Value** is defined as follows:-

"Market Value of land at any time means the amount which would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid)";

- a) Any increase or decrease in the value of the land caused by the carrying out of or the proposal to carry the public purpose for which the land was acquired;
- b) Any increase in the value of land caused by the carrying out by the authority of the state, before the land is acquired, of improvements for the public purpose for which the land is to be acquired;
- c) Any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

**Special Value** is defined under **Section 57** as follows:-

Special Value of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation, which is incidental to the person's use of the land.

**Severance** is defined under **Section 58** as follows:-

Severance "means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person".

**Disturbance** is defined under **Section 59** as follows:-

"Loss attributable to disturbance" of land means any of the following:-

- a) Legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land;
- b) Valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land;
- c) Financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs);

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- d) Stamp duty costs reasonably incurred (or might reasonably be incurred) by those persons in connection with the purchase of land for relocation) but not exceeding the amount which would be incurred for the purchase of land of equivalent value to the land compulsorily acquired);
- e) Financial cost reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage);
- f) Any financial cost reasonably incurred or that might be reasonably incurred relating to the actual use of the land as a direct and natural consequence of the acquisition.

**Disadvantage Resulting from Relocation** is defined under **Section 60** as follows:-

Means compensation to a person of non-financial disadvantage resulting from a necessity of the person to relocate his or her principle place of residence as a result of the acquisition”.

In assessing the amount of compensation, all relevant circumstances are to be taken into account including:

- a) The interest in the land of the person entitled to compensation; and
- b) The length of time the person has resided on the land (and in particular with the person who is residing on the land temporarily or indefinitely); and
- c) The inconvenience likely to be suffered by the person because of his or her removal from the land; and
- d) The period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

## **9.0 SALES EVIDENCE**

### **9.01 Sales History – Subject Property**

#### **436-440 Oxford Street:**

Our investigations have revealed a previous sale of the subject property on 30 October 2017 in the amount of \$7,550,000.

#### **442 Oxford Street:**

In our investigations we have not identified a previous sale of the subject property.

#### **22 George Street:**

In our investigations we have not identified a previous sale of the subject property.

### **9.02 Sales Evidence**

We note for the purpose of this valuation and taking into consideration the subject property's highest and best use, we have considered B4 Mixed Use and R2 Low Density Residential sales within the locality of Paddington.

In our analysis we have also included an analysed rate per square metre of land area. We note this has been done by depreciating the cost of existing improvements in order to allow for a secondary check method.

Below are our analysed B4 Mixed Use sales:-

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**92 Oxford Street, Paddington NSW 2021**

	<b>Sale Price:</b>	\$2,000,000
	<b>Sale Date:</b>	October 2018
	<b>Building Area (m2) / Rate (m2) Building:</b>	175 / \$11,429
	<b>Improved Land Area (m2) / Rate (pm2):</b>	102 / \$19,608
	<b>Analysed Land Value/Rate (pm2):</b>	\$950,000 / \$9,314
	<b>Yield (%):</b>	3.80%

**Description:**

The property comprises a three level strip retail building located on the northern side of Oxford Street at Paddington. At the time of sale the property was leased to a fashion brand for \$88,000 per annum gross + GST. We have estimated the net passing income at \$76,150 per annum. Property is located on an elongated allotment which is relatively level and also comprises rear lane access from Hopewell Lane. Zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014.

**Comparison to Subject Property:**


Comparable zone, age of improvements and topography.



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**268 Oxford Street, Paddington NSW 2021**

	<b>Sale Price:</b>	\$2,675,000
	<b>Sale Date:</b>	April 2019
	<b>Building Area (m2) / Rate (m2) Building:</b>	260 / \$10,288
	<b>Improved Land Area (m2) / Rate (pm2):</b>	247 / \$10,830
	<b>Analysed Land Value/Rate (pm2):</b>	\$1,570,000 / \$6,356
	<b>Yield (%):</b>	N/A

**Description:**

The property comprises a two storey strip retail building located on the northern side of Oxford Street at Paddington. Property comprises ground floor café and first floor kitchen, office and additional seating. Property is located on an elongated irregular shaped allotment which is relatively level and also comprises rear lane access from Belmore Place. Zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014.

**Comparison to Subject Property:**

Comparable zone, age of improvements and topography.

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**270 Oxford Street, Paddington NSW 2021**

	<b>Sale Price:</b>	\$2,775,000
	<b>Sale Date:</b>	April 2018
	<b>Building Area (m2) / Rate (m2) Building:</b>	230/ \$12,065
	<b>Improved Land Area (m2) / Rate (pm2):</b>	168/ \$16,512
	<b>Analysed Land Value/Rate (pm2):</b>	\$1,401,000 / \$8,339
	<b>Yield (%):</b>	3.28%

**Description:**

The property comprises a three level strip retail building located on the northern side of Oxford Street at Paddington. At the time of sale property was leased to Saba Trading on a short term lease of approximately \$104,280 per annum gross + GST or \$90,924.87 per annum net + GST. Property is located on an elongated slightly regular shaped allotment which is relatively level and also comprises rear lane access from Belmore Place. Zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014.


**Comparison to Subject Property:**

Comparable zone, age of improvements and topography.



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344 Oxford Street, Paddington NSW 2021		
	Sale Price:	\$4,000,000
	Sale Date:	September 2018
	Building Area (m2) / Rate (m2) Building:	426 / \$9,390
	Improved Land Area (m2) / Rate (pm2):	215/ \$18,605
	Analysed Land Value/Rate (pm2):	\$1,870,000 / \$8,698
	Yield (%):	3.34%
<b>Description:</b> <p>The property comprises a three level strip retail building located on the north eastern side of Oxford Street at Paddington. Property is located on a regular shaped allotment which is relatively level and also comprises rear lane access from Victoria Street. Zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014.</p> <p>The property was sold fully leased on a five year period with a passing rental of \$170,000 per annum gross + GST or \$133,790 per annum net + GST.</p>		
<b>Comparison to Subject Property:</b> <p>Comparable zone, age of improvements and topography.</p>		

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#### 383 Oxford Street, Paddington NSW 2021



<b>Sale Price:</b>	\$2,000,000
<b>Sale Date:</b>	June 2019
<b>Building Area (m2) / Rate (m2) Building:</b>	200 / \$10,000
<b>Improved Land Area (m2) / Rate (pm2):</b>	169/ \$11,834
<b>Analysed Land Value/Rate (pm2):</b>	\$1,200,000 / \$7,101
<b>Yield (%):</b>	N/A

#### Description:

The property comprises a two level strip retail building located on the south western side of Oxford Street at Paddington. Property is located on a regular shaped allotment which is relatively level and also comprises rear lane access from Newcombe Street. Zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014.

#### Comparison to Subject Property:

Comparable zone, age of improvements and topography.

#### 398 Oxford Street, Paddington NSW 2021



<b>Sale Price:</b>	\$1,850,000
<b>Sale Date:</b>	March 2019
<b>Building Area (m2) / Rate (m2) Building:</b>	125 / \$14,800
<b>Improved Land Area (m2) / Rate (pm2):</b>	127/ \$14,567
<b>Analysed Land Value/Rate (pm2):</b>	\$1,225,000 / \$9,646
<b>Yield (%):</b>	N/A

#### Description:


The property comprises a single level strip retail building located on the north eastern side of Oxford Street at Paddington. Property is located on a regular shaped allotment which is relatively level. Zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014. We note this property does not comprise rear lane access.

#### Comparison to Subject Property:

Comparable zone, age of improvements and topography.

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400 Oxford Street, Paddington NSW 2021		
	Sale Price:	\$1,225,000
	Sale Date:	February 2018
	Building Area (m2) / Rate (m2) Building:	90 / \$13,611
	Improved Land Area (m2) / Rate (pm2):	193/ \$6,347
	Analysed Land Value/Rate (pm2):	\$775,000 / \$4,016
	Yield (%):	N/A
<b>Description:</b> <p>The property comprises a two storey strip retail building located on the north eastern side of Oxford Street at Paddington. Property is located on a regular shaped allotment which is relatively level. Zoned B4 Mixed Use under the Woollahra Local Environmental Plan 2014. We note this property does not comprise rear lane access.</p>		
<b>Comparison to Subject Property:</b> <p>Comparable zone, age of improvements and topography.</p>		

Our above analysed sales evidence shows a range between \$9,390 and \$14,800 per square metre of building area and a yield range between 3.28% and 3.80%. We also note our analysed sales evidence shows an analysed rate per square metre of land content between \$4,016 and \$9,646.

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### 9.03 Leasing Evidence

We have also taken into consideration the below leasing evidence of retail/commercial buildings within the vicinity of Paddington:-

394 Oxford Street, Paddington	
<b>Lettable Area m2 / Rate pm2:</b>	66 / \$788
<b>Annual Rental:</b>	\$52,000
<b>Lease Commencement:</b>	July 2017
<b>Lease Term:</b>	5 + 5
<b>Rent Reviews:</b>	N/A
<b>Outgoings Basis:</b>	Gross
<b>Description:</b> Comprises of a ground floor retail tenancy situated on the northern side of Oxford Street, Paddington. The property also includes rear lane access via Victoria Street. The tenancy is configured to provide an open plan retail area along with kitchenette and bathroom amenities. At grade car parking is provided at the rear. Advised by agent leased for \$52,000 per annum gross + GST. Term: 5+5.	

92 Oxford Street, Paddington	
<b>Lettable Area m2 / Rate pm2:</b>	175 / \$503
<b>Annual Rental:</b>	\$88,000
<b>Lease Commencement:</b>	Passing October 2018
<b>Lease Term:</b>	3 + 3
<b>Rent Reviews:</b>	5% annual increases
<b>Outgoings Basis:</b>	Gross
<b>Description:</b> The property comprises a three level strip retail building located on the northern side of Oxford Street at Paddington. Property is located on an elongated allotment which is relatively level and also comprises rear lane access from Hopewell Lane. Advised by agent leased at \$88,000 per annum gross + GST. Term: 3+3. Reviews: 5% annual increases.	

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**Preston Rowe Paterson**  
International Property Consultants and Valuers

270 Oxford Street, Paddington	
<b>Lettable Area m2 / Rate pm2:</b>	230 / \$453
<b>Annual Rental:</b>	\$104,280
<b>Lease Commencement:</b>	Passing April 2018
<b>Lease Term:</b>	1 year
<b>Rent Reviews:</b>	N/A
<b>Outgoings Basis:</b>	Gross
<b>Description:</b> The property comprises a three level strip retail building located on the northern side of Oxford Street at Paddington. Property is located on an elongated slightly regular shaped allotment which is relatively level and also comprises rear lane access from Belmore Place. Advised by agent leased to Saba Trading on a short term lease of approximately \$104,280 per annum gross + GST.	

344 Oxford Street, Paddington	
<b>Lettable Area m2 / Rate pm2:</b>	426 / \$400
<b>Annual Rental:</b>	\$170,000
<b>Lease Commencement:</b>	Passing September 2018
<b>Lease Term:</b>	5 + 5 + 5
<b>Rent Reviews:</b>	3.5% annual increases
<b>Outgoings Basis:</b>	Gross
<b>Description:</b> The property comprises a three level strip retail building located on the north eastern side of Oxford Street at Paddington. Property is located on a regular shaped allotment which is relatively level and also comprises rear lane access from Victoria Street. Advised by agent leased at \$170,000 per annum gross + GST. Term: 5 + 5 + 5. Reviews: 3.5% annual increases.	


Our above leasing evidence shows a range between \$400 and \$788 per square metre on a gross basis.


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#### 9.04 Residential Sales Evidence

In addition to the above we have also taken into consideration the below residential sales located on R2 Low Density Residential land within the vicinity of Paddington:-

9 Elizabeth Street, Paddington NSW 2021		
	Sale Price:	\$1,601,000
	Sale Date:	March 2019
	Land Area:	51
	Analysed Land Area (m2) / Rate (pm2):	\$710,000 / \$13,922
<b>Description:</b> A three level Victorian style terrace located on the south eastern side of Elizabeth Place at Paddington. Property is located on a regular shaped allotment which is relatively level. Property comprises two bedrooms, one bathroom and one car space. Zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.		
<b>Comparison to Subject Property:</b> Comparable location and zone. Inferior land area. Superior street exposure and age of improvements.		


14 McGarvie Street, Paddington NSW 2021		
	Sale Price:	\$1,285,000
	Sale Date:	September 2018
	Land Area:	64
	Analysed Land Area (m2) / Rate (pm2):	\$692,500 / \$10,820
<b>Description:</b> An attached two storey Victorian style terrace located on the north western side of McGarvie Street at Paddington. Property is located on a regular shaped allotment which is relatively level. Property comprises two bedrooms and one bathroom and no car spaces associated with the property. Zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.		
<b>Comparison to Subject Property:</b> Comparable location, age of improvements and zone. Inferior land area. Superior street exposure.		



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36 Elizabeth Street, Paddington NSW 2021		
	Sale Price:	\$4,090,000
	Sale Date:	April 2019
	Land Area:	193
	Analysed Land Area (m2) / Rate (pm2):	\$2,460,000 / \$12,746
<b>Description:</b> An attached two storey Victorian style terrace located on the north western side of Elizabeth Street at Paddington. Property is located on an elongated regular shaped allotment which is relatively level. Property comprises four bedrooms, three bathrooms and two car spaces. Zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.		
<b>Comparison to Subject Property:</b> Comparable location and zone. Inferior land area. Superior street exposure and age of improvements.		

40 Elizabeth Street, Paddington NSW 2021		
	Sale Price:	\$3,110,000
	Sale Date:	October 2018
	Area:	187
	Analysed Land Area (m2) / Rate (pm2):	\$1,902,000 / \$10,171
<b>Description:</b> An attached two storey Victorian style terrace located on the north western side of Elizabeth Street at Paddington. Property is located on an elongated regular shaped allotment which is relatively level. Property comprises four bedrooms, two bathrooms and two car spaces. Zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.		
<b>Comparison to Subject Property:</b> Comparable location and zone. Inferior land area. Superior street exposure and age of improvements.		

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154 Underwood Street, Paddington NSW 2021		
	Sale Price:	\$2,380,000
	Sale Date:	April 2019
	Area:	92
	Analysed Land Area (m2) / Rate (pm2):	\$1,300,000 / \$14,130
<b>Description:</b> An attached two storey Victorian style terrace located on the south western side of Underwood Street at Paddington. Property is located on an elongated regular shaped allotment which is relatively level. Property comprises three bedrooms, two bathrooms and one car space. Zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.		
<b>Comparison to Subject Property:</b> Comparable location and zone. Inferior land area. Superior street exposure and age of improvements.		

166 Underwood Street, Paddington NSW 2021		
	Sale Price:	\$1,930,000
	Sale Date:	September 2018
	Area:	114
	Analysed Land Area (m2) / Rate (pm2):	\$950,000 / \$8,333
<b>Description:</b> An attached two storey Victorian style terrace located on the south western side of Underwood Street at Paddington. Property is located on an elongated regular shaped allotment which is relatively level. Property comprises three bedrooms, two car spaces and no car spaces associated with the property. Zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.		
<b>Comparison to Subject Property:</b> Comparable location and zone. Inferior land area. Superior street exposure and age of improvements.		

Our above residential sales evidence shows a sales range between \$1,285,000 and \$4,090,000 and an analysed rate per square metre of land content between \$8,333 and \$14,130.

The above sales or leasing evidence has been obtained from reliable sources including RP Data (Sales data produced from the NSW Land Titles Office and Valuer General's Department), and Commercial Property Monitor. We have also, where possible, had discussions with Estate Agents to undertake a process of verification of the data.

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Where sales data has been obtained from the RP Data/Land Titles Office and Valuer General's database, we have considered that to be the most current sales data available. However, sales which have occurred during the course of the last three months or sales which have been the subject of deferred settlement terms may not necessarily appear immediately on the Land Titles Office records. Accordingly, with this type of transaction, we rely on separate enquiries to attempt to obtain all available sales data.

In certain instances, it has not been possible for us to inspect sale and lease evidence properties internally, however they have been externally inspected for purposes of carrying out our valuation.

In analysing the sales and/or leasing evidence referred to herein, it is noted that we have attempted to ascertain whether or not the sale price/rental is inclusive or exclusive of the Goods and Services Tax (GST). Apropos sales evidence, it is emphasised that the New South Wales Land Titles Office does not currently differentiate between or record whether or not the sale price is inclusive or exclusive of GST.

Where we have not been able to verify whether or not GST is included in the sale price or rental, we have assumed that the Land Titles Office record sales price or the rental inclusive of GST.

## 10.0 VALUATION APPROACH AND OUTCOME

### 10.01 Introduction

It is understood that Woollahra Municipal Council are considering a proposal to purchase land for flood mitigation, parklands/open space and road purposes in the Paddington over the rear of 436-440 & 442 Oxford Street along with 22 George Street at Paddington.

A 'before and after' method of valuation is the accepted method used to assess the likely compensation in terms of partial acquisitions. This methodology requires us to undertake a full valuation of the whole property in the before scenario prior to any acquisition then applying a diminution percentage to the whole property, reflecting the overall impact of the acquisition in the after scenario.

We note this approach will be underpinned by the Investment Income Capitalisation Approach and Direct Comparison Approach. We note we have assessed the properties on a vacant possession basis. In the event this information is incorrect we reserve the right to reconsider our valuation herein.

**Our assessment at this stage is an indicative estimate of market value and finalisation of this report will be subject to an internal inspection and provision of all relevant documentation associated with each property in order to confirm the full extent of the impact of the acquisition. In the event this is made available we reserve the right to reconsider our valuation herein.**

### 10.02 Methodology

To consider our valuation of the subject property we have, where appropriate, adopted two valuation approaches to establish the Highest and Best Use Market Value. The valuation approaches include the Direct Comparison Approach which involves comparing the subject property to comparable sales and letting transactions, usually on a rate per square metre of lettable building area basis; and the Investment Income Capitalisation Approach which involves estimating the net maintainable income receivable from the property and capitalising this to derive a value. In the case of the Investment Income Capitalisation Approach we draw on elements of Direct Comparison as to the input parameters for this approach.

In selecting the most appropriate primary approach to valuation, we have been mindful of the following determining factors as to the suitability of each approach.

If the property is currently leased as an investment property, we would adopt the Investment Income Capitalisation Approach as the primary valuation method. However if the property is vacant or owner occupied, we would be guided by the manner in which similar properties are transacted in the market i.e. whether or not they are sold predominantly on an investment basis or, alternatively, owner occupier basis, in which case the direct comparison approach may be more appropriate.

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As stated earlier, we have not had the benefit of an internal inspection and provision of all formal documentation in association with the properties. We have therefore undertaken this assessment on a vacant possession basis. Should further information render this to be incorrect, we reserve the right to reconsider our valuation herein.

Further, due to the income producing potential of 436-440 & 442 Oxford Street, we have adopted the Investment Income Capitalisation Approach as our primary approach. In relation to no. 22 George Street we have adopted the Direct Comparison as our primary method.

We consider that these approaches provide the most reliable indication as to the market value for the subject property. Each approach is considered below:-

#### **10.03 Investment Income Capitalisation Approach – 436-440 Oxford Street, Paddington**

To consider our investment Income Capitalisation Approach we have:-

- Estimated the appropriate market rental per annum for the subject property;
- Deducted appropriate outgoings which we note have been based on our market research and inquiries. We further note that the Valuer General appears to have assessed the subject property as one. Should this information be incorrect we reserve the right to reconsider our valuation herein;
- Deducted an ongoing vacancy factor of 2.00%;
- Capitalised the net maintainable income in perpetuity at 3.25% to arrive at our capitalised value;
- Deducted a letting up allowance for vacant areas;
- Deducted estimated tenant incentives; and
- Deducted letting up fees for the vacant areas.

As such we have arrived at our estimate of Market Value in the sum of \$7,083,433 which we have rounded to \$7,100,000 exclusive of GST.



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PRESTON ROWE PATERSON SYDNEY PTY LIMITED VALUATION OF 436-440 OXFORD STREET, PADDINGTON NSW 2021 FOR & ON BEHALF OF WOOLLAHRA MUNICIPAL COUNCIL						
Date Printed:	12-Aug-19					
Time Printed:	1:33 PM					
Date Of Valuation:	8/08/2019					
PRP File Reference:	840646					
1. Tenancy & Market Rental Estimate						
Component	Description	Use	Area M2	Market Rental PM2PA Gross	Market Rental PA Gross	
436 Oxford Street	Whole Building	Retail	161.00	\$600.00	\$96,600	
438 Oxford Street	Whole Building	Retail	150.00	\$600.00	\$90,000	
440 Oxford Street	Whole Building	Retail	152.00	\$600.00	\$91,200	
<b>Totals / Average</b>			<b>463.00</b>	<b>\$600.00</b>	<b>\$277,800</b>	
2. Valuation Calculations & Outcome						
Estimated Fully Leased Market Rental:						<b>\$277,800</b>
Less Outgoings:						-\$35,915
Plus Recoveries:					0.00%	\$0
Less Vacancy Allowance:					2.00%	-\$5,556
Estimated Net Rental Income:						\$236,329
<b>Capitalise In Perpetuity @ Say:</b>					<b>3.25%</b>	<b>\$7,271,662</b>
Less Letting Up Allowance Vacant Areas:					Months: 3	-\$78,429
Less Rent Free Periods Vacant Areas:					Months: 3	-\$78,429
Less Agents Commission on Leasing Vacant Areas:					10%	-\$31,372
Less Capital Expenditure Allowance:						\$0
<b>Current Market Value:</b>						<b>\$7,083,433</b>
<b>But Say Round To:</b>						<b>\$7,100,000</b>
<b>Shows Rate Per M2:</b>						<b>\$15,335</b>
<b>Shows a Rate Per M2 of land area:</b>						<b>\$7,152</b>
<b>Shows Initial Yield Of:</b>						<b>3.41%</b>

#### 10.04 Before and After Method - 436-440 Oxford Street, Paddington

Based on the above methodology, the subject property results in an indicative estimate of market value of \$7,100,000 in the before scenario.

We note the advised land area to be acquired of 281 square metres equates to approximately 28% of total land area.

Given the usability of the land, potential separate access issues for tenants, elimination of rear lane access and off street parking along with the analysed market evidence, particularly of those without rear lane access and parking we consider a diminution of 30% to 50% would be a reasonable range to the underlying value.

Market Value 'before' = \$7,100,000

**The 30%-50% diminution in value for the after as a result of elimination of rear lane access and off street parking along with potential separate access issues for tenants.**

Indicative Estimate of Compensation Payable Value Range 436 - 440 Oxford Street, Paddington, NSW, 2021 Prepared for Woollahra Municipal Council Prepared by Preston Rowe Paterson Sydney Pty Ltd						
Subject Property	Market Value "Before"	30% Diminution (Lower)	50% Diminution (Upper)	Area M2	\$/PM2 (Lower)	\$/PM2 (Upper)
Whole Property	\$7,100,000	\$2,130,000	\$3,550,000	281	\$7,580	\$12,633



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#### 10.05 Indicative Valuation Range adopted for part of 436-440 Oxford Street, Paddington

\$2,130,000 - \$3,550,000 Exclusive of GST

#### 10.06 Investment Income Capitalisation Approach – 442 Oxford Street, Paddington:

To consider our investment Income Capitalisation Approach we have:-

- Estimated the appropriate market rental per annum for the subject property;
- Deducted appropriate outgoings which we note have been based on our market research and inquiries, should this information be incorrect we reserve the right to reconsider our valuation herein;
- Deducted an ongoing vacancy factor of 2.00%;
- Capitalised the net maintainable income in perpetuity at 3.25% to arrive at our capitalised value;
- Deducted a letting up allowance for vacant areas;
- Deducted estimated tenant incentives; and
- Deducted letting up fees for the vacant areas.

As such we have arrived at our estimate of Market Value in the sum of \$1,494,221 which we have rounded to \$1,500,000 exclusive of GST.

PRESTON ROWE PATERSON SYDNEY PTY LIMITED VALUATION OF 442 OXFORD STREET, PADDINGTON NSW 2021 FOR & ON BEHALF OF WOOLLAHRA MUNICIPAL COUNCIL					
Date Printed:	12-Aug-19				
Time Printed:	1:34 PM				
Date Of Valuation:	8/08/2019				
PRP File Reference:	840646				
1. Tenancy & Market Rental Estimate					
Component	Description	Use	Area M2	Market Rental PM2PA Gross	Market Rental PA Gross
442 Oxford Street	Whole Building	Retail	117.00	\$700.00	\$81,900
<b>Totals / Average</b>			<b>117.00</b>	<b>\$700.00</b>	<b>\$81,900</b>
2. Valuation Calculations & Outcome					
Estimated Fully Leased Market Rental:					<b>\$81,900</b>
Less Outgoings:					-\$29,527
Plus Recoveries:					0.00%: \$0
Less Vacancy Allowance:					2.00%: -\$1,638
Estimated Net Rental Income:					\$50,735
<b>Capitalise In Perpetuity @ Say:</b>					<b>3.25%: \$1,561,077</b>
Less Letting Up Allowance Vacant Areas:			Months: 3		-\$27,857
Less Rent Free Periods Vacant Areas:			Months: 3		-\$27,857
Less Agents Commission on Leasing Vacant Areas:			10%:		-\$11,143
Less Capital Expenditure Allowance:					\$0
<b>Current Market Value:</b>					<b>\$1,494,221</b>
<b>But Say Round To:</b>					<b>\$1,500,000</b>
<b>Shows Rate Per M2:</b>					<b>\$12,821</b>
<b>Shows Rate Per M2 of land area:</b>					<b>\$4,021</b>
<b>Shows Initial Yield Of:</b>					<b>3.49%</b>

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#### 10.07 Before and After Method - 442 Oxford Street, Paddington

Based on the above methodology, the subject property results in an indicative estimate of market value of \$1,500,000 in the before scenario.

We note the advised land area to be acquired of 109 square metres equates to approximately 29.22% of total land area.

Given the usability of the land, potential separate access issues for tenants, elimination of rear lane access and off street parking along with the analysed market evidence, particularly of those without rear lane access and parking we consider a diminution of 30% to 50% would be a reasonable range to the underlying value.

Market Value 'before' = \$1,500,000

**The 30%-50% diminution in value for the after as a result of elimination of rear lane access and off street parking along with potential separate access issues for tenants.**

Indicative Estimate of Compensation Payable Value Range 442 Oxford Street, Paddington, NSW, 2021 Prepared for Woollahra Municipal Council Prepared by Preston Rowe Paterson Sydney Pty Ltd						
Subject Property	Market Value "Before"	30% Diminution (Lower)	50% Diminution (Upper)	Area M2	\$/PM2 (Lower)	\$/PM2 (Upper)
Whole Property	\$1,500,000	\$450,000	\$750,000	109	\$4,128	\$6,881

#### 10.08 Indicative Valuation Range adopted 442 Oxford Street, Paddington

\$450,000 - \$750,000 Exclusive of GST

#### 10.09 Direct Comparison – 22 George Street, Paddington

In order to determine the Market Value of the subject property, we have adopted the Direct Comparison Approach with the available sales evidence summarised earlier herein.

We note the subject property benefits from a land area of 386.6 square metres

The subject property is zoned R2 Low Density Residential under the Woollahra Local Environmental Plan 2014.

The sales evidence of comparable R2 Low Density Residential zoned dwellings summarised herein, have sale prices ranging between \$1,285,000 and \$4,090,000 with the most appropriate values ranging between \$2,250,000 and \$2,750,000 depending on location, land area, street frontage, state of repair and standard of finish of improvements, car parking provisions, potential view profile and proximity to surrounding services and amenities.

Bearing in mind the above and taking into consideration the individual characteristics of the subject property detailed above, we are of the opinion an estimate of Market Value for the subject property is in the order of \$2,500,000.

Below is an illustration of our calculation:-

PRESTON ROWE PATERSON SYDNEY PTY LIMITED VALUATION OF 22 GEORGE STREET, PADDINGTON NSW 2021 FOR & ON BEHALF OF WOOLLAHRA MUNICIPAL COUNCIL				
Date Printed:	12-Aug-19			
Time Printed:	2:07 PM			
Date Of Valuation:	8/08/2019			
PRP File Reference:	840646			
1. Direct Comparison Analysis				
Component	Description	Range		Adopted Market Value
22 George Street	Whole Building	\$2,250,000	\$2,750,000	\$2,500,000

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Prepared for Woollahra Municipal Council



#### 10.10 Before and After Method – 22 George Street, Paddington

Based on the above methodology, the subject property results in an indicative estimate of market value of \$2,500,000 in the before scenario.

We note the advised land area to be acquired of 109 square metres equates to approximately 28.19% of total land area.

Given the usability of the land and a reduction in rear yard area along with analysed market evidence we consider a diminution of 25% to 50% would be a reasonable range to the underlying value.

Market Value 'before' = \$2,500,000

**The 25% -50% diminution in value as a result of elimination of rear yard space.**

Indicative Estimate of Compensation Payable Value Range 22 George Street, Paddington, NSW, 2021 Prepared for Woollahra Municipal Council Prepared by Preston Rowe Paterson Sydney Pty Ltd						
Subject Property	Market Value "Before"	25% Diminution (Lower)	50% Diminution (Upper)	Area M2	\$/PM2 (Lower)	\$/PM2 (Upper)
Whole Property	\$2,500,000	\$625,000	\$1,250,000	109	\$5,734	\$11,468

#### 10.11 Indicative Valuation adopted 22 George Street, Paddington

\$625,000 - \$1,250,000 Exclusive of GST

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## 11.0 GENERAL & MARKET COMMENTARIES

### 11.01 Economic Commentary

The table below provides a snapshot of various economic indicators shown currently, 3 months ago and 12 months ago to give an indication of the movement in the economy over the last year. The data is compiled using publicly available publications, which are produced in arrears to the current month and quarter.

	Current Month	Rate 3 Months Prior	Rate 12 Months Prior
Economic Indicator	Jun-19	Mar-19	Jun-18
Cash Rate	1.25%	1.50%	1.50%
90 Day Bank Bill Rate	1.29%	1.83%	2.07%
10 Year Bond Rate	1.38%	1.96%	2.70%
Consumer Price Index Australian All Groups*			
Index Number	114.1 (Mar)	114.1 (Dec)	112.6 (Mar)
Percentage Change (from the previous quarter)	0.00%	0.5% (Dec)	0.40%
Australia S&P ASX 200	517.2	482.0	484.0
United States S&P 500	890.8	843.2	823.3
Dow Jones Euro STOXX 300	413.1	398.5	414.3
United Kingdom FTSE 100	346.4	330.1	356.3
Hong Kong Hang Seng	943.70	946.70	957.30
All Ordinaries x 200 - Index Value	6,633.60	6,252.70	6,273.20
Property Trusts - Index Value	1,633.80	1,477.90	1,415.80
Industrials - Index Value	6,931.80	6,200.80	5,900.80
Trade Weighted Index	60.1	60.5	62.60
Housing Loan Indicator Lending Rates			
Banks - Standard	5.15	5.37	5.20
Banks - 3 year fixed	3.92	4.05	4.15
Mortgage Managers	5.30	5.42	5.30
Building Loan Indicator Lending Rates			
Small Business - Residential Secured	6.36	6.47	6.45
Small Business - Other	7.23	7.35	7.30
Small Business - 3 year fixed rate	4.75	5.19	5.30
Dwelling Approvals - Private sector (mthly)	14,244 (May)	16,968 (Feb)	18,529 (Apr)
Non Residential approvals - Private sector (mthly)(\$m)	3112.7 (May)	2,786 (Feb)	1,766 (Apr)
Dwelling Investment - Private spending (qtrly) (\$m)	25,887 (Mar)	26,318 (Dec)	24,730 (Mar)
Westpac - Melbourne Institute Consumer Sentiment Index (Base 100)	100.66	98.80	102.10
NAB Business Confidence Index**	(+) 2	(+) 0	(+) 6
ANZ Job Series***			
Newspaper and Internet Job Ads Recorded Per Week	159,717	166,509	175,660
Percentage Change (Seasonally adjusted on previous month)	(+) 4.6%	(-) 1.7%	(-) 1.7%
Exchange Rates (per A\$)			
United States dollar	0.697	0.7087	0.7391
UK Pound Sterling	0.5535	0.5422	0.5634
Euro	0.6171	0.6310	0.6344
Japanese Yen	75.54	78.49	81.82

\* Based on ABS CPI released 24 April 2019

\*\*Based on NAB Monthly Business Survey released 9 July 2019

\*\*\*Based on ANZ Job Advertisement Series released 8 July 2019

#Date of Publication Figures based on those available at 9 July 2019

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## 12.0 GENERAL TERMS AND CONDITIONS

### Explanation

1. The following terms and conditions are the standard terms and conditions that apply to all Valuations or the Valuation Services or consultancy services and Services provided by Preston Rowe Paterson Sydney Pty Limited.
2. These terms and conditions form part of the appointment of Preston Rowe Paterson Sydney Pty Limited by the Client to provide the Services.
3. Preston Rowe Paterson Sydney Pty Ltd and its valuers are members of a Limited Liability Scheme in the meaning of the NSW Professional Standards Act 1994.
4. The Valuation and all Valuation Services are provided by Preston Rowe Paterson Sydney Pty Limited subject to these Terms and Conditions;

### Definitions

5. The following definitions apply to these Terms and Conditions and the provision of our Valuations, Valuation Services and Services:-

"Client" shall mean Woollahra Municipal Council;

'Confidential information' means information that:

- (a) Is by its nature confidential;
- (b) Is designated by Us as confidential;
- (c) You know or ought to know is confidential; and
- (d) Includes, without limitation:
  - i. Information comprised in or relating to any of Our intellectual property in the Services or any reports or certificates provided as part of the Services; and
  - ii. The Quotation which We have provided to You.

'Date Of Valuation' means, in relation to any Valuation, Valuation Services, Services or consultancy services or advice, the date of preparation of our report or the specific date as at which our opinions are stated to apply (the Relevant Date).

'Director' means a Director noted on the Australian Securities and Investment Companies (ASIC's) records for Preston Rowe Paterson Sydney Pty Ltd (ABN 61 003 139 188)

'Fee' means the amount agreed to be paid for the Services by You as set out in the Quotation.

'Limited Liability Scheme' means a scheme pursuant to the NSW Professional Standards Act 1994.

'Parties' means You and/or Us as the context dictates.

'Quotation' means the quote provided by Us in relation to the Services.

'Relevant Date' means the specific date that our opinion is stated to apply where we are instructed to value at a specific date other than the date of inspection.

'Services' means the Valuation, Valuation Services, asset management, property management, facilities management, agencies or consultancy services or advice provided by Us pursuant to these Terms and Conditions and the Quotation.

"Valuation" shall include a Valuation, Valuation services, or feasibility study, made or given in relation to any real or personal property, freehold or leasehold property, asset, liability or item or items of plant and machinery, proposed development, infrastructure, carbon, water or native title property right, business, fixtures, fittings or other property;



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"Valuation Services", shall include any oral or written advice, opinion, recommendation or statement communicated to the Client by Us consequent upon or incidental to the request for a Valuation;

"Valuer" means the individual valuer that has undertaken the valuation or valuation services;

"We", "Us", "Our (s)" means Preston Rowe Paterson Sydney Pty Limited, our employees, contractors, servants and agents;

"You", "Your" means the Client engaging Us to perform the Valuation, Services or Valuation Services;

#### Quotation

6. Prior to commencing work We will provide you with a Quotation that sets out who the report is for; the purpose for which the report is being prepared and the fee to be charged.
7. You agree that:
  - (a) You will not use any advice we provide for any purpose other than as stated in the Quotation;
  - (b) You will not pursue any claim against Us for any loss you suffer because you have used Our advice for any other purpose;
  - (c) You will keep this report confidential, unless otherwise agreed by Us in writing; and
  - (d) You will indemnify Us in relation to any loss suffered by a third party that relies on Our advice without first receiving our written consent to do so.

#### Limitation of Liability

8. You agree to release Us and hold Us harmless from all liability to You for or in respect of any loss, damage, costs and expenses of whatsoever kind which We have or may have or, but for the operation of this Clause, might have had arising from or in any way connected with the Valuation, Valuation Services or Services or the Use of the Valuation Services or any part of them. This release shall be complete and unconditional except in the case of gross negligence or wilful misconduct by Us in the provision of the Services.
9. You agree that You will fully indemnify Us for and in respect of all loss, liability, costs and expenses of whatsoever kind which We may suffer or incur arising from or in any way connected with any breach by You of these Terms and Conditions. This indemnity shall include but not be limited to loss, liability, costs and expenses which We may suffer or incur in respect of any claims, actions, proceedings, disputes or allegations made against Us or to which We are a party.
10. You agree to this Limitation of Liability and these Terms and Conditions whether such liability arises under contract, at common law or under Statute.
11. You agree that this limitation of liability extends to all Our directors, employees and contractors. Every right, immunity, exemption and limitation in these Terms and Conditions available or applicable to Us shall also be available and shall extend to every employee, contractor, servant or agent of Ours;
12. No employee, contractor, servant or agent of Ours or any other person has any power to waive or vary any of these Terms and Conditions unless such waiver or variation is in writing and signed by one of Our Directors.

#### Your Obligations

13. You agree that:
  - (a) You will not use any advice We provide for any purpose other than as stated in the Quotation;
  - (b) You will not pursue any claim against Us for any loss You suffer because You have used Our advice for any other purpose;
  - (c) You will keep this report confidential, unless otherwise agreed by Us in writing; and
  - (d) You will indemnify Us in relation to any loss suffered by a third party that relies on our advice without first receiving Our written consent to do so.

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14. You warrant that the instructions and subsequent information supplied by You contain a full and frank disclosure of all information that is relevant to Our provision of the Valuation, Valuation Services or Services. You also accept all risk and any loss that might occur should you withhold any relevant information from Us.
15. You warrant that all third party expert or specialist reports provided to Us by You for the purpose of Us providing the Valuation, Valuation Services or Services are provided with the authority of the authors of those reports.
16. You authorise and licence Us to incorporate Your intellectual property within Our report(s).
17. The Valuation and all Valuation Services are provided by Us solely for the use of the Client. You will not release any part of Our valuation or consultancy report or its substance to any third party without the written consent of one of Our Directors. Such consent will be provided at Our absolute discretion and on such conditions as We may require including that a copy of these Terms and Conditions must be provided to such third party. This clause shall not apply to persons noted as recipients in Your prior instruction to Us or in the Quotation provided. You are obligated to provide any such recipient with a copy of these Terms and Conditions.
18. If You release any part of the valuation or consultancy advice or its substance with Our written consent, You agree:  
a) to inform the other person of the terms of our consent; and b) to compensate Us if You do not do so. We have no responsibility to any other person even if that person suffers damage as a result of any other person receiving this Valuation, Valuation Services, Services or consultancy advice.
19. You agree that We do not and will not assume any responsibility to any person other than the Client for any reason whatsoever including, without limiting the generality of the foregoing, for breach of contract, negligence (including negligent mis-statement) or wilful act or default of itself or others by reason of or arising out of the provision of the Valuation, Valuation Services or Services and notwithstanding that any damages have been suffered or incurred by that person as a result of the provision of this Valuation or those Valuation Services to the Client or the use of either of them (or any part of either of them) by the Client for any purpose whatsoever;
20. You must pay our Fees within 14 days of the date of a correctly rendered invoice, unless otherwise dealt with in the Quotation. Fees that remain unpaid for a period of 30 days or more will attract an administration charge of 2% of the total of the invoice calculated per month or part thereof.
21. You agree that We reserve the right to reconsider or amend the Valuation, Valuation Services, Services or consultancy advice, or the Fee set out in Our Quotation to You, if we identify information or facts that were not provided to Us in the at the time of quoting that reveal that the task is much greater than we initially anticipated from the information you provided. In such circumstances, once We have identified additional issues that necessitate additional work, we will advise you of the additional fees for additional time required to complete the task.
22. You agree that neither the whole nor any part of Our Valuation or the substance of any of Our Valuation Services or Services may be communicated to any third party (whether by way of inclusion in a document, circular, statement, prospectus, Product Disclosure Statement (PDS), public offer document or otherwise) without first obtaining the written consent of one of Our Directors. Neither the whole nor any part of Our valuation report or Valuation Services report or any reference to it may be included in any published document, circular or statement, prospectus, Product Disclosure Statement (PDS), public offer document, nor published in any way, without written approval by one of Our Directors as to the form and context in which our Valuation or Valuation Services may appear. Notwithstanding the foregoing, the Client agrees that in the event that it does communicate to a third party the whole or any part of this Valuation or the Valuation Services it shall also communicate to that third party these Terms and Conditions. Furthermore You agree to indemnify Us in the event of any failure so to do;
23. You agree that every right, immunity, exemption and limitation or liability in these terms and conditions shall continue to have its full force and effect in all circumstances notwithstanding any breach of contract or the Terms and Conditions hereof by Us or any person entitled to the benefit of these Terms and Conditions;
24. You agree that if any provision or any part of a provision hereof is unenforceable for any reason whatsoever, such unenforceability shall not affect any other part of such provision or any other provision of these Terms and Conditions;

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#### **Valuation only for First Mortgage Security**

25. Where the Services are provided for mortgage purposes, You agree that You will not use the Valuation or Valuation Services report where the property:-
  - (a) is used as security other than by first registered mortgage;
  - (b) is used as part of a group of securities (except where the property forms part of a trust); or
  - (c) is used as security for more than one loan.
26. Any waiver of this requirement must be approved in writing by one Our Directors.
27. We will not accept any liability or responsibility to second or subsequent mortgagees whom have not instructed Us;

#### **Reliance on the Valuation or Valuation Services report (Solicitor Loans)**

28. Where this valuation is used for 1st mortgage security for a loan controlled, managed, brokered or otherwise induced by a solicitor (Solicitor Loan) it cannot be relied upon where the Loan to Value Ratio exceeds 70% of the valuation sum. We will not accept any liability or responsibility for a solicitor originated loan where the loan to valuation rate exceeds 70% of the value of the property. A Solicitor Loan means any loan of money on mortgage security arranged, controlled, managed, brokered or otherwise induced by a solicitor or firm or partnership of solicitors.
29. Reliance on Our Valuation or Valuation Services and report should only be taken upon sighting the original report document that has been signed by the Valuer and counter signed by one of Our Directors. The counter signatory verifies that this report is genuine, is issued and endorsed by Us. The opinion of value expressed in the report, however has been arrived at by the valuer whom has undertaken the valuation in accordance with the instructions given to us.

#### **Length of Time Our Valuation or Valuation Services can be relied upon**

30. Our Valuation and or Valuation Services are current at the Date of Valuation only. The value assessed in Our Valuation or Valuation Services Report may change significantly and unexpectedly over a relatively short period of time (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, We do not assume responsibility or accept any liability where the valuation is relied upon after the expiration of ninety (90) days from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation. Notwithstanding the above You accept that our Valuation and or Valuation Services are current as at the Date of Valuation only and no representation or warranty is made as to the value of the property after the date of valuation.

#### **Obligation for Prudent Lending Practises – Lender Client**

31. This valuation is prepared on the assumption that the lender as referred to in the valuation report (and no other), may rely on the valuation for mortgage finance purposes and the lender has complied with its own lending guidelines as well as prudent finance industry lending practices, and has considered all prudent aspects of credit risks for any potential borrower, including the borrower's ability to service and repay any mortgage loan. Further, the valuation is prepared on the assumption that any such lender is providing mortgage financing at a conservative and prudent loan to value ratio. This clause (Prudent Lenders Clause) only applies if the lender is not a lender regulated by the Banking Act of 1959.



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#### Assignment of Valuation or Valuation Services

32. You acknowledge that We reserve the right, at Our absolute discretion, to determine whether or not to assign Our valuation to any third party. Without limiting the extent of Our discretion, We may decline a request for assignment where:
  - (a) the proposed assignee is not a major recognised lending institution (such as a bank or other lender regulated by the Banking Act 1959);
  - (b) the assignment is sought in excess of 3 months after the date of valuation;
  - (c) we consider that there has been a change in conditions which may have a material impact on the value of the property;
  - (d) the proposed assignee seeks to use the valuation for an inappropriate purpose; or
  - (e) Our Fee has not been paid in full.
33. Where We decline to provide an assignment We may be prepared to provide an updated valuation on terms to be agreed at that time.
34. In the event that You request us to assign Our valuation and We agree to do so, You authorise Us to provide to the assignee a copy of these Terms and Conditions, the original Quotation and any other document, including instructions provided by You, relevant to the scope of Our Valuation or Valuation Services.

#### Intellectual Property

35. All Our intellectual property contained within any advice We provide, remains Our property. We only grant you licence to use Our intellectual property to carry out the purpose for which the advice was provided.

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#### 12.02 Property or Valuation Circumstance Specific Qualifications, Assumptions and Conditions Precedent

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(NB – Only to be included where they relate to the circumstances of the instruction and/or the property being valued)

36. We are providing You with our professional opinion as valuers. Our opinion is usually provided by way of a valuation report. That report will set out a number of important qualifications, assumptions and conditions precedent which We may need to make, in addition to these Terms and Conditions, relative to the circumstances of the particular property or properties (real or personal property) under consideration.
37. You agree to read these qualifications, assumptions and conditions precedent carefully, and understand that if the assumptions that we have made or relied on are circumstances that do not prevail or eventuate, or are found later to be inaccurate, Our opinion as to value may be materially different. You agree to solely bear the risk in relation to any loss you might suffer, should this occur.
38. The qualifications, assumptions, and conditions precedent that We make will usually depend on the circumstances of the property being valued and are made in relation to matters that We do not have expertise to verify or We cannot verify information provided to Us within the time required to complete the valuation. These will be set out in detail in the Valuation, Valuation Service report or Services report that We provide to You.
39. These qualifications, assumptions and conditions precedent typically may relate to:-
  - (a) Land contamination and environmental risk;
  - (b) Town Planning Information;
  - (c) Town Planning and Development Controls and Consents;
  - (d) Title including Notifications on Title such as Easements, Caveats, Restrictions and other dealings;
  - (e) Building Areas;
  - (f) Building Structural Integrity;

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- (g) Building Compliance with the Building Code of Australia;
  - (h) Pest Infestation;
  - (i) Leases, Licences and Tenancies;
  - (j) Current Passing Rents;
  - (k) The ongoing ability of tenants to pay lease rents;
  - (l) Rental Areas;
  - (m) Strata Title Certificates;
  - (n) Plant and Equipment within Buildings;
  - (o) The veracity of and sources of Sales and Letting Information and Transaction Data;
  - (p) The nature of forecasting, future value assessment and discounted cash flow analysis;
  - (q) The basis of Value where access to the property is restricted; and
  - (r) Whether or not the property has been completed where a development.
40. You agree that we will include property specific qualifications, assumptions and conditions precedent within Our reports as circumstances require. Furthermore You agree that it is Your responsibility to carefully read and consider these qualifications, assumptions and conditions precedent and discuss them with Us if they cause You any concern.

#### **12.03 Property or Valuation Circumstance Specific Qualifications, Assumptions and Conditions Precedent**

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41. You acknowledge the following:-

##### **Site Description - Environmental Risks**

42. That We have endeavoured to comment on all areas of Environmental concern based on Our superficial inspection of the property. An actual environmental audit may reveal matters that affect Our valuation herein that were not readily discernible at the time of inspection. In such an event, We reserve the right to reconsider our Valuation figure herein;
43. You acknowledge and recognise that We are not expert in identifying environmental hazards and compliance requirements affecting properties. We have, however, endeavoured to superficially identify all matters of environmental concern and the effect they might have on the value of the property. However, We will not be held liable nor responsible for any failure to identify all such matters of environmental concern and the impact, which any environmental related issue has on the property and its value including loss arising from site contamination; or the non-compliance with any environmental laws; or costs associated with the clean up of a property in which an environmental hazard has been recognised, including action by the relevant Environmental Protection Authority to recover clean up costs pursuant to the relevant Environmental Protection Act.

##### **Town Planning**

44. That information has been obtained verbally from representatives of the Woollahra Council or the Council's web site and this valuation is issued on the understanding that such information is correct. The Town Planning information should be checked by You by the obtaining of the relevant certificate from the Planning Consent Authority. We will not assume any liability or negligence for our reliance on the Local Authority's verbal advice or information obtained from its web site.

##### **Title & Easements**

45. That We have relied on copies of title which were searched on (7 August 2019). Should any notations have been placed on title since the date of search which defect the Valuation or Valuation Services We reserve the right to reconsider our valuation findings herein.



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46. That this valuation has been prepared on the understanding that no notations encumbrances, easements, rights of way or encroachments exist by or on the subject property other than those set out in title details or detailed herein.
47. That this valuation has been prepared on the understanding that no notations, encumbrances, easements, rights of way or encroachments exist by or on the subject property other than those detailed herein. We have not sighted boundary markers and for the purposes of this valuation, have assumed that all improvements have been erected within the legal confines of the land and that no adjoining improvements encroach onto the boundaries.

#### **Building Areas**

48. That the estimates of Lettable Area have been provided by the Client. We have assumed that they are a true and correct reflection of the actual lettable areas. We have not had the benefit of sighting a lettable area Survey. Should a Lettable Area Survey compliant with The Property Council of Australia's Method of Measurement (March 1997 Revision) be made available which reveals different areas to that which we have adopted, We reserve the right to reconsider our findings herein;

#### **Building Compliance**

49. That it has been assumed that all improvements to the property comply with the Environmental Planning and Assessment Act, 1979; Local Government Act 1993 and the Building Code of Australia except as detailed herein. Certain aspects of the improvements may not comply. No Certificate of Compliance has been obtained.
50. That it has been assumed that all improvements to the property comply with the Terms and Conditions of all relevant statutory and other authorities except as detailed herein. No certification of compliance has been obtained.

#### **Structural Survey**

51. That we emphasise that this report is for valuation purposes only and that it is not and should not be construed to be a structural survey.

#### **Pest Survey**

52. That no enquiries or examination of any property or of any improvements erected thereon, has been made for any sign of timber infestation, asbestos or other defect. We recommend that a pest certificate be obtained.

#### **Leases**

53. That leases have not been inspected and We reserve the right to reconsider the valuation should the leases indicate matters that may materially affect the value.

#### **Plant & Equipment**

54. That it is emphasised that each and every one of our valuation figures herein excludes any plant or equipment erected on or associated with the respective properties. If the Client requires valuations of any plant and equipment, We would be only too happy to arrange this through our plant and machinery valuation division.
55. That We are not building services engineers and Our valuation assumes that the plant and equipment within the building including, inter alia, lift equipment, air conditioning equipment, fire services, security equipment and building maintenance equipment forms part of the Building and that they have been adequately designed to cater for a building of the size of the subject building. We have also assumed that all equipment has been maintained to a high standard. Should this not be the case We reserve the right to reconsider Our findings herein;
56. That We are not building services engineers and have not undertaken engineering inspections or taken advice on any of the plant and equipment and We therefore take no responsibility for the condition or suitability thereof.

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#### Restricted Assessment – General

57. That where this Valuation or the Valuation Services are provided in circumstances where We have had restricted or no internal access to the property we have inspected the property from the nearest public road based on your Instructions. The resultant figure is an indicative estimate only and may vary significantly upon internal inspection for any one of a number of reasons. The Assessment/ Indicative Estimate is not and should not be construed to be a full and formal market valuation. It should not be relied upon as a formal valuation for any dealings with the property including sale, purchase, mortgage or loan fund advance. We recommend that a full and detailed valuation be undertaken including an internal inspection prior to any dealings with the property. We will not assume any negligence or liability for the Client's reliance on the Restricted Assessment/ Indicative Estimate herein.

#### Restricted Access Assessment – Residential

58. That this Restricted Access Assessment has been prepared in accordance with the Australian Property Institute's Supporting Memorandum for Residential Valuations within Professional Practice June 2008. It has been conducted by way of external inspection from the street only, as specifically instructed by the Client. The resultant figure is an indicative estimate only and may vary significantly upon internal inspection for any one of a number of reasons. The Assessment/ Indicative Estimate is not and should not be construed to be a full and formal market Valuation. It should not be relied upon as a formal Valuation for any dealings with the property including sale, purchase, mortgage or loan fund advance. We recommend that a full and detailed valuation be undertaken including an internal inspection prior to any dealings with the property. We will not assume any negligence or liability for the Client's reliance on the Restricted Assessment/ Indicative Estimate herein.

#### Market Transaction Evidence

59. That the sales or leasing evidence which We have utilised has been obtained from reliable sources including RP Data (Sales data produced from the NSW Land Registry Services and Valuer General's Department), and the Commercial Property Monitor. We have also, where possible, had discussions with Estate Agents to undertake a process of verification of the data. Should it be revealed that any of the sales or leasing information stated herein, upon which We have relied, is incorrect or misleading, We reserve the right to reconsider our opinion of Market Value as determined herein.
60. That where sales data has been obtained from the RP Data/Land Registry Services and Valuer General's database, We have considered it to be the most current sales data available. However sales which have occurred during the course of the last three months or sales which have been the subject of deferred settlement terms may not necessarily appear immediately on the Land Registry Services records. Accordingly with this type of transaction, We rely on separate enquiries to attempt to obtain all available sales data.
61. That it is noted that We have relied on sales data information services as being a true and correct reflection of the terms of any sale considered at arm's length. We have not sighted copies of transfer notices, nor have we sighted copies of contract documents between the vendor and purchaser which may reveal matters that affect the sale price and necessitate adjustment to apply to the subject property. In the event that contract documents reveal matters that necessitate adjustment of the sales evidence We reserve the right to reconsider our valuation herein.
62. That in most instances it has not been possible for us to inspect sale and lease evidence properties internally, however they have been externally inspected for purposes of carrying out our valuation.
63. That where there is a paucity of directly comparable sales and leasing evidence in a locality, it is necessary for us to either consider other comparable localities and/or to consider sales and leasing evidence which is dated in the immediate area to gain an understanding of the historical sales and leasing value base for the area.

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64. That in analysing the sales and/or leasing evidence referred to herein, it is noted that we have attempted to ascertain whether or not the sale price/rental is inclusive or exclusive of the Goods and Services Tax (GST). Apropos sales evidence, it is emphasised that the New South Wales Land Registry Services does not currently differentiate between or record whether or not the sale price is inclusive or exclusive of GST. Where we have not been able to verify whether or not GST is included in the sale price, we have assumed that the Land Titles Office record sale prices exclusive of GST. Should this not be the case for any particular sale used as evidence, we reserve the right to reconsider our valuation.
65. That in relation to the sales evidence, Contracts of Sale, Special Conditions within Contracts and Side Agreements have not been sighted. We reserve the right to reconsider the Valuation should these documents indicate any matters that materially affect our valuation.

#### Executive Summary

66. That Our executive summary in Our Valuation or Valuation Services Report must be read in context of and in conjunction with the full valuation report of which this executive summary forms part. All comments, terms and conditions contained in the full valuation report and Quotation relate directly to this Executive Summary.

#### Time Base Assumption

67. Our valuation assumes that both economic and real estate markets will remain relatively stable subject to usual economic and real estate circumstances. In the event that there is an impact of the above events or abnormal circumstances on the economy and real estate markets in general, we reserve the right to reconsider our valuation herein.

#### Time Base Assumption 23.10.2018

68. That Our valuation or Valuation Services have been prepared at a time when markets are declining in certain sectors due to a number of economic and real estate market circumstances including, inter alia:-
- (a) The continuing uncertainties regarding the global geopolitical environment including the potential for further escalation of global trade wars;
  - (b) The general impact of the Hayne Financial Services Royal Commission and the tightening of lending and credit availability from major banks in certain market sectors that has resulted;
  - (c) The increase in the cost of debt and terms offered for that debt available from the non-bank lending sector as opposed to that previously available from the banks ;
  - (d) The prospect of rising interest rates in Australia given the continuing disparity between Australia's Reserve Bank Cash Rate and the United States Federal Reserve Rate as well as the disparity between 10 year term to maturity bonds which, notwithstanding the current Australian inflationary environment, will continue to put upward pressure on interest rate movements in Australia;
  - (e) The immediate noticeable and widely reported impact of the above circumstances on residential property markets and residential development site markets particularly in Sydney; and
  - (f) The prospect of further contagion occurring, not only at an economic level, but also into other real estate sectors and geographic locations.
69. Notwithstanding these circumstances, Our Valuation assumes that both economic and real estate markets will remain relatively stable for the next 3 months subject to usual economic and real estate circumstances.
70. We have attempted to identify recent sales and /or leasing transactions to prepare our valuation. Where there is a paucity of recent sales and or leasing evidence we have, to the best of our ability, adjusted sales and or leasing evidence being mindful of the current circumstances. In the event that there is further decline in the economy and or real estate markets in general, we reserve the right to reconsider our valuation herein.

Indicative Assessment of Likely Compensation Payable of Value Range  
436-440 & 442 Oxford Street  
and 22 George Street  
Paddington, NSW, 2021  
Prepared for Woollahra Municipal Council



**Preston Rowe Paterson**  
International Property Consultants and Valuers

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**APPENDIX A**

**LETTER OF INSTRUCTION**





**Preston Rowe Paterson**

International Property Consultants and Valuers

**DID YOU KNOW?**

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**From:** Stephen Kuhn <[Stephen.Kuhn@woollahra.nsw.gov.au](mailto:Stephen.Kuhn@woollahra.nsw.gov.au)>

**Sent:** Tuesday, 6 August 2019 5:22 PM

**To:** [greg.rowe@prpsydne.com.au](mailto:greg.rowe@prpsydne.com.au)

**Subject:** Request for quotation to provide urgent valuation report

Dear Greg

**Private and Confidential**

Woollahra Municipal Council is seeking a quotation for an urgent valuation report as outlined below. Please review the brief below and provide your quote and confirmation you can comply with the tight timeframe.

If you wish to discuss this matter please call on my direct line.

If you are selected as the preferred service provider for this project you will be notified within 24 hours of receipt of quotations and instructed to proceed with the valuation based on the quoted and agreed price.

**BRIEF**

Woollahra Municipal Council is considering a proposal to purchase land for flood mitigation, parklands/open space and road purposes in the Paddington area.

The identified land for the flood mitigation, parklands/open space and road extends across a portion of multiple properties as shown in pink cross hatching below.

Council seeks an urgent valuation for the purchase of portions of land as shown in pink cross hatching below.

Please provide a valuation report showing an estimated purchase price resulting from:

- <!--[if !supportLists]-->• <!--[endif]-->purchase by agreement; and/or
- <!--[if !supportLists]-->• <!--[endif]-->valuation resulting from a purchase by compulsory acquisition.

Council does not anticipate that you will require access to the properties and has not arranged for such access. It is anticipated that the valuation can be undertaken, based on the enclosed diagrams, other maps and possible access to the rear lane.

This matter is urgent and a complete valuation report would need to be provided to Council by 13 August 2019.

Please provide your quotation as soon as possible to facilitate prompt commencement of valuation report.

The identified land extends across 436 and 442 Oxford St as well as 22 George Street. It measures 20m x 25m in size.



Regards,



**Stephen Kuhn**  
Property Officer

Woollahra Municipal Council  
536 New South Head Road, Double Bay NSW 2028  
t: 02 9391 7991  
f: 02 9391 7044  
e: [stephen.kuhn@woollahra.nsw.gov.au](mailto:stephen.kuhn@woollahra.nsw.gov.au) w: [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

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**Item No:** D3 Delegated to Committee  
**Subject:** **OXFORD STREET & PADDINGTON WORKING PARTY  
MEETING 13 AUGUST 2019**  
**Author:** Peter Kauter, Manager Placemaking  
**Approver:** Allan Coker, Director - Planning & Development  
**File No:** 19/132829  
**Reason for Report:** To report on the activities of the Oxford Street & Paddington Working Party

**Recommendation:**

THAT the draft minutes of the Oxford Street & Paddington Working Party meeting held on 13 August 2019, as contained in the Annexure to this report, be received and noted.

---

**Background:**

The Oxford Street & Paddington Working Party (OSPWP) was formed following a Council resolution of 22 April 2013. Membership of the OSPWP was established following expressions of interest by Councillors.

The most recent meeting of the OS&PWP was on 13 August 2019. The draft minutes of that meeting are annexed.

Under the OSPWP's current Terms of Reference (revision 24 November 2014) its stated purposes are:

- *To serve as an advisory body to Council to assist with the revitalisation and reinvention of Oxford Street, Paddington.*
- *To provide a mechanism for consultation with key stakeholders*
- *To advise on strategies and projects for implementation arising from the Oxford Street, Paddington Placemaking Roadmap Report dated 20/5/14 prepared by Village Well in accordance with Council's resolution of 11/8/14*

*The Working Party shall not operate in a regulatory or authoritative capacity.*

In relation to delegated authority the Draft Terms of Reference provide as follows:

*The Working Party is an advisory committee only and has no delegated authority. The Working Party will report to the Urban Planning Committee (now the Environmental Planning Committee) as required.*

Accordingly the minutes of the OSPWP meeting held on 2 July 2019 are being reported to the Environmental Planning Committee for its consideration.

**Conclusion:**

Key points arising from the meeting included:

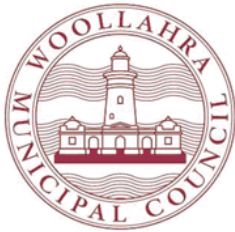
- **City of Sydney** – Councillor Jess Scully's initial attendance at the Working Party and updates on the City's activities and the development plans for the prominent site, 1-11 Oxford Street

- **UNSW Art and Design** – Kelly Doley was welcomed to the Working Party as the UNSW’s new representative and provided information on UNSW Galleries and other activities
- **Wayfinding App** – Justin Dean, Managing Director - Envent, presentation on ‘Ganda Paddington’, the new wayfinding application for Paddington
- **Head On Photo Festival 2019** – Moshe Rosenzveig’s presentation on the Festival’s 10<sup>th</sup> Anniversary edition
- **Paddington Business Partnership** – the update from the Partnership’s President Belinda Rankine on the good work being done on a range of matters including growing memberships, social media, wayfinding, networking, partnerships (with Telstra, Big Bus Tours & the SCG) and William Street Festival

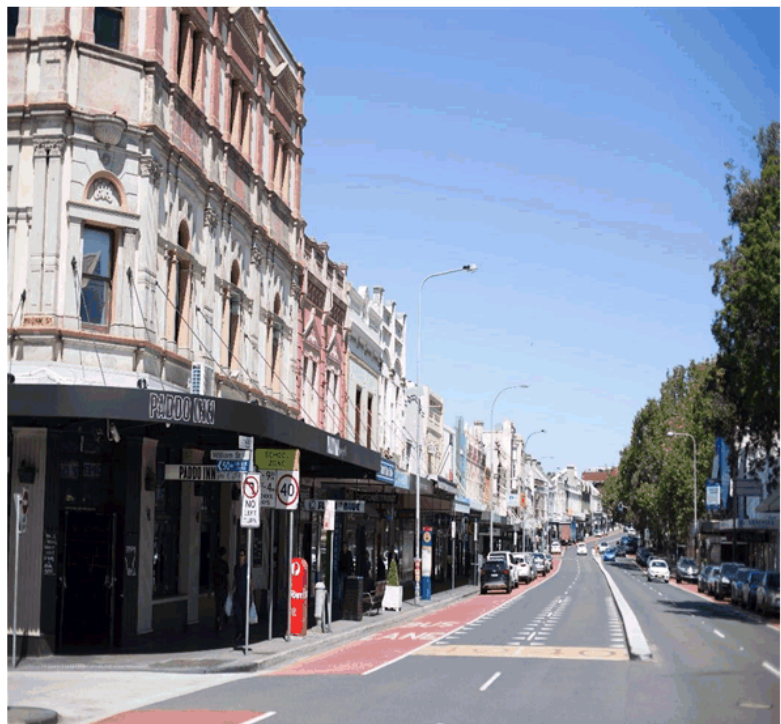
## Annexures

1. Draft minutes of the Oxford Street Working Party meeting held on 13 August 2019 [↓](#)





## Oxford Street & Paddington Working Party



# Minutes

Tuesday 13 August 2019



Woollahra Municipal Council  
Oxford Street & Paddington Working Party Minutes

13 August 2019

## **Oxford Street & Paddington Working Party Minutes**

**Tuesday 13 August 2019**

### **Present**

**Councillors:** Peter Cavanagh (Mayor/Chair – part of meeting)  
Anthony Marano (Chair – part of meeting)  
Matthew Robertson  
Harriet Price  
Jess Scully – City of Sydney  
Nick Maxwell (part of meeting)

**Property owners:** Julie Davaine  
Kathy Samios

### **Paddington Business**

**Partnership:** Belinda Rankine

**UNSW A+D** Kelly Doley

**Resident representative:** Keri Huxley

**Presentations:** Justin Dean – Managing Director, Envent  
Moshe Rosenzevig – Director, Head On Photo  
Festival  
Sebastian de Santisteban Gimenez – October10

**Staff:** Peter Kauter - Manager Placemaking (Woollahra  
Council)  
Victoria Moxey (City of Sydney)

**Meeting opened: 6.00pm in the Thornton Room, Woollahra Council Chambers**

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## **1. Apologies**

Councillor Megan McEwin  
Councillor Philip Thalys – City of Sydney

The Mayor extended a warm welcome to Councillor Jess Scully, City of Sydney, who attended the Working Party for the first time and to Kelly Doley who was also attending her first meeting & has been appointed as UNSW A+D's representative. Various people who were making presentations were also welcomed.

## **2. Confirmation of Minutes**

**Item No:** 2.1  
**Subject:** **CONFIRMATION OF THE MINUTES OF THE OXFORD STREET & PADDINGTON WORKING PARTY MEETING HELD 2 JULY 2019**

The draft minutes of the Oxford Street & Paddington Working Party Meeting held on 2 July 2019 were confirmed.

## **3. Late Correspondence**

Update from the Paddington Business Partnership (circulated by e-mail 12/8/19)  
Update from the City of Sydney (circulated by e-mail 12/8/19)

## **4. Items for Discussion**

Nil

## **5. General Business**

**Item No:** 5.1  
**Subject:** **OXFORD STREET & PADDINGTON WAYFINDING APPLICATION**

Envent were engaged to develop wayfinding applications for both the Double Bay & Oxford St/Paddington shopping precincts. The Oxford St/Paddington App is now available from the App Store and soon on Google Play.

Justin Dean, Envent – Managing Director, gave a presentation on the Oxford St/Paddington App, 'Ganda Paddington'. Justin's presentation covered the benefits of Ganda for visitors, Council & retailers, software user interface, administration website, reporting & analysis, future developments, local business advertising and outdoor promotions.

Working Party members were invited to download Ganda Paddington. Feedback related to:

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- Privacy
- Smart City principles
- Events – organise to display the top 5 as Paddington events
- Maintenance of the data base (this is through on-going support from Envent for updates to be done in-house & in conjunction with the PBP)
- Cost of potential advertising
- Content – review menu categories, e.g. include ‘galleries’; make ‘education’ a sub-category; geo-fence ‘yellow line’ to be realigned to cover City of Sydney & the Trumper Park galleries
- Marketing/promotion – critical to getting downloads; Justin to provide an options package for consideration; WMC will do social & print media plus decals; installation of multi-function ‘totems’; loyalty programs

It was agreed that initially Working Party members provide further feedback via the App facility. If necessary a focus group could be established.

**Action:**

*That Justin be thanked for his presentation.*

*A review of menu categories be undertaken & the geo-fence line be realigned to better encompass the area covered by the App.*

*Working Party members provide feedback & if considered necessary, a focus group be established.*

*Following feedback & resolution of issues/glitches a marketing program be implemented.*

---

**Item No:** 5.2

**Subject:** UNSW ART & DESIGN

Kelly Doley is the Deputy Director of UNSW Galleries, the flagship contemporary art and design gallery for UNSW’s Faculty of Art & Design. UNSW Galleries is looking to build local audience and attract new people to the area with its program and are keen to find ways to collaborate.

Kelly spoke about UNSW Galleries activities. The Galleries program is new, ambitious and includes strategies for connecting with local communities, in particular the Oxford St & Paddington community. Kelly mentioned the gallery networks, links to the local fashion precinct, exhibitions including seasonal & outdoor exhibitions, bridging art and health including through The Big Anxiety (27 September to 9 November).

Kelly distributed handouts, ‘UNSW Galleries 2019 Program’ and ‘A (patchy) history of the natural environment surrounding UNSW Galleries’.

**Action:**

*Kelly be thanked for her very insightful presentation and we look forward to her continued contributions to the Working Party.*

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**Item No:** 5.3

**Subject:** **PADDINGTON BUSINESS PARTNERSHIP**

Belinda Rankine informed the Working Party of the PBP's activities. These related to:

- The Oxford St & Paddington Place Plan implementation [there was discussion on the paparazzi dog that was outside Opus – information was provided on action that led to it being recently removed]
- Wayfinding Map
- Festivals – Eastside Music Festival, William St Festival, Head On Photo Festival, Five Ways Festival (proposed)
- Other more regular events throughout Paddington, networking events and workshops
- Telstra showcase windows – a program of displays is being developed
- Produce market – possibly at the Young St Piazza (Cr Marano updated the Working Party on the James St market DA which was refused – a further application is anticipated)
- SCG – agreement has been reached for promotion of businesses
- Big Bus Tours – negotiating advertising in their quarterly booklet
- Grant funding – annual funding approved by both City of Sydney and Woollahra Council; Placemaking grant also approved by Woollahra Council
- Social media and monthly newsletters
- Membership - now 65 businesses; recent new members include Jardan Furniture, UNSW Galleries, Dario Chicco Haircutters, Sonia Hopkins Knitwear and Imperial Hotel

**Action:**

*Belinda be thanked for her presentation on the PBP activities. The activities be noted.*

**Item No:** 5.4

**Subject:** **HEAD ON PHOTO FESTIVAL**

Moshe Rosenzweig, Director – Head On Photo Festival, did a presentation on the 2019 Festival – the Festival's 10<sup>th</sup> anniversary. Moshe's presentation covered:

- The Festival's background and Director's message
- The Festival in numbers:
  - 1,107 exhibiting artists; 196 industry creatives; 182 exhibitions & events; 61 venues; over 5.8M passing visits; \$6.7M worth of promotion; and 24 international guests
  - 340K website page views; over 43,000 mailing list; 27.5K posts to brand hashtag; total social media following of 45,204 (8% growth); 6,085 twitter followers; 12,257 Instagram followers (19% growth); and Facebook 26,862 (6% growth)
- WMC as a Government Partner; Oxford St as a Festival Hub - activation the area with events & exhibitions; Mayor Peter Cavanagh print message in catalogue; and opening address by Deputy Mayor Mary-Lou Jarvis:
  - 42 exhibitions & 39 events in Paddington
  - Most overseas guests stayed in Paddington
  - Active participation by local businesses/galleries

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- Acknowledgement of WMC – additional 6 EDMs; press release; Eventbrite booking page; invitation launch; online exhibition webpages; slides screened at launch; Perry Ln exhibition (Jennifer Greenburg, USA); 12 exhibition statements in Paddington Reservoir Gardens; external banners; signage at Festival Hub; press release; and full page advertisement in Festival catalogue
- Head On Photo Festival 2020 – 2022 – the Festival will return to Paddington as a central hub; and continuation of placemaking activations
- Survey of Festival attendees

Moshe spoke about the range of works and e.g. ‘Loud & Luminous’ women photographers, indigenous themes & other difficult topics which drew emotional responses from Festival goers. Also the family friendly aspects of the Festival & for the first time the use of Telstra’s showcase windows.

Moshe distributed a booklet, ‘10<sup>th</sup> Anniversary Head On Photo Festival 4-19 May 2019’, and invited suggestions on themes and venues for next year’s festival.

**Action:**

*Moshe be thanked for his presentation.*

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**Item No:** 5.5

**Subject:** CITY OF SYDNEY UPDATE

Victoria Moxey spoke to the City’s update that had be circulated to Working Party members. It covers:

**1. PROGRAMS**

**1.1 Promotion of Paddington & #SydneyLocal**

The updated “*A Local’s Guide to Paddington*” is now live on What’sOn.

Media partnerships:

#SydneyLocal, profiles of local businesses through media partnerships with Broadsheet, Concrete Playground, TimeOut and Destination NSW.

City’s Paddington Guide, which has just gone live on What’s On

**1.2 Grants & Sponsorship**

Business Support Grants – Place and Industry

Paddington Business Partnership was awarded a Business Support Grant by Council in June, for \$16,280 for three projects taking place between 1 August 2019 to 31 July 2020.

Project 1: Wayfinding Map

Project 2: Promotion of Paddington Village

Project 3: Business networking and education

**1.3 Building Business Capacity**

Small Business Digital 101 Seminar Series 2019

The recent SBD101 in July, *How to succeed with your eCommerce business using Shopify*, attracted a full-house with 127 engaged and enthusiastic guests.

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**Councillor Jess Scully** updated the Working Party on development plans for **1-11 Oxford St** (the proponents previously did a presentation to the Working Party on their plans to convert the building into a boutique hotel). The City will consider a recommendation from the Central Planning Committee for a planning proposal which is mainly about height and floor space. Key features of the development include retaining entertainment space, medical support for visitors (no operating facilities), activation of shop fronts and a large atrium garden. No on-site parking is provided but a loading dock is included. There is no DA at this stage. Councillor Scully advised this would be a good development for Oxford St with the activation of this prominent, landmark building which has been underutilised for a long period of time.

In the meantime Fox Studios have fitted out the cinema space for use in conjunction with its activities.

**Action:**

*That Councillor Jess Scully and Victoria be thanked for their update of the City's activities and in particular for the information regarding the development of 1-11 Oxford St*

---

**Item No:** 5.6

**Subject:** GENERAL BUSINESS

**Sebastian de santisteban Gimenez**

Sebastian was invited by Councillor Marino to discuss with the Working Party his ideas for an Oxford St event. Unfortunately, due to a technical hitch, Sebastian's power point presentation failed to launch. However he spoke of a fashion show focusing on Oxford St being the #1 fashion destination. His intention is to formulate a fashion show in the Reservoir Gardens.

There was discussion around noise & heritage conditions which apply to the use of the venue and which could affect Sebastian's intended activities. As the venue comes under the City of Sydney Sebastian was advised to talk with them about these conditions. He was also advised that an event of this nature would be consistent with the recently adopted Oxford St & Paddington Place Plan. Once he had a better understanding of the practicability of using the venue & more details of activities associated with the event there would be an opportunity for him to do a full presentation to a future Working Party meeting.

**Action:**

*Sebastian be thanked for his presentation. He should discuss with the City of Sydney the practicability of using the Reservoir Gardens as the venue and gain more details on the event's associated activities. Following which he may make a full presentation to a future Working Party meeting.*

**Pollen** – Keri Huxley asked about the use of the footpath by the florist, Pollen, at the corner of Oxford & Comber Sts. The Working Party was advised that Pollen would need to get roads act/activity approval to use the footpath. There was discussion about the tension between policies relating to the use of the footpath and some of the objectives/actions

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under the Oxford St & Paddington Place Plan. Information on where policies for the use of footpaths could have a bearing on achieving objectives and undertaking activities advocated by the Place Plan was requested.

***Action:***

*The advice on the use of the footpath be noted. Pollen should contact Council staff about approval processes. Information be obtained on policies relating to the use of footpaths.*

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**Next Meeting**

The next meeting is scheduled for 24/9/19.

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The meeting concluded around 8.30pm.

**Draft**

<b>Item No:</b>	R1 Recommendation to Council
<b>Subject:</b>	<b>DRAFT WOOLLAHRA VOLUNTARY PLANNING AGREEMENT POLICY</b>
<b>Author:</b>	Chris Bluett, Manager - Strategic Planning
<b>Approver:</b>	Allan Coker, Director - Planning & Development
<b>File No:</b>	19/125710
<b>Reason for Report:</b>	To present the Draft Woollahra Voluntary Planning Agreement Policy for consideration. To obtain a decision of the Council to place the Draft Policy on public exhibition.

**Recommendation:**

- A. That the Draft Woollahra Voluntary Planning Agreement Policy contained in annexure 3 of the report to the Environmental Planning Committee meeting on 2 September 2019 be publicly exhibited for a period of 28 days.
- B. That a further report be presented to the Environmental Planning Committee following the public exhibition.

---

**1. Background**

The Council has considered the introduction of a policy for voluntary planning agreements on a number of occasions over the last four years. In 2015 a Draft Voluntary Planning Agreement Policy was prepared and considered by the Urban Planning Committee (UPC) on 14 December 2015. The Council endorsed the Draft VPA Policy on 8 February 2016 for the purpose of public exhibition.

Following public exhibition of the Draft VPA Policy a report on submissions was considered by the UPC on 9 May 2016 (**annexure 1**). The Council refused the Draft VPA Policy at its meeting on 23 May 2016.

The latest report was presented to the Environmental Planning Committee (EPC) on 9 April 2018 (**annexure 2**). The report dealt with financing mechanisms for public facilities and addressed a number of matters including:

- The use and role of section 7.11 contributions (formerly s.94) and section 7.12 levies (formerly s.94A) to fund the provision of public amenities and services.<sup>1</sup>
- An overview of voluntary planning agreements.
- Responses to reasons provided in the Council's decision of 23 May 2018 to refuse the Draft VPA Policy.
- The advantages of s.7.11 contributions, s.7.12 levies and VPAs.
- The introduction of a Council policy position for VPAs.

The report of 9 April 2018 is particularly relevant because it responds to a number of common concerns and misconceptions about VPAs.

---

1. These sections are contained in the *Environmental Planning and Assessment Act 1979* (the Act). Division 7.1 of the Act deals with development contributions, including those obtained through planning agreements.

As a consequence of that report, the Council resolved on 23 April 2018:

- A. THAT the report on financing mechanisms for public facilities be received.
- B. THAT the Council adopt the following policy statement for voluntary planning agreements:

The Council will consider the negotiation, preparation, approval and implementation of VPAs in circumstances authorised by, in accordance with and for purposes set out in the provisions of the Environmental Planning and Assessment Act 1979 in order to secure the provision of public facilities for the public's benefit. The Council will conduct these procedures in an open, fair, consistent and accountable manner and with regard to a probity framework. The Council will not allow these procedures to impede or influence its statutory responsibilities in assessing development applications and preparing and approving planning proposals.

- C. THAT a draft voluntary planning agreement policy be prepared and reported to a meeting of the Environmental Planning Committee.

This report to the EPC presents a Draft VPA Policy (**annexure 3**) for the Council's consideration.

## **2. What is a planning agreement?**

A planning agreement is a voluntary agreement (herein called a voluntary planning agreement or VPA) between a planning authority (e.g. Council) and a developer, where the developer agrees to make contributions towards a public purpose. Contributions can be monetary, works-in-kind, the dedication of land, or any other material public benefit (or any combination of these).

A public purpose includes (without limitation) any of the following:

- the provision of (or the recoupment of the cost of providing) public amenities or public services,
- the provision of (or the recoupment of the cost of providing) affordable housing,
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- the monitoring of the planning impacts of development,
- the conservation or enhancement of the natural environment.

(Source: section 7.4(2) (formerly s.93 F (2) of the Environmental Planning and Assessment Act 1979)

A public benefit is a benefit enjoyed by the public as a consequence of a development contribution. The circumstances in which a developer and a council may decide to enter into a voluntary planning agreement are where a developer:

- (a) has sought a change to a local environmental plan, or
- (b) has made, or proposes to make a development application or an application for a complying development certificate, or
- (c) has entered into an agreement with, or is otherwise associated with, a person to whom (a) or (b) applies.

(Section 7.4(1) of the Act)

### **3. Benefits of a VPA**

VPAs provide a number of benefits in the delivery of public amenities and services for the community.

- (a) VPAs provide a means for allowing the local community to share in the financial benefit obtained by a developer due to a change in planning controls or a consent to a development application. This financial benefit is commonly referred to as planning gain or windfall gain which can be shared with the community through the concept of value capture (see section 5 below).
- (b) VPAs enable the Council to deliver targeted public benefits over and above measures to address the impact of development on the public domain. Therefore, VPAs provide an effective means by which the Council can supplement developer contributions which are required by conditions of development consent to address the impact of development on private and public lands.

The statutory capping of developer contributions under s.7.11 (s.94) and developer levies under s.7.12 (s.94A) effectively limits the amount of monetary contributions that can be obtained through development consents. This directly impacts on the timely delivery of public amenities and services.

VPAs are not subject to statutory capping, although under the Draft VPA Policy, contributions derived from the land value capture approach may be influenced by a number of matters including the location and context of a site and a proposed development, and the economic viability of a proposed development.

- (c) VPAs have the potential to deliver public amenities and services in a timely manner.
- (d) VPAs allow for a flexible means for achieving good development outcomes and targeted public benefits.
- (e) VPAs allow opportunities for more innovative and efficient provision of public benefits than might be realised under other means.
- (f) VPAs are advertised in draft form and therefore provide opportunities for the local community to participate in the quality and delivery of public benefits.
- (g) VPAs allow developers to have an input to the type, quality, timing and location of public benefits. Developers, however, do not have sole rights in deciding these matters. A VPA is a negotiated arrangement which involves all parties.

### **4. Countering some misconceptions about VPAs and a VPA Policy**

The exhibition of Council's previous Draft VPA Policy resulted in a number of submissions criticising the use of VPAs and hence concluding that Council should not adopt a VPA policy. Some of these criticisms lacked evidence and were based on misconceptions about the role and processes involved with the negotiation operation of VPAs. The reports to the UPC and the EPC addressed those matters but we consider that responses to the main criticisms and concerns should be restated.



***Introduction of a policy will set a precedent for VPAs***

A VPA policy will not commit the Council to enter into VPAs, or will it bind the Council in its decision making regarding agreements.

VPAs are voluntary arrangements. Therefore, a council cannot require a developer to enter into a VPA. A council and a developer can decline to enter into a VPA or can decide to discontinue negotiations and not complete the agreement. However, once an agreement has been finalised, signed and registered it is a legal and binding contract.

The presence of a policy will not provide a catalyst for more VPAs. It will, however, provide a consistent and transparent set of guidelines for both the Council and developers.

***VPAs will undermine Council's planning controls***

VPAs will not devalue or compromise Council's planning controls or will they establish a practice that can suggest that Council is abandoning development standards and other development controls. This is because:

- The primary consideration is to establish the merit of the requested changes to planning controls, in the case of planning proposals, or whether a non-compliance with the statutory development standards and other planning controls is justified, in the case of a DA.
- Consideration of the terms of a VPA, including the type of public benefit to be delivered, is carried out in a separate process and by different staff members to those who undertake the merit assessment of changes to planning controls.
- The perception that the Council is compromising its planning controls by considering and entering into a VPA can be addressed in part by the transparent and public process in which decisions on VPAs, planning proposals and development applications are made.

***VPAs allow developers to buy additional development potential and development consents.***

This is a common perception often put forward in arguments opposing the use of VPAs. The argument gains emphasis often due to a range of matters including lack of consistency in processes and poor transparency in decision making. A contrary argument can be assisted by the existence of a VPA policy which:

- has passed through a public exhibition stage which allows lodgement and consideration of submissions,
- has been considered and approved in a transparent and public process,
- identifies the probity rules to be followed in separating the responsibilities for negotiating VPAs and assessing the merits of planning proposals and development applications,
- identifies the decision making steps involved in the consideration of a VPA which are undertaken in a public meeting,
- relates the use of VPAs to the Council's corporate strategic planning framework and development contributions system,
- sets out criteria for assessing the acceptability of the benefit of public amenities and services that are to be provided by the developer,
- sets out the criteria for assessing the acceptability of a VPA in general,
- sets out the strategic infrastructure needs that will be funded by contributions, particularly in the case of contributions arising from value capture.

The Draft VPA policy will satisfy all these points.

## 5. Content of the Draft Policy

A copy of the Draft VPA Policy is contained in **annexure 3**. The content of the Draft VPA Policy has regard to the legislative requirements for planning agreements contained in the Act and the *Environmental Planning and Assessment Regulation 2000*. The Draft VPA Policy has also been informed by the Practice Note issued by the NSW Department of Infrastructure Planning and Natural Resources on 19 July 2005.

The Draft VPA Policy establishes important guidelines relating to the Council's use, preparation and implementation of planning agreements. In this regard it deals with a range of matters including:

- principles which will be observed by Council when planning agreements are being considered, negotiated and used,
- the relationship of planning agreements to the planning framework within which the Council operates including the Eastern City District Plan, the Community Strategic Plan, the Delivery Program and Operational Plan and the Council's contribution plans,
- the role of planning agreements in delivering projects and actions within the Council's integrated planning framework,
- matters of probity in negotiating a planning agreement,
- establishing roles for negotiating a planning agreement,
- enabling the use of specialists engaged by the Council to participate in the negotiation process, testing the acceptability of an offer by a developer to enter into a planning agreement,
- using planning agreements to allow the community to benefit from a share of the unearned increment in land value obtained by developers from changes to planning controls which facilitate intensified development.

The Draft VPA Policy is consistent with and adopts the statutory requirements, obligations, restrictions and safeguards contained in the Act and the Regulation relating to planning agreements. These include matters concerning the basic content of a planning agreement, public notice of a planning agreement, the relationship with development consents and the amendment and revocation of a planning agreement.

An important element of the Draft VPA Policy is the facility to negotiate a VPA using the concept of value capture. A description of value capture is provided in the following extracts from a published article by Council's lawyer Dr Lindsay Taylor:

[V]alue capture in relation to urban land development involves a planning authority, such as a local council in New South Wales, capturing for the community benefit some of the land value increase accruing to a parcel of land from planning activities of the authority which increase the development potential of the land and hence its value.

[T]he fundamental purpose of value capture is ...to capture increased land value for the community on the basis of a legitimate claim by the planning authority to a share of what is commonly referred to as the '*unearned increment*' of land value uplift.

(Lindsay Taylor, *Value capture through voluntary planning agreements*, In focus, 18/5/2016)

The article also explains a number of concepts and understandings that underpin value capture.

Value capture practices rest on several key concepts and understandings. The first is that the unearned increment is a form of ‘*community property*’ in so far as it is wealth created by the activities of planning authorities and not by landowners. The second is that planning authorities, by virtue of planning legislation such as the EPA Act, are monopoly suppliers of development rights to the extent to which their approval is required to allocate rights, whether for a single parcel of land or more generally, through changes to planning controls (see for example, the scheme for making planning controls in relation to land contained in Part 3 of the EPA Act). The third is that where landowners seek variances to existing planning controls so as to increase development rights relating to land, planning authorities are entitled to claw-back any unearned increment arising from approving the variance.

(Lindsay Taylor, *Value capture through voluntary planning agreements*, In focus, 18/5/2016)

The last sentence in this extract needs to be qualified. The ability of planning authorities to “claw-back” the unearned increment is not unrestricted. Any value capture practice needs to be reasonable in so far as the amount of contribution negotiated must have regard to a number of considerations including the effect of the contribution on the economic viability of any future development of the land which is the subject of the planning agreement.

The Draft VPA Policy contains a formula for calculating the land value capture contribution based on the residual land value method. The methodology also builds in consideration of factors which can influence the contribution including the effect on the economic viability of future development. This has the benefit of opposing criticism that the contribution is merely a tax or a fee to buy a development consent or additional development potential.

## **6. The next steps**

The Draft VPA Policy should be placed on exhibition to allow public comment. There is no statutory timeframe for exhibiting a VPA policy, but a period of 28 days is consistent with the exhibition of other policy documents prepared by the Council.

Following the exhibition a further report addressing submissions will be prepared and submitted to the EPC.




## **7. Conclusion**

VPAs are a means by which the Council can provide public benefits in a timely manner and within a legal framework. VPAs can operate in a complementary way with the Council’s development contribution and levy plans to provide options for funding the coordinated delivery of public infrastructure and growth.

VPAs have a distinct advantage over section 7.11 and section 7.12 contribution plans because they are not subject to statutory caps on the amount of monetary contributions that can be raised. Whereas contributions plans have fixed schedules of works, VPAs are flexible and adaptable in meeting opportunities for providing public facilities. In particular, they allow for value sharing which is used by all levels of government within Australia to assist with the delivery of public infrastructure.

The Council has taken an initial step in adopting a policy statement for VPAs. It should now take the next step in exhibiting and adopting a VPA Policy.

**Annexures**

1. Report to UPC - 9 May 2016 [↓](#) 
2. Report to EPC - 9 April 2018 [↓](#) 
3. Draft Woollahra Voluntary Planning Agreement Policy 2019 [↓](#) 

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**Item No:** R1 Recommendation to Council  
**Subject:** **REPORT ON THE EXHIBITION OF THE DRAFT WOOLLAHRA VOLUNTARY PLANNING AGREEMENT POLICY**  
**Authors:** Jorge Alvarez, Senior Strategic Planner  
Anne White, Acting Team Leader - Strategic Planning  
**Approvers:** Allan Coker, Director - Planning & Development  
Chris Bluett, Manager - Strategic Planning  
**File No:** 16/36175  
**Reason for Report:** To report on the public exhibition of the Draft Woollahra Voluntary Planning Agreement Policy and obtain Council's approval of the policy.

**Recommendation:**

- A. THAT Council approve the Woollahra Voluntary Planning Agreement Policy contained in draft form in annexure 1.
- B. THAT the Woollahra Voluntary Planning Agreement Policy come into effect on the date of the Council's approval.
- C. THAT Council authorise a delegation to the General Manager to negotiate and execute Voluntary Planning Agreements under section 93(F) of the Environmental Planning and Assessment Act 1979.

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**1. Background**

The Draft Woollahra Voluntary Planning Agreement Policy (the Draft Policy) was placed on public exhibition from Wednesday 17 February 2016 to Friday 18 March 2016. A copy of the Draft Policy as exhibited, with corrections to minor typographical errors, is attached as **annexure 1**. If approved as Woollahra Voluntary Planning Agreement Policy (the Policy), it will establish a policy framework for Council to negotiate Voluntary Planning Agreements (VPAs) with developers. It will provide clear and consistent information to the Council staff, the community and developers in order to identify the methodology for preparing VPAs and the purpose and situation in which they can be used.

A VPA is a voluntary agreement between Council and a developer, where the developer agrees to make contributions towards a public purpose as part of a development application or planning proposal. Contributions can be monetary, works-in-kind, the dedication of land, or any other material public benefit (or any combination of these). VPAs may apply to development applications which justifiably exceed existing development controls or planning proposals which seek to amend the *Woollahra Local Environmental Plan 2014* (the LEP).

The content of the Policy has regard to the legislative requirements for planning agreements contained in the *Environmental Planning and Assessment Act 1979* (the Act) and the *Environmental Planning and Assessment Regulation 2000* (the Regulation). The Policy has also been informed by the Department of Infrastructure Planning and Natural Resources' *Development Contributions Practice Notes – July 2005* (the Practice Notes). The Policy establishes important guidelines relating to the Council's use, preparation and implementation of planning agreements. In this regard it deals with a range of matters including:

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- principles which will be observed by Council when planning agreements are being considered, negotiated and used,
- the relationship of planning agreements to the Council's contributions plans, in particular the ability to pool development contributions in order to obtain efficiencies in the provision of public facilities,
- the role of planning agreements in delivering projects and actions with the Council's integrated planning framework,
- matters of probity in negotiating a planning agreement,
- establishing roles for negotiating a planning agreement,
- enabling the use of specialists engaged by the Council to participate in the negotiation process,
- testing the acceptability of an offer by a developer to enter into a planning agreement,
- using planning agreements to allow the community to benefit from a share of the unearned increment in land value obtained by developers from changes to planning controls which facilitate intensified development.

The Policy is consistent with and adopts the statutory requirements, obligations and restrictions contained in the Act and the Regulation relating to planning agreements. These include matters concerning the basic content of a planning agreement, public notice of a planning agreement, the relationship with development consents and the amendment and revocation of a planning agreement.

At an operational level, the Policy will require delegation to be issued to the General Manager to allow negotiation of VPAs. This delegation is required to fulfil the probity requirement of the Act, Practice Notes and Policy to exclude elected members of Council from face-to-face VPAs negotiations. Council staff recommend that delegation be given as part of the Council's decision to approve the Policy.

On 14 December 2015 the Urban Planning Committee (UPC) considered the Draft Policy and made a recommendation to Council to exhibit the Draft Policy and report back to the UPC after exhibition. The report for that meeting is attached as **annexure 2**.

On 8 February 2016 Council accepted the recommendation of the UPC and resolved the following:

- A. THAT the Draft Woollahra Voluntary Planning Agreement Policy contained in annexure 2 of the report to the Urban Planning Committee be publicly exhibited for a period of 28 days.
- B. THAT a further report be presented to the Urban Planning Committee following the public exhibition.

This report discusses the results of the public exhibition of the Draft Policy.

## **2. Public Exhibition**

The Draft Policy was placed on public exhibition from Wednesday 17 February 2016 - Friday 18 March 2016. The exhibition took place in the Council's main offices in Double Bay, within the Customer Service area. A copy of the Draft Policy and associated material was placed on the Council's website for the duration of the exhibition period. The exhibition webpage on Council's website was viewed 164 times.



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Notice of the public exhibition was placed in the Wentworth Courier editions of:

- 17 February 2016
- 24 February 2016
- 2 March 2016
- 9 March 2016
- 16 March 2016

Individual notification letters were sent to the following bodies, which may have had an interest in the Draft Policy:

- Department of Planning and Environment
- City of Sydney Council
- Randwick Council
- Waverley Council
- Property Council of Australia
- Planning Institute of Australia (NSW)
- Urban Taskforce
- The representatives of three landowners who are currently negotiating Planning Proposals with Council

### 3. Submissions

Sixteen submissions regarding the Draft Policy were received during the exhibition period. Of the submissions:

- fourteen opposed the approval of the Draft Policy,
- one generally supported approval of the Draft Policy, but recommended a number of key changes prior to approval, and
- one acknowledged the exhibition but stated that it would not be making a submission on the Draft Policy.

Copies of all submissions are included in **annexure 3**.

#### 3.1 Submission of objection

The submissions objecting to the Draft Policy were made by the following individuals and residents' associations:

- John McCarroll
- A and V Edwards
- Colleen Bray
- Darling Point Society Inc.
- Joe Meagher
- Harbour View Residents Group
- Victoria Taylor
- Nazy Minbashian (On behalf of SP69620)
- John Hughes and Kay Ingleton (On behalf of SP45091 & SP10261)
- Double Bay Residents' Association
- Rose Bay Residents Association
- Stephen Lawler
- Rob and Vicki Joyner
- The Paddington Society

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The issues raised in objection to the Draft Policy and Council staff responses to these issues are summarised in the table below.

Ref No	Issue	Response
<b>Issue 1</b>	VPAs undermine the existing planning controls which were developed as a result of extensive public consultation. Consequently, VPAs will permit unacceptable development and reduced resident / public amenity.	Council staff do not agree that the Draft Policy or VPAs will undermine the existing planning controls. The Draft Policy and the Practice Notes, require that benefits provided under VPAs should not be used to justify a contravention of development standards. The Draft Policy provides principles and practices requiring the justification of contraventions to the planning standards to be considered without giving weight to the potential benefits gained by a VPA. The merit of any proposed change to planning controls or departure from LEP controls must be established in the first instance.
<b>Issue 2</b>	VPAs allow developers to “buy” additional development potential through variation to planning standards.	Council staff do not agree that VPAs allow developers to “buy” additional development potential through variation to planning standards. The Draft Policy and the Practice Notes, establish strong principles and practices to safeguard against the actual or perceived “buying” of development potential through variation to the planning standards as part of the VPA process. The merit of any proposed change to planning controls or departure from LEP controls must be established in the first instance.
<b>Issue 3</b>	VPAs were introduced for new release areas and not for established urban areas. Planning agreements were introduced "to provide a flexible framework under which the State and local government can share responsibility for the provision of infrastructure in new release areas or in major urban redevelopment projects" (Department's "Development contribution Practice Notes — July 2005)	The inference that VPAs were exclusively introduced for use in new release areas and not for established urban areas is incorrect as explained below: <ol style="list-style-type: none"> <li>1. The claim is based on a single sentence in “Part 2 - Overview of current trends” (page 12) of the Practice Notes. The sentence is an adjunct to a broader discussion of six apparent reasons why the use of planning agreements had become widespread at the time the Practices Notes were produced (2005). A summary of the six apparent reasons are: <ul style="list-style-type: none"> <li>• planning authorities are under increasing pressure from local communities to provide targeted public benefits,</li> <li>• development consent conditions, including s94, can have limitations in producing targeted public benefits,</li> <li>• developers are increasingly seeking greater involvement in determining the type, standard and location of targeted public benefits,</li> <li>• negotiation tends to promote co-operation over conflict,</li> <li>• VPAs provide a flexible means of achieving tailored development outcomes and targeted public benefits, and</li> <li>• VPAs can provide enhanced and more flexible infrastructure funding opportunities for planning authorities.</li> </ul> </li> <li>2. There is no discussion in the Practice Notes to suggest that VPAs were specifically designed only for new release areas.</li> <li>3. The legislation does not distinguish between the application of VPAs to new release areas and established urban areas.</li> <li>4. A number of Sydney councils in established urban areas have successfully introduced VPA policies. These include: <ul style="list-style-type: none"> <li>• City of Canterbury</li> <li>• City of Ryde</li> <li>• Hurstville City Council</li> <li>• North Sydney Council</li> <li>• Randwick Council</li> <li>• Warringah Council</li> <li>• Waverley Council</li> <li>• Willoughby City Council</li> </ul> </li> </ol>

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Ref No	Issue	Response
		VPAs are an important and valuable public financing mechanism for any Council, whether it be in a new release or established area. VPAs capture a share of land value increases to provide community benefits such as the capital and recurrent funding of public facilities provided by Council, including transport, affordable housing and other infrastructure, the protection and enhancement of the natural environment, and the monitoring of the planning impacts of development. These benefits are considered as necessary in established areas as new release areas.
<b>Issue 4</b>	Council should not consider adopting the Policy until the investigation of the Council amalgamations process is finalised, otherwise any public benefit made under a VPA could be redirected to a location outside the current boundaries of the Woollahra LGA.	Council staff disagree that Council should not consider approving the Draft Policy until the investigation of the Council amalgamations process is finalised. Guidelines from the Office of Local Government and the Department of Premier and Cabinet about Council operations during the merger proposal period, direct councils to adopt a "business as usual" approach to their regulatory functions, including the preparation of new policies.
<b>Issue 5</b>	The VPA policy is open to abuse by unscrupulous developers and / or Councillors.	Council staff do not agree that the Draft Policy will be open to abuse by unscrupulous developers and / or Councillors. There are a number of mechanisms provided in the Act, the Practice Notes and the Draft Policy relating to governance and probity guidance that will ensure VPAs are used for proper planning purposes and in a fair and ethical manner. The Draft Policy (particularly Clause 1.10) complies with the requirements of the Act and Practice Note in terms of probity. In particular, it excludes elected members of Council from face-to-face VPAs negotiations in favour of delegated Council staff, and the involvement of independent persons in the negotiation process, where appropriate.
<b>Issue 6</b>	The <i>Environmental Planning and Assessment Regulation 2000</i> should be amended to exclude adoption of VPA policies.	Amendment of the <i>Environmental Planning and Assessment Regulation 2000</i> is a consideration for the Department of Planning and Environment and the Minister of Planning and is beyond the scope of public exhibition of the Draft Policy.

### 3.2 Submission of support with recommendations for amendment

One submission generally supporting the Draft Policy was received from Lesli Berger, Managing Director, Fivex Commercial Property. However, the submission recommended a number of amendments prior to approval.

The recommendations and Council staff responses to the recommendations are summarised in the Table below.

Ref No	Issue	Response
<b>Recommendation 1</b>	Council should remove any requirement that Council choose a valuer.	Council staff do not support this recommendation. Section 3.9 of the Draft Policy describes the process of valuation for VPAs. It states that the monetary value of a development contribution or an offer by a developer is to be determined by an independent land valuer in the case of land to be dedicated, and an independent quantity surveyor in the case of a material public benefit. Further, it states that Council staff will appoint the valuer and surveyor.

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Ref No	Issue	Response
		The Act, Practice Notes and the Draft Policy all include principles to ensure VPAs are negotiated in a fair and ethical manner, by providing adequate governance and probity guidance. This includes involving independent third parties, such as valuers, in planning agreement negotiations. Council should be able to select a valuer who is completely independent of the developer, and has chosen to establish this concept within the Draft Policy.
<b>Recommendation 2</b>	The Policy should explicitly state that an applicant may choose to apply the value capture methodology instead of s94 or s94A contributions and that Council will not seek to apply s94 or s94A contributions where the value capture methodology has been applied.	<p>Council staff do not support this recommendation.</p> <p>A requirement for a s94 contribution or a s94A levy may be imposed by a council as a condition of consent to a development application. Section 93F addresses the application of s94 and s94A in respect of a planning agreement. Section 93F(3A) specifies that a "planning agreement cannot exclude the application of s94 or s94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement." Additionally, section 93F(5) specifies that if "a planning agreement excludes the application of section 94 or 94A to particular development, a consent authority cannot impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by the agreement)."</p> <p>The Act contemplates that a planning agreement associated with a development application may have a provision which excludes the application of a s94 contribution or a s94A levy to a particular development. Conversely, the Act contemplates that a planning agreement associated with a development application may include a provision relating to a condition of consent requiring a s94 contribution or a s94A levy. Such a provision might address the circumstances of how that contribution or levy is to be delivered.</p> <p>In the case of a development application and an associated planning agreement, it would be a matter of negotiation between the developer and the Council as to:</p> <ul style="list-style-type: none"> <li>• whether a requirement for a s94 contribution or a s94A levy should be imposed in addition to a development contribution relating to the value capture consideration, or</li> <li>• whether a s94 contribution or a s94A levy should be excluded.</li> </ul> <p>The policy sets a framework for this negotiation to be carried out on a case by case basis. Therefore, in light of these points, it would be inappropriate for the Policy to be amended in the manner sought by in this submission.</p>
<b>Recommendation 3</b>	The value capture methodology be applied to 33% of the net increase in residual land value should Council agree to change its town planning controls.	<p>Council staff do not support this recommendation.</p> <p>The proposed value capture formula allows for a 50% community share in the land value uplift.</p> <p>The proposed formula was based on best practice research, including examination of policies prepared by other councils in the Sydney Metropolitan Area, as well as policies from councils in London which have similar systems. The formula was then developed in consultation with Dr. Lindsay Taylor, Senior Partner of Lindsay Taylor Lawyers and Martin Hill, Director of Hill PDA Consulting, a specialist property consulting firm. We are confident that the proposed formula represents best practice in the determination of value capture for VPAs and should not be amended.</p> <p>Additionally, the Draft Policy contains provisions to ensure that development contributions associated with land value capture do not make a development economically unviable.</p>

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Ref No	Issue	Response
<b>Recommendation 4</b>	Council modify the definition of value capture to acknowledge that a credit will be provided for existing non-compliances with Council's town planning controls if an existing development consent is in place or the existing built form exceeds the town planning controls.	Council staff do not support this recommendation. The Draft Policy does not recognise value capture credits to existing non-compliances with planning standards in the existing built form or development consent. However, two essential components of VPAs are that they are voluntary and negotiable. This provides the opportunity for the consideration of the existing circumstances of a proposed development site during the negotiation process, and on a case by case basis.

### 3.3 Acknowledgement letter

A response to the exhibition was provided from the City of Sydney. The response stated that Council staff had reviewed the draft, and would not be making a submission on it.

### 3.4 Submission conclusion

The issues raised and recommendations made by the submissions do not warrant an amendment or termination of the Draft Policy.

## 4. Minor clarifications

Two minor clarifications have been made to the Draft Policy and are shown as **strikeout** (deleted text) and **underline** (inserted text) in **annexure 1**:

1. Clause 1.10 (e), (page 7) – delete the word “not” from the sub-clause.
2. Clause 3.1, (page 12) – replace the word “Municipality” with “LGA”.

## 5. Next steps

The issues raised and recommendations made in the submissions to the exhibition of the Draft Policy have been assessed and no changes are recommended. This report recommends that Council approve the Policy attached as **Annexure 1**.

The following steps are recommended to finalise the approval of the Policy:

1. Council makes a decision to approve the Policy.
2. The Policy will come into effect on the date of the Council’s approval.
3. Council give public notice of its decision in a local newspaper.

## 6. Conclusion

The Draft Policy was prepared with regard to the provision of the Act, the Regulation and the Practice Notes.

Sixteen submissions were received during the exhibition period, of these:

- fourteen opposed the approval of the Draft Policy,
- one generally supported approval of the Draft Policy, but recommended a number of key changes prior to approval, and

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- one acknowledged the exhibition but stated that it would not be making a submission on the Draft Policy.

Council staff found that the objections raised and recommendations made do not warrant amendment or termination of the Draft Policy. Therefore, Council staff recommend approval of the Draft Policy as exhibited with minor clarifications. Once approved, the Draft Policy will become the Woollahra Voluntary Planning Agreement Policy. The Policy will come into effect on the date that it is approved by Council.

Council staff also recommend that Council authorise delegation to the General Manager to allow negotiation of VPAs. This recommendation fulfils the probity requirement of the Act, Practice Notes and the Policy to exclude elected members of Council from face-to-face VPAs negotiations in favour of delegated Council staff.

The Policy will provide a framework for the clear and consistent preparation of VPAs between Council and developers to provide contributions towards a public purpose which will benefit the residents of the Woollahra LGA.

**Annexures**

1. Woollahra Voluntary Planning Agreement Policy - Post-exhibition version
2. UPC agenda - Dec14-2015 - Draft VPA Policy Report
3. Woollahra Voluntary Planning Agreement Policy - Copies of all submissions



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**Item No:** R1 Recommendation to Council  
**Subject:** **FINANCING MECHANISMS FOR PUBLIC FACILITIES**  
**Author:** Chris Bluett, Manager - Strategic Planning  
**Approver:** Allan Coker, Director - Planning & Development  
**File No:** 18/25051  
**Reason for Report:** To respond to a notice of motion adopted by Council on 30 October 2017.

**Recommendation:**

- A. That the report on financing mechanisms for public facilities be received.
- B. That the Council adopt the following policy statement for voluntary planning agreements:

The Council will consider the negotiation, preparation, approval and implementation of VPAs in circumstances authorised by, in accordance with and for purposes set out in the provisions of the *Environmental Planning and Assessment Act 1979* in order to secure the provision of public facilities for the public's benefit. The Council will conduct these procedures in an open, fair, consistent and accountable manner and with regard to a probity framework. The Council will not allow these procedures to impede or influence its statutory responsibilities in assessing development applications and preparing and approving planning proposals.

- C. That a draft voluntary planning agreement policy be prepared and reported to a meeting of the Environmental Planning Committee.

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**1. Introduction**

The Council adopted the following notice of motion at its meeting on 30 October 2017:

THAT Council:

1. Requests that staff prepare and submit an updated report to the Urban Planning Committee on the financing mechanisms to secure monetary, works-in-kind, the dedication of land or any other material public benefit or any combination of these which may be available to support improved public infrastructure and services in precincts which may be the subject of urban intensification.
2. The updated report to consider the merit of a range of financing mechanisms including s.94, S.94A as well as value capture through the adoption of a VPA Policy and other mechanisms where developments can accommodate social infrastructure.

Since the above decision was made, amendments to the *Environmental Planning and Assessment Act 1979* (the Act) have been introduced. The amendments, which commenced on 1 March 2018, included reformatting of the Act and the use of a new numbering system. We have included the new numbering system in this report. The old numbers are provided in parenthesis to assist with interpretation.

This report responds to the Council's decision. In doing so this report includes information on the scope, opportunities and limitations on three mechanisms available under the provisions of the Act to secure the delivery of public facilities. The three mechanisms are contained in:

- Section 7.4 (previously s.93F) – Planning agreements

- Section 7.11 (previously s.94) – Contribution towards provision or improvement of amenities and services
- Section 7.12 (previously s.94A) – Fixed development consent levies

We have not included special infrastructure contributions under sections 7.22 to 7.31 (s.94ED to s.94EM) of the Act because those contributions are obtained to assist with the delivery of key State and regional infrastructure within major growth regions and precincts that are planned to experience high growth rates.

Other funding mechanisms commonly used by councils are general rates, special rate levies, loans, grants and user charges. We do not provide discussion on those options other than to say they often complement the three mechanisms available under the Act and are matters for consideration during Council's annual deliberations.

For the purpose of this report the following definitions are used:

**development contribution** means the payment of a monetary contribution, the dedication of land free of cost or the provision of a material public benefit or any combination of them towards a public purpose.

**land value capture** is a public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of the unearned increment to developers in land value increases arising from:

- (a) an amendment to Woollahra LEP 2014 which facilitates development, plus associated or consequential changes to Woollahra DCP 2015, or
- (b) the granting of a development consent or the approval of a modification of a development consent which allows development to exceed the otherwise permissible development controls under Woollahra LEP 2014 or another environmental planning instrument.

**material public benefit** means a benefit that is not a monetary contribution or the dedication of land, but is for a public purpose. A material public benefit does not need to be a physical work.

**planning agreement** means a voluntary agreement referred to in section 7.4 (s.93F) of the Act.

**public benefit** is the benefit enjoyed by the public as a consequence of a development contribution.

**public facilities** mean public infrastructure, facilities, amenities and services. Public facilities include, but are not limited to physical, social or community infrastructure and public services such as:

- (a) public car parking,
- (b) cycleways,
- (c) civic improvements,
- (d) public art,
- (e) open space and recreation facilities
- (f) childcare facilities,
- (g) multi-function community facilities,
- (h) libraries,

**public purpose** includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

(Source: section 7.4(2) (s.93F(2)) of the Act)

**work in kind** means a work or action which replaces a monetary contribution in whole or in part.

## **2. Section 7.11 contributions (s.94)**

Section 7.11 (s.94) of the Act allows a consent authority to apply a condition of consent to a development application or an application for a complying development certificate requiring the dedication of land free of cost, or the payment of a monetary contribution, or both. The consent authority may accept a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of the condition.

A condition requiring a contribution may only be applied if the consent authority is satisfied that the development, which is the subject of the application, will or is likely to require the provision of, or increase the demand for, public amenities or public services within the area.

A council can only impose a condition under section 7.11 (s.94) if the condition is of a kind allowed under a contributions plan. The *Woollahra Section 94 Contributions Plan 2002* operates within the municipality. It allows, or has allowed, conditions of development consent for contributions towards the provision of –

- certain recreation facilities in the case of development that will increase the number of dwellings on a site or will increase lots for the purpose of accommodating dwellings,
- civic improvements in the Rose Bay and Double Bay Commercial Centres based on public domain improvement plans for those centres,
- public car parking in the Rose Bay and Double Bay Commercial Centres in the case of a shortfall in parking generated by new commercial and retail development.

Notes:

- i. The title of the plan and provisions within it still reference the previous sections of the Act.
- ii. Monetary contributions are capped at \$20,000 per dwelling or residential allotment (Ministerial Direction dated 28.8.2012).
- iii. The current contributions fund contains \$1.425 million.

It is generally accepted that there are four key concepts that form the basis for section 7.11 (s.94). These are:

- 1. *nexus* – the link between the proposed development and the increased demand for public amenities and services created by the development.

2. *reasonableness* – which relates to matters of equity, fairness, judgement and moderation. Reasonableness is used in issues such as the quantity of a contribution, the timing of a payment, the timing of providing public amenities and services, and consideration of reducing or waiving payments.
3. *apportionment* – seeks to ensure that new development is only charged for the proportion of the demand for additional amenities and services generated by that development.
4. *accountability* – can be found in matters such as the clarity of documentation, provision and upkeep of financial records, integration of section 7.11 (s.94) planning in a council's overall management processes, and public involvement in planning processes.

These key concepts are contained in section 7.11 (s.94) and its supporting provisions under Part 4 of the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

Although it is not spelt out in the Act or the Regulation, it is clear that a section 7.11 (s.94) contributions plan must be prepared with regard to a council's general financial planning and management processes. In particular, where a plan is largely based on apportionment of costs for additional public facilities between the population arising from new development and the existing population, there can be substantial implications for the general budget and for the planning and delivery of other services. Potentially, it can be financially detrimental to a council where a substantial portion of costs is to be borne by the council on behalf of the existing population.

It is important to understand that in preparing and approving a contributions plan, a council is committing itself to providing those public facilities contained in the plan's capital works schedule or, subject to review, committing to similar facilities that achieve the purpose for which contributions are received.

Experience across the Sydney metropolitan area over the past twenty years has shown that section 7.11 (s.94) is more easily implemented for greenfield development areas and urban renewal precincts rather than established urban areas such as Woollahra where growth is mainly in the form of infill development. Generally this is attributable to a number of factors including:

- the difficulty in accurately predicting anticipated growth in established areas,
- the effects and uncertainty of market forces (both slow and accelerated growth),
- declining dwelling occupancy rates,
- the need to consider apportionment of costs between new and existing populations where there is still a demonstrated demand for facilities by the existing population,
- the difficulty in establishing nexus.

In areas where population and development growth is slow, section 94 contributions plans that are based on fair and reasonable contribution rates and modest capital works programmes will not generate substantial funds from new development.

Because of Woollahra's low growth patterns and in order to avoid the financial burden to Council associated with apportionment of costs, plus the constraints with nexus, the Council's current section 7.11 (s.94) plan has very limited application. Consequently, public recreational facilities provided in the plan's schedule of works is relatively modest. Their delivery has relied on increased residential dwellings which has been slow and sporadic. Similarly, slow growth in Double Bay and Rose Bay Centres has not allowed sufficient contributions to be realised to enable the civic improvement works in those centres to proceed in a reasonable time.

Whilst monetary contributions are capped at \$20,000 for additional dwellings, the ability to reach this figure in Woollahra's case is affected by nexus and the apportionment of costs. The expansion of a capital works program as a means to increase the monetary contribution to the upper limit is not a viable option because it ultimately drives up the cost apportioned to Council in implementing the works.

### 3. Section 7.12 levies (s.94A)

Section 7.12 (s.94A) enables a consent authority to impose a condition of development consent requiring the payment of a levy referred to as a fixed development consent levy. The levy may be imposed as a condition of consent on development applications and applications for complying development.

A council can only impose a condition under section 7.12 (s.94A) if the condition is of a kind allowed under a contributions plan. The *Woollahra Section 94A Development Contributions Plan 2011* applies to the municipality. It nominates the amount of contribution payable and sets out a list of projects, including capital works projects derived from the Council's capital works program, on which levies will be spent.

The amount of contribution generated from each application is calculated by a simple formula that uses the proposed cost of development and a fixed flat rate levy set by clause 25K of the Regulation. For Woollahra and the majority of councils, there are three incremental rates based on development cost thresholds:

- (i) if the proposed cost of carrying out the development is up to and including \$100,000 - nil, or
- (ii) if the proposed cost of carrying out the development is more than \$100,000 and up to and including \$200,000 - 0.5 per cent of that cost, or
- (iii) if the proposed cost of carrying out the development is more than \$200,000 - 1 per cent of that cost.

The section 7.12 (s.94A) levy is a measure that provides councils with an alternate income source to fund the provision, extension or augmentation of public amenities and public services.

A section 7.12 (s.94A) levy has several key features which distinguish it from a section 7.11 (s.94) contribution.

- A section 7.12 (s.94A) levy is not subject to nexus. That is, there is no prerequisite to establish a link between the proposed development and the increased demand for public facilities (s.7.12 (4) (s.94A(4))).
- In the absence of nexus, a section 7.12 (s.94A) levy can be used towards the provision, extension or augmentation of a wider range of public facilities than is possible with funds obtained under section 7.11 (s.94). This addresses the constraints and difficulties under section 7.11 (s.94) for justifying expenditure on certain works such as infrastructure maintenance.
- A condition imposing a section 7.11 (s.94A) levy cannot be disallowed or amended by the Land and Environment Court on appeal.

Without the restrictions imposed by nexus and apportionment of costs, the section 7.12 (s.94A) levy can be a more beneficial approach for delivering public facilities in established areas such as Woollahra compared with section 7.11 (s.94) contributions. However, section 7.12 (s.94A) still has three interrelated limitations.

First, section 7.12 (s.94A) plans need to provide a works schedule. This does not have to be as precise as the works schedule in a section 7.11 (s.94) plan, or does it have to be established to demonstrate nexus between the anticipated development and the provision of facilities. However, the presence of a works schedule, no matter how generic it may be described, still results in a degree of inflexibility if innovative and unforeseen public facilities become possible with new development and those facilities are not listed.

Second, as with section 7.11 (s.94) contributions, the ability to deliver significant public facilities still relies on regular development. Hence, there can be a delay between the development occurring and the eventual provision of facilities.

Third, irrespective of the pace of development, the quantity of levies is regulated by legislation under which the maximum levy rates are capped and linked to development cost thresholds.

The maximum rates, which are approved by the Minister for Planning, have been increased, but only for development within the central business districts in seven council areas. The maximum rates in those areas vary from 2 to 4 per cent. The highest maximum rate of 4 per cent is achievable in the Gosford City Centre and Burwood Town Centre. In both cases the development cost threshold for that rate is more than \$250,000.

It is evident that variations to the maximum rates are difficult to achieve and are restricted to major commercial centres which are experiencing or are anticipated to have substantial growth. Parramatta, Randwick and Waverley Councils are currently seeking increases, largely based on projected growth aligned with changes to planning controls and the need to provide infrastructure to service that growth.

To date their requests have not been approved and we have been unable to establish if the Department will give them favourable consideration. Irrespective, the pattern suggests that rate increases are most likely achievable in the large district centres where significant growth is planned.

#### **4. Planning agreements**

##### **4.1 Background**

The legal and procedural framework for planning agreements, which are commonly referred to as voluntary planning agreements or VPAs, was created in 2005 and is set down in sections 7.4 – 7.10 (s.93F – 93L) of the Act and clauses 25B-25H of the Regulation. Guidance is also obtained from associated State Government practice notes. The Planning Agreements Practice Note issued on 19 July 2005 by the Department of Infrastructure Planning and Natural Resources is particularly relevant. A draft revision of the Practice Note was exhibited in November 2016 but has not been approved at this time.

Section 7.12(1) (s.93F(1)) of the Act describes planning agreements.



- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer):
- (a) who has sought a change to an environmental planning instrument, or
  - (b) who has made, or proposes to make, a development application, or
  - (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

A primary requirement of VPAs is that they are voluntary arrangements. As such, both a planning authority and a developer can decline to enter into an agreement. A planning authority cannot force a developer to enter into an agreement. A person cannot appeal to the Court against the failure of a planning authority to enter into a planning agreement or against the terms of a planning agreement. However, whilst agreements are voluntary, once entered into they become legal and binding contracts.

VPAs –

- (a) provide a means for allowing the local community to share in the financial benefit obtained by a developer due to a change in planning controls or a consent to a development application,
- (b) provide a way for the local community to secure public benefits in addition to measures which are required to address the impact of development on private and public lands,
- (c) allow for a flexible means for achieving good development outcomes and targeted public benefits,
- (d) allow opportunities for more innovative and efficient provision of public benefits than might be realised under other means,
- (e) provide opportunities for the local community to participate in the quality and delivery of public benefits,
- (f) allow developers to have an input to the type, quality, timing and location of public benefits.

VPAs may be used for a variety of reasons in order to achieve public benefits some of which go beyond or are not ordinarily available through the planning and development system under section 7.11 (s.94) or section 7.12 (s.94A) contributions. Examples include:

- Provision or contribution towards the provision of public facilities to a standard or amount that is not necessarily required for the development.
- Provision of periodical or interim contributions towards recurrent costs of infrastructure, facilities and services.

A VPA can supplement section 7.11 (s.94) and section 7.12(s.94A) as a means of achieving the delivery of public facilities. Unless specifically identified in the agreement, a VPA does not exclude the application of contributions under section 94 or 94A. This means that a development consent may include a condition for either a section 94 contribution or a section 94A levy and a council can also negotiate a VPA for other public facilities.

A VPA may entail a contribution based on the planning gain likely to be achieved by a developer as a consequence of an LEP amendment, or a development consent. In these circumstances, a VPA acts as a value capture mechanism. This arrangement is well used in NSW by local and State authorities to fund the delivery of infrastructure projects in a more expedient manner than section 7.11 (s.94) and section 7.12 (s.94A) measures thereby enabling the coordination of growth and infrastructure provision. Generally this occurs because value capture enables opportunities for more substantial contributions towards provision of infrastructure than is possible through section 7.11 (s.94) and section 7.12(s.94A).

In terms of Council's urban growth projects in the Double Bay Commercial Centre and the Edgecliff Commercial Corridor, value capture has potential to assist with the timely delivery of public infrastructure. In the Double Bay Commercial Centre a range of infrastructure has been identified by the Double Bay Public Domain Strategy. Projects include:

- Bay Street link between Cross Street and the Double Bay wharf
- Commercial waste strategy
- Minor works to Kiaora Lane
- Knox Street and Knox Lane upgrade
- Upgrades to service laneways and linking streets - Gumtree Lane, Goldman Lane, Brooklyn Lane and Short Street.
- Upgrade to Jamberoo Lane/Jamberoo stormwater channel and Cross Lane between Cross Street and William Street

The Act provides a number of safeguards to regulate the legitimate operation of VPAs. Notably sections 7.4(9) and (10) (s.93F(9) and (10)) state:

- (9) A planning agreement cannot impose an obligation on a planning authority:
  - (a) to grant development consent, or
  - (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.
- (10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.

Additionally section 7.7(2) (s.93I(2)) prescribes that:

- (2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.

These three provisions can be supplemented by a policy of a council which provides for an open and transparent process when planning agreements are negotiated. Importantly, the policy would establish a process to require the merit of a DA and a planning proposal to be established by the Council in the first instance, independently from the decision to enter into a VPA.

#### 4.2 Draft Woollahra VPA Policy 2016

In 2016 the Council prepared and exhibited a Draft VPA Policy. In preparing the policy considerable research was carried out on the content and operation of VPA policies used by other councils in the Sydney Metropolitan Area and similar policies used by overseas councils. We also obtained legal advice from Dr. Lindsay Taylor from Lindsay Taylor Lawyers and Martin Hill, director of Hill PDA Consulting, a specialist property consulting firm. Dr Taylor has particular expertise in the legal aspects of planning agreements whilst Mr Hill has acted for other councils in negotiating planning agreements.

At its meeting on 9 May 2016 the Urban Planning Committee considered a report on submissions received in response to public exhibition of the *Draft Woollahra Voluntary Planning Agreement Policy* (**Annexure 1**).

The Council did not adopt the Draft VPA Policy. Instead, on 23 May 2016 the Council resolved:

THAT Council REFUSE the Woollahra Voluntary Planning Agreement Policy for the following reasons:

1. Council already has section 94 contributions and 94A levies that deal with issues raised in this policy.
2. This policy will give rise to increased development.
3. Concerns with the precedent set by the Voluntary Planning Agreement Policy.
4. Belief that the Voluntary Planning Agreement Policy will undermine the DCP and LEP.
5. Concerns with how the money generated from the Voluntary Planning Agreement Policy will be spent and the proximity of the public benefit as the test is the benefit to the developer.
6. Make it clear in an amalgamated environment that Council does not want this sort of delegation to the General Manager.

The following comments address the reasons for refusing the VPA Policy.

***Council already has section 94 contributions and 94A levies that deal with issues raised in this policy.***

There are similarities between section 7.11 (s.94), section 7.12 (s.94A) and VPAs since they all aim to facilitate the delivery of public facilities. However, this point by itself is not a reason to discard a VPA policy. VPAs can legally operate in a complementary way with section 7.11 (s.94) and section 7.12 (s.94A) plans in order to achieve public facilities.

VPAs offer Council another and more flexible means of delivering public facilities. The discussion about the three mechanisms shows that both section 7.11 (s.94) contributions and section 7.12 (94A) levies have limitations in their ability to deliver public facilities. The main limitation occurs with the quantity of contributions and levies that can be legally required. This occurs in the case of both section 7.12 (s.94A) levies and section 7.11 (s.94) contributions with statutory capping. For section 7.11 (s.94) contributions, the delivery of public facilities is also constrained by the concepts of nexus and apportionment of costs.

Section 7.11 (s.94) and section 7.12 (s.94A) will not be capable of funding the public improvements identified in strategies such as the Double Bay Public Domain Strategy and the Double Bay Lighting Strategy. Full implementation of infrastructure works in those strategies is broadly estimated to cost \$18.25m.

**Note:**

A number of projects nominated within the section 7.11 (s.94) contribution plan's works schedule align with those in the Double Bay Public Domain Strategy. However, the total section 7.11 (s.94) contributions currently available for civic improvement works in the Double Bay Commercial Centre amount to only \$95,894. The average annual total of contributions for civic improvement works in Double Bay since 2000 amounts to only \$7,700.

***This policy will give rise to increased development.***

There is no evidence that the introduction of a VPA policy will increase development in Woollahra. VPAs were brought into a legislative framework through an amendment to the Act in 2005. Despite the option being available to both developers and Council, only two VPAs have been entered into over twelve years. One was for a development application at 231 New South Head Road Double Bay involving the construction of a four storey residential flat building. The agreement required the payment of a monetary contribution which would be used for a public purpose to fulfil the Council's vision to make Double Bay a better place.

The second agreement relates to a development application for the Scottish Hospital in Paddington. The agreement applies to the dedication of land to extend the public reserve in Dillon Street.

Development in the Woollahra LGA has not been influenced by the availability of VPAs. Changes to planning legislation, at State and local levels, together with economic conditions and demand for services, facilities and accommodation are the important drivers which facilitate growth. When planning for growth it is important that Council also has capacity to deliver supporting infrastructure and services. VPAs provide a flexible option for this purpose.

The two cases where VPAs have been negotiated in Woollahra demonstrate that in specific circumstances VPAs are appropriate and Council has used the provisions in the Act.

The VPA policy provides that development application consents and planning proposals cannot be bought. The policy includes safeguards consistent with the Act to ensure that development applications and planning proposals that involve VPAs do not get preferential consideration.

***Concerns with the precedent set by the Voluntary Planning Agreement Policy.***

The option of entering into a planning agreement remains a voluntary one for both the Council and the developer despite the operation of a policy.

Adoption of a VPA policy will provide the necessary tool for managing the negotiation, preparation, public participation, approval and operation of VPAs on an individual basis. A VPA policy establishes important principles and probity measures which must be followed in the course of negotiating and preparing VPAs. A VPA policy therefore establishes a consistent and transparent process.

The existence of a VPA policy does not infer that Council will give preferential consideration to planning proposals or development applications. The Council is bound by legislation to carry out separate assessment processes for planning proposals and DAs. The merit of each planning proposal and DA must be established before approvals are granted. In each case there are transparent processes that enable public involvement of varying degrees.

Adoption of a VPA policy does not demonstrate that the Council is abandoning development standards and other development controls. A planning agreement is not a mandatory requirement by law or by virtue of an adopted policy. These points are acknowledged in the Land and Environment Court decision for *Mecone Pty Limited v Waverley Council [2015] NSWLEC 1312*.

***Concerns with how the money generated from the Voluntary Planning Agreement Policy will be spent and the proximity of the public benefit as the test is the benefit to the developer.***

The terms of a VPA will identify the particular development contribution that is to be made. The Council, as a signatory to the agreement, will have the opportunity to comment on the nature of the development contribution, including the location of any material public benefit or work in kind.

The benefit to the developer in the eventual delivery of the contribution is not the pivotal test. The Act clearly establishes that the development contribution is to be “used for or applied towards a public purpose”. (s.7.4(1) (s.93F(1))) There is no requirement that public facilities be for the exclusive use of the development to which an agreement relates. Furthermore, the issue of nexus is not a requirement for VPAs which allows a degree of flexibility in the location of a development contribution. However, VPAs should not involve public benefits which are wholly unrelated to the development which is the subject of the agreement. This understanding implies that the developer and users of the development will obtain a degree of benefit from the public purpose.

***Make it clear in an amalgamated environment that Council does not want this sort of delegation to the General Manager.***

The recommendation contained in part C of the report to the Urban Planning Committee meeting on 9 May 2016 specified:

- C. That Council authorise a delegation to the General Manager to negotiate and execute Voluntary Planning Agreements under section 93F of the Environmental Planning and Act 1979.

Whilst the council amalgamation process has been discontinued, we consider that should Council decide to recommence a process for introducing a VPA policy, there should be delegation in the manner described by part C of the last recommendation.

A delegation of the type proposed will enable a separation of the negotiation, administrative and approval steps. The delegation will therefore assist probity matters. The Councillors would maintain their role in deciding whether to enter into a VPA and then at the conclusion of the process whether the agreement should be signed. The General Manager, subject to a delegation issued by the Council, would be authorised to sign the approved agreement.

## **5. Summary advantage and disadvantages – s.7.11 (s.94), s.7.12 (s.94A) and VPAs**

The relative advantage and disadvantage of the three funding mechanisms are summarised in the following table.

Method	Advantages	Disadvantages
Section 7.11 (s.94) contributions	<ul style="list-style-type: none"> <li>Known contribution provides certainty for parties.</li> <li>Effective in rapid growth areas – greenfield and urban renewal precincts.</li> <li>Generally low administration requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Contributions for residential development capped.</li> <li>Limited value in highly developed urban areas with slow growth.</li> <li>Slow accrual of sufficient funds to deliver significant projects.</li> <li>Potential for public facilities to be heavily subsidised by existing population due to apportionment.</li> <li>Restricted by nexus.</li> <li>Lacks flexibility – contributions only applied to scheduled works within plan.</li> <li>Amendment to contribution plan requires long statutory process.</li> </ul>
Section 7.12 (s.94A) levy	<ul style="list-style-type: none"> <li>Known contribution provides certainty for parties.</li> <li>Applicable to more development.</li> <li>Not constrained by nexus and apportionment.</li> <li>Potential to deliver small and medium sized works in reasonable timeframes.</li> <li>Generally low administration requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Levies restricted to three incremental rates – difficult to obtain approval for rate increases.</li> <li>Lacks flexibility – contributions only applied to scheduled works within plan.</li> <li>Amendment to contribution plan requires long statutory process.</li> </ul>
Voluntary planning agreement	<ul style="list-style-type: none"> <li>No capping of contributions – reasonableness test still applicable.</li> <li>Flexible and adaptable approach to delivery of public facilities - allows innovation – not restricted by nominated works schedule.</li> <li>Allows value sharing as a means to secure public facilities.</li> <li>Potential to deliver major infrastructure in short timeframe.</li> </ul>	<ul style="list-style-type: none"> <li>Requires a high administration effort.</li> <li>Generally applied only to major development and changes to planning controls.</li> <li>Needs to be negotiated and authorised on a project by project basis.</li> <li>For developers, the value capture process requires full feasibility disclosure.</li> </ul>

The three mechanisms have their distinct and common advantages and disadvantages. For a highly developed urban area like Woollahra, section 7.12 (s.94A) and planning agreements provide stronger funding opportunities than section 7.11 (s.94).

VPAs, in particular, have substantial potential for the flexible delivery of public infrastructure in Woollahra in a timely manner.

## 6. Policy position on VPAs

It is open to the Council to negotiate a VPA with a developer under the legislative provisions of the Act and the Regulation. The Council has done so on two occasions. However, the Council lacks a policy position in regard to VPAs. A VPA policy will articulate that position and will also provide a consistent approach to the negotiation, preparation and implementation of planning agreements. A VPA Policy, however, will not obligate the Council to negotiate an agreement or give favourable consideration to development applications or changes in planning controls.



As an initial step, the Council can agree to a policy statement for VPAs. The statement may be -

The Council will consider the negotiation, preparation, approval and implementation of VPAs in circumstances authorised by, in accordance with and for purposes set out in the provisions of the *Environmental Planning and Assessment Act 1979* in order to secure the provision of public facilities for the public's benefit. The Council will conduct these procedures in an open, fair, consistent and accountable manner and with regard to a probity framework. The Council will not allow these procedures to impede or influence its statutory responsibilities in assessing development applications and preparing and approving planning proposals.

As a secondary step the Council can agree to the preparation of a VPA policy.

A VPA policy will express the Council's overarching policy statement for VPAs and will provide important guidelines for the Council's use, preparation and implementation of planning agreements. It will deal with a range of matters including:

- principles which will be observed by Council when planning agreements are being considered, negotiated and used,
- the relationship of planning agreements to the Council's contribution plans, in particular the ability to pool development contributions in order to obtain efficiencies in the provision of public facilities,
- the role of planning agreements in delivering projects and actions within the Council's integrated planning framework,
- matters of probity in negotiating a planning agreement,
- establishing roles for negotiating a planning agreement,
- enabling the use of specialists engaged by the Council to participate in the negotiation process,
- identifying the key steps in the negotiating process,
- testing the acceptability of an offer by a developer to enter into a planning agreement,
- using planning agreements to allow the community to benefit from a share of the unearned increment in land value obtained by developers,
- establishing a methodology and formula to determine how residual land value should be shared between Council and developers.
- identifying implementation and management actions.

The content of the revised Draft Policy will have regard to legislative requirements contained in the Act and the Regulation. The revised Draft Policy will also be informed by:

- the section titled Planning Agreements within the *Development Contribution Practice Note* issued by the NSW Department of Infrastructure Planning and Natural Resources on 19 July 2005, and
- the *Draft Practice Note Planning Agreements*, November 2016, issued by the NSW Department of Planning and Environment.

## 7. Conclusion

The three statutory mechanisms examined in this report have the capacity when used in a complementary way to deliver a variety of public facilities over different timeframes. However, the effectiveness of each mechanism is largely subject to legislative measures and restrictions and the nature, scale and pace of growth and change within urban areas.

For many years Woollahra Council has operated a dual funding approach with section 94 and section 94A plans. The latter plan has been the more effective mainly due to the legislative flexibilities, notwithstanding the capping of levies.

There is considerable scope for the delivery of public facilities through planning agreements. VPAs have distinct advantages over section 7.11 (s.94) and section 7.12 (s.94A). They are flexible and adaptable in meeting opportunities for providing public facilities. In particular, they allow for value sharing. This concept is widely used in all levels of government within Australia for the delivery of various types of public infrastructure.

The coordinated provision of local public infrastructure and growth is an important planning consideration which benefits from a range of funding mechanisms. We consider the Council should maximise its options for securing funds to provide public infrastructure.

There is a legal framework within which the Council can negotiate VPAs. The Council has used that framework on two occasions. However, the Council lacks a policy position in regard to VPAs. A VPA policy will articulate that position and will also provide a consistent approach to the negotiation, preparation and implementation of planning agreements.

As an initial step, the Council can agree to policy statement for VPAs. A secondary step would involve the preparation of a VPA policy. Our recommendation facilitates this two stepped approach.

#### **Annexures**

1. Report to UPC 9 May 2016 [↓](#)



## Draft Woollahra Voluntary Planning Agreement Policy 2019

23 August 2019

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## **Part 1 Preliminary**

### **1.1 About this policy**

This document contains Woollahra Council's policy relating to planning agreements which are legally established under the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. The policy only applies to those planning agreements to which the Council is or will be a party.

This policy sets out:

- (a) when and why the Council would consider entering into a planning agreement,
- (b) matters which would normally be provided in a planning agreement,
- (c) the types of development contributions that would be sought under a planning agreement,
- (d) when a contribution will be sought due to the value uplift of land arising from a proposed change to a planning control or a development application that exceeds planning controls,
- (e) the method of calculating contributions, including standard charging,
- (f) the method of calculating the contribution associated with land value capture,
- (g) the pooling of monetary contributions obtained through different planning agreements,
- (h) the delivery of public benefits,
- (i) procedures for negotiating and entering into planning agreements,
- (j) discharging a developer's obligations,
- (k) the monitoring, review and reporting on planning agreements.

### **1.2 Name of this policy**

This policy is called Woollahra Voluntary Planning Agreement Policy 2019.

### **1.3 Objectives of this policy**

The objectives of this policy are:

- (a) To establish the Council's policy on the use of planning agreements.
- (b) To provide a clear and transparent framework for the Council's use of planning agreements.
- (c) To ensure that the negotiation, preparation and implementation of planning agreements occurs in an open, fair, consistent and accountable manner.
- (d) To establish a probity framework for the negotiation, preparation and implementation of planning agreements.
- (e) To facilitate an arrangement which supplements the Council's development contributions system.
- (f) To facilitate flexibility in the provision of public benefits.
- (g) To facilitate the provision of public facilities and actions aligned with a public purpose and in keeping with the Council's corporate planning context.
- (h) To enable the provision of development contributions above those required to address the direct impact of a particular development on neighbouring land and the wider community.
- (i) To establish a method for negotiating planning agreements which allows for development contributions based on the concept of land value capture.



#### **1.4 Land to which this policy applies**

This policy applies to all land within the Woollahra Local Government Area.

This policy also applies to land outside the Woollahra LGA in the case of a joint planning agreement between the Council and another council or planning authority that deals with land not within the Woollahra LGA.

#### **1.5 When will this policy be used?**

This policy will be used in association with planning agreements, within their meaning under the Act and the Regulation, to which the Council is a party.

#### **1.6 What is a planning agreement?**

A planning agreement is defined in section 7.4(1) of the Act as:

A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer):

- (a) who has sought a change to an environmental planning instrument, or
- (b) who has made, or proposes to make, a development application or application for a complying development certificate, or
- (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

#### **1.7 Why use a planning agreement?**

Planning agreements may be used for a variety of reasons in order to achieve public benefits which are not ordinarily available through the planning and development system or are available in a restricted manner. Planning agreements –

- (a) provide a means for allowing the local community to share in the financial benefit obtained by a developer due to a change in planning controls or a consent to a development application,
- (b) provide a way for the local community to secure public benefits in addition to measures which are required to address the impact of development on private and public lands,
- (c) allow for a flexible means for achieving good development outcomes and targeted public benefits,
- (d) allow opportunities for more innovative and efficient provision of public benefits than might be realised under other means,
- (e) provide opportunities for the local community to participate in the quality and delivery of public benefits,

- (f) allow developers to have an input to the type, quality, timing and location of public benefits.

**1.8 When may the Council consider entering into a planning agreement?**

The Council may consider entering into a planning agreement where there will be an opportunity or likely requirement for a development contribution -

- (a) when a developer:
  - i. proposes to, or has made a request for a planning proposal seeking a change to Woollahra Local Environmental Plan 2014 to facilitate the carrying out of development, or
  - ii. proposes to, or has made, a development application or an application under section 4.55 of the Act to modify a development consent, or
  - iii. has entered into an agreement with, or is otherwise associated with, a person to whom (i) or (ii) applies, or
- (b) in the circumstances of an offer by a developer as set out in section 7.7(3) of the Act,

Section 7.7(3) states in part:

a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with:

- (a) the development application or application for a complying development certificate, or
- (b) a change to an environmental planning instrument sought by the developer for the purposes of making the development application or application for a complying development certificate,

Notwithstanding the above, the Council is not obliged to enter into a planning agreement with a developer.

Note: Clause 4.3 of this Policy explains when the Council may consider entering into a planning agreement for the purpose of land value capture.

**1.9 Types of development contributions authorised by a planning agreement**

Development contributions under a planning agreement can be:

- (a) monetary contributions,
- (b) the dedication of land free of cost,
- (c) any other material public benefit,
- (d) any combination of (a), (b) and (c).

Development contributions will be used for or applied towards a public purpose.

**1.10 Principles for using a planning agreement**

The Council's involvement in planning agreements is bound by the following principles:

- (a) Foremost, planning decisions will not be bought or sold through planning agreements.
- (b) The Council will never allow planning agreements to fetter the exercise of its statutory functions.
- (c) When considering a written request from an applicant for development consent made under clause 4.6(3) of Woollahra LEP 2014 seeking to justify the contravention of a development standard imposed by that or any other environmental planning instrument, the Council will not give weight to a planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, unless the planning agreement or draft planning agreement is relevant to one or more of the matters the Council is required to consider under clause 4.6(3) (a) or (b) or be satisfied about under clause 4.6(4) of Woollahra LEP 2014.
- (d) The Council will only use planning agreements for a proper planning purpose.
- (e) Council will not seek to negotiate or enter into a planning agreement that offers public benefits that are wholly unrelated to the particular development application or proposed change to Woollahra LEP 2014 which is the subject of the agreement.
- (f) The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering planning agreements.
- (g) The Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements.
- (h) The Council will not seek to negotiate or enter into a planning agreement which has the consequence of rendering a development proposal economically unviable.

### 1.11 Definitions

In this policy the following definitions apply.

**annual report** means the report prepared by the Council under section 428 of the *Local Government Act 1993*.

**contributions plan** means a contributions plan approved under section 7.18 of the Act

**Council** means Woollahra Council.

**corporate strategic planning context** includes the community strategic plan, delivery program and operational plan, resourcing strategy, local environmental plan and development contribution plans.

**developer** means a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument), or who has made or proposes to make a development application or an application under section 4.55 of the Act to modify a development consent, or who has entered into an agreement with or is otherwise associated with such a person.

**development** has the same meaning referred to in section 4 of the Act.

**development application** has the same meaning referred to in section 4 of the Act.

**development contribution** means the payment of a monetary contribution, the dedication of land free of cost or the provision of a material public benefit or any combination of them towards a public purpose.

**explanatory note** means a written statement prepared in accordance with clause 25E of the Regulation.

**land value capture** is a public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of the unearned increment to developers in land value increases arising from:

- (a) an amendment to Woollahra LEP 2014 which facilitates development, plus associated or consequential changes to Woollahra DCP 2015, or
- (b) the granting of a development consent or the approval of a modification of a development consent which allows development to exceed the otherwise permissible development controls under Woollahra LEP 2014 or another environmental planning instrument.

**material public benefit** means a benefit that is not a monetary contribution or the dedication of land, but is for a public purpose. A material public benefit does not need to be a physical work.

**Minister** means the Minister for Planning and Public Spaces.

**planning agreement** means a voluntary agreement referred to in section 7.4 of the Act. Section 7.4(1) states:

- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer):
  - (a) who has sought a change to an environmental planning instrument, or
  - (b) who has made, or proposes to make, a development application or application for a complying development certificate, or
  - (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies, under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

**planning benefit** means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.

**Practice Note** means the document titled *Planning Agreements within the Development Contributions Practice Note* issued by the NSW Department of Infrastructure Planning and Natural Resources on 19 July 2005, as may be amended.

**public benefit** is the benefit enjoyed by the public as a consequence of a development contribution.

**public facilities** mean public infrastructure, facilities, amenities and services.

**public purpose** includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

(Source: section 7.4(2) of the Act)

**residual land value** means the value of potential development on a site which may be achieved less all development costs and normal profit.

**the Act** means the *Environmental Planning and Assessment Act 1979*.

**the Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**VPA Officer** means the Council staff member who negotiates or coordinates the negotiation of the planning agreement.

**work in kind** means a work or action which replaces a monetary contribution in whole or in part.

## **1.12 Approval and commencement**

This policy was approved by Council on xx/xx/xxxx and commenced on xx/xx/xxxx.

## **1.13 Monitoring, reviewing and reporting**

The operation of this policy will be monitored, reviewed and reported to the Council periodically.

## **Part 2 Policy context**

### **2.1 Legislative framework**

This policy and the preparation, content and implementation of planning agreements have regard to and may be governed by:

- (a) the provisions of Subdivision 2 (Planning agreements) of Division 7.1 (Development contributions) of Part 7 (Infrastructure contributions and finance) of the Act,
- (b) the provisions of Division 1A (Planning agreements) of Part 4 (Development contributions) of the Regulation,
- (c) the section titled Planning Agreements within the *Development Contributions Practice Note* issued by the NSW Department of Infrastructure Planning and Natural Resources on 19 July 2005. The Practice Note is made for the purposes of clause 25B(2) of the Regulation.

The practice note is not legally binding. If there is any inconsistency between this policy and the Practice Note, this policy prevails.

Subdivision 2 of Division 7.1 of Part 7 of the Act sets out, amongst other matters:

- the definition of a planning agreement (s.7.4(1))
- the definition of a public purpose (s.7.4(2))
- the mandatory, minimum requirements for a planning agreement (s.7.4(3))
- the relationship of a planning agreement to the application of section 7.11 and section 7.12 of the Act (s.7.4(2, 3A, 5,6))
- the ability of the Council to enter into a joint planning agreement with another council of other public authority (s.7.4(8))
- limitations on the content of a planning agreement (s.7.4(9))

Division 1A of Part 4 of the Regulation sets out, amongst other matters:

- the form and subject matter of planning agreements (cl.25B)
- the signing and commencement of a planning agreement (cl.25C)
- amendment and revocation of a planning agreement (cl.25C)
- public notice requirements, including the timing of that notice in regard to a development application and a planning proposal (cl.25D)
- requirements for an explanatory note and the content of that note (cl.25E)
- requirements for the public inspection of planning agreements (cl.25F, 25G and 25H).

## **2.2 Development contribution context – relationship of a planning agreement to contribution plans and special infrastructure contributions**

This policy forms part of the Council's development contribution system.

The Council may impose a condition of consent to a development application or a complying development application requiring a development contribution under section 7.11 or the payment of a levy under section 7.12 of the Act (if consistent with the relevant contributions plan).

A planning agreement can be used in conjunction with or instead of a contributions plan in several ways. These can allow the Council and a developer to negotiate the delivery of public benefits in a manner that may normally be unavailable in a way a contributions plan allows or requires.

Sections 7.4 and 7.11 of the Act set out the manner in which a planning agreement can influence contributions and levies imposed as conditions of development consent. This



includes the ability of a planning agreement to wholly or partly exclude the application of section 7.11 or section 7.12 in respect of a development. However, this can only occur where the Council, as consent authority for the development, or the Minister is a party to the agreement.

Where the Council is the consent authority for development, the exclusion of section 7.11 or section 7.12 through a planning agreement will be a matter of negotiation between the Council and the developer on a case by case basis.

### **2.3 District plan framework**

Planning agreements can assist with the delivery of the directions and planning priorities outlined in the Eastern City District Plan which are set out under the umbrella of four themes drawn down from the Greater Sydney Region Plan – A Metropolis of Three Cities:

1. Infrastructure and collaboration
2. Liveability
3. Productivity
4. Sustainability

Liveability is a particularly important theme because it influences the quality of life that people experience. The creation and renewal of places, neighbourhoods and business centres are central objectives to improving liveability.

Improvements to liveability can occur through a variety of actions including providing:

- local infrastructure
- more and improved public spaces including better use of and access to those spaces
- well-connected places
- people-friendly, workable and safer streets, lanes and pathways that are accessible by people of all ages and abilities

In negotiating planning agreements and establishing the type of public facilities to be included in the agreement, all parties will take into consideration the relevant directions and planning priorities contained in the Eastern City District Plan.

### **2.4 Integrated planning framework**

Planning agreements can also be used to implement the projects, actions and services contained in the Council's integrated planning and reporting framework. The components of this framework are:

- The Community Strategic Plan.
- The combined Delivery Program and Operational Plan.
- A Resourcing Strategy, incorporating the Long Term Financial Plan, Asset Management Strategy and Workforce Management Plan.
- The Annual Report.

The integrated planning framework embraces the community vision and five themes identified in the Community Strategic Plan – *Woollahra 2030 Our community, our place, our plan*. They are:

1. Community well-being
2. Quality places and spaces
3. A healthy environment
4. Local prosperity
5. Community leadership and participation

Some of the things valued by the Woollahra community within these themes are:

***Community well-being***

- Community facilities, activities and events
- Activities for young people
- Support for healthy aging and activities to engage seniors and isolated people in our community
- Programs and services that are inclusion of people with disabilities
- Quality library services
- A safe community

***Quality places and streets***

- Retention and enhancement of the village atmosphere throughout the area, offering a good range of shops and services
- Protection of local history, heritage values and buildings
- No inappropriate high rise and oversize development
- Quality design of new developments
- Retention of local urban character
- Sustainable development
- Renewed and upgraded infrastructure, especially footpaths, pedestrian ramps, kerb, guttering, stormwater drainage and local roads
- Reduced traffic congestion
- Improved parking
- Good public transport
- Good access to the city, harbour, beaches and facilities
- Good pedestrian and bicycling access
- Well-managed trees in streets and parks
- Well-maintained foreshores, beaches, parks, sports fields and recreation areas
- Local parks and green open spaces
- Trees and leafy green streetscapes that are well maintained
- Children's play areas and playgrounds
- An environment with less graffiti
- A clean and well maintained environment

***A healthy environment***

- Environmental monitoring and protection
- Environmentally sustainable initiatives
- Retention of bushland and bush regeneration
- A commitment to sustainable waste management
- Reduced water pollution and improved stormwater drainage
- A commitment to responsible management of biodiversity
- Good street cleaning, recycling and waste collection

***Local prosperity***

Enhancement and revitalisation of our shopping areas

***Community leadership***

- Information on Council activities
- Council being responsive to the community
- Opportunities for community engagement and participation and involvement in Council's planning and decision making

There is an important role for planning agreements in facilitating the delivery of actions, projects and services which align with the Council's integrated planning framework and the community's vision and values.

In particular, planning agreements can assist with the delivery of infrastructure in a timely manner. Such infrastructure may be nominated in the Council's Resourcing Strategy, (notably in asset management plans), the Operational Plan, strategic plans, public domain plans or may be identified as a consequence of a planning proposal or development application.

In negotiating planning agreements and establishing the type of public facilities to be included in the agreement, all parties will take into consideration the Council's integrated planning framework and proposed infrastructure which may be identified in the plans and strategies mentioned above.

**2.5 Local planning context**

The local statutory planning instrument applying to land within the Woollahra LGA is Woollahra Local Environmental Plan 2014.

Woollahra LEP 2014 is used in association with Woollahra Development Control Plan 2015. Changes to Woollahra LEP 2014 may require consequential changes to Woollahra DCP 2015 to facilitate appropriate development of land.

**Part 3 Preparing a planning agreement**

**3.1 Probity**

The Council is committed to fairness, equity and ethical behaviour in the care, control and management of the Woollahra LGA and in the administration of this policy. To this end, the following practices will apply:

- (a) Roles and responsibilities within the processes for a planning agreement, a planning proposal and a development application will be managed to ensure transparency, impartiality and accountability and to avoid conflicts of interest. This will generally include separation of roles and responsibilities.
- (b) Commercial and financial information will be treated as confidential material.

Depending on the type of planning agreement and the Council's involvement, the Council may engage a probity expert for advice and assistance with the agreement. Costs associated

with this service will be shared between the Council and the other parties associated with the agreement.

### **3.2 Negotiating a planning agreement**

#### **3.2.1 Who will negotiate?**

In any planning agreement the Council acts as a regulatory and planning authority and, in most cases, as a stakeholder and asset manager. This policy acknowledges those roles and seeks to separate them in order to ensure probity. Therefore, in negotiating a planning agreement the following arrangements regarding negotiation will be practiced:

- (a) A Council staff member who meets probity requirements, particularly in regard to separation of roles, will be responsible for negotiating or co-ordinating the negotiation of a planning agreement with a developer or their representative. This staff member will be referred to as the VPA Officer.
- (b) Councillors will not participate in negotiations with a developer or their representatives but will have a role in:
  - i. endorsing a draft planning agreement and explanatory note for exhibition purposes,
  - ii. endorsing an offer to enter into a planning agreement,
  - iii. approving a planning agreement.
- (c) Where negotiations occur in regard to land that is not owned by the developer, the written approval of the land owner authorising the developer to act on their behalf must be provided to the Council at the commencement of negotiations. This requirement applies to land which is the subject of the development application or planning proposal and other land which may be part of negotiations.
- (d) The developer is required to disclose all third party interests in the land or lands that are the subject of negotiations. The written consent of those parties must be provided at the commencement of negotiations.

The above negotiation arrangements will also apply to an offer from a developer in regard to a future planning agreement.

#### **3.2.2 When should negotiations commence?**

The Council prefers that negotiations for a planning agreement commence before the lodgement of a development application or a request for a planning proposal is made. Negotiations can commence as part of a formal pre-development application or pre-planning proposal meeting.

#### **3.2.3 Reporting and decision making**

Throughout the planning agreement process, reports will be provided to committees of the Council and recommendations from those committees will be considered by the Council. Reports will also be presented to the Woollahra Local Planning Panel (LPP), as required by directions issued by the Minister, or to the Sydney Eastern City Planning Panel.

The tables below set out those steps in the process for preparing and approving planning proposals which involve reports to Council committees, decisions of the Council and reports to external planning panels. The tables do not show the full process for preparing a planning agreement.

All committee and Council meetings and meetings of the Woollahra LPP and Sydney Eastern City Planning Panel are open to the public.

<b>Planning proposal with draft planning agreement or offer for a planning agreement</b>		
<b>Step in process</b>	<b>Committee or panel report</b>	<b>Council decision required</b>
Assessment of draft planning agreement and explanatory note or written offer by VPA Officer.	Report to Council committee - VPA Officer reports on draft agreement and explanatory note or written offer.	Yes
Assessment of request for planning proposal by Strategic Planner.	Report to Council committee - Strategic Planner reports on request for planning proposal.  Both reports are considered by the same committee and at the same committee meeting. Both recommendations from the committee are considered by the Council at the same time.	Yes
Advice from Woollahra Local Planning Panel on request for planning proposal.	Report to Woollahra LPP - Strategic Planner reports on request for planning proposal.	N/A
Consideration of WLPP advice.	Report to committee - Strategic Planner reports on advice.	Yes
After public exhibition of planning proposal and draft planning agreement or written offer.	Report to committee – VPA Officer reports on exhibition of draft planning agreement or written offer and submissions received.  Report to committee – Strategic Planner reports on exhibition of planning proposal and submissions received.  Both reports are considered by the same committee and at the same committee meeting. Both recommendations from the committee are considered by the Council at the same time.	Yes  Yes

<b>Development application with draft planning agreement or offer for a planning agreement</b>		
<b>Step in process</b>	<b>Committee or panel report</b>	<b>Council decision required</b>
After public exhibition of development application and draft planning agreement or written offer.	Report to committee – VPA Officer reports on exhibition of draft planning agreement or written offer and submissions received. A supplementary report from a Development Control Assessment Officer on the merit of the development application is attached.	Yes
After public exhibition of development application and draft planning agreement or written offer.	Report to Woollahra LPP or Sydney Eastern City Planning Panel as required – Development Control Assessment Officer reports on exhibition and assessment of development application. Council’s decision on draft planning agreement or written offer is provided in report to Panel. Relevant conditions of consent are included in recommendation.	N/A

### **3.3 Who will prepare a planning agreement?**

Unless otherwise determined between the parties, the developer will be responsible for drafting the planning agreement or the offer to enter into a planning agreement. This will be confirmed at the outset of negotiations.

The developer must use the Council’s template for a planning agreement or the offer. This document will then be provided to the VPA Officer as a draft planning agreement or a draft offer for review. When submitting the planning agreement or offer, the developer must justify any changes to the template.

The explanatory note, which must be exhibited with a planning agreement, is to be prepared jointly by the developer and the VPA Officer.

### **3.4 Acceptability of a planning agreement**

The Council will consider the following matters when determining the acceptability of a planning agreement.

The planning agreement must:

- (a) provide for development contributions which can be used for or applied towards a public purpose,



- (b) satisfy the statutory requirements for planning agreements contained in the Act and the Regulation,
- (c) be directed towards proper or legitimate planning purposes which can be identified from planning controls and other adopted planning policies applying to development,
- (d) produce outcomes that meet the general values and expectations of the public and protect the overall public interest,
- (e) not be put in place outside the planning system to secure contributions that are wholly unrelated to development or that make development unacceptable,
- (f) provide for a reasonable means of achieving the purposes and outcomes of the agreement and securing the benefits sought from the agreement,
- (g) protect the community against unreasonable, adverse environmental impacts,
- (h) satisfy the principles for using a planning agreement contained in this policy,
- (i) be consistent with the Council's integrated planning framework and corporate strategic planning context,
- (j) not be in conflict with another planning agreement applying to the relevant land.

### **3.5 Acceptability of land to be dedicated**

In deciding whether land to be dedicated is acceptable, the Council will consider, where relevant, matters including:

- (a) the monetary value of the land,
- (b) the dimensions, location and topography of the land,
- (c) the current use and improvements on the land,
- (d) factors affecting the usability of the land, including soil condition, accessibility, solar access and relationship with existing public facilities,
- (e) ongoing costs to Council, and
- (f) works proposed to be undertaken by the applicant.

### **3.6 Acceptability of a material public benefit**

In deciding whether a material public benefit is acceptable, the Council will consider, where relevant, matters including:

- (a) the monetary value of the benefit,
- (b) what needs of the community would be satisfied,

- (c) the financial implications for the Council,
- (d) the timing of completion of works or the delivery of the benefit, and
- (e) future recurrent costs associated with the benefit.

### **3.7 Acceptability of an offer by a developer**

Criteria used in clauses 3.4 to 3.6 will also be used in a situation where a developer makes an offer which sets out the terms of a planning agreement and the Council is considering imposing a condition of development consent requiring a planning agreement.

### **3.8 Amending or revoking a planning agreement**

The Council and the developer may negotiate the amendment or revocation of a planning agreement.

A planning agreement may be amended or revoked by a further agreement in writing signed by representatives of the Council and the developer.

An amendment of a planning agreement may need to be negotiated where a development application linked to the agreement is modified under section 4.55 of the Act and the modification has a bearing on development contributions.

Negotiation of an amendment or revocation will be carried out by the VPA Officer.

Amendment or revocation of a planning agreement must follow the statutory requirements contained in the Act and the Regulation. The amendment and revocation will be endorsed by a decision of the Council.

### **3.9 Valuation of development contribution or offer**

The monetary value of a development contribution or an offer by a developer comprising land to be dedicated or a material public benefit is to be determined prior to a draft planning agreement being publicly notified.

The valuation is to be determined by a qualified land valuer in the case of land to be dedicated and a qualified quantity surveyor in the case of a material public benefit.

Where the developer engages a valuer or surveyor to provide the valuations, the Council will engage an independent valuer or surveyor to verify the valuations. The cost is to be borne by the developer.

The developer and the Council may agree that an independent valuer or surveyor, or both, be engaged to provide valuations. Appointment of the agreed valuer or surveyor will be made by the VPA Officer. All costs will be borne by the developer.

### **3.10 Costs**

The costs for preparing, executing, stamping and registering the planning agreement are to be met by the developer.

The Council's costs in negotiating, assessing, reviewing, administering and enforcing the planning agreement will be met in part or full by the developer depending on the circumstances.

The Council's costs may be related to matters and actions including the use of independent consultants, legal advice, notification and advertising, and Council staff preparation and administration time.

The planning agreement will include provision for the payment of costs by the developer and the Council.

Costs incurred by the Council will be payable by the developer at particular stages of the process.

The developer will pay a security deposit as set by the Council's fees and charges for meeting the Council's costs. The security deposit will be paid at the time of submitting the draft planning agreement and explanatory note or the offer.

## **Part 4 Form and content of a planning agreement**

### **4.1 Statutory requirements**

The Act and Regulation set out the statutory requirements governing the form and content of a planning agreement and the mandatory process in its preparation, including steps for public notification and the requirement for explanatory notes. Details contained in the Act and Regulation are supplemented by the Practice Note.

This policy adopts the requirements and processes contained in the Act, the Regulation and the Practice Note.

### **4.2 Template planning agreement**

A planning agreement will be in writing and will be based on the Council's template. The final content of the agreement will be subject to the outcome of negotiations between the responsible Council officer and the developer and any decision of the Council.

Clauses 4.3 to 4.12 explain the Council's policy on certain standard matters that are required in a planning agreement and other matters that may be included depending on the nature of the agreement.

### **4.3 Land value capture**

For the purposes of this policy, land value capture is a public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of the unearned increment to developers in land value increases arising from:

- (a) an amendment to Woollahra LEP 2014 which facilitates development, plus associated or consequential changes to Woollahra DCP 2015, or

- (b) the granting of a development consent or the approval of a modification of a development consent which allows development to exceed the otherwise permissible development controls under Woollahra LEP 2014 or another environmental planning instrument.

Land value capture is distinguishable from development contribution mechanisms under section 7.11 and section 7.12 of the Act. Land value capture focusses on value sharing between the Council on behalf of the community and developers in order to provide public benefits rather than on financing the costs to the Council of addressing particular impacts of development on public facilities.

The Council will seek opportunities to negotiate a planning agreement which includes a land value capture component.

The formula for calculating a monetary contribution associated with value capture has regard to a residual land valuation process and is provided below.

$$C = \frac{RLV(2) - RLV(1)}{2}$$

C = Monetary contribution

RLV (2) = Residual land value of a site following:

- (a) a change to a statutory planning control in Woollahra LEP 2014 plus associated or consequential changes to Woollahra DCP 2015, or
- (b) a non-compliance with planning controls which is acceptable to the consent authority,

which in both cases allow intensified development.

RLV (1) = Residual land value of a site under the existing Woollahra LEP 2014 and Woollahra DCP 2015 provisions.

The developer will be required to provide the Council with sufficient details, costs and valuations to determine a realistic figure for the residual land values under the existing and altered statutory planning controls. Documentation provided to the Council is to be verified by a certified practicing valuer or a qualified and experienced land economist or both if necessary.

The VPA Officer may engage an independent land economist and other specialists to review information provided by the developer. Costs incurred by the Council will be met by the developer.

Proposed changes to Woollahra LEP 2014 contained in the planning proposal may be amended following the public consultation stage. In that case, further negotiations regarding the land value capture component of the planning agreement may occur having regard to

changes in development potential and viability. Consequential amendments to the planning agreement may occur.

In negotiating a planning agreement which includes a land value capture component, the Council may vary the development contribution, including the monetary contribution, having regard to the effect of the contribution on:

- (a) the economic viability of a proposed development on the site,
- (b) the particular attributes, conditions or location of the site,
- (c) the type of a proposed development,
- (d) other circumstances that are identified.

#### **4.4 Timing the delivery of development contributions**

A planning agreement will specify the time at which a development contribution must be paid or provided.

Where the planning agreement is associated with a development application, a monetary contribution should be provided prior to an occupation certificate being issued. In other cases, the timing for the payment of a monetary contribution will be negotiated. The delivery of a development contribution other than a monetary contribution will be negotiated with regard to its nature and purpose.

A planning agreement may contain a provision allowing the deferral, periodic payment or staging of a development contribution. In such cases, a provision allowing the adjustment of the contribution value may be included in the agreement.

#### **4.5 Recurrent funding**

A planning agreement may include a provision relating to the payment of a monetary contribution towards recurrent costs associated with a public purpose.

#### **4.6 Adjustment of development contributions**

A planning agreement which includes the payment to the Council of a monetary contribution under section 7.11 or a levy under section 7.12 of the Act, imposed as a condition of consent to a development application or a complying development application, may include a provision which adopts the indexation of that contribution or levy using the method contained in the relevant Woollahra contributions plan.

A planning agreement which requires a development contribution associated with land value capture will contain a provision which enables the Council to review the value of the contribution at the time it is required to be paid.

#### **4.7 Pooling of development contributions**

A planning agreement which requires the payment of a monetary contribution may include a provision which allows money to be pooled with funds obtained from other planning agreements and contributions plans and to be used for public purposes identified in those agreements and plans.

#### **4.8 Implementation of a material public benefit**

A planning agreement may include provision for the Council and a developer to enter into a separate contractual arrangement relating to the delivery of a material public benefit.

The Council and the developer will maintain the confidentiality of such an arrangement where sensitive commercial information is involved.

#### **4.9 Security/enforcement of a planning agreement**

A planning agreement will include a provision relating to the enforcement of obligations set out in the agreement. An appropriate type of security will be negotiated as part of the planning agreement and will be aligned with the type of contribution such as a monetary contribution, land dedication or a work in kind. The type of security will also be aligned with different circumstances that might apply with the delivery of the particular contribution and the existing and future tenure of land. Types of security may include bonds and bank guarantees and a pre-acquisition agreement in the case of land dedication.

#### **4.10 Dispute resolution**

A planning agreement will include a provision for the mediation of disputes. Should it be necessary to enter into dispute resolution, each party will bear their own costs.

#### **4.11 Assignment and dealings by the developer**

A planning agreement will include a provision requiring the Council's prior consent to:

- (a) the sale or transfer of the land which is the subject of the agreement,
- (b) the assignment of the developer's rights and obligations under the agreement to a third party, or
- (c) any novation of the agreement.

#### **4.12 Registration of a planning agreement**

A planning agreement should include a provision requiring the registration of the agreement on the title of the land to which the agreement applies.

Before the registration occurs, the developer is required to provide written evidence that all persons to whom consent is necessary to register the agreement on the title of the land, including the landowner and other parties with a registered interest in the land, provide their consent for the registration to occur.

The costs of registering the planning agreement on the title of the land are to be borne by the developer.

Registration of a planning agreement ensures that the developer's obligations run with the land to which the agreement relates and binds future landowners.



## **Part 5 Implementation and management**

### **5.1 Annual report**

The Council will provide details in its annual report of all planning agreements that are in force during the year. The details will include particulars of compliance with and the effect of the planning agreements.

### **5.2 Planning agreement register**

The Council will establish and maintain a planning agreement register. The register will:

- (a) contain all planning agreements, with any amendments, that apply to the Woollahra LGA, including those to which the Council is not a party but which have been provided to the Council under the Act
- (b) contain the relevant information required by the Act and the Regulation
- (c) be available for public inspection free of charge during the ordinary office hours of the Council

### **5.3 Monitoring the planning agreement**

Depending on the nature of the agreement and the type of public benefits, Council will monitor the agreement to ensure it is operating effectively and that the developer's obligations are being met.

This may require the developer to report at specified times to the Council.

Where the Council needs to engage experts or other personnel to assist with the monitoring, the costs will be borne by the developer.

### **5.4 Discharging of developer's obligations**

Upon completion of all the developer's obligations in the planning agreement to the Council's satisfaction, Council will upon request provide a letter of discharge to the developer.

**Political Donations: Matters to be considered by Councillors at Council and/or Committee Meetings**

