



Corporate & Works Committee

Agenda: *Corporate & Works Committee*

Date: *Monday 3 April 2006*

Time: *6.00pm*

Outline Of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Delegated Authority (“D” Items):

- General financial and corporate management of the Council, except those specifically excluded by statute, by Council direction or delegated specifically to another Committee.
- Note: This not to limit the discretions of nominated staff members exercising Delegated Authorities granted by the Council.
- Quarterly review of Council's Management Plan.
- Finance Regulations, including:-
 - Authorisation of expenditures within budgetary provisions where not delegated;
 - Quarterly review of Budget Review Statements;
 - Quarterly and other reports on Works and Services provision; and
 - Writing off of rates, fees and charges because of non-rateability, bad debts, and impracticality of collection.
- Auditing.
- Property Management.
- Asset Management.
- Traffic Management - Works Implementation.
- Works and Services - Monitoring and Implementations.
- Legal Matters and Legal Register.
- Parks and Reserves Management.
- Infrastructure Management, Design and Investigation.
- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agenda (and as may be limited by specific Council resolution).
- Confirmation of Minutes of its Meeting.
- Any other matter falling within the responsibility of the Corporate and Works Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed below.

Recommendation only to the Full Council (“R” Items):

- Such matters as are specified in Section 377 and within the ambit of the Committee considerations.
- The voting of money for expenditure on works, services and operations.
- Rates, Fees and Charges.
- Donations
- Matters which involve broad strategic or policy initiatives within responsibilities of the Committee.
- Matters not within the specified functions of the Committee.
- Asset Rationalisation.
- Corporate Operations:-
 - Statutory Reporting; - Delegations.
 - Adoption of Council's Management Plans; - Policies.
 - Quality Service/Communications; - Tenders.
 - Leases.
 - Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes

Committee Membership:

7 Councillors

Quorum:

The quorum for a Committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

30 Mar 2006

To: His Worship the Mayor, Councillor Petrie, ex-officio
Councillors John Walker (Chair)
 Keri Huxley (Deputy Chair)
 Claudia Cullen
 Marcus Ehrlich
 Tanya Excell
 Wilhelmina Gardner
 Fiona Sinclair King

Dear Councillors

Corporate & Works Committee Meeting – 3 April 2006

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Corporate and Works Committee** to be held in the **Council Chambers, 536 New South Head Road, Double Bay, on Monday 3 April 2006 at 6.00pm.**

Gary James
General Manager

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 20 March 2006	1
D2	85 Vacluse Road, Vacluse – Proposed Road Closure and Sale – 462.85	2

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

R1	Environmental Enforcement Levy	7
R2	Draft Fees and Charges Schedule for 2006/2007	16
R3	Draft Communication and Construction Policy and Guidelines – 941.G	48

Item No: D1 Delegated to Committee

Subject: **Confirmation of minutes of meeting held on 20 March 2006**

Author: Les Windle, Manager – Governance

File No: See Council Minutes

Reason for Report: The Minutes of the Meeting of Monday 20 March 2006 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 Corporate and Works Committee Meeting of 20 March 2006 be taken as read and confirmed.

Les Windle
Manager - Governance

Item No: D2 Delegated to Committee
Subject: **85 Vacluse ROAD, Vacluse - Proposed ROAD CLOSURE AND SALE**
Author: Anthony Sheedy - Property Officer
File No: 462.85
Reason for Report: To give consideration to the closure and subsequent sale of unmade roadway adjoining the property.

Recommendation:

That the site be inspected prior to the Corporate and Works Committee meeting of 24 April 2006.

Background:

Council has received a request from Mr & Mrs Reid, the owners of 85 Vacluse Rd, Vacluse, to purchase a thin triangular shaped section of unmade road adjoining their property (see Annexures). The approximate dimensions of the unmade road portion are as follows; depth of 1.2 metres at its point of maximum depth, width 22 metres and 13.2 square metres in size.

The subject area presents as an extension of the Reid's shrub filled garden, and is located between the pedestrian footpath and the property boundary. This dense coverage has made it practically unusable for pedestrian access. The Reid's property boundary line convexes inward some 1.2 metres on the east facing Wentworth Road frontage and, for this reason, Mr & Mrs Reid would like to regularise the boundary.

A Section 96 development application (DA 417/2004/2) was made on 21/6/05 for site works to construct the extension of an existing sandstone wall along a newly demarcated eastern boundary line adjoining Wentworth Road. This would involve building the wall on the subject road reserve area, thereby, the Reids want to purchase the said road reserve portion. Council provided planning consent to the Section 96 works on 31 January 2006.

The Manager of Public Infrastructure, Greg Stewart, and I inspected the site on 23 February 2006. Mr Stewart said that there are no plans to widen Vacluse Road at this location. The cost to widen the road would be substantial and widening it in the future was considered unlikely. Mr Stewart also stated that he has "no objection to the requested sale of the subject portion of Wentworth Road adjacent to eastern boundary of the property, which is currently landscaped and appears to form part of the property."

The owner has agreed to pay all of Council's costs in connection with the purchase of the unmade road portion.

Conclusion:

In accordance with the policy for sale of Council land, it is recommended that the Committee inspect the site in the first instance, just prior to the commencement of the next meeting, Monday 24 April 2006.

Anthony Sheedy
Property Officer

Warwick Hatton
Director Technical Services

ANNEXURES:

1. Cadastral and locality map of Vaocluse and Wentworth Rd, Vaocluse.
2. Overhead photo of subject land and Wentworth Rd.
3. Applicants' plan showing, in hatched relief, the area of the proposed road closure and sale.

Item No: R1 Recommendation to Council
Subject: ENVIRONMENTAL ENFORCEMENT LEVY
Author: Peter Kauter, Executive Planner
File No:
Reason for Report: Response to questions without notice

Recommendation:

That in respect of the questions without notice relating to *Byron Pirola v City of Canada Bay Council* [2006] NSWLEC 36:

- A. The report of the Executive Planner in response to questions without notice be noted
 - B. The council introduce an environmental enforcement levy to be charged on each development application at the time of lodgement to partly off set the costs associated with providing regulatory services relating to certification and other post development consent matters
 - C. The levy referred to in B be the amount of 0.2% of the estimated cost of work as determined in respect of the development proposed by the development application with a minimum amount of \$50 (also applicable if no work is proposed by the development application) and a maximum amount of \$2,000
 - D. The environmental enforcement levy referred to in B apply to development applications received on and after the 1st July 2006 and for this purpose it be included in the draft management plan fees and charges
-

Background:

The following questions without notice were asked at the Council meeting on 13 February 2006:

Councillor Comino asking:

Will you bring a report to the appropriate Committee of Council discussing the ramifications of the recent Canada Bay Council decision of the Land and Environment Court imposing obligations on Council's dealings with retrospective approvals of construction certificates and other issues where accredited certifiers have been involved?

Also discussing – what are the consequences legal or otherwise to Council?

Councillor Shoebridge asking:

Can any report on the recent Canada Bay Council decision please also consider the possibility of Council levying a charge under the LGA on all privately certified developments to cover potential costs to Council similar to that proposed by Gosford Council in November 2005?

The Byron Pirola v City of Canada Bay Council decision (the Byron Pirola decision)

In these proceedings Justice Jagot considered questions of law for preliminary determination in connection with appeal proceedings under s.109K of the *Environmental Planning and Assessment Act* 1979 (the EPA Act), appeals against failure or refusal to issue part 4A certificates, in this case being an occupation certificate.

The council refused to issue an application for an occupation certificate, submitted to it seven (7) months after construction of the buildings was completed. Section 109H of the EPA Act was relied upon by the council in its refusal of the application. Its provisions include the following:

...

(1B) An occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent or complying development certificate have been met.

...

(1) A final occupation certificate must not be issued to authorise a person to commence occupation or use of a new building unless the certifying authority is satisfied:

(a) that a development consent or complying development certificate is in force with respect to the building, and

(b) in the case of a building erected pursuant to a development consent but not a complying development certificate, that a construction certificate has been issued with respect to the plans and specifications for the building, and

(c) that the building is suitable for occupation or use in accordance with its classification under the Building Code of Australia, and

(d) that such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

S. 109D(2) provides that an occupation certificate for a new building must be issued by the principal certifying authority (PCA) appointed for the erection of the building.

In this case the council became aware eleven (11) months after construction commenced that there was no construction certificate for the work and thereafter that no PCA had been appointed, contrary to s. 81A(2)(a) and (b) respectively of the EPA Act. The applicant appointed the council as the PCA after the points of law had been raised.

The council did issue a building certificate under s.149 of the EPA Act for the buildings and granted consent for strata subdivision. The judgement at paragraph 6 states: *The Council, which has otherwise sought to facilitate the completion of the development, determined that it was not able to issue the final occupation certificate by reason of s.109H(1B) of the EPA Act which provides that.....*

Paragraphs 31 and 32 of the judgement state:

*31. The Council submitted that enabling a person with the benefit of a development consent to appoint a principal certifying authority after the completion of building works was inappropriate and potentially placed an unreasonable burden on the principal certifying authority. That concern appears to me to be answered by the scheme of the legislation, particularly s 109E(3) and s 109H: **a principal certifying authority may find it more difficult to reach the required states of satisfaction with respect to a building erected in contravention of the requirement that a principal certifying authority be appointed prior to the commencement of building works and, in consequence, an applicant in such a case may be required to take additional steps and supply further information to enable such a state of satisfaction to be reached.** If, however, the requirements of the statute are able to be met, then the function of issuing a final occupation certificate may still be able to be discharged despite the commencement (or, as here, the completion) of building works without the principal certifying authority having been appointed.*

32. *As to the second reason, the requirements for lodgement of an application for an occupation certificate are contained in cl 149 of the Regulations. I do not consider that the fact that the effective date for appointment of the Council as the principal certifying authority was 27 January 2006, some 4 months after lodgement of the application, renders the appointment (or the application) invalid or ineffective. An application was lodged with the Council, in the form the Council required (albeit absent some necessary accompanying information to enable the application to be successful), in circumstances where the Council (if appointed as the principal certifying authority) would have been able to issue an occupation certificate. The Council, moreover, processed and determined the application by way of refusal and, in accordance with cl 151(1)(c)(ii) of the Regulations, notified the applicant of “the applicant’s right of appeal under the Act against the refusal”. (emphasis added)*

The concluding paragraph (37) states:

37. *The parties indicated to me that in order for the appeal to be determined on the merits, further information was required to be provided by the applicant to the Council. In particular, the applicant accepts (as I understand it) that it must obtain a construction certificate for the building work which has been completed. For its part, the Council, consistent with the decision of this Court in *Marvan Properties Pty Ltd v Randwick City Council (2005) 138 LGERA 1*, accepts that a construction certificate may be issued for the building works even though those works have already been completed. Other information is required also to be provided by the applicant, particularly relating to fire safety. It is necessary that directions be made for the further conduct of the merits hearing in the ordinary course. (emphasis added)*

Councillor Comino’s QWN

The Byron Pirola decision has indirect ramifications on councils in relation to retrospective approval of construction certificates and the involvement of accredited certifiers. In this case there was no construction certificate and it appears there was no accredited certifier. There was certainly no PCA until the appointment of the council which was not until after the points of law had been raised.

The retrospective approval of construction certificates was established in *Marvan Properties Pty Limited and Another v Randwick City Council* [2005] NSWLEC 9 (11 January 2005) (the Marvan decision). This case was referred to by Justice Jagot in paragraph 37, quoted above. The relevance of the Marvan decision to Byron Pirola is s.109H(1)(b) which provides that a final occupation certificate must not be issued for a new building unless a construction certificate has been issued. Marvan provided the applicant with the means of satisfying a precondition for the issuing of an occupation certificate by allowing for construction certificates to be issued retrospectively.

It should be noted that s.109F of the EPA Act has been amended in reaction to the Marvan decision to provide that construction certificates, issued by either private certifiers or councils after the building work to which the certificate relates is physically commenced, will have no effect. This amendment involves the introduction of s.109F(1A) which came into effect on 3 March 2006. This effectively prevents the issue of retrospective construction certificates. Also, it should make it impossible to satisfy the precondition of s.109H(1)(b) of the EPA Act for the issue of an occupation certificate if a construction certificate has not been issued.

The ramifications of the Byron Pirola decision for councils was recognised by Justice Jagot at paragraph 31, referred to earlier..... *a principal certifying authority (PCA) may find it more difficult to reach the required states of satisfaction.....*

The amendment to introduce s.109F(1A) will not prevent councils being appointed as PCAs after building work has been commenced. However, as the primary role of the PCA is to issue an occupation certificate it should be less likely that a PCA would be appointed after the commencement of work as, in the absence of a construction certificate, a precondition for the issue of an occupation certificate can not be satisfied.

Justice Jagot's judgement deals with the appointment of PCAs. The council relied on s.109D(2) which refers to "*the principal certifying authority appointed for the erection of the building*". As the building had been erected their appointment as PCA could not have been *for the erection of the building*. The judgement however states that the source of the power to appoint a PCA is s.109E(1), which refers to "*the principal certifying authority for the development*". The council's reason for claiming that their appointment as the PCA was ineffective because the appointment was after the building work had been completed was therefore not supported.

The PCA's responsibilities extend to critical stage inspections as prescribed by cl.162A of the regulations. Cl.162C relates to circumstances where critical stage inspections are not made. It effectively provides that inspections need not be made where the PCA considers that the circumstances for missing an inspection were unavoidable and the PCA is satisfied that the work was satisfactory. This is the "*required states of satisfaction*" to which Justice Jagot referred.

Missing critical stage inspections of reinforcement prior to the placement of concrete is an example where it could be extremely difficult for a council to be able to satisfy itself that a building is structurally sound. Experience has shown that professionals such as structural engineers are reluctant to give unqualified certification of work particularly if they did not make inspections. Qualified certification makes it difficult for a PCA to be satisfied that the work was satisfactory. Accepting qualified certification increases the exposure of PCAs to the risk of damages in the event of future structural problems. Resolving these type of situations can involve considerable resources on the part of the PCA. The PCA has to decide:

- was the missing of the inspection unavoidable, and
- is it satisfied that the work was satisfactory

The consequences for council of the Byron Pirola decision have been ameliorated to a degree by the amendment which introduces s.109F(1A) to the EPA Act, effectively prohibiting the issue of retrospective construction certificates. There are ongoing consequences for council where it may be appointed as a PCA after building work has been carried out. However the appointment of a PCA after building work has been carried out is considered to be less likely as a result of the amendment due to the PCA's role in issuing occupation certificates.

It is possible that appeals against council decisions to refuse to issue occupation certificates could increase. This is because, while there is a right of appeal against a council's refusal to issue an occupation certificate, there is no such right if an accredited certifier acting as a PCA refuses to issue such certificate. The appointment of council as PCA may be perceived as providing an appeal right although the court may also be restrained by the legislation in the absence of a construction certificate.

Councillor Shoebriidge's QWN

The council incurs costs in administering the certification scheme for development and building activities. These costs include the processing of construction certificate and occupation certificate applications and carrying out critical stage inspections. The certification system allows an applicant to choose either councils or accredited certifiers to process applications for certificates and to carry out the critical stage inspections.

When an applicant chooses us to process its construction certificate application and/or appoints us as PCA we charge fees based on a schedule that are competitive with fees charged by accredited certifiers. We also have fees for occupation certificate applications and critical stage inspections.

When an applicant uses accredited certifiers there are costs which we still incur. As a minimum we are responsible for keeping records of certificates issued by accredited certifiers. We charge a nominal fee of \$30.00 for each certificate we receive that is issued by an accredited certifier. This fee is set by the regulations, clause 263.

However, the enforcement provisions of the EPA Act provide that we can become substantially more involved in building related matters when an accredited certifier has been appointed than merely keeping records of certificates and inspections. An example is s.109L of the EPA Act which provides that an accredited certifier acting as a PCA may serve a notice of intent to serve an order under s.121B. These notices can relate to orders for a broad range of matters, including compliance with the provisions of development consents. If an order has to be served as a result of that notice then the council has to serve the order and take whatever action is required to enforce it. The action required may involve court proceedings as a result of an appeal by the person on whom the notice was served or class 4 proceedings brought by council due to non compliance with the order.

Issues can also arise with development consents after an occupation certificate has been issued by an accredited certifier. The accredited certifier's role ceases with the occupation certificate whereas conditions of consent relating to matters such as maintenance of landscaping and hours of operation of businesses can require ongoing enforcement action. In circumstances where consents for change of building uses do not involve building work the council can be required to take action regarding compliance with consent conditions.

An environmental enforcement levy would assist in reducing the costs incurred by council in these situations.

Gosford City Council will be introducing an environmental enforcement levy on 1st March 2006. The Notice of Proposed New Fee and Charge states:

The fee will be charged at the time of development application lodgement to assist in covering Council's costs associated with investigating complaints, serving orders and conducting audits associated with development under construction and/or after completion.

The levy will recognise that all new development should contribute to the increasing cost of providing Council's regulatory services which on occasion can result in legal costs.

It is proposed the fee will be based on the value of the development in accordance with the following scale:

<i>Estimated Cost of Work \$</i>	<i>Fee</i>
<i>0-50,000</i>	<i>0.200% of estimated cost up to a maximum of \$75</i>
<i>50,001 - 100,000</i>	<i>0.175% of estimated cost up to a maximum of \$150</i>
<i>100,001 - 250,000</i>	<i>0.150% of estimated cost up to a maximum of \$275</i>
<i>250,001 - 500,000</i>	<i>0.125% of estimated cost up to a maximum of \$500</i>
<i>500,001 - 1M</i>	<i>0.100% of estimated cost up to a maximum of \$750</i>
<i>>1,000,001 <5M</i>	<i>0.075% of estimated cost up to a maximum of \$2,250</i>
<i>>5M</i>	<i>\$3,700</i>

Section 608 of the *Local Government Act* 1993 (LG Act) relates to fees and services:

608(1) A council may charge and recover an approved fee for any service it provides, other than a service provided, or proposed to be provided, on an annual basis for which it is authorised or required to make an annual charge under section 496 or 501.

(2) The services for which an approved fee may be charged include the following services provided under this Act or any other Act or the regulations by the council:

-
- *Providing a service in connection with the exercise of the council's regulatory functions – including receiving an application for approval, granting an approval, making an inspection and issuing a certificate*
-

(Note: Section 496 relates to domestic waste collection charges and section 501 relates to charges for services such as water supply, drainage and waste management.)

An environmental enforcement levy could be regarded as a charge for the service of enforcing regulatory provisions.

Section 610D of the LG Act provides that the following factors must be taken into account in determining the amount of a fee for service:

(a) the cost to the council of providing the service,

The cost to council of enforcing regulatory provisions is estimated to be \$650,000 per annum but this cost is already subsidised to some extent by the income we receive in providing Part 4A certificates and PCA services. It has not been possible to provide more accurate enforcement costs because we do not have separate activity based costing for regulatory and PCA services.

(b) the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department,

It appears that there has been no price suggested by any relevant industry body or by the Department.

(c) the importance of the service to the community,

Enforcing regulatory provisions is of high importance to the community.

(d) any factors specified in the regulations.

There do not appear to be any factors specified in the regulations.

The following table shows the income we would have received applying Gosford's scale of fees to the estimated cost of work of our DAs for each of the last seven (7) years:

Year	Number of DAs	Income (\$)
1999	1363	270,302
2000	1041	244,287
2001	1160	268,705
2002	1024	261,855
2003	1081	296,631
2004	793	233,763
2005	752	227,078

The following table shows the income we would have received using a fee scale of 0.2% of the estimated cost of work, with a minimum of \$50 and a maximum of \$2,000, for each of the last seven (7) years based on the estimated cost of our DAs:

Year	Number of DAs	Income (\$)
1999	1363	259,544
2000	1041	229,671
2001	1160	246,462
2002	1024	247,928
2003	1081	288,681
2004	793	224,555
2005	752	212,582

The above tables show that the amount of income from an environmental enforcement levy will be affected by:

- DA numbers and
- the estimated cost of work for DAs.

The marked reduction in DA numbers in 2000 and 2004 significantly reduced the income a levy would have raised. Between 2000 and 2003 DA numbers fluctuated within a small range. 2003 was significant as income would have been higher than for any other year although DA numbers were less than in 1999 and 2001. This must reflect that the average estimated cost of works for individual DAs was high.

DA numbers and estimated costs of work are difficult to predict. Factors beyond our control are largely responsible such as interest rates, changes to land taxes and stamp duty, the strength of the real estate market, the cost and availability of building materials, etc. Our DA numbers are historically low but it is not possible to say that the general downward trend will continue. Similarly it is not possible to accurately forecast what would be the income from an environmental enforcement levy.

Comparing the above tables the income using the Gosford scale is slightly higher. However, their scale is more complicated and would be more difficult to administer. Also, the higher minimum and maximum fees in particular would impose a greater burden on applicants. It is therefore considered that a fee scale based on 0.2% of the estimated cost of work with minimum and maximum fees of \$50 and \$2,000 is fairer and preferable.

Using the estimated cost of work as determined on the DA as a basis for calculating the levy payable, together with a minimum charge, is considered to be appropriate as:

- the higher the estimated cost of work the more complex the development is likely to be increasing the potential for council to become involved in enforcement action
- we have recently adopted an equitable method of determining the estimated cost of work proposed by DAs
- DAs where no work is proposed, such as change of uses, can result in council becoming involved in enforcement action and would also be subject to the levy

Requiring payment at the time of DA lodgement is considered to be justified as:

- All development proposals have the potential to involve the council in enforcement action
- We do not know if we will be the certifying authority for any construction certificate and/or be appointed as the PCA

- Although enforcement action benefits the wider community it is mainly required because of activities related to DAs
- If we grant consent to a DA we do not know if that development will proceed or if it will proceed in a lawful manner
- Enforcement action may be beyond what could be reasonably envisaged by our certification charges which are set to be market competitive, whereas our market competitors (ie. private certifiers) have, by comparison, a limited level of responsibility particularly in the ongoing enforcement of consents and orders which may arise from consents

Conclusion:

The Byron Pirola case highlights the complexity involved in enforcing the certification provisions of the EPA Act. The amendment to s.109F of the EPA Act now means that construction certificates issued after work has physically commenced have no effect. This may mitigate the instances where councils would otherwise be appointed as PCAs and therefore required to sort out applications for occupation certificates.

The introduction of an environmental enforcement levy would have the effect of reducing the cost to council of providing regulatory services in the area of certification and other post consent related costs. It is recommended that council introduce an environmental enforcement levy based on the following principles:

- the amount of the levy be 0.2% of the estimated cost of work proposed by DAs with a minimum of \$50 and a maximum of \$2,000
- the levy be collected at the time of DA lodgement
- the levy applies to all DAs
- the levy subsidises the cost of council resourcing its regulatory services relating to certification and other post consent matters

Recommendation:

That in respect of the questions without notice relating to *Byron Pirola v City of Canada Bay Council* [2006] NSWLEC 36:

- A. The report of the Executive Planner in response to questions without notice be noted
- B. The council introduce an environmental enforcement levy to be charged on each development application at the time of lodgement to partly offset the costs associated with providing regulatory services relating to certification and other post development consent matters
- C. The levy referred to in B be the amount of 0.2% of the estimated cost of work as determined in respect of the development proposed by the development application with a minimum amount of \$50 (also applicable if no work is proposed by the development application) and the maximum amount of \$2,000
- D. The environmental enforcement levy referred to in B apply to development applications received on and after the 1st July 2006 and for this purpose it be included in the draft management plan fees and charges

Peter Kauter
Executive Planner

Allan Coker
Director – Planning and Development

Item No: R2 Recommendation to Council
Subject: **Draft Fees & Charges Schedule for 2006/2007**
Author: Don Johnston, Manager Finance
File No: 331G 2006/2007
Reason for Report: To provide the draft Schedule of Fees & Charges to the Committee for formal consideration for inclusion in the Draft Management Plan for the purposes of public exhibition.

Recommendation:

THAT the Draft 2006/2007 Fees & Charges Schedule attached as Annexure A to this report be included in the Draft Management Plan for the purposes of public exhibition.

Background:

Each year Council is required to set its fees and charges as part of its consideration and adoption of the Management Plan. The schedule of fees and charges forms part of the Management Plan and therefore goes through the same public exhibition process prior to final adoption.

The preliminary draft 2006/2007 Fees & Charges Schedule was reported to the last Corporate & Works Committee to provide some additional time for review prior to this formal consideration and recommendation from the Committee for its inclusion in the Draft Management Plan.

Discussion:

The Draft Fees & Charges Schedule for 2006/2007 is attached as **ANNEXURE A**. The annexure provides the current year's fees and charges, and the proposed fees and charges for 2006/2007. On the right hand side of the annexure the percentage increase is provided, along with an indication of any new fees and charges. It has been prepared in conjunction with the operating budget and forms the basis of fees and charges income.

Two changes have been made to the schedule since it was last provided to the Committee. The Domestic Waste Management Charge has been re-calculated following budget adjustments and increased to \$260 per annum. This is a \$9, or coincidentally 3.6% increase, over the 2005/2006 charge. The additional service charges have been increased by 3.6% accordingly.

The second change comes from the inclusion of the Holdsworth Street Community Centre charges as recommended by its Management Committee. Generally there have been no increases proposed due to increases made last year or due to the capacity to pay of services users.

Conclusion:

Council is required to adopt its fees and charges each year as part of its Management Plan. The Draft 2006/2007 Fees & Charges Schedule attached as Annexure A is recommended for inclusion in the Draft Management Plan.

Don Johnston
Manager Finance

Geoff Clarke
Director Corporate Services

Annexures:

- A. Draft Fees & Charges Schedule for 2006/2007

Item No: R3 Recommendation to Council
Subject: **Draft Communication and Consultation Policy & Guidelines**
Author: Kylie Walshe
File No: 941.G
Reason for Report: To seek Council's approval of the release of the draft Communication & Consultation Policy and Guidelines for public exhibition.

Recommendation:

- A. That Council approve the release of the draft Communication and Consultation Policy and the draft Guidelines for Communicating and Consulting with the Community for a public exhibition period of 28 days.
- B. That a further report be presented back to Council in consideration of submissions received during the public exhibition period.

Background:

At the Corporate & Works Committee meeting of 21 February 2005, the Committee considered a report regarding the development of a policy and guidelines for consulting with the community (see Annexure 1). Council then resolved on 28 February 2005:

- A. *That Council endorse the commencement of the development of a Community Consultation Policy and Framework.*
- B. *That Council endorse the establishment of a Community Consultation Working Party, with Councillor representatives appointed by the Mayor.*

Following this resolution two meetings of the Community Consultation Working Party were held, with Councillor representation including Cr Petrie, Cr Huxley, Cr Excell and Cr Gardner. At the meeting of 14th April 2005 it was resolved that the Director Community Services prepare a draft Consultation Policy and Guidelines for consideration by the Committee. This was completed in September 2005, and distributed to the Working Party and all Council Divisions for comment. At this time significant amendments were recommended with the draft now presented to Council encompassing both **Communication and Consultation**.

Proposal:

The implementation of the draft Communication and Consultation Policy and Guidelines for Communicating and Consulting with the Community will assist staff and Council in determining how and when to communicate and consult with the community.

The **draft Communication and Consultation Policy** will provide a policy framework, confirming Council's commitment to communicating and consulting with the community on issues and projects that affect them. See Annexure 2 for the draft Policy.

The **draft Guidelines for Communicating & Consulting with the Community** provide a step-by-step approach to determining when to communicate and/or consult with the community and how to assess the most appropriate level of communication and/or consultation for a particular issue, project or activity, based on level of interest and impact. These are designed to be a working document that may change over time when new consultation techniques are identified. See Annexure 3 for the draft Guidelines.

Consultation:

It is important that community input is gathered in this project, with this report recommending the release of the draft Policy and Guidelines for public comment. This exhibition will be widely advertised, with notification letters sent to all community groups and advertisements placed in the Wentworth Courier.

The draft documents have undergone extensive internal consultation, with all relevant staff reviewing the draft Policy and Guidelines to ensure that they cover all current or future activities of Council. Staff also brought their expert knowledge and experience in communicating and consulting with the Woollahra community to the project.

Income & Expenditure

The adoption of this recommendation will have no impact on income or expenditure as Council is already committed to communicating and consulting with the community on issues, projects and activities.

Conclusion:

Effective community consultation is an integral part of local government. The adoption of a policy and guidelines for communicating and consulting with the community will provide clear guidelines for staff in day-to-day operations. It also demonstrates a commitment to Woollahra residents regarding the level of consultation that will be undertaken by Council in areas that affect them.

The release of the draft Communication and Consultation Policy and draft Guidelines for Communicating and Consulting with the Community for a public exhibition period will provide an opportunity for community input into this important policy of Council.

Kylie Walshe

Director Community Services

Annexures:

Annexure 1: Report to Corporate & Works, 21 February 2005

Annexure 2: draft Communication & Consultation Policy

Annexure 3: draft Guidelines for Communicating & Consulting with the Community

ANNEXURE 1

Item No: R3 Recommendation to Council
Subject: **Community Consultation Policy & Framework**
Author: Kylie Washe
File No: 941.G
Reason for Report: To seek Council's endorsement to commence the development of a Community Consultation Policy and guidelines.

Recommendation:

- A. That Council endorse the commencement of the development of a Community Consultation Policy and Framework.
- B. That Council endorse the establishment of a Community Consultation Working Party, with Councillor representatives as detailed in Option 1.

Background:

Council has demonstrated its commitment to community consultation and participation as part of its vision in the Management Plan 2004-2007, *to support and promote active community participation to achieve a healthy social environment, appropriate cultural services and an efficient infrastructure.*

In recognition of Council's responsibility and commitment to consult with the Woollahra community, this project is detailed in the Woollahra Management Plan 2004-2007, in the sub-activity 5.1 Community Services Management and also relates to sub-activity 6.1 Customer Service & Communication. Initially this project was to be completed by Community Services staff, however, as this project encompasses many activities of Council it is recommended that this project be broadened to include all Council departments.

Proposal:

Council has a clear notification policy and procedures for planning and development applications, but does not have a policy and procedure for community consultation. Community consultation is not the same as notification (which is a one way flow of information). Consultation relies on the two way flow of information and by its nature is often more complex than notification. If Council is to engage in meaningful consultation with the Woollahra community we need a policy and procedures that will ensure an effective and consistent approach.

Council currently undertakes many forms and types of consultation with residents and stakeholders, on issues ranging from strategic planning to the installation of playground equipment. The consultation undertaken for each of these projects has been developed based on the perceived level of interest or impact on the community and stakeholders. Although this method has produced excellent results in some projects the lack of a framework for how Council consults has raised some questions on the appropriateness of certain methods for particular issues. A framework for determining how and when to consult will assist staff and Councillors in determining the appropriate mechanisms to use in each situation, based on level of interest and impact.

Representative staff from each department of Council has met to discuss the project, with a commitment from all departments to contribute to the project. Alongside this, examples of consultation frameworks and guidelines have been collected from a number of other Councils, all aiming to provide a clear, consistent approach when consulting with their communities. These will provide a good starting point in the development of the framework, with the understanding that Woollahra is a unique community and requires a specific framework. Examples of these are attached in Annexure 1 for the information of Councillors.

Project Management:

An essential component in the development of a Community Consultation Policy and Framework is the participation of Councillors. The management of the project could be conducted in a number of ways, with the following two options for Council's consideration:

Option 1:

Establishment of a Working Party to develop the scope and monitor the project, with Councillor and staff representatives. This group will include the determination of the most appropriate mechanisms to consult with the community on the policy and framework. As this project covers many activities of Council it is recommended that Councillor representatives include the Chairperson of each Council Standing Committee, that is Crs Huxley, Shoebridge, Gardner and Ehrlich, and the Mayor or his nominee.

Option 2:

Establishment of an Internal Staff Working Party, to develop the brief and report progress to the Corporate and Works Committee, when required. Reports will be presented on the proposed consultation process, draft policy and draft guidelines.

Either of these options will ensure Councillor input in key stages of the project, with support from appropriate staff from each Council department. However, Option 1 is recommended as it will ensure ownership of the project by the elected representatives and that appropriate consultation and participation by the community is undertaken.

Consultation:

It is imperative that community input and participation from a wide range of residents and stakeholders is gathered in this project. It is anticipated that the consultation strategy could include a mix of the following:

- Community workshops, with representatives from different suburbs, ages, interests invited to attend facilitated workshops.
- Random telephone surveys
- Web based surveys.
- LGA wide letterbox survey and/or request for submissions.
- Use of the local media, such as Woollahra News in the Wentworth Courier.

The Working Party or Committee of Council will determine the final mix. If additional funding is required, this will need to be considered in the 2005/06 budget process.

Conclusion:

Effective community consultation is an integral part of local government. The development of a policy and framework for consulting with the community will provide clear guidelines for staff in day-to-day operations and provide a commitment to Woollahra residents of the level of consultation that will be undertaken by Council in areas that affect them.

Kylie Walshe

Director Community Services

Annexures:

Annexure 1: Examples of Community Consultation Frameworks/Guidelines – Mackay City Council, Mornington Peninsula & Warringah Council.