



# Ordinary Council Meeting

**Agenda:** *Ordinary Council Meeting*

**Date:** *Monday 25 July 2011*

**Time:** *8.00pm*

# Woollahra Municipal Council

## Notice of Meeting

21 July 2011

To: Her Worship The Mayor, Councillor Isabelle Shapiro  
Councillors Anthony Boskovitz  
Sean Carmichael  
Peter Cavanagh  
Lucienne Edelman  
Nicola Grieve  
Chris Howe  
Susan Jarnason  
Greg Medcraft  
Andrew Petrie  
Ian Plater  
David Shoebridge  
Susan Wynne  
Malcolm Young  
Toni Zeltzer

Dear Councillors

### **Council Meeting – 25 July 2011**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Ordinary Council Meeting** to be held in the **Council Chambers, 536 New South Head Road, Double Bay, on Monday 25 July 2011 at 8.00pm.**

Gary James  
General Manager

## Meeting Agenda

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1.	Confirmation of Minutes – Ordinary Meeting	11 July 2011
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7.	Public Forum	
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R3	DA239/2009 - 7, 9 & 10 Fern Place, Woollahra – Construction of 2 x 2 x 3 storey detached residential dwellings with a common basement car park – 20/5/2009	6
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## Mayoral Minute

**Mayoral Minute No:** 1

**Subject:** General Manager – Contract Renewal

**Author:** Cr Isabelle Shapiro, Mayor

**File No:** 58.G Staff James G

**Reason for Report:** To consider renewal of the General Manager's employment contract.

**Recommendation:**

1. That Council note the General Manager Performance Review Panel's unanimous recommendation for the renewal of the General Manager's Contract.
2. That Mr Gary James current contract term as General Manager be extended for four (4) years to 1 July 2016.
3. That the Mayor, in consultation with the Performance Review Panel, be authorised to negotiate and finalise the Contract of Employment, subject to any substantive departure from the standard contract of employment for General Managers issued by the Department Local Government being advised to Councillors prior to signing the Contract.

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**Background:**

The General Manager's employment contract expires 30 June 2012. Clause 5.1 of the contract requires the General Manager to give 12 months notice of his intention to seek a renewal of his contract.

*"5.1 At least 12 months before the termination date, the employee will apply to the council in writing if seeking reappointment of the position."*

The General Manager has requested reappointment to the position. The Local Government Act requires the actual appointment of a General Manager to be by way of a Council resolution. Appointment of the General Manager can not be delegated but negotiations and determination of the actual contract conditions is permitted.

Mr James's reappointment is recommended by me in my capacity as Mayor and it is also recommended unanimously by the Performance Review Panel. Mr James met with the Panel on 30 June 2011. The Panel, chaired by me, included Councillors Cavanagh, Petrie, Wynne, Howe, Zeltzer, Plater and Young. The General Manager presented an overview of key indicators and detailed information of a large range of achievements measured against key health check indicators. The indicators:

- Financial Management, Strategic & Corporate planning,
- Risk Management,
- Good Governance,
- Customer Service,
- Workforce Development,
- Corporate Communications, and
- Regional Development.

After considering the General Manager's report on the management of Council business and the Council's achievements against agreed indicators the General Manager's Performance Review Panel unanimously resolved:

*"We recommend the renewal of the General Manager's contract having considered the information provided on the operation of Council during the current Council term and the performance review conducted on 30 June 2011.*

*We recommend the Council renew the contract of the General Manager."*

The term of any reappointment can be for a period of 1 - 5 years. An extension of up to 4 years, up to 1 July 2016 has been sort rather than the maximum 5 year term. The standard contract provisions will require Mr James, if he so determines, to seek a further extension in July 2015, some 15 months before the following Council elections. (The standard form contract clause requires 9 months notice in lieu of 12 months as agreed above.) I propose that the Standard Form of Contract be amended to provide that any such notice that it be given by 1 July 2015 so that in the event the relationship between the Council and the General Manager is not to be continued the Council has 15 months to obtain a replacement before the elections.

I strongly recommend Mr James be reappointed as General Manager for a 4 year term ending 1 July 2016. Further, I am recommending he be reappointed in accordance with the standard contract issued by the Department of Local Government and that the Mayor, in consultation with the members of the Performance Review Panel be delegated authority to negotiate and finalise the contract.

Cr Isabelle Shapiro  
Mayor

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**Annexures:**

Nil

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## 9.1 Corporate & Works Committee

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### Items with Recommendations from the Committee Meeting of Monday 18 July 2011 Submitted to the Council for Determination

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**Item No:** R1 Recommendation to Council  
**Subject:** **Reconstruction Work in Bunyula Road between Latimer Road and Blaxland Road, Bellevue Hill.**  
**Author:** Sam Badalati – Project Manager  
**File No:** Tender No 11/08  
**Reason for Report:** To recommend to Council the acceptance of a Tender.

**Recommendation:**

- A. That Council enter into a Contract with Melhemcorp Pty Ltd for the lump sum of \$463,016 excluding GST, plus any provisional rates used for reconstruction work in Bunyula Road between Latimer Road and Blaxland Road, Bellevue Hill.
- B. That successful and unsuccessful tenderers be advised accordingly.
- C. That Council progress at SSROC meetings, regional support for Council's open tendering procedures to promote transparency in the decision making process.

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**Item No:** R2 Recommendation to Council  
**Subject:** **Interest on Overdue Rates & Charges**  
**Author:** Don Johnston, Manager Finance  
**File No:** 331.G 2011/12  
**Reason for Report:** To report to the Committee an increase in the maximum interest rate for overdue Rates and Charges and seek a determination of the rate to be charged by Council in 2011/12.

**Recommendation:**

That Council:

- A. Give 28 days notice of an amendment to its 2011/12 Fees and Charges Schedule to apply the maximum interest rate of 11% on overdue Rates and Charges.
  - B. Receive a further report advising of any submissions received in respect of the proposal.
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**Item No:** R3 Recommendation to Council  
**Subject:** **Internal Audit Function and Audit Committee**  
**Author:** Stephen Dunshea - Director Corporate Services  
Cheryle Burns – Manager Risk Control & Safety Services  
Helen Tola – Governance & Corporate Planning Coordinator  
**File No:** 1225.G  
**Reason for Report:** To provide the Committee with an overview of the Woollahra Council model for Internal Audit in the context of an overall Business Assurance Framework and to make recommendations regarding the establishment of an Audit and Assurance Committee.

**Recommendation:**

That Council:

- A. Note the development of Council's Internal Audit function as a key operational component of Council's overall Business Assurance Framework.
- B. Having considered the Division of Local Government Internal Audit Guidelines and the ICAC recommendations in relation to Audit Committees, formally establish the Woollahra Council Audit and Assurance Committee as an Advisory Committee of Council, to report to Council through the Corporate & Works Committee.
- C. Determine the composition of the Audit and Assurance Committee, as a five (5) member Committee comprising three (3) independent members to be appointed by Council, and two (2) Councillors to be appointed by the Mayor.
- D. Establish a panel comprising the Mayor, Deputy Mayor, Chair of the Corporate & Works Committee, one (1) other Councillor to be appointed by the Mayor, the General Manager and the Director Corporate Services, to prepare draft expressions of interest documents relating to the appointment of the independent members for review by the Corporate Works Committee.
- E. Review the Draft Audit & Assurance Committee Charter provided as Annexure 2 as the Audit and Assurance Committee's Charter, in light of the matters raised at the Corporate & Works Committee meeting of the 18 July 2011.
- F. Note Council's participation in a resource sharing arrangement with the Southern Sydney Regional Organisation of Councils (SSROC) for the provision of Internal Audit Services.

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## 9.2 Development Control Committee

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### Items with Recommendations from the Committee Meeting of Monday 18 July 2011 Submitted to the Council for Determination

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- Item No:** R1 Recommendation to Council
- Subject:** **20-22 Pacific Street, Watsons Bay – Demolition of two existing dwelling houses & ancillary structures (excluding boatshed) & construction of a new dwelling house & swimming pool, landscaping & associated siteworks – 13/3/2010**
- Author:** Clare Hall – Assessment Officer
- File No:** DA132/2010
- Reason for Report:** In accordance with Council’s meeting procedures and policy this matter has been called to full Council by Councillor Howe for the following reasons:
1. Impact of proposal on Watsons Bay Heritage Conservation Area as expressed by significant number of local residents.
  2. Public interest and precedent due to;
    - Non-compliance of the chimneys with Clause 12 of the WLEP1995 and SEPP 1 Objection lodged by applicant.
    - Non-compliance of Clause 19 WLEP1995 FSBL and SEPP 1 Objection lodged by applicant.
    - Non-compliance with WBHCADCP; Part 3 Clauses J.6.1, J.6.2, J.6.3, J.6.4, & J18, & Part 4 Section 6.4.1.
  3. Recommendations of our Planning and Heritage Staff for Approval
  4. Recommendation of Councillors at Site Meeting for deferment due to non-compliances.

**Recommendation:**

THAT the Council, defer Development Application No. 132/2010 for the demolition of existing dwelling houses and ancillary structures (excluding boatshed), construction of a new dwelling house and swimming pool, landscaping and siteworks on land at 20 Pacific Street Watsons Bay, for the following reasons:

- Extent of excavation and FSR exceedance
- Breach of Council’s height development standard
- Front setback non-compliance
- Roof form not consistent with Council’s DCP controls
- FSBL encroachment
- The use of solid fuel for the fireplaces



**Item No:** R2 Recommendation to Council  
**Subject:** **23 Serpentine Parade, Vacluse – Section 96 Application – Proposed modification addition of a new roof terrace – 7/4/2011**  
**Author:** Clare Hall – Assessment Officer  
**File No:** DA372/2010 Part 2  
**Reason for Report:** In accordance with Council’s meeting procedures and policy this matter is referred to full Council due to a substantive change of the Committee’s recommendation (refusal) to the Officer’s recommendation (approval).

**Recommendation:**

THAT Council, refuse to modify development consent to Development Application No. 372/2010 part 2 for the addition of a new roof terrace on land at 23 Serpentine Parade Vacluse, for the following reasons:

- Privacy
- Overlooking
- Noise
- Excessive scale and FSR

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**Item No:** R3 Recommendation to Council  
**Subject:** **7, 9 & 10 Fern Place, Woollahra – Construction of 2 x 2x3 storey detached residential dwellings with a common basement car park – 20/5/2009**  
**Author:** Simon Taylor – Senior Assessment Officer  
**File No:** DA239/2009  
**Reason for Report:** In accordance with Council’s meeting procedures and policy this matter has been called to full Council by Councillor Boskovitz for the following reasons:

- Lack of public consultation regarding the potential sale of public land
- The future of the RTA who may eventually sell the asset, is in question
- Planning issues that are involved in the proposal

**Recommendation:**

THAT the Council, defer Development Application No. 239/2009 for the construction of 2 x two/three storey detached residential dwellings with a common basement car park on land at Lot 7, 9 and 10 DP 262918 in Fern Place, Woollahra, to the next Development Control Committee of the 1 August 2011 for the following reason:

- To allow affected parties further time to consider the development application and their associated impacts.

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## 9.3 Urban Planning Committee

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### Items with Recommendations from the Committee Meeting of Monday 11 July 2011 Submitted to the Council for Determination

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**Item No:** R1 Recommendation to Council  
**Subject:** **Woollahra Principal LEP Dwelling Opportunity Sites**  
**Author:** Chris Bluett - Manager Strategic Planning  
**File No:** 1064.G Principal LEP  
**Reason for Report:** To inform Council about advice from the Department of Planning and Infrastructure on the dwelling opportunity sites and preparation of the Principal LEP.  
To obtain a decision to prepare a planning proposal for 9A Cooper Park Road, Bellevue Hill

**Recommendation:**

- A. That the Council advise the Department of Planning and Infrastructure that it would prefer to proceed with a staged approach to the delivery of additional housing opportunity sites in Woollahra through planning proposals as suggested in the Department's letter of 22 June 2011.
  - B. That the Council defer consideration of the remaining opportunity sites or other sites that have or may be brought to the Council's attention until gazettal of the Principal LEP, unless strong and supportable planning reasons are brought forward.
  - C. That a planning proposal be prepared for 9A Cooper Park Road, Bellevue Hill incorporating the changes endorsed by the Council in Part A of its resolution of 16 May 2011 relating to the site.
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## Rescission Motion

**Item No:** 1  
**From:** Councillors Shoebridge, Jarnason and Grieve  
**Date:** 19 July 2011  
**File No:** 900.G 2011

That the motion carried at the Council Meeting held on 11 July 2011 being Item Number R3 of the Corporate and Works Committee dealing with the Installation of a lift at the Hugh Latimer Centre be rescinded.

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## Notices of Motion

**Item No:** 1  
**From:** Councillors Grieve, Jarnason and Shoebridge  
**Date:** 19 July 2011  
**File No:** 900.G

**Note:** In the event the Rescission Motion is adopted by Council, the following Notice of Motion is submitted for consideration.

- A. That Council approve the installation of a lift at the Hugh Latimer Centre Woollahra Preschool, to comply with the Disability Discrimination Act and Department of Education funding agreement.
  - B. That the sum of \$75,000 from the Preschool reserve be utilised to fund the installation of a lift and Council continue to seek grant funding for this project, when they become available.
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## Questions on Notice

**Item No:** 12  
**Subject:** Questions on Notice  
**Author:** Gary James, General Manager  
**File No:** 467.G/Q 10  
**Reason for Report:** To introduce Councillors Questions on Notice submitted in accordance with Council's Code of Meeting Practice.

### Recommendation:

That the Question on Notice be noted.

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### Background:

The provision for Councillors to ask Questions on Notice is contained in Section 3.1 of Council's Code of Meeting Practice which states:

#### **3.1 QUESTIONS ON NOTICE – received in accordance with part (2) below**

- (1) *As a standard practice, "Questions on Notice" shall be listed in all agendas of Ordinary Council Meetings.*
- (2) *Questions on Notice must be submitted in writing to Council's Governance Department by no later than 10.00am on the Thursday preceding the Council Meeting.*
- (3) *The Questions on Notice may be asked by the Councillor submitting the question or another Councillor, should the Councillor who submitted the question be absent from the meeting, at the Council Meeting.*
- (4) *The Councillor must put every such question directly, succinctly and without argument.*
- (5) *If an answer to a Question on Notice can be given at the Council Meeting then such shall be done either in writing or verbally and a record made in the Minutes of the Meeting. If an answer can be given, but not at the meeting, ie due to further research being required, the question can be taken "On Notice" and the chairperson shall indicate to whom the question is to be directed and the basis upon which the answer is to be provided (ie whether in writing and direct to the enquirer, to all Councillors or reported to the next or subsequent Council Meeting).*
- (6) *When an answer has been given to a Question on Notice, the chairperson must not allow any discussion on any reply or refusal to reply to the question (clause 249 of the Regulation)*
- (7) *When an answer has been given to a Question on Notice, no motion can be moved at the Council meeting. However if a matter is genuinely urgent, it could be dealt with under the urgency provisions (clause 241(3)) of the Regulation as is the case with any matter of urgency.)*
- (8) *If a Councillor seeks to have a matter arising from a question and answer considered by the Council, a Notice of Motion should be submitted to the General Manager in accordance with the Notice of Motion provisions of the Code of Meeting Practice.*

The below Questions on Notice were received by Council and should be asked in accordance with the Code of Meeting Practice.

**Councillor Carmichael asking:**

Question on Notice to Director of Corporate Services RE: Impact of Carbon Tax on Council's Budget

Based on available information, what impact do you expect the Commonwealth Government's proposed carbon dioxide tax will have on Council's future budgets?

Particularly, I note Brisbane City Council's 'warning' to residents that rates may rise an additional 2% due to the proposed tax. Can Woollahra ratepayers expect a similar rise in the coming years?

**Director Corporate Services in response:**

It's very difficult at this stage to put a dollar figure on any impact the Carbon Tax will have on Council's budget. Given we don't operate any direct carbon emission business activities that would attract the direct \$23 / tonne carbon tax, any impact on us will be through flow-on costs as other industries and suppliers pass on the tax through price increases.

The only relevant indicator I can find from the Clean Energy Future website shows the carbon price is expected to increase the CPI by 0.7% in 2012/13. But there are a range of price indicators IPART will use in their Local Government Costs Index to determine the rate pegging limit for 2012/13, including fuels, electricity, gas, building & construction materials etc. An estimate of the impact the carbon tax will have on these indicators isn't available at this stage so it is difficult to forecast what IPART's rate increase determination for 2012/13 might be.

It is worth noting that Council's rate increase for 2012/13 is already locked in at an effective 4% under the recently approved SRV, i.e., the estimated rate cap of 3% plus the additional 1% to recover some of the Emergency Management Contribution increases. Our long term financial modelling submitted with the SRV forecasts rate increases of 3% from 2013/14, being the estimated rate pegging limit which is subject to IPART's annual determination.

I would suggest that Brisbane Council are only able to provide the estimated 2% rate increase impact because they don't have the restriction of rate pegging.

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Gary James  
General Manager

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## Questions for the Next Meeting

**Item No:** 13  
**Subject:** Questions for Next Meeting  
**Author:** Gary James, General Manager  
**File No:** 467.G/Q 10  
**Reason for Report:** To provide a response to Questions for Next Meeting from Council Meeting of 11 July 2011 and for Councillors to ask Questions for Next Meeting in accordance with Council's Code of Meeting Practice.

### Recommendation:

That the responses to previous Questions for Next Meeting be noted.

### Background:

The provision for Councillors to ask Questions for Next Meeting is contained in Section 3.2 of Council's Code of Meeting Practice which states:

#### **3.2 QUESTIONS FOR NEXT MEETING – No previous notice of questions required**

- 1) *As a standard practice, "Questions for Next Meeting" shall be listed in all agendas of Ordinary Meetings of Council. The agenda item shall contain a report of the questions asked at the last Council Meeting and the responses to those questions and provide an opportunity for the Councillors to ask questions for the next Council Meeting.*
- 2) *Questions asked at a Council Meeting shall also be submitted in writing.*
- 3) *The Councillor must put every question directly, succinctly and without argument.*
- 4) *The Mayor shall refer the question to the General Manager or responsible Division Head, or if the question is directed to another Councillor, the Councillor concerned. There shall be no requirement to answer the question immediately.*
- 5) *If the answer to a question can be given immediately, and it makes sense to do so, then such shall be done and a record made in the Minutes of the Meeting. If an answer can be given, but not immediately, then the Mayor shall indicate to whom the question is to be directed.*
- 6) *In the spirit of achieving the expeditious discharge of Council business the agenda item "Questions for Next Meeting" shall generally be limited to not more than 30 minutes duration unless the Council determines otherwise, on the evening in question and by way of specific resolution.*

Questions for Next Meeting should be asked in accordance with the Code of Meeting Practice.

Responses to Councillors Questions for Next meeting on 11 July 2011 are as follows:

**Councillor Young asking:**

Can I ask when Council is going to take some definite action over the unsafe retaining wall at the rear of 22 Bathurst Street Woollahra backing on to Harbourview Park? After the owner of 22 Bathurst Street provided the Council with an engineer's report about the dangerous state of the wall, Council had it taped off on the park side on 1 October 2010.

The owner of No 22 has made some 15 calls to staff since then and all she is told is "we will get back to you". They have small children who are restrained in their use of their back yard. They want to landscape their back garden but don't want to spend a lot of money and then find that the wall is to be pulled down.

**Director Technical Services in response:**

The issue with this wall is that it actually borders on two properties and the Council park. The issue has been determining who actually owns the wall and on the face of it the survey shows that the wall is part of Council property but it is a lot more complicated than that and I don't intend to go into detail here. We are making an argument to the owners of the property that there is, because the wall provides benefit entirely to them, that they have a role to play in this as well and it is not purely a Council responsibility to fix the wall. I am aware that the owner of No 22 was told last week that we now have some firm legal advice to that matter and we are trying to arrange a meeting with the two neighbours and ourselves in the next couple of weeks to see if we can come to a three way arrangement regarding costs.

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Gary James  
General Manager

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**POLITICAL DONATIONS DECISION MAKING FLOWCHART  
 FOR THE INFORMATION OF COUNCILLORS**

