PLANNING PROPOSAL

LEP ERRATUM
RECLASSIFICATION OF LOT 6 DP 12264, BEING LAND IN ANDERSON STREET, DOUBLE BAY

November 2010

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1. Introduction

This planning proposal has been prepared for the purpose of correcting an inconsistency between the description of land in the written instrument of Woollahra LEP 1995 (Amendment No.49) and the land shown on the instrument's associated map. The inconsistency has occurred due to formatting changes carried out by the Parliamentary Counsel.

The planning proposal has generally been prepared in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* and the relevant Department of Planning guidelines titled *A Guide to Preparing Local Environmental Plans* (2009) and *A Guide to Preparing Planning Proposals* (2009). However, as the planning proposal seeks only to correct an obvious omission of details from a local environmental plan which has been prepared and made under previous provisions of the Act, a full planning proposal has not been prepared.

2. Background

Amendment No.49 was prepared to take up matters deferred from Woollahra LEP 1995 (Amendment No.8). Amendment No.49 dealt with the reclassification of public lands in Double Bay and was gazetted on 31 October 2003 (**attachment 1**). The gazetted copy does not include a map, which is the custom. However, the Minister's signed copy, dated 19 October 2003, does include a map (**attachment 2**). Amendment 49 inserted a description of additional public lands within Schedule 4, Part 1 of Woollahra LEP 1995 (**attachment 3**).

The typographical error occurs in clause 3 and schedule 1 of the LEP. The written description of the land shown in clause 3 and schedule 1 of the LEP omits reference to Lot 6 DP 12264. However, the classification map clearly shows Lot 6 DP 12264 within the shaded land to which the plan applies. The error is carried into Schedule 4, Part 1 of Woollahra LEP 1995.

The Council's file shows that the draft LEP was referred to the Department in a letter dated 25 June 2003 (**attachment 4**). The purpose of the letter was to obtain the Parliamentary Counsel's opinion and Minister's approval. The letter included reference to public consultation and a public hearing. The draft LEP written instrument prepared by the Council and submitted with the letter included reference to Lot 6 DP 12264. The accompanying classification map shows Lot 6 DP 12264 as part of the land to which the LEP applies.

Since gazettal of Amendment No.49, no land use changes or redevelopment of the lands have occurred. The error has been identified now in the course of preparing new planning controls for lands which include properties covered by Amendment No.49. These controls will replace outdated provisions introduced as part of a previous master planning exercise. The new controls will guide a substantial redevelopment proposal comprising a supermarket, public library, car parking, and commercial and retail floor space.

Due to the discrepancy between the LEP written instrument and the map, it is questionable whether Lot 6 DP 12264 has been reclassified to operational land. The classification of the land is an important aspect in the future management options for the public lands which form part of redevelopment proposal.

3. Site identification

The land to which the planning proposal applies is Lot 6 Deposited Plan 12264. A location map is provided in **attachment 5**.

4. Objective of planning proposal

The objective of the planning proposal is to correct an error in Schedule 4, Part 1 of Woollahra LEP 1995.

5. Explanation of provisions

The objective of the planning proposal will be achieved by inserting the matter "Lot 6 DP 12264 and" before the matter "Lot 7 DP 12264" in Part 1 of Schedule 4 of Woollahra LEP 1995 (**attachment 6**).

6. Justification

The planning proposal seeks only to correct an error in the written instrument arising from the omission of text when the draft LEP was reformatted by the Parliamentary Counsel. Reinstatement of text in the written instrument will remove an obvious inconsistency between the written instrument and the map.

7. Community consultation

No consultation is proposed. Community consultation was carried out for the deferred matter when it was initially part of Woollahra LEP 1995 (Amendment No.8). The consultation included a public hearing. Further consultation was carried out when Woollahra LEP 1995 (Amendment No.49) was being prepared.

Attachment 1
Woollahra LEP 1995 (Amendment No.49) – gazetted written instrument dated 31 October 2003

Attachment 2
Woollahra LEP 1995 (Amendment No.49) – Minister's signed copy dated 19 October 2003

Attachment 3
Schedule 4 – Woollahra LEP 1995

Attachment 4
Letter to Planning NSW dated 25 June 2003

Attachment 5
Lot 6, DP 12264 – location map

Attachment 6
Schedule 4 Woollahra LEP 1995 – with amendment to Part 1

New South Wales

Woollahra Local Environmental Plan 1995 (Amendment No 49)

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (S03/01816/PC)

DIANE BEAMER, M.P.,
Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)

Woollahra Local Environmental Plan 1995 (Amendment No 49)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Woollahra Local Environmental Plan 1995 (Amendment No 49)*.

2 Aims of plan

The aims of this plan are:

(a) to reclassify the public land to which this plan applies from community to operational land within the meaning of the *Local Government Act 1993*, and

(b) to provide Woollahra Council with flexible management options for the land.

3 Land to which plan applies

This plan applies to:

(a) Lot 1, DP 507107, Lot 1, DP 509113, Lot 1, DP 502206, Lot 1, DP 508776, Lot 81, DP 774685 and Lot 9, DP 12264, known as the Kiaora Lane Car Park, Double Bay, and

(b) Lot 4, DP 12264 and Lot 5, DP 12264, known as the Anderson Street Car Park, Double Bay, and

(c) Lot 7, DP 12264, known as the former Telecom site, Double Bay, and

(d) Lot 1, DP 68509, known as No 1 Kiaora Road, Double Bay,

as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No 49)—Classification Map" deposited in the office of Woollahra Council.

4 Amendment of Woollahra Local Environmental Plan 1995

Woollahra Local Environmental Plan 1995 is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 4)

Schedule 4 Classification and reclassification of public land as operational land

Insert at the end of Part 1 of the Schedule:

Lot 1, DP 507107, Lot 1, DP 509113, Lot 1, DP 502206, Lot 1, DP 508776, Lot 81, DP 774685 and Lot 9, DP 12264, known as the Kiaora Lane Car Park, Double Bay, Lot 4, DP 12264 and Lot 5, DP 12264, known as the Anderson Street Car Park, Double Bay, Lot 7, DP 12264, known as the former Telecom site, Double Bay and Lot 1, DP 68509, known as No 1 Kiaora Road, Double Bay, as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No 49)—Classification Map".

New South Wales

Woollahra Local Environmental Plan 1995 (Amendment No 49)

under the

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Diane Beamer

Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)

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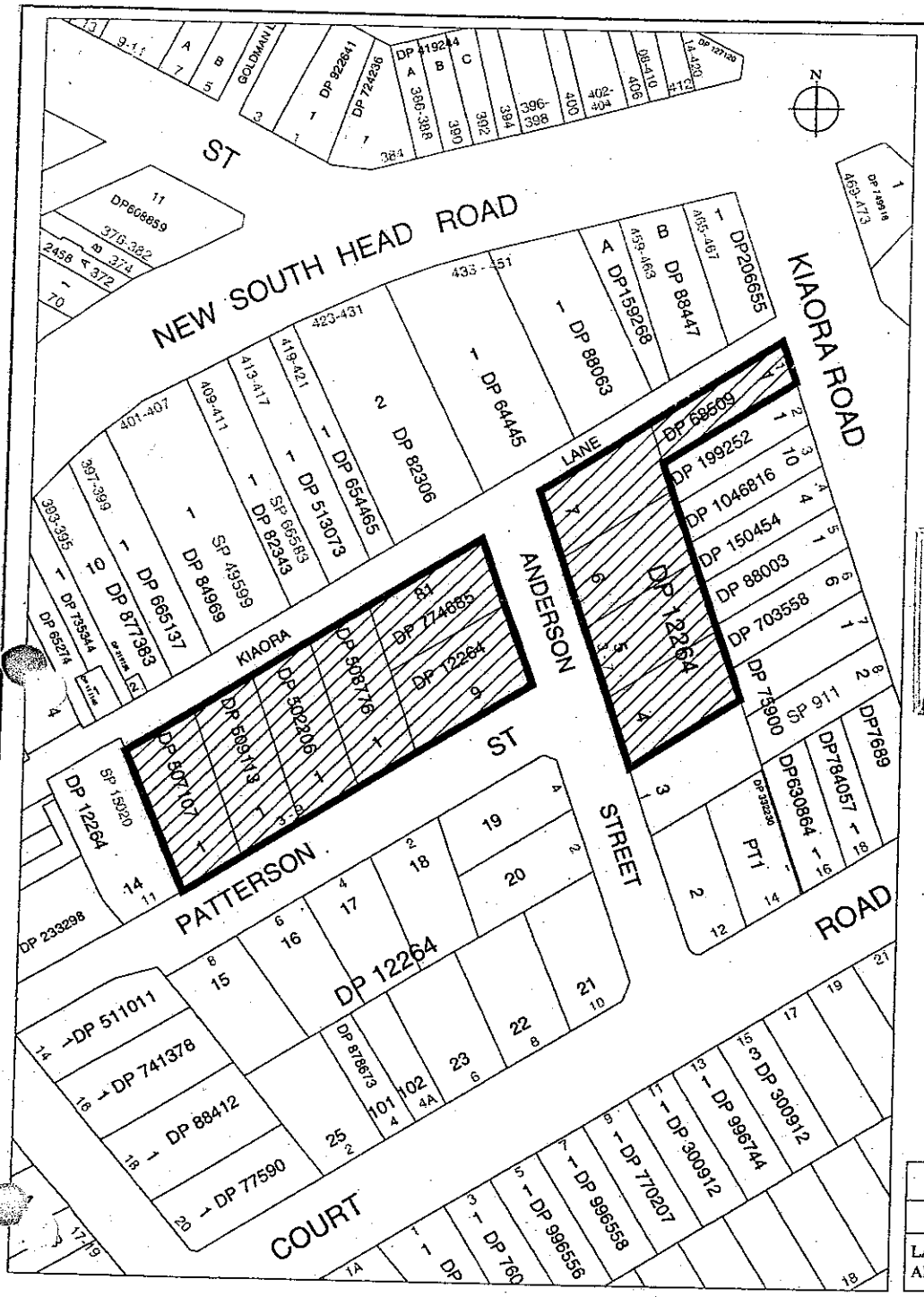

Approved 19/10/03.
Diane Beamer
Minister

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GENERAL
LAND TO WHICH THIS PLAN APPLIES

Locality of Double Bay

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995
(AMENDMENT NO. 49) - CLASSIFICATION MAP

DRAWN BY	Scott Pedder	DATE 20 June 2003	**STATEMENT OF RELATIONSHIP WITH OTHER PLANS**
SUPERVISING DRAFTPERSON	Chris Bluett	DATE 20 June 2003	Amends Woollahra Local Environmental Plan 1995 in the manner set out in clause 4.
PLANNING OFFICER	Chris Bluett	20 June 2003 DATE	
FILE No. CCL.	1064.G (Amendment 49)	DEPT Strategic Planning	**PUBLISHED IN GOVERNMENT GAZETTE OF**
CERTIFICATE ISSUED UNDER S.65 E.P.A. ACT. 1979		DATE	CERTIFICATE IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 AND REGULATION — A/ GENERAL MANAGER — 25/06/03 DATE

SCHEDULE 4 – Classification and reclassification of public land as operational land – refer to clause 25A

Part 1 Land classified, or classified, under original section 30 of Local Government Act 1993

Lots 1 and 2, D.P. 220530, known as 1 – 13 Cross Street, Double Bay, Lot 8, Section A, D.P. 4244, Lots 70 and 71, Section A, D.P. 4244 and Lots A and B, D.P. 104986, known as 17 Dover Road, Rose Bay and Lots 7 and 8, D.P. 976610, known as 16 – 18 Dover Road, Rose Bay, as shown edged heavy black and hatched on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No. 8) – Classification Map".

Land adjoining 5 Wunulla Road, Point Piper, known as Lot 1, Section 7, D.P. 3556, as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No. 21) – Classification Map".

Lot 1, DP 507107, Lot 1, DP 509113, Lot 1, DP 502206, Lot 1, DP 508776, Lot 81, DP 774685 and Lot 9, DP 12264, known as the Kiaora Lane Car Park, Double Bay, Lot 4, DP 12264 and Lot 5, DP 12264, known as the Anderson Street Car Park, Double Bay, Lot 7, DP 12264, known as the former Telecom site, Double Bay and Lot 1, DP 68509, known as No 1 Kiaora Road, Double Bay; as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No 49) – Classification Map.

Part 2 Land classified, or classified, under amended section 30 of Local Government Act 1993 – interests not changed

Column1	Column 2
Locality	**Description**
Paddington	
Land at the rear of (but not forming part of) 37 Union Street	Lot 2, DP 304163, as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No 34) – Classification Map"*)*

Part 3 Land classified, or classified, under amended section 30 of Local Government Act 1993 – interests changed

Column1	Column 2	Column 3
Locality	**Description**	**Trusts etc not discharged**
Double Bay		
Land adjoining (but not forming part of) 51 and 53 Suttie Road	Part of Lot 3, DP 81467, as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No. 37) – Classification Map" – *Woollahra Local Environmental Plan 1995 (Amendment No 37)*	Nil

Woollahra Municipal Council

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Double Bay NSW 2028

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records@woollahra.nsw.gov.au
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Telephone: 61 2 9391 7000
Facsimile: 61 2 9391 7044

Council Ref: 1064.G (Amendment No.49)
Your Ref:

25 June 2003

Ms Marianne Christmann
Regional Planning Coordinator - Sydney Region East
Planning NSW
GPO Box 3927
SYDNEY NSW 2000

Dear Ms Christmann

WOOLLAHRA LEP 1995 (AMENDMENT NO.8) – DEFERRED MATTER
DRAFT WOOLLAHRA LEP 1995 (AMENDMENT NO.49) - CLASSIFICATION OF DOUBLE BAY PUBLIC LANDS

The purpose of this letter is to inform you that the Council has made a decision to take action under section 68(6) of the *Environmental Planning and Assessment Act 1979* regarding public lands in Double Bay that are part of a matter deferred from Woollahra LEP 1995 (Amendment No.8). The decision of the Council forms part of a master planning exercise for lands in Double Bay.

Amendment No.8
Purpose of the amendment
Amendment No.8 was prepared for the purpose of confirming the classification of Council-owned lands as operational land under the *Local Government Act 1993*. Preparation of Amendment No.8 was a consequence of a decision in the Land and Environment Court regarding Bathurst City Council. In that case, the court held that lands acquired through a section 94 process under the Act, or a similar process, were deemed to be classified as community land unless otherwise classified as operational land through the LEP process.

The Court of Appeal and the High Court have upheld the decision of the Land and Environment Court.

A report and its annexures setting out the details of Amendment No.8, including the land to which it applied, the exhibition process, a public hearing process, and the consideration of submissions is enclosed (**attachment 1**).

At its meeting on 3 November 1997, the Council resolved to refer Amendment No.8 to the Department of Urban Affairs and Planning (DUAP) subject to the deferral of certain lands in Rose Bay, Double Bay and Woollahra. A copy of that decision is enclosed (**attachment 2**).

A further report dealing with land in Rose Bay was considered by the Council's Urban Planning Committee on 17 November 1997. The Council subsequently resolved to reinstate the Rose Bay lands within Amendment No.8. Copies of that report and the decision of the Council taken on 1 December 1997 are enclosed (**attachments 3** and **4**).

Amendment No.8 was referred to the DUAP under section 68 of the Act in a letter dated 7 January 1997 (**attachment 5**). The Council did not use its section 69 delegation. Amendment No.8 was gazetted on 12 June 1998 (**attachment 6**).

Reason for deferring the Double Bay lands
The lands deferred in Double Bay comprise the Kiaora Lane car park, the Anderson Street car park, the former Telecom site and No.1 Kiaora Road.

Submissions received in response to the exhibition of Amendment No.8 generally fell into three categories:

1. retention of public car parking facilities
2. transfer of Double Bay parking trust funds from the sale of lands
3. adequacy of public consultation.

In the public hearing conducted for Amendment No.8 similar issues were raised. Additionally, the issue of covenants burdening part of the Kiaora Lane car park arose.

The Council gave careful consideration to all the issues raised in the submissions and to the independent report prepared on the public hearing. That report included the following conclusions:

1. The notification procedure more than satisfied legal requirements, but additional discussion should be held with stakeholders in the Rose Bay and Woollahra centres.
2. The presence or otherwise of existing covenants is not relevant to the process of classification.
3. The eventual disposal of any funds raised from disposal is not relevant.
4. An operational classification of the subject lands would be justified, and would allow the Council the proper determination of the optimum use of its resources.

The Council's reason for deferring the Double Bay lands relates solely to the issue of covenants. Despite the conclusion reached by the chairman of the public hearing on the question of covenants, there are specific implications regarding the classification of public lands and the status of covenants.

The Council deferred the lands as it became aware through legal advice that classification of the lands under Amendment No.8 would have the effect of discharging the lands from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the lands.

In deferring the lands, the Council was mindful that it had also prepared a draft LEP [Draft Woollahra LEP 1995 (Amendment No.10)] which addressed covenants applying to the Kiaora Lane car park and the former Telecom site. The Council considered that the owners of land that benefited from the covenants should be informed of the classification process and the affect of the Amendment No.8.

Notification to the land owners was undertaken in 1997 and 1998 as part of the public consultation process for Amendment No.10.

No further action was taken on the deferred matters under Amendment No.8, other than the notification and consultation carried out with land owners through the Amendment No.10 process.

Amendment No.10 was not finalised. It has recently been the subject of reports to the Council's Kiaora Lands Masterplan Committee on 2 April 2003 (**attachment 7**) and Urban Planning Committee on 10 June 2003 (**attachment 8**).

A separate letter regarding the Council's decision on Amendment No.10 will be sent to Planning NSW.

Draft Woollahra LEP 1995 (Amendment No.49)
Amendment No.49 has been prepared as part of the Council's master planning exercise for land to the south of New South Head Road, Double Bay (the Kiaora Lands site).

The Kiaora Lands site contains public and private lands. Classification of the public lands as operational land is a necessary requirement of the project due to the proposed land transactions.

Amendment No.49 deals specifically with the classification of the deferred Double Bay lands, being the Kiaora Lane car park, the Anderson Street car park, the former Telecom site and No1. Kiaora Road. A copy of Amendment 49 is enclosed (a**ttachment 9**).

Reports on the deferred lands were considered by the Kiaora Lands Masterplan Committee on 2 April 2003 (**attachment 7**) and the Urban Planning Committee on 10 June 2003 (**attachment 8**).

At its meeting on 7 April 2003 the Council resolved in part:

> *That action be taken under section 68(8) of the Environmental Planning and Assessment Act 1979 to include the classification of the Kiaora Lane public car park, Anderson public car park, former Telecom site and No.1 Kiaora Road, all of which comprise part of the deferred matter from Draft Woollahra LEP 1995 (Amendment No.8), within a draft local environmental plan.*

The report to the Urban Planning Committee on 10 June 2003 provided further reference to the classification matter. Its main purpose, however, was to provide a consideration of submissions relating to Amendment No.10. The Committee's recommendation was considered by the Council on 23 June 2003. In regard to the deferred matter, the Council resolved in part:

> *That the Council reiterate its decision of 7 April 2003 to take action under section 68(8) of the Environmental Planning and Assessment Act 1979 to include the classification of the Kiaora Lane public car park, Anderson public car park, former Telecom site and No.1 Kiaora Road, all of which comprise part of the deferred matter from Draft Woollahra LEP 1995 (Amendment No.8), within a draft local environmental plan.*

Information required under section 68(4) of the Act
The information required by section 68(4) of the Act is set out below.

Public involvement and submissions
Section 68(6) of the Act enables the Council to take action without having to publicly re-exhibit the deferred matter under section 66 of the Act. This dispensation is subject to there being no change to the deferred matter, which is the case with Amendment No.49. Confirmation of this action was obtained from Mr.Roper on 18 March 2003 and from the Council's lawyers, Deacons. Mr Roper advised that he had spoken to the Parliamentary Counsel about the process.

Amendment No.49 has not been exhibited under section 66 of the Act. However, in light of the time that has elapsed since the deferred matter was last addressed, and due to the affect that the land classification will have on covenants burdening the public lands, the Council notified the current owners of land that have the benefit of covenants. The Council also notified those people who had previously made a submission to Amendment No.10 in regard to the issue of the Double Bay covenants. The notice informed the land owners and others that the Council had made a decision to reactivate the deferred matter for the Double Bay lands and that a report addressing the covenants and the land classification would be considered at the Council's Urban Planning Committee meeting on 10 June 2003. The notice provided information about the affect of the land classification on covenants.

The report of 10 June 2003 (**attachment 8**) provides a consideration of all submissions to Amendment No.10 regarding the issue of covenants. These issues are also relevant to the classification process and its outcome.

Public hearing
As mention above, a public hearing was conducted for Amendment No.8. The hearing occurred on 25 September 1997 and was chaired by Mr John McInerney. A copy of the hearing report was included as an annexure to a report to the Urban Planning Committee on 13 October 1997 (**attachment 1**).

Draft LEP and alterations
No alterations to the purpose of the draft LEP were recommended by Council. Three copies of Amendment No.49 are enclosed (**attachment 9**).

Environmental planning instruments and section 117 directions
The following relevant environmental planning instruments and directions under section 117 have been taken into consideration:

- Woollahra LEP 1995
- SEPP Nos. 1, 4, 5, 6, 8, 9, 10, 11, 16, 19, 21, 22, 32, 33, 38, 55, 56 and 65.
- SREP No. 23
- Section 117 (2) directions G1, 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 15, 17,18, 19, 21, 22, 25 and 26, and C1.

Amendment No.49 is consistent with Woollahra LEP 1995, all relevant State environmental planning policies, regional environmental plans and directions under section 117 of the Act.

Exclusions
As mentioned above, Amendment No.49 deals with part of a matter deferred under section 68(5) of the Act in regard to Woollahra LEP 1995 (Amendment No.8). No provisions have been excluded from Amendment No.49. Furthermore, no land has been excluded from the application of Amendment No.49 under subsection (5).

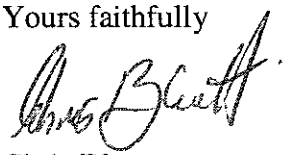
Parliamentary Counsel's opinion
An opinion from the Parliamentary Counsel advising that Amendment No.49 may legally be made has not been obtained.

Circular C30 – notice of appeals
No appeals are currently lodged to the Land and Environment Court in regard to land the subject of Amendment No.49.

Section 69 delegation
The Council did not use the delegated functions under section 69 of the Act for Draft Woollahra LEP 1995 (Amendment No.8). Accordingly, it is considered that the delegated functions cannot be used for Amendment No.49.

Further enquiries
For further information I may be contacted by phone on 9391 7083.

Yours faithfully



Chris Bluett
Manager of Strategic Planning

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3 Land to which plan applies

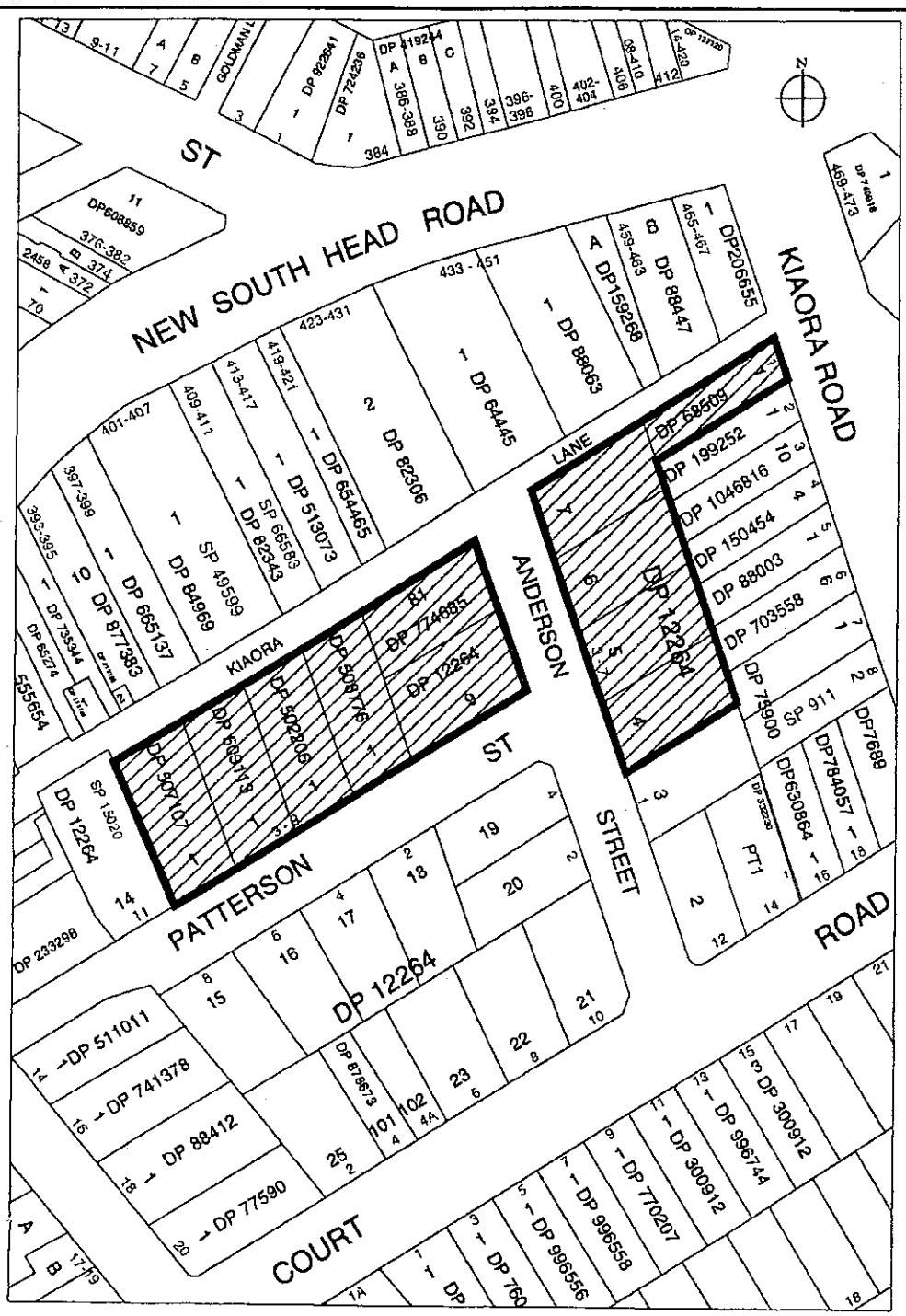
This plan applies to land comprising Lot 1, DP 507107, Lot 1, DP 509113, Lot 1, DP 502206, Lot 1, DP 508776, Lot 81, 774685 and Lot 9, DP 12264, known as the Kiaora Lane Car Park, Double Bay, Lot 4, DP 12264 and Lot 5, DP 12264, known as the Anderson Street Car Park, Double Bay, Lot 6, DP 12264 and Lot 7, DP 12264, known as the former Telecom site, Double Bay, and Lot 1, DP 68509, known as No.1 Kiaora Road, Double Bay, as shown edged heavy black and hatched on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No 49) – Classification Map" deposited in the office of Woollahra Council.

4 Amendment of Woollahra Local Environmental Plan 1995

Woollahra Local Environmental Plan 1995 is amended by inserting at the end of Part 1 in Schedule 4 the following words:

> Lot 1, DP 507107, Lot 1, DP 509113, Lot 1, DP 502206, Lot 1, DP 508776, Lot 81, 774685 and Lot 9, DP 12264, known as the Kiaora Lane Car Park, Double Bay, Lot 4,

DP 12264 and Lot 5, DP 12264, known as the Anderson Street Car Park, Double Bay, Lot 6, DP 12264 and Lot 7, DP 12264, known as the former Telecom site, Double Bay, and Lot 1, DP 68509, known as No.1 Kiaora Road, Double Bay, as shown edged heavy black and hatched on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No 49) – Classification Map"



Locality of Double Bay

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LAND TO WHICH THIS PLAN APPLIES

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995
(AMENDMENT NO. 49) - CLASSIFICATION MAP

DRAWN BY	Scott Pedder	DATE 20 June 2003	**STATEMENT OF RELATIONSHIP WITH OTHER PLANS**
SUPERVISING DRAFTPERSON	Chris Bluett	DATE 20 June 2003	Amends Woollahra Local Environmental Plan 1995 in the manner set out in clause 4.
PLANNING OFFICER	Chris Bluett	20 June 2003 DATE	
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Lot 6 DP 12264 Location Plan

Scale = 1:2,137

Metres 50 100

12/11/2010
chrisb

SCHEDULE 4 – Classification and reclassification of public land as operational land – refer to clause 25A

Part 1 Land classified, or classified, under original section 30 of Local Government Act 1993

Lots 1 and 2, D.P. 220530, known as 1 – 13 Cross Street, Double Bay, Lot 8, Section A, D.P. 4244, Lots 70 and 71, Section A, D.P. 4244 and Lots A and B, D.P. 104986, known as 17 Dover Road, Rose Bay and Lots 7 and 8, D.P. 976610, known as 16 – 18 Dover Road, Rose Bay, as shown edged heavy black and hatched on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No. 8) – Classification Map".

Land adjoining 5 Wunulla Road, Point Piper, known as Lot 1, Section 7, D.P. 3556, as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No. 21) – Classification Map".

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Part 2 Land classified, or classified, under amended section 30 of Local Government Act 1993 – interests not changed

Column1	Column 2
Locality	**Description**
Paddington	
Land at the rear of (but not forming part of) 37 Union Street	Lot 2, DP 304163, as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No 34) – Classification Map"*)*

Part 3 Land classified, or classified, under amended section 30 of Local Government Act 1993 – interests changed

Column1	Column 2	Column 3
Locality	**Description**	**Trusts etc not discharged**
Double Bay		
Land adjoining (but not forming part of) 51 and 53 Suttie Road	Part of Lot 3, DP 81467, as shown edged heavy black on the map marked "Woollahra Local Environmental Plan 1995 (Amendment No. 37) – Classification Map" – *Woollahra Local Environmental Plan 1995 (Amendment No 37)*	Nil