



Corporate & Works Committee

Agenda: *Corporate & Works Committee*

Date: *Monday 5 August 2013*

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).

Recommendation only to the Full Council:

- Such matters as are specified in Section 377 of the Local Government Act 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;
 - Adoption of Council's Community Strategic Plan, Delivery Program and Operational Plan;
 - Delegations; and
 - Policies.
- Tenders as per Regulation requirements.
- Leases required to be determined by Full Council by specific legislative requirements
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

Delegated Authority:

- 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.
- Statutory reviews of Council's Delivery Program and Operational 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.
- 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 the Minutes of its Meetings.
- 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 above.

Committee Membership:

7 Councillors

Quorum:

The quorum for a Committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

1 August 2013

To: His Worship the Mayor, Councillor Andrew Petrie ex-officio
Councillors Katherine O'Regan (Chair)
Ted Bennett
Peter Cavanagh
Deborah Thomas
Elena Wise
Susan Wynne (Deputy Chair)
Jeff Zulman

Dear Councillors

Corporate & Works Committee Meeting – 5 August 2013

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 5 August 2013 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence Note Council resolution of 27 June 2011 to read late correspondence in conjunction with the relevant Agenda Item	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 15 July 2013	1
D2	Joint Panel of Conduct Reviewers – Code of Conduct Matters – 817.G	2

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

R1	Conflict of Interests Policy – 817.G	6
R2	Statutory Review of Policy – Payment of Expenses & Provision of Facilities to The Mayor, Deputy Mayor & Councillors Policy – 18.G	42
R3	Commercial & Retail Leasing Strategy for the Kiaora Lands Development – Tender No. 12/12 *Note Confidential Annexure Circulated Under Separate Cover	59

Item No: D1 Delegated to Committee
Subject: **Confirmation of minutes of meeting held on 15 July 2013**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 15 July 2013 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 15 July 2013 be taken as read and confirmed.

Les Windle
Manager – Governance

Item No: D2 Delegated to Committee
Subject: **Joint Panel of Conduct Reviewers - Code of Conduct Matters**
Author: Les Windle - Manager Governance
File No: 817.G
Reason for Report: For Council to appoint members to a joint panel of conduct reviewers with Randwick Council for Code of Conduct matters

Recommendation:

That Council appoint Inconsult, Wright Associates, Jeremy Bingham, Sinc Solutions, Strategic Risk Solutions and Woodward Legal to the joint panel of conduct reviewers for Randwick and Woollahra Councils for a 4 year term commencing 14 August 2013.

Background:

The *Model Code of Conduct for Local Councils in NSW (the 2013 Model Code)* and accompanying *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW (the 2013 Procedures)* which came into effect on 1 March 2013 requires Council to appoint a panel of conduct reviewers.

Council has a current panel of conduct reviewers under the previous Model Code of Conduct however must appoint a new panel of conduct reviewers under the provisions and process prescribed by *the 2013 Procedures*.

The role of conduct reviewers is to review certain complaints of breaches of the code of conduct by councillors and the general manager. The general manager is responsible for reviewing complaints about staff.

The 2013 Procedures require that certain complaints about councillors and the general manager must be referred to the Division of Local Government (*the Division*) to investigate and allows for other complaints to be managed as follows:

1. where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to *the Division*, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the Council's complaints coordinator (for referral to a conduct reviewer),
2. where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to *the Division*, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the Council's complaints coordinator (for referral to a conduct reviewer).

Complaints about councillors that the General Manager must refer to *the Division* are:

- a) complaints alleging a breach of the pecuniary interest provisions of the Local Government Act,
- b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations,
- c) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
- d) complaints the subject of a special complaints management arrangement with *the Division* under clause 5.40 (of *the Procedures*).

Complaints about the general manager that the Mayor must refer to *the Division* are:

- a) complaints alleging a breach of the pecuniary interest provisions of the Local Government Act,
- b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
- c) complaints the subject of a special complaints management arrangement with *the Division* under clause 5.40 (of *the Procedures*).

If a complaint is not referred to *the Division* or resolved by the above alternative dispute resolution process, it is to be referred to the Council's complaints coordinator (Director Corporate Services) to manage the process of referring the complaint to a conduct reviewer for preliminary assessment and if appropriate, investigation.

Proposal:

The Procedures prescribe the manner in which Council must call for public expressions of interest for appointment to the panel, the eligibility and skills required to be a member of a panel, who may not be a member of a panel and that the maximum term of appointment to a panel is 4 years. *The Procedures* also allows Council to enter into an arrangement with one or more other councils to share a panel of conduct reviewers.

Following discussions with Randwick Council, it was decided to call for expression of interest for membership to a joint Waverly and Woollahra Council panel of conduct reviewers. The expression of interest process was managed by Randwick Council and conducted in accordance with the statutory requirements of *the Procedures*.

The closing date for the expressions of interest was 9 July 2013 and the following submissions were received:

1. Ally Group P/L
2. BDO East Coast Partnership
3. Chris Gallagher Consulting
4. Desmond Crowley
5. Jeremy Bingham
6. John Kleem Consulting
7. Julie Baker-Smith & Associates
8. Inconsult
9. Internal Audit Bureau (IAB)
10. LKA Group
11. Lloyd Graham
12. Mayer Vandenberg Lawyers
13. McClintock Lawyers
14. Mediate Today
15. MSM Fidelity Services
16. Nemesis Consulting Group
17. O'Connor Marsden & Associates
18. Peter Zdjelar
19. Prevention Partners
20. Sinc Solutions
21. Strategic Risk Solutions
22. Third Party Neutral
23. Tress Cox Lawyers
24. Warfield & Associates
25. Wright Associates
26. Woodward Legal

The submissions have been reviewed independently by both Randwick and Woollahra Council based on the following core criteria:

- an understanding of local government.
- a demonstrated experience in, and knowledge of, investigative processes including, but not limited to, procedural fairness requirements and the requirements of the [Public Interest Disclosures Act 1994](#).
- an understanding of the Model Code of Conduct for Local Councils in NSW 2013 and Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW 2013 and other relevant applicable Legislation including but not limited to the Local Government Act 1993.
- knowledge and experience of one or more of the following: law, investigations, public administration, public sector ethics, or alternative dispute resolution.
- not precluded from eligibility as a “conduct reviewer” under Clause 3.6 of the *Procedures for Administration of the Model Code of Conduct for Local Councils in NSW 2013*.
- price to undertake preliminary assessments and investigations.

Further consideration was given to the following additional criteria:

- independence and freedom from contractual arrangements in relation to the subject councils.
- the ability to prepare a report to Councils on the investigations, findings and recommendations.
- the ability to provide the service at a high standard, which reflects value for money.
- the ability to communicate effectively and work in partnership with officers of Council.
- the ability to provide flexibility and availability of time whenever an assessment or investigation is required.

It is recommended that the following be appointed to the joint panel of conduct reviewers for Randwick and Woollahra Councils for a 4 year term commencing 14 August 2013.

1. Inconsult
2. Wright Associates
3. Jeremy Bingham
4. Sinc Solutions
5. Strategic Risk Solutions
6. Woodward Legal

It should be noted that either Council may terminate the panel of conduct reviewers at any time by resolution.

Should the need arise for a reviewer to be appointed to undertake a preliminary assessment or investigation, one of the above panel members will be selected based on their particular skills and experience relative to the matters being assessed/investigated.

The requirement for Council to appoint independent persons, to comprise the membership of a conduct review committee or to act as a sole conduct reviewer, was introduced with the 2008 Model Code of Conduct. Since that time Council has not had a need to refer any complaints to a conduct review committee or sole conduct reviewer.

Identification of Income & Expenditure:

All costs associated with assessments or investigations will be met from Council’s existing budget.

Conclusion:

Council is required to establish a panel of conduct reviewers in accordance with the statutory provisions of the *Model Code of Conduct for Local Councils in NSW* and *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*. Randwick and Woollahra Councils advertised for expressions of interest from suitably qualified persons to be appointed to a joint panel of conduct reviewers for both Councils.

26 submissions were received and it is recommended that a panel of 6 conduct reviewers, as identified above, be appointed to the joint panel.

Les Windle
Manager Governance

Stephen Dunshea
Director Corporate Services

Annexures:

Nil

Item No: R1 Recommendation to Council
Subject: **Conflict of Interests Policy**
Author: Les Windle - Manager Governance
File No: 817.G
Reason for Report: For Council to consider amendment to the Conflict of Interests Policy

Recommendation:

That the Conflict of Interests Policy August 2013 submitted as Annexure 2 to the report to the Corporate and Works Committee on 5 August 2013 be adopted.

Background:

Council first adopted a Conflict of Interests Policy in 1997 to support the Code of Conduct and has seen several updates since that time in conjunction with changes to Codes of Conduct. The current Policy was adopted on 18 February 2013 along with new Model Code of Conduct for Councils in NSW for commencement on 1 March 2013.

The structure of the Policy has generally been to replicate the conflict of interests requirements of the various Codes of Conduct and the honesty and disclosure of interests provisions of the Local Government Act.

The proposed policy moves away from merely replicating the legislative requirements to providing a structure that identifies the relationship between private interests and conflict of interests and recognises that:

- there is nothing unusual or necessarily wrong with having a conflict of interests,
- conflicts of interests cannot always be avoided,
- unavoidable conflicts of interest need to be identified, disclosed and effectively managed,
- how conflicts of interest are dealt with is the important thing,

The proposed policy includes a more detailed section on how conflict of interests are to be managed by council officials.

Proposal:

The proposed policy has been informed by the joint NSW Independent Commission Against Corruption (ICAC) and Queensland Crime and Misconduct Commission (CMC) publications *Managing Conflicts of Interest in the Public Sector - Guidelines* and *Managing Conflicts of Interest in the Public Sector - Toolkit*.

The publications identify that a high proportion of matters referred to those organisations concern actual, perceived or potential conflicts of interest and that a transparent system will also demonstrate to members of the public and others who deal with the organisation that its proper role is performed in a way that is fair and unaffected by improper considerations.

A key component included in the proposed policy is the introduction of requirements that address perceived conflict of interests. As identified by the *ICAC + CMC* publications, poorly managed perceived conflict of interests can be just as damaging as poorly managed conflict of interests.

The legislative requirements provide that staff must avoid or appropriately manage conflicts of interests, disclose those conflict of interests, distance themselves from pecuniary and significant non-pecuniary conflict of interests and manage non-pecuniary conflict of interests in consultation with their manager.

The legislation does not prescribe when the disclosures are to be made. The proposed policy addresses how a conflict of interests is to be managed from the moment the conflict is known to exist. This early disclosure addresses any potential perceived conflict of interests.

The proposed policy also includes how staff members who have declared pecuniary and significant non-pecuniary conflict of interests must manage the conflict of interests in an appropriate and transparent way.

The legislative requirements address how Councillors are to manage conflict of interests at meetings but does not address how conflict of interests are to be managed prior to a matter coming before a Committee or Council Meeting. The proposed policy addresses how a conflict of interests is to be managed from the moment the conflict is known to exist.

This approach is consistent with Council's recent submission to the Local Government Acts Taskforce - A New Local Government Act for NSW Discussion Paper. Council's submission in relation to pecuniary interests was:

Pecuniary Interest (3.3.7)

The current Local Government Act requires that pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters be publicly recorded and requires councillors and staff to refrain from taking part in decisions on council matters in which they have a pecuniary interest.

*Council proposes that the pecuniary interest provisions be strengthened so that councillors, council delegates and staff refrain from **having any involvement at any stage** in council matters in which they have a pecuniary interest, and not just refrain from taking part in decisions on such matters.*

The proposed policy includes the following requirements on managing conflict of interests:

Managing conflict of interests

Councillors must manage their conflicts of interest appropriately and with transparency. This includes:

- *declaring your conflict of interests in writing to the General Manager as soon as you become aware of the conflict of interests and verbally at meetings*
- *in relation to pecuniary and significant non-pecuniary conflict of interests:*
 - *distancing yourself from any involvement in the matter and particularly in the decision making process*
 - *not obtaining documents and information from Council relating to the matter, decision or transaction, unless the documents and information is available to the general public, ie meeting business papers*
 - *not discussing the matter or providing advice or information to any party involved in or associated with the matter*
- *not communicating with other Council officials in a manner that could be perceived as trying to influence the conduct or decisions of those officials in an improper manner*

- *in relation to a reportable political donation made by a major political donor in the previous 4 years who has a matter before council, declaring the non-pecuniary conflict of interest, the nature of the interest and have no involvement in the matter*
- *declaring your conflict of interests in a proposal relating to the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and making a written special disclosure in the prescribed form before the commencement of the relative meeting*
- *Submitting a Primary Return of Disclosure of Pecuniary Interests and other Matters within 3 months of becoming a Councillor and thereafter submitting an Ordinary Return for each July – June period.*

Options for Councillors to manage non-significant non-pecuniary conflict of interests include:

- *participating in the discussion but not the decision making (vote) on the matter,*
- *participating in the decision making (vote) but not the discussion on the matter,*
- *participating in both the discussion and decision making (vote) on the matter,*
- *not participating in the discussion and decision making (vote) on the matter.*
- *removing the source of the conflict.*

Council staff must manage their conflicts of interest appropriately and transparently. This includes:

- *declaring your conflict of interest in writing to your manager or General Manager as soon as you become aware of the conflict of interests*
- *in relation to pecuniary and significant non-pecuniary conflict of interests:*
 - *distancing yourself from any involvement in the matter and particularly in the decision making process*
 - *not obtaining documents and information from Council relating to the matter, decision or transaction, unless the documents and information is available to the general public, ie meeting business papers*
 - *not discussing the matter or providing advice or information to any party involved in or associated with the matter*
- *not communicating with other Council officials in a manner that could be perceived as trying to influence the conduct or decisions of those officials in an improper manner*
- *if your conflict of interest changes or still exists a year after the initial written notification you must make a new notification in writing to your manager or the General Manager*
- *managers passing a copy of the written notifications to the General Manager*
- *managers and staff together preparing a document detailing how the conflict will be managed and passing a copy of the agreed management plan of action to the General Manager*
- *staff complying with the management plan of action*
- *managers monitoring the management of the conflict of interests*
- *staff and managers always putting the public interest ahead of a person's private interest in a conflict of interests situation*
- *if you are considering secondary employment that relates to the business of the Council or might conflict with your council duties, you must notify and seek approval of the General Manager in writing.*

For senior staff and designated persons, submitting a Primary Return of Disclosure of Pecuniary Interests and other Matters within 3 months of becoming employed at Council and thereafter submitting an Ordinary Return for each July – June period

Conclusion:

The proposed new Conflict of Interests Policy moves away from merely replicating legislative requirements to providing a structure that identifies the relationship between private interests and conflict of interests. It provides a more transparent system of understanding and identifying conflict of interests and how council officials are to manage the conflict of interests.

It is recommended that the Conflict of Interests Policy August 2013 be adopted.

Les Windle
Manager Governance

Stephen Dunshea
Director Corporate Services

Annexures:

1. Current Conflict of Interests Policy March 2013
2. Proposed Conflict of Interests Policy August 2013

Item No: R2 Recommendation to Council
Subject: **Statutory Review of Policy - Payment of Expenses and Provision of Facilities to The Mayor, Deputy Mayor and Councillors Policy**
Author: Les Windle - Manager Governance
File No: 18.G
Reason for Report: For Council to fulfil its statutory requirement to annually review and publicly exhibit a proposed policy for the Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors

Recommendation:

- A. THAT Council's current Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors Policy as contained in Annexure 1 of the report to the Corporate and Works Committee meeting on 5 August 2013 be placed on public exhibition for a period of not less than 28 days as Council's proposed policy for the ensuing twelve months.
- B. THAT a further report be submitted to the Committee at the conclusion of the exhibition period.

Background:

Council adopted the current *Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors Policy* on 26 November 2012. (Annexure 1)

Section 252 of the Local Government Act (the Act) requires Council to adopt an expenses and facilities policy within 5 months after the end of each financial year. Section 253 of the Act requires Council to publicly exhibit a proposed Policy for no less than 28 days prior to adopting the policy. The policy must comply with the Act, Local Government (General) Regulation 2005 and guidelines issued under section 23A of the Act by the Division of Local Government (DLG), Department of Premier and Cabinet. Council's current Policy complies with the legislative requirements and DLG Guidelines.

Proposal:

Council must now undertake the annual review of the Policy.

When the Policy was considered during the 2012 review, the following proposals were considered and adopted by Council:

It is proposed, at this stage, in order to meet the legislative requirements of public exhibition and adoption of the Policy by 30 November, that the current Policy, subject to updating reference information such as budget allocations and the Australian Taxation Determination in relation to reasonable travel and overtime meal allowances, be placed on exhibition for public comment and a further report be submitted to the Committee at the conclusion of the exhibition period.

It is also proposed that the Policy be further reviewed in early 2013. This will allow the new Councillors to become familiar with the operation of the Policy and the Council as a whole, determine whether the Policy provisions are sufficient to allow for the Councillors to receive adequate and reasonable expenses and facilities to enable them to carry out their civic duties as elected representatives of the local community.

The Policy was adopted on 26 November 2012 and in February 2013 Councillors were invited to comment on the adequacy of the current level of expenses and facilities allowed in the Policy. 5 responses were received and a summary of the survey responses is attached. (Annexure 2)

The responses indicate, from those Councillors submitting a response, that the majority of expenses and facilities are considered adequate however consideration could be given to increasing the monetary limits for mobile phone calls (currently \$100 per month), home internet use (currently \$50 per month) and care and other related expenses (currently \$3,000 per annum).

Council may propose to exhibit the current Policy without change or it may introduce amendments to the Policy. Whichever option Council chooses it still must undertake the full consultation process.

Council's Policy is structured in accordance with the DLG Guidelines and references the payment of expenses and/or provision of facilities to the Mayor, Deputy Mayor and Councillors under the following headings:

- Conferences, seminars, workshops and courses
- Care and other related expenses
- Insurance cover
- Legal expenses and assistance
- Provision of facilities to the Deputy Mayor and Councillors
- Provision of facilities to the Mayor
- Reimbursement of expenses incurred by the Mayor, Deputy Mayor and Councillors
- Funding of additional facilities purchased by the Mayor, Deputy Mayor or Councillors
- Joint Regional Planning Panel (JRPP) Fees

Council should consider whether the scope or level of facilities or expenses provided to Councillors are considered adequate or should be altered.

Consultation:

Before Council can adopt or amend an expenses and facilities policy it must give public notice of not less than 28 days of the proposed policy. At the conclusion of the exhibition period the Council must consider any submission made to it and if considered necessary, make appropriate changes to the proposed policy. If the changes to the policy are considered substantial, the proposed amended policy will be required to be re-exhibited. If the proposed changes are, in the opinion of the Council, not substantial then the amended proposal will not need to be re-exhibited.

Following adoption of the policy by Council, the policy together with details of all submissions received and a statement from Council setting out the response to each submission must be forwarded to the Division of Local Government.

Identification of Income & Expenditure:

If Council adopts the current policy no additional expenditure will be incurred by Council. If changes are made to the policy, additional expenditure may be incurred depending on the scope and level of the changes made.

Conclusion:

Council must review its Councillors expenses and facilities policy within five months of the end of each financial year and must publicly exhibit any proposed policy, even if it is the existing policy, for a period of not less than 28 days. Should Council consider the existing policy provides a satisfactory scope and level of facilities and expenses to the Mayor, Deputy Mayor and Councillors, the existing policy could be placed on public exhibition and a further report submitted to the Committee following the exhibition period. It is recommended that the current policy, subject to updating reference information such as budget allocations and the Australian Taxation Determination in relation to reasonable travel and overtime meal allowances, be placed on public exhibition as the proposed policy for the ensuing 12 months.

Les Windle
Manager Governance

Stephen Dunshea
Director Corporate Services

Annexures:

1. Adopted Policy – Payment of expenses and provision of facilities to the Mayor, Deputy Mayor and Councillors (November 2012)
2. Summary of survey responses from Councillors

Item No: R3 Recommendation to Council
Subject: **Commercial and Retail Leasing Strategy for The Kiaora Lands Development**
Author: Tom O’Hanlon, Director Technical Services
File No: Tender No 12/12
Reason for Report: To advise Council on the progress of the commercial and retail leasing strategy for the Kiaora Lands Development.

Recommendation:

- A. That Council note the Commercial and Retail Leasing Strategy for the Kiaora Lands Development.
 - B. That the General Manager be authorised to execute leases for commercial and retail spaces at Kiaora Lands that derive from the strategy and the work of Rook Partners.
 - C. That the content of the Strategy remains confidential under Section 10A (2) (c) until all negotiations for leasing of Kiaora Lands is concluded, as the strategy includes information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
-

Background

The Kiaora Lands development is comprised of three large retail spaces which will be occupied on long term lease by Woolworths. In addition, there are significant areas of commercial/office and specialty retail space which will be managed directly by Council and which are required to be separately leased.

On 25 March 2013, Council resolved to enter into a contract with Rook Partners for the development and implementation of a commercial and retail leasing strategy for the Kiaora Lands Development.

The strategy has been developed in consultation with Council staff and a copy is attached as **Confidential Annexure 1**. Rook Partners are now actively seeking to implement the strategy and are in discussion with a number of potential tenants. Work so far has focussed primarily on the office and retail spaces in Stage 1 of the development (the site to the south of Kiaora Lane) which is scheduled to open in mid 2014.

The Strategy

The Commercial and Retail Leasing Strategy for the Kiaora Lands Development includes the following key elements;

- 1. A vision for the centre
- 2. Key objectives
- 3. Critical success factors
- 4. Current market review
- 5. SWOT analysis
- 6. Premises by premises plan

The critical section of the strategy is part 6, the Premises by Premises Plan. This section describes the layout of the centre on a shop by shop basis and for each shop site identifies the preferred use and a range of preferred tenants who will be targeted. It also sets budget and target rents for each site.

It should be noted that the plan, while appearing prescriptive and somewhat fixed in regard to the tenancy mix, is in fact a strategic document which will remain necessarily flexible and will be subject to change as circumstances change, i.e. if new opportunities arise which represent a better deal than those initially proposed, they will be pursued.

Leasing of the Stage 1 Commercial Space as a Childcare Centre

As noted earlier, the focus of activity to date has been the spaces in Stage 1 of the development which need to be leased prior to opening in mid 2014. The most significant progress has been in regard to the commercial office space which sits above the Thomas Dux store at the Kiaora Road/Kiaora Lane frontage.

Council staff have been in discussion since late 2012 with an organisation called Goodstart Early Learning, with regard to use of this site as a child care and early learning centre. In recent months, Rook Partners and Goodstart have undertaken detailed negotiations, to the point where Goodstart have submitted a Letter of Intention to Lease and have requested prompt consideration of their proposal, noting that significant development works will be required if the target opening date is to be achieved.

Goodstart Early Learning is a very high calibre not for profit child care operator which is jointly owned by The Benevolent Society, Mission Australia, the Brotherhood of St Laurence and Social Ventures Australia. They currently operate 655 centres across Australia. At the Double Bay site, they propose to provide 120 places and are seeking two leases, both with initial terms of ten years with a further four terms of five years. They will occupy the entirety of the commercial office space in Stage 1 of the development.

Rook Partners have evaluated the offer from Goodstart and have tested it against other potential uses and or tenants for the site and have concluded that from a commercial and centre development point of view, the offer is very strong. They cite the following key considerations;

1. Very competitive rental and incentive offer.
2. Stable corporate position.
3. Excellent security of tenure and income over a thirty year period.
4. Excellent fit to the site, noting other complementary uses such as the library, supermarket and cafes.
5. Strong potential for animation of the site through increased foot traffic, particularly at non-peak retail times.

For all of the commercial reasons outlined above, Rook Partners have strongly recommended that Council accept the leasing offer from Goodstart Early Learning without delay and proceed to preparation of an Agreement for Lease.

It should also be noted that, while consideration of the Goodstart offer by Rook Partners has been made purely on a commercial basis, it is also clear that their offer also holds strong appeal from a social needs point of view.

Execution of Leases

Full occupation of the commercial and retail spaces at the Kiaora Lands site will require the execution of approximately 28 – 30 small and large leases over the next 18 months. These leases will be negotiated on behalf of Council by Rook Partners. It is not proposed to report individual leases to Council as to do so would be unnecessarily cumbersome and would significantly impede the flexibility and agility that will be required in our negotiations with potential tenants. It would also undermine the level of certainty that Rook Partners and staff can bring to negotiations with potential tenants.

It is proposed that, where Rook Partners have achieved a satisfactory leasing proposal which is consistent with the Commercial and Retail Leasing Strategy, that the lease will be authorised and executed by the General Manager on behalf of Council. This approach will be consistent with the requirements of the Local Government Act and the General Manager's existing delegations.

Conclusion:

It is recommended that Council receive and note the development of the Commercial and Retail Leasing Strategy for the Kiaora Lands Development which has been prepared by Rook Partners in consultation with Council staff.

Tom O'Hanlon
Director Technical Services

Annexures:

- 1 Confidential Annexure – Commercial and Retail Leasing Strategy for the Kiaora Lands Development

Political Donations – matters to be considered by Councillors at Meetings

