

**Amendment to Woollahra LEP 1995: Definition of Height and Existing Ground Level**

Proposal Title : **Amendment to Woollahra LEP 1995: Definition of Height and Existing Ground Level**

Proposal Summary : **The planning proposal aims to redefine the definitions of "Height" and "Existing Ground Level" within the Woollahra Local Environmental Plan 1995 (WLEP 1995). The planning proposal adopts the Standard Instrument Local Environmental Plan definitions.**

PP Number : **PP\_2013\_WOOLL\_001\_00**      Dop File No : **13/01452**

**Proposal Details**

Date Planning Proposal Received : **07-Jan-2013**      LGA covered : **Woollahra**

Region : **Sydney Region East**      RPA : **Woollahra Municipal Council**

State Electorate : **VAUCLUSE**      Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

**Location Details**

Street :

Suburb :      City :      Postcode :

Land Parcel : **Woollahra LGA**

**DoP Planning Officer Contact Details**

Contact Name : **Sandy Shewell**

Contact Number : **0292286436**

Contact Email : **Sandy.Shewell@planning.nsw.gov.au**

**RPA Contact Details**

Contact Name : **Anne White**

Contact Number : **0293917086**

Contact Email : **anne.white@woollahra.nsw.gov.au**

**DoP Project Manager Contact Details**

Contact Name :

Contact Number :

Contact Email :

**Land Release Data**

Growth Centre : **N/A**      Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Metro East subregion**      Consistent with Strategy : **Yes**

## Amendment to Woollahra LEP 1995: Definition of Height and Existing Ground Level

MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :			

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

### Supporting notes

Internal Supporting Notes : **Woollahra Council has recently received legal advice that its traditional interpretation of its 'height' and 'existing ground level' definitions is incorrect.**

**Council's advice is that the provisions of Woollahra LEP 1995 allow the definitions of 'height' and 'existing ground level' to be interpreted to enable the height of buildings to be measured from the natural ground level, prior to development (rather than the existing ground level). This interpretation effectively enables the height of buildings to be raised.**

**Council is concerned that the new interpretation may result in undesirable planning outcomes. In order to address this issue, Council proposes to adopt the Department's Standard Instrument LEP definition for height.**

External Supporting Notes : **Woollahra Council has accepted the Minister's offer to delegate his plan-making functions under the EP&A Act. Council is seeking delegation to carry out the Minister's functions under section 59 of the EP&A Act to progress this planning proposal. Delegation will be to the position of General Manager and sub-delegated to the position of Director Planning and Development. The relevant evaluation criteria are attached to this proposal.**

## Adequacy Assessment

### Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The planning proposal applies to all land within the Woollahra Local Government Area.**

**Council's objective is to provide certainty when measuring building height in WLEP 1995. The planning proposal adopts the Department's Standard Instrument LEP definition to prevent unintended planning outcomes.**

### Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The proposed outcome will be achieved by Amending Schedule 1 in WLEP 1995 by:-**

**1. Deleting the existing definition of "height" and adopting the definition contained in the Standard Instrument Local Environmental Plan; and**

## Amendment to Woollahra LEP 1995: Definition of Height and Existing Ground Level

2. Deleting the existing definition of "existing ground level" and adopting the definition contained in the Standard Instrument Local Environmental Plan.

### Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

\* May need the Director General's agreement

**1.1 Business and Industrial Zones**

**3.1 Residential Zones**

**3.4 Integrating Land Use and Transport**

**4.1 Acid Sulfate Soils**

**4.3 Flood Prone Land**

**6.1 Approval and Referral Requirements**

**7.1 Implementation of the Metropolitan Plan for Sydney 2036**

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **N/A**

e) List any other matters that need to be considered :

**The planning proposal highlights compliance with the following S.117 directions.**

**Business and industrial zones**

**Consistent. Planning proposal seeks to introduce the SI definition of 'height' and 'ground level' to ensure there is a consistent approach to measuring building height in business zones**

**Residential zones**

**Consistent. Planning proposal seeks to introduce the SI definition of 'height' and 'ground level' to ensure there is a consistent approach to measuring building height in residential zones**

**Integrating land use and transport**

**Consistent. Planning proposal seeks to introduce the SI definition of 'height' and 'ground level' to ensure there is a consistent approach to measuring building height.**

**Acid sulfate soils**

**Consistent. Planning proposal seeks to introduce the SI definition of 'height' and 'ground level' to ensure there is a consistent approach to measuring building height.**

**Flood prone land**

**Consistent. Planning proposal seeks to introduce the SI definition of 'height' and 'ground level' to ensure there is a consistent approach to measuring building height.**

**Approval and referral requirements**

**Consistent. Planning proposal seeks to introduce the SI definition of 'height' and 'ground level' to ensure there is a consistent approach to measuring building height.**

**Implementation of the Metropolitan Plan for Sydney 2036**

**Consistent. Planning proposal seeks to introduce the SI definition of 'height' and 'ground level' to ensure there is a consistent approach to measuring building height.**

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

### Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

**The proposed amendment relates only to the written instrument of Woolahrah LEP 1995 and will apply to the entire LGA. No mapping is required.**

## Amendment to Woollahra LEP 1995: Definition of Height and Existing Ground Level

### Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **It is recommended that the planning proposal be exhibited for 14 days. Public notification of the exhibition will comprise:-**

1. a weekly notice in the local newspaper for the duration of the exhibition period; and
2. a notice on Council's website

**As this is a local matter, Council does not propose consultation with State and Commonwealth agencies.**

### Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

### Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

## Proposal Assessment

### Principal LEP:

Due Date : **December 2013**

Comments in relation to Principal LEP : **The proposal is consistent with the definitions of "height" and "existing ground level" in the Standard Instrument Local Environmental Plan.**

### Assessment Criteria

Need for planning proposal : **The planning proposal results from recent legal advice which provided a new interpretation of the height standard in the WLEP 1995. The legal advice indicates that the provisions of WLEP 1995 allow the definitions of 'height' and 'existing ground level' to be interpreted in such a way as to enable the height of buildings to be measured from the natural ground level, prior to development (rather than the existing ground level). This interpretation effectively enables the height of buildings to be raised. Council is concerned that this new interpretation may result in undesirable planning outcomes.**

**The planning proposal indicates that the legal advice received by Council is confidential and has requested that this advice not be made public. Advising that the legal advice is confidential within the planning proposal document is not preferred and the gateway determination is conditioned to remove any reference to the confidentiality of the legal advice. It is considered that the planning proposal adequately describes what the legal advice contains.**

**It is anticipated that the new Principal LEP based on the Standard Instrument will not commence until the end of 2013. Council considers the adoption of the Standard Instrument definitions a matter of urgency and therefore it is not appropriate to address this matter as part of the Principal LEP.**

**Amendment to Woollahra LEP 1995: Definition of Height and Existing Ground Level**

Consistency with strategic planning framework :

The proposal is consistent with the definitions of "height" and "existing ground level" in the Principal Local Environmental Plan. It is considered that the planning proposal is consistent with the objectives and actions contained in the Sydney Metropolitan Strategy and the Draft East Subregional Strategy.

The proposal also reflects Council's Delivery Program and Operational Plan 2012-2013: Goal 4 - Well planned neighbourhoods.

Environmental social economic impacts :

The proposal is not likely to adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats. The proposal is not likely to have any other environmental effects.

There are no negative social or economic impacts. The planning proposal will provide certainty to both applicants and the community as to the manner in which building height will be measured.

**Assessment Process**

Proposal type : **Consistent** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 Month** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) :

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

**No internal consultation required**

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

**Documents**

Document File Name	DocumentType Name	Is Public
Heights and Ground Level_12 12 21 _Letter to DoPI requesting gateway determination.pdf	Proposal Covering Letter	Yes
Heights and Ground Level_12 12 21_Planning proposal.pdf	Proposal	No
Heights and Ground Level_ A2_Evaluation criteria for the delegation of plan making funct.pdf	Determination Document	No

## Amendment to Woollahra LEP 1995: Definition of Height and Existing Ground Level

Heights and Ground Level_A3_CI resolution 10 12 12 UPC report 26 11 12.pdf	Determination Document	No
Heights and Ground Level_A4_CI resolution 26 11 12 UPC report 12 11 12.pdf	Determination Document	No

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:           **1.1 Business and Industrial Zones**  
                                     **3.1 Residential Zones**  
                                     **3.4 Integrating Land Use and Transport**  
                                     **4.1 Acid Sulfate Soils**  
                                     **4.3 Flood Prone Land**  
                                     **6.1 Approval and Referral Requirements**  
                                     **7.1 Implementation of the Metropolitan Plan for Sydney 2036**

Additional Information :   **It is recommended that the planning proposal proceed, subject to the following conditions:**

- 1. The planning proposal be publicly exhibited for a period of not less than 14 days.**
- 2. The planning proposal is to be finalised within 6 months from the date of the gateway determination.**
- 3. Council amends the Introduction of the planning proposal to remove any reference to confidential legal advice prior to its public exhibition.**

Supporting Reasons :   **The planning proposal will allow the adoption of clearer definitions for height of buildings and is consistent with the Standard Instrument LEP.**

**Council proposes to progress the planning proposal under delegation. The matter is considered to be of local significance and the use of Council's delegation is supported.**

Signature:



Printed Name:



Date:

