



Corporate & Works Committee

Agenda: *Corporate & Works Committee*

Date: *Monday 6 July 2009*

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 as per Regulation requirements.
 - Leases.
 - Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes

Committee Membership:

6 Councillors

Quorum:

The quorum for a Committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

2 July 2009

To: His Worship The Mayor, Councillor Andrew Petrie ex-officio
Councillors Greg Medcraft (Chair)
 Anthony Boskovitz
 Peter Cavanagh (Deputy)
 Nicola Grieve
 Ian Plater
 Isabelle Shapiro

Dear Councillors

Corporate & Works Committee Meeting – 6 July 2009

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 6 July 2009 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	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 22 June 2009	1
D2	9 Fisher Avenue, Vaucluse – Proposed Road Closure & Sale – 166.9	2
D3	10 Wharf Road, Vaucluse – Proposed Road Closure & Sale – 492.10	8
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D5	Disclosure of Interest returns submitted by new Designated Employees April to June 2009 – 169.G	17

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

R1	Cooper Street, Paddington to Brown Street – Civil Reconstruction Project – Tender No. 09/06	20
R2	Paddington Library Agreement – 659.G	26
R3	The Drill Hall at Sir David Martin Reserve – Proposed licence to critical path incorporated – 787.G Drill Hall	49
R4	Statutory Review of Policy – Payment of Expenses & Provision of facilities to The Mayor, Deputy Mayor & Councillors Policy – 18.G	64
R5	Structured Finance Investor Claim Against Lehman Brothers Australia Limited – 349G CDO's * Annexure 1 and 2 are confidential and distributed separately	78

Item No: D1 Delegated to Committee
Subject: **Confirmation of minutes of meeting held on 22 June 2009**
Author: Les Windle, Manager – Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 22 June 2009 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 22 June 2009 be taken as read and confirmed.

Les Windle
Manager – Governance

Item No: D2 Delegated to Committee
Subject: **9 Fisher Avenue, Vacluse - Proposed Road Closure and Sale**
Author: Anthony Sheedy, Property Officer
File No: 166.9
Reason for Report: To give consideration to the closure and subsequent sale of unmade roadway adjoining the property.

Recommendation:

- A. That the proposal to sell a section of unmade road reserve adjoining 9 Fisher Avenue, Vacluse, be advertised and notified to adjoining properties.
 - B. That a further report be submitted, following part A above.
-

Background:

The Corporate and Works Committee considered this matter on 22 June 2009, where it was resolved:

That the site be inspected prior to the Corporate and Works Committee meeting of 6 July 2009.

A copy of the previous Corporate and Works Committee report of 22 June 2009 is attached (Annexure 1).

Council has received a request from the owner of 9 Fisher Avenue, Vacluse to purchase an estimated 124 square metre irregular shaped section of Gilliver Avenue road reserve which adjoins their property; for the purpose of formalising the existing encroachment upon the road reserve, being brush fencing and landscaping.

The subject land is identified hatched on the attached plan (Annexure 2) and is steeply sloping with no need for pedestrian access. There is no benefit to Council to widen the road at this location.

It is considered appropriate that the encroachments are formalised by the owner purchasing the land at the market price as determined by valuation. In accordance with the procedures for the Sale of Council land, the next step is for the proposal to be publicly advertised, and a further report be submitted.

The owner of 9 Fisher Avenue, Vacluse has agreed to pay all Council's costs in connection with the purchase of the subject road reserve portion.

Conclusion:

In accordance with Council's Policy and Procedure for the Sale of Council Land, it is recommended that the proposal be publicly advertised and a further report be submitted.

Anthony Sheedy
Property Officer

Warwick Hatton
Director, Technical Services

Annexures:

- 1. Copy of report to Corporate and Works Committee 22 June 2009.
 - 2. Plan identifying the subject road reserve portion.
-

Item No: D3 Delegated to Committee
Subject: **10 Wharf Road, Vaucluse - Proposed Road Closure and Sale**
Author: Zubin Marolia, Manager - Property & Projects
File No: 492.10
Reason for Report: To give consideration to the closure and subsequent sale of unmade roadway adjoining the property

Recommendation:

- A. That a valuation be obtained for the sale of the unmade roadway adjoining 10 Wharf Road, Vaucluse.
- B. That a further report be submitted, following part A above.

Background:

The Corporate and Works Committee considered this proposal on 4 May 2009, where it was resolved:

- “A.. That the proposal to sell the subject road reserve in Wharf Road, Vaucluse adjoining 10 Wharf Road be advertised and notified to adjoining properties.*
- B. That a further report be submitted, following part A above.”*

A copy of the previous Corporate and Works Committee report on 4 May 2009 is attached.

The proposal to close and subsequently sell the unmade portion of roadway adjoining 10 Wharf Road, Vaucluse was advertised in the Council Notices section of the Wentworth Courier on Wednesday 20 May 2009; notices were circulated to adjoining neighbours and to the Vaucluse Sailing Club on 19 May 2009; and a site plan identifying the relevant section of unmade roadway was posted under the “Have Your Say” section of Council’s website for a period of 28 days until 17 June 2009 inclusive.

A copy of the survey plan prepared by Dunlop Thorpe & Co, Land Surveyors, identifying the portion of unmade roadway by the shaded area is attached.

The required notice period for the registration of objections expired on 17 June 2009. No objections to this proposed closure and subsequent sale have been received by Council.

The owner has agreed to pay all Council’s costs in connection with the purchase of the subject road reserve portion.

Conclusion:

It is recommended that Council resolve that a valuation be obtained for the sale of the unmade roadway adjoining 10 Wharf Road, Vaucluse, and that a further report be submitted to Council following receipt of the valuation.

Zubin Marolia
Manager – Property & Projects

Warwick Hatton
Director, Technical Services

ANNEXURES:

- 1. Copy of report to Corporate and Works Committee, 4 May 2009.
- 2. Land Surveyors, Dunlop Thorpe & Co survey plan of proposed road closure (shown hatched)

Item No: D4 Delegated to Committee
Subject: SMS \ Email Notification
Author: Nabil Saleh – Manager Information Systems
Stephen Dunshea – Director Corporate Services
File No: 6.G
Reason for Report: Response to adopted Council Resolution

Recommendation:

- A. That a request for quotation be prepared for an integrated Email and SMS e-Marketing system that satisfies Council's communication and electronic messaging requirements.
 - B. That a report is presented to the Corporate and Works Committee with a cost benefit analysis of implementing an e-Marketing solution.
-

Background:

On 25 May 2009, Council adopted the following resolution:

- A. That the Committee note the Actions included in the draft Delivery Program 2009 to 2013 and Operational Plan 2009/10 regarding the development of an online community engagement strategy and information technology strategy.*
- B. That detailed investigation of the email (push) technology for notification to subscription users be undertaken as part of the development of the online community engagement strategy.*
- C. That the Committee agree to detailed investigation being undertaken into the BounceBack SMS on demand (pull) technology for the provision of information on a range of Council services and events.*
- D. That a further report be presented on the BounceBack SMS technology detailing the specific services and events that could be supported through the use of this facility along with details of the resources required to maintain the system.*
- E. That the further investigation to be undertaken include reviewing tools and methods used to gather and store contact details for potential users.*
- F. That the rate notice for 2009/10 include an invitation to ratepayers, printed on the notice, to subscribe to 'What's on in Woollahra'".*

This report is presented in response to points C, D and E of the above Council resolution.

Report

We have conducted some investigations into integrated e-Marketing systems and stand alone SMS systems used in various organisations including Randwick City and Wyong Shire Councils.

Randwick City Council implemented a stand alone "Community Text" system from Dialogue Communications which enables the Council to communicate with customers using SMS for status of playing fields, cleanup services, events and public works. Currently Randwick City Council has approximately 200 subscribers to the events database and 200 subscribers to the cleanup service. The system provides SMS service only and does not have the capacity to gather email addresses or send customer communications via email.

Wyong Shire Council uses the BounceBack (pull) SMS system for providing SMS information on the status of playing fields. BounceBack SMS technology is well suited for this type of communication. However, at this stage it lacks email functionality and it doesn't satisfy the rest of requirements stated in the adopted Notice of Motion.

From statistics gathered on our website usage, most of the content that is suited for SMS delivery is listed under the news section and have very low usage volumes unless there is a major issue such as the hole in Bellevue Hill. The most popular and frequently accessed content on our website is more suited for email delivery. Below is a list of infrequently used and most popular and frequently used website content.

Infrequently used website content suited for SMS or Email delivery

- major road works and diversions, special event clearways
- beach and road closures
- library public holiday closures
- sports fields wet weather closures
- Council services during Christmas/NY period
- new services such as after hours phone service, 'kitchen to compost', free wireless at Redleaf
- updates concerning major planning issues, eg. DB high rise, marina DAs
- upcoming significant Council meeting dates and information sessions
- elections (where to vote, who to call)
- call for entries (Garden Awards, Sculpture Prize, Conservation Award etc)
- major Council events, eg. People & Pets, Kids Day Out, Sculpture Prize etc.

Most popular and frequently used website content suited for Email delivery

- positions vacant
- Council contact information
- quarterly clean up dates
- agendas and minutes
- development rules
- list of parks and playgrounds
- forms
- library locations and catalogue
- parking permits
- Councillors contact info

The website statistics indicate that for the content we wish to communicate to customers, it is imperative to have an email facility in any e-Marketing system that we may implement in the future

E-Marketing Systems

Our initial investigation into systems and tools that we can use to collect and store customer information demonstrated that there are various e-Marketing system offerings that may provide us with an opportunity to implement an integrated solution that will satisfy most of the Council's requirements using Email and SMS. Some of the systems investigated include the following:

- Lyris HQ Email Software
- Soprano Campaign Manager
- Wocom Campaigner

The above systems are stand alone e-Marketing systems and need to be integrated with Council's name and address and property databases and the notification process for development applications or public works.

Below is a high level specification of what an e-Marketing system should include in order to satisfy Council's requirements.

Email and SMS marketing high level system specification

The email and SMS marketing system should as a minimum cater for the following requirements:

- Provide customers with a web form to register their contact details including email and/or mobile numbers
- Provide customers with ability to subscribe or unsubscribe to notification processes including DAs and public works taking place in their area.
- Provide customers with the ability to create their own profile information and select topics or services of interest and preferred communication channels (eg. Email, SMS or Both).
- Satisfy requirements for delivery of our website's most popular and frequently used content
- Be easily integrated into Council's existing name and address and property databases for targeted communications for events, cleanups, public works or notifications such as "DAs in your area".
- Ability to enable push (initiated by Council) and pull (initiated by Customer) communications
- Ability to manage undeliverable messages due to incorrect or obsolete email addresses or mobile numbers
- Reporting features to assist in managing the contacts database and improve communication and marketing campaigns
- Ease of use and management to ensure least impact on Council's administrative resources
- Comply with Australia's anti-spam legislation (Spam Act 2003)

Request for quotation

Should Council wish to proceed further, at this stage with an integrated SMS / Email notification system, then the next step is to issue a request for quotation with the above high level specification as the requirements for an e-Marketing system. The high level specification will be detailed to include additional requirements.

Cost Benefit Analysis

Due to the low number of subscribers to the SMS service provided by Randwick City Council, it is important to conduct a thorough cost benefit analysis before committing to an investment in an e-Marketing system to ensure an adequate return on investment or a significant customer service improvement from using the technology.

Conclusion:

There are multiple technologies and service providers that have service or system offerings which may satisfy all Council's requirements. The above high level system specification addresses the requirements stated in the adopted Notice of Motion and subsequent Council resolution.

A request for quotation will be prepared to ensure that we identify available options and consider a complete integrated solution that will satisfy Council's Email and SMS marketing and communication requirements. A cost benefit analysis will be provided to determine if it is appropriate for Council to invest in such an e-Marketing system.

Nabil Saleh
Manager Information Systems

Stephen Dunshea
Director Corporate Services

Item No: D5 Delegated to Committee
Subject: **Disclosure of Interest Returns submitted by new Designated Employees April to June 2009**
Author: Les Windle – Manager Governance
File No: 169.G
Reason for Report: To table the disclosure of interest returns that have been lodged by new designated employees during the period April to June 2009

- A. That the Disclosure of Interest Returns of the new designated persons who were required to submit a Primary Return during the period April to June 2009 be tabled.
- B. That Council notes that the Primary Disclosure of Interest Returns have been submitted in accordance with the requirements of the Local Government Act 1993.

Background:

Designated persons are required to lodge a disclosure of interest return:

- (1) within three months of becoming a designated person, (Primary Return) and
- (2) for each July 1 to June 30 period (Ordinary Return).

A designated person is described in Section 441 of the Local Government Act as:

S441 Who are 'designated persons'

For the purposes of this chapter, "designated persons" are:

- *the general manager*
- *other senior staff of the council*
- *a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict of interest between the person's duty as a member of staff or delegate and the person's private interest*
- *a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the Council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.*

The occupants of the following Council positions have been determined to be designated persons for the purpose of Section 441 of the Local Government Act:

General Manager	Determined by Local Government Act
Directors	Senior staff of Council
Managers	Deemed to exercise designated persons functions
Executive Planner	Exercises designated persons functions
Team Leaders – Development Control	Exercises designated persons functions
Senior Assessment Officers	Exercises designated persons functions
Assessment Officers	Exercises designated persons functions
Team Leader – Compliance	Exercises designated persons functions
Blg/DA/Hoarding Compliance Officers	Exercises designated persons functions
Senior Building and Compliance Officers	Exercises designated persons functions
Building and Compliance Officers	Exercises designated persons functions
Team Leader – Urban Design	Exercises designated persons functions
Urban Design Planner	Exercises designated persons functions
Team Leader – Strategic Planning	Exercises designated persons functions
Development Engineers	Exercises designated persons functions
Environmental Health Officers	Exercises designated persons functions
Environmental Protection Co-ordinator	Exercises designated persons functions
Fire Safety Officers	Exercises designated persons functions
Strategic Heritage Officer	Exercises designated persons functions
Heritage Officers	Exercises designated persons functions
Coordinator Trees Maintenance	Exercises designated persons functions
Coordinator Parks Maintenance	Exercises designated persons functions
Team Leader – Development Assessment	Exercises designated persons functions
Team Leader – Tree Management	Exercises designated persons functions
Tree Officers	Exercises designated persons functions
Admin Assistant – Printing & Purchasing	Exercises designated persons functions
Resource Management Team Leader	Exercises designated persons functions
Customer and Community Services Library Team Leader	Exercises designated persons functions
Children’s and Young Adult Librarian	Exercises designated persons functions
Branch Librarian	Exercises designated persons functions
Plant and Fleet Co-ordinator	Exercises designated persons functions
Purchasing Co-ordinator	Exercises designated persons functions
Trades Supervisor	Exercises designated persons functions
Co-ordinator Civil Works	Exercises designated persons functions
Project Manager – Open Space	Exercises designated persons functions
Business Centres & Street Cleaning Co-ordinator	Exercises designated persons functions
Consultant Planners	Exercises designated persons functions
Duty Planners	Exercises designated persons functions
Team Leader – Infrastructure Asset Management	Exercises designated persons functions
Landscape Development/Tree Officers	Exercises designated persons functions
Project Manager – Strategic Projects	Exercises designated persons functions
Property Services Co-ordinator	Exercises designated persons functions
Asset Maintenance Officers	Exercises designated persons functions
Property Officers	Exercises designated persons functions
Co-ordinator Regulatory Services	Exercises designated persons functions
Traffic and Development Assessment Engineer	Exercises designated persons functions

The Local Government Act requires, at Section 450A(1), the General Manager to keep a register of returns disclosing the interests of Councillors and designated persons.

Section 450A(2)(a) requires the returns lodged with the General Manager be tabled at the first meeting held after the last day for lodgement. The purpose of this report is to table the Primary Disclosure of Interest Returns of designated persons who were required to lodge a return during the period April 1, 2009 to June 30, 2009.

Tabling of Returns:

Three new designated persons were required to submit Primary Disclosure of Interest Returns during the period and each designated person submitted their return in accordance with the legislative requirements.

Conclusion:

The designated persons required to complete Primary Disclosure of Interest Returns during the quarter ended 30 June 2009 completed their declarations in accordance with the legislative requirements.

The Returns are tabled in accordance with the requirements of the Local Government Act and it is recommended that the information be noted.

Les Windle
Manager - Governance

Stephen Dunshea
Director Corporate Services

ANNEXURES:

Nil

Item No: R1 Recommendation to Council
Subject: Cooper Street Paddington to Brown Street - Civil Reconstruction Project
Author: Kelley Ambrose, Purchasing Coordinator
File No: Tender No 09/06
Reason for Report: To recommend to Council the acceptance of a Tender

Recommendation:

- A. That Council enter into a Contract with Statewide Civil for the Cooper Street to Brown Street, Paddington - Civil Infrastructure Project for the lump sum of \$381,545 (including provisional amount of \$5,000 but excluding GST), and provisional rates for excavation in rock, sandstone kerbing and tipping.
- B. That successful and unsuccessful tenderers be advised accordingly.

Background

Council adopted an Asset Management Strategy in 2005 which includes a detailed condition indicator analysis of all our infrastructure assets. This condition analysis identified that the road pavement, kerb and gutter; footpath and driveways, drainage pits and pipes in Cooper St Paddington require renewal. The area of works to be carried out under this contract is shown in the location aerial photograph below:



Detailed design plans and specifications were prepared for the following works:

- Removal and reconstruction of segments of footpath and driveways using concrete;
- Road pavement milling & correction, patching and re-sheeting in asphalt;
- Construction of new kerb access ramps;
- Adjust service covers to suit new surface levels
- Reconstruction of storm water drainage pits and lintels, storm water pipes including the reinstatement and reconnection of all household storm water connections;
- Reinstatement of traffic signs, parking signs and pavement line-marking;
- Protection of all existing services as required;

Invitation to Tender

Tender 09/06 for the Cooper Street Paddington to Brown Street Civil Infrastructure Reconstruction Project was advertised in the Tenders section of the Sydney Morning Herald commencing on Tuesday 19 May 2009, and in the Wentworth Courier on Wednesday 20 May 2009.

A pre-tender meeting was held on Wednesday June 3 2009. All tenderers who had registered their interest in the tender were invited to attend. Questions raised by tenderers were answered and a record of the questions and answers was circulated to all tenderers who attended, or who were unable to attend but registered their wish to receive information. Tenders for this project closed at 2:30pm on Thursday June 11, 2009. Thirteen tenders were received by the closing date and time, including one alternative tender. No late tenders were received.

Tender Assessment

The tender assessment panel comprised Mr Kelley Ambrose as the convenor and independent member of the tender panel, Mr Michael Castelyn as the Commissioning Officer, and Mr Sam Badalati as the Project Manager. Prior to the tender closing date, the tender panel agreed on the following weightings that would be used against the advertised selection criteria:

Cost and Pricing	40%
Demonstrated experience and capacity	25%
Program and methodology	15%
Duration of works	10%
Management systems (OHS, quality and environment)	10%

Council has resolved that a probity adviser should be included during the tender assessment stage for high risk, high value or sensitive projects. This project was deemed not to require a probity adviser.

The tenders were first checked for conformance and were all accepted by the evaluation panel as having met the requirements for further consideration

The tender prices were then ranked and include a provisional amount of \$5,000 for negotiating with Telstra over the service pits. Provisional amounts apply where the final cost cannot be determined. The tender prices have been shown including the provisional amount as it was set by the Principal (Woollahra Municipal Council) and applies equally to all tenders.

All figures in the tables are net of GST:

RANKING BY PRICE	TENDERER	Lump sum tender price (including \$5,000 provisional amount)
1	Ozpave	\$362,130.81
2	Sydney Civil	\$379,501.46
3	Statewide Civil	\$381,545.00
4	Delaney Civil	\$402,877.80
5	Trackline Civil	\$413,675.00
6	Chrisos Civil	\$438,617.57*
7	Central Coast Civil	\$494,037.00
8	Kingston Civil	\$500,208.00
9	Roadworx (Alternative tender)	\$548,800.00**
10	Avoca	\$670,270.00***
11	Roadworx (Conforming tender)	\$703,370.00
12	Northshore Paving	\$725,228.47
13	QMC	\$918,237.00

*calculated from Schedule of rates – no Form of Tender submitted

**No details shown in Schedule of Rates

***stated as \$640,270 in Schedule but \$670,270 on Form of Tender

The tender documents were then assessed in detail, including the responses to the qualitative criteria. Lump sum prices were scored relative to the lowest price. Each tender was given an initial total score out of 100. On the basis of total scores, Statewide Civil, Sydney Civil and Ozpave were shortlisted for further evaluation and interviews. As a result of information gained from the interviews, the evaluation panel agreed that it would be appropriate to adjust the scores for Ozpave under the criterion “Experience and Capability” and to amend the score for Statewide for “Program and Methodology”. The final scores are:

TENDERER	CRITERIA					TOTAL SCORE (100%)
	Cost and pricing (40%)	Demonstrated experience and capability (25%)	Program and methodology (15%)	Duration of works (10%)	Management Systems (OH & S, Environmental and Quality) (10%)	
STATEWIDE	37.96	23.96	15.00	10.00	7.50	94.42
OZPAVE	40.00	23.96	15.00	6.67	7.50	93.13
SYDNEY CIVIL	38.17	23.96	15.00	6.67	7.50	91.29
DELANEY	35.95	22.92	13.13	10.00	7.50	89.50
CHRISOS	33.05	23.96	11.25	5.33	10.00	83.59
KINGSTON	28.96	23.96	15.00	5.00	10.00	82.92
TRACKLINE	35.02	18.75	13.13	5.33	7.50	79.72
ROADWORX (ALTERNATIVE)	26.39	23.96	13.13	8.00	7.50	78.98
CENTRAL COAST	29.32	21.88	13.13	4.44	7.50	76.26
NORTHSHORE	19.97	23.96	15.00	4.44	10.00	73.38
ROADWORX (CONFORMING)	20.59	23.96	13.13	8.00	7.50	73.18
AVOCA	22.62	22.92	13.13	3.08	9.17	70.91
QMC	15.78	23.96	15.00	4.00	10.00	68.73

Explanatory notes:

1. **Cost and Pricing:** Tenderers provided information on estimated quantities and rates that make up the lump sum price, with a weighting of 40%. The lowest tender price received the highest score, with all other prices ranked accordingly using the formula (lowest price/each price)x 40).

2. **Experience and capacity:** Each tender was scored on scope and complexity of past civil experience, particularly for this type of project where drainage and site access are significant issues.
3. **Program & Methodology:** Information was requested on each tenderer's approach to the project program and construction methodology to check the tenderer's ability to meet the stated works duration.
4. **Duration of Works:** The shortest duration of 8 weeks received the maximum score, with others ranked according using the formula (shortest duration in weeks/each duration in weeks) x 10.
5. **Management Systems: Assessment of Quality, Environment controls and OH & S,** scored according to comprehensiveness of documentation and evidence of it being applied to past projects.. The highest scores were allocated for systems with independent accreditation.

Comment

The major construction issue for the project is constructing a drainage pipeline in the middle of a narrow street while needing to maintain access for trucks to deliver supplies to the supermarket loading dock at the end of Cooper Street. Cooper Street also has a high on street car parking demand and maintaining parking and access for residents will be challenging. The weighting criteria allocated for Experience and Capability and Program and Methodology reflect the difficulties a contractor will need to deal with on this particular project.

The three highest scoring tenderers were interviewed on 22 June 2008. The evaluation panel agreed that all three shortlisted tenderers have proven track records in civil works and scored equally for project methodology, however Sydney Civil expressed some reservations that the pipeline could be constructed as designed due to the presence of services and the narrowness of Cooper Street.

Ozpave did not express any particular reservations about the design but had some issues in relation to resources, due to other project commitments.

Statewide Civil has offered the most thought out solution for managing the difficult site issues, particularly in maintaining access to the ten residential vehicle crossings and the supermarket loading dock. Statewide has the shortest works duration, which the evaluation panel considered to have a cost benefit when the issues for residents and the supermarket were considered. All three tenderers stated that the time to complete the work would increase depending on the amount of rock that had to be excavated and the frequency of work delays to provide access to residents and the supermarket.

The tenderers confirmed that they were happy with the costing basis of their submission. However, the Director of Statewide Civil stated that he had incorrectly provided the provisional rates for disposal of coal tar on a 'per cubic metre' basis when the requirement was for a 'per tonne' basis, and his rate was clarified as \$120.00 tonne when converted from the tendered rate per cubic metre. A geotechnical investigation for this project was not carried out and therefore the underground conditions that may be encountered are uncertain. It is normal practice to allow tenderers to submit provisional rates for tasks or activities that could possibly apply, or where it is not practical to determine the quantity required. For such items provisional rates are sought from the tenderer and these are used only if applicable. Provisional items used for this project by the three tenderers follow:

	Ozpave	Sydney Civil	Statewide Civil
Excavation in rock	\$260/cubic metre	\$150/cubic metre	\$170/cubic metre
Supply of new sandstone kerb	\$350 per metre	\$260 per metre	\$320 per metre
Disposal of coal tar if present.	\$90 per Tonne	\$77 per Tonne	\$120 per Tonne

The amount of sandstone kerb that may need to be replaced and the amount of coal tar that may need to be disposed is considered to be minimal and should not have a bearing on the final price, since the respective tendered rates are close.

However, there is a likelihood that rock will need to be excavated. Ozpave's rock excavation rate is \$90 per cubic metre higher than Statewide. If an estimate of rock of 80 m³ is applied to this project, the price advantage of the Ozpave tender would reduce by \$7,200 (80 m³ x \$90). Statewide's tender price is \$19,414 higher than Ozpave. If the estimate of rock excavation is factored in, the difference would be effectively reduced to \$12,214.

Tender Assessment Panel Opinion

The three shortlisted companies are fairly evenly matched in terms of general municipal civil works experience. However the tender panel agreed that Statewide Civil's responses to the issues of site construction management and consultation with the residents and the supermarket operator were excellent. Statewide Civil was the only tenderer that had taken the initiative to speak with the supermarket owner/operator to find out what was required in relation to the use of the loading dock and how to better co-ordinate use of the loading dock while construction was proceeding.

Statewide Civil's tender price is \$19,414 higher than the lowest tendered price from Ozpave but, as noted above, this price advantage would reduce considerably if rock is encountered due to Ozpave's higher provisional rates for rock excavation. Statewide achieved the highest overall score when the qualitative factors and interview responses are taken into account, including community consultation, site management and shorter works duration.

Statewide's projected works duration is four weeks shorter than Ozpave's, and appears achievable based on their site management proposals. It is considered that the additional cost of \$3,053 to \$4,853 per week represents good value to Council and the local community in terms of reduced disruption to residents and the supermarket given the need for daily deliveries and the high on-street parking demand.

Identification of Income and Expenditure:

All figures in this report exclude GST. The preferred tenderer's lump sum price for this project is \$381,545, including the \$5,000 provisional amount set by the Principal. In addition a contingency amount of approximately \$15,000 should be allowed for potential expenditure on provisional items and possible variation claims, and \$5,000 for project management. To date funds of \$24,600 have been expended on design, project management and materials. The total funding required for this project is therefore estimated to be \$401,545.

A total available budget of \$388,953 has been allocated for this project from the Environmental and Infrastructure Works Program (\$318,953), the Stormwater Management Program (\$50,000) and a developer's contribution (\$20,000), which is not sufficient to cover the anticipated total project cost.

The additional \$37,192 required can be funded from available Infrastructure Works Program Reserve Funds made from savings against other completed Infrastructure Works Projects.

Recommendation:

That Council enter into a Contract with Statewide Civil for the Cooper Street, Paddington to Brown Street - Civil Infrastructure Project for the lump sum of \$381,545 (including provisional rate of \$5,000 but excluding GST), plus provisional rates for excavation in rock, sandstone kerbing and tipping.

Kelley Ambrose
Purchasing Coordinator

Warwick Hatton
Director Technical Services

Item No: R2 Recommendation to Council
Subject: **Paddington Library Agreement**
Author: Vicki Munro - Manager, Library and Information Services
File No: 659.G
Reason for Report: This report seeks Council's endorsement to finalise the negotiations for the Paddington Library Agreement with City of Sydney Council for a further three year period, 2009/10 to 2011/12.

Recommendation:

- A. That Council authorise the General Manager to finalise negotiations and enter into a three year agreement with City of Sydney Council for Paddington Library, for the financial years, 2009/10, 2010/11 and 2011/12 with details as set out in this report.
-

Background:

Since 2 January 1994, Paddington Library has been operating as a joint library service between Woollahra and the City of Sydney (previously with the then South Sydney Council) with Woollahra Municipal Council having the managerial control for the service.

Under the existing agreement, Woollahra funds 55% and the City of Sydney funds 45% of the total cost of operating the Library Service. The funding has been based on the use of the Library by the respective residents of the two Councils. The City of Sydney also contributes the use of Paddington Town Hall, including maintenance of the building.

Since inception, there have been four cooperative agreements. The current agreement will expire on 30 June 2009. (See Annexure 1 for this Agreement).

As a snapshot, Paddington Library is a very well used Library service point, open 46 hours per week with three key staff members. The service has a collection totaling approx. 37, 200 items consisting of books, magazines and audio visual materials to meet local demand. It is especially noted for its visual arts collection and children's board books.

As at 31 March 2009, Paddington Library had a membership of 4,231, representing 27.7 % of total library membership and a quarterly circulation of 25,524, representing 26.3% of total circulation. 21,912 people visited the Library during the January to March 2009 quarter. The new Children's program has been widely acclaimed with high attendance at rhyme time, (average attendance of 26 children per week) and preschool storytime, (average attendance of 19 children per week). In addition, up to four local pre-schools visit the Library for a storytime session each week. The introduction of WiFi in December 2008 has been readily taken up by Paddington users with 746 sessions during the quarter. This service is additional to the four public access computers which are in high use, with 90% bookings each week.

Proposal:

At a recent Paddington Planning group meeting, both Councils expressed a desire to enter into another three year agreement, based on similar terms in the existing agreement. The new agreement will cover the period from 1 July 2009 to 30 June 2012.

At the Council meeting of 1 June 2009, the City of Sydney considered this matter and resolved to enter into an agreement with Woollahra Council for a further three years (2009/10-2011/12) with the view of reviewing the operation of Paddington Library in 2011/12. The resolution states:

- “(A) the City enter into a three year agreement with Woollahra Municipal Council to provide cash of \$200,500 (excluding GST) for 2009/10 and then \$200,500 (excluding GST) plus CPI for the years 2010/11 and 2011/2012 for the operation of Paddington Library;*
- (B) the City continue the current arrangement of providing the library building free of charge; maintaining the building at its own cost; and sharing the costs of electricity;*
- (C) authority be delegated to the Chief Executive Officer to negotiate and enter into agreement with Woollahra Municipal Council for this purpose; and*
- (D) the operation of the Paddington Library be reviewed in 2011/12, such a review to consider:*
- (i) the impacts of Surry Hills Library;*
 - (ii) opportunities for better integration with the City’s library network;*
 - (iii) the development for Sustainable Sydney 2030;*
 - (iv) the implementation and development of the Oxford Street Cultural Quarter Strategy; and*
 - (v) cultural and other opportunities arising from the Library’s location within Paddington Town hall and its proximity to Paddington Reservoir Gardens, the Australian Centre of Photography, the Chauvel Cinemas and Metroscreen.*

A copy of the City of Sydney report is listed as Annexure 2.

Consultation:

Negotiations have commenced between representatives of both Councils.

Identification of Income & Expenditure:

The total cost for the operation of the Paddington Branch Library for the year 2008/9 was \$426,037 (ex GST). At 55% this represents \$234,320 for Woollahra Council and \$191,717 for the City of Sydney Council.

In the adopted budget for 2009/10, the operational costs total \$445,555 (ex GST) with Woollahra’s costs being \$245,055 and the City of Sydney’s associated costs representing \$200,500.

Conclusion:

The joint operation of the Paddington Library has been a highly successful venture since it commenced in 1994. It has established co-operation between Councils and enabled a cost effective, quality library service for the residents of both Woollahra and the City of Sydney. It is now proposed that the Council endorse a further three year Paddington Library Agreement between Woollahra Municipal Council and the City of Sydney Council.

Vicki Munro
Manager, Library and Information Service

Kylie Walshe
Director – Community Services

Annexures:

Annexure 1: Library Agreement. 1 July 2006 – 30 June 2009.

Annexure 2: Paddington Library – Renewal of agreement with Woollahra Council – Finance, Properties and Tenders Committee, City of Sydney – 25 May 2009.

Item No: R3 Recommendation to Council
Subject: **The Drill Hall at Sir David Martin Reserve - Proposed Licence to Critical Path Incorporated**
Author: Zubin Marolia, Manager Property & Projects
File No: 787.G Drill Hall
Reason for Report: To give consideration to the granting of a further licence, with two 3 year options to renew, for part of the ground floor of the Drill Hall and a 1st floor workshop room of the Drill Hall Extension to Critical Path Incorporated.

Recommendation:

- A. That subject to the Minister's consent, Council agrees to:
- i) Grant a further licence to Critical Path Incorporated for the use of part of the ground floor area of the Drill Hall at Sir David Martin Reserve, Rushcutters Bay for a 39 week per year for a 3 year term with two 3 year options to renew, at a commencement rent of \$29,344.80 per annum including GST, with the premises to be reviewed to market prior to the exercise of the first option.
 - ii) Grant a licence to Critical Path Incorporated for the use of a small workshop room on the first floor of the Drill Hall Extension at Sir David Martin Reserve, Rushcutters Bay for a 3 year term with two 3 year options to renew, at a commencement rent of \$6,269.16 per annum including GST and outgoings, with the premises to be reviewed to market prior to the exercise of the first option.

Introduction

Woollahra Council currently manages the venue The Drill Hall at 1C New Beach Road, Rushcutters Bay. Due to its position in a residential area, The Drill Hall is available for use by the community as a low impact performance development facility incorporating dance development, theatre and script development, rehearsals, arts meetings and workshops and low-key performance showings.

The Drill Hall is a multi user facility and has two main areas available for community usage including "The Drill" and "The Studio". There are also a number of common areas in the building including a kitchenette and toilets.

Currently Critical Path Incorporated utilise 'The Drill' area of the Drill Hall for their dance program nine months of each calendar year. Critical Path Incorporated is supported by the State and Federal Governments through receipt of triennial program funding from Arts NSW and annual special program funding through the Australia Council. Critical Path Incorporated administer their programs from an upstairs office area within the Drill Hall which they occupy for twelve months of the year.

Background

Sir David Martin Reserve is Crown Land (Annexures 1 and 2) located along New Beach Road, Rushcutters Bay. Woollahra Council has been appointed the Trustee of the Rushcutters Bay Maritime Reserve Trust No 10007. As Sir David Martin Reserve is Crown Land, the consent of the Minister of Lands is required for all legal agreements granted by the Trustee in relation to the reserve.

Expressions of Interest (EOIs) for the use of the buildings and facilities at Sir David Martin Reserve were called in November/December 2001. A report on the assessment of the EOIs was submitted to the Corporate & Works Committee on 16 September 2002 which, under its delegated authority, resolved that Council explore a mix of uses for the use of all buildings and facilities on the Sir David Martin Reserve. The mix of uses outlined in the report provided both maritime and community and cultural benefits to the site.

The Council meeting of 16 December 2002 considered the uses for the Reserve facilities, and resolved in part for the Drill Hall and Drill Hall Extensions as follows:

1. *That Council endorse the proposal set out as Option B, which offers the most effective use of the spaces on a full time basis, a superior financial return from the Drill Hall, Drill Hall Extension, Sail Loft and Cottage and provides both community and cultural benefits.*

Option B specifically outlined the proposed use for the Drill Hall and the Drill Hall Extension being 'Ausdance International Choreographic Laboratory (9 months) per year, and other choreographic uses 3 months, plus in Extension, various "artists in residence".'

The Ausdance International Choreographic Laboratory (now Critical Path Incorporated) originally occupied these premises on a casual hire agreement from 2003. The continuation of this arrangement was formalised by Council's Resolution at its meeting on 19 December 2005 where it was resolved:

- A. *That, subject to the Minister's consent, Council agrees to:*
 - i. *Grant a licence to Critical Path Incorporated for the use of part of the ground floor area of the Drill Hall at Sir David Martin Reserve, Rushcutters Bay for a 39 week per year for a 3 year term with a 3 year option to renew, at a rent of \$19,500 per annum plus GST and outgoings, with annual review to CPI.*
 - ii. *Grant a licence to Critical Path Incorporated for the use of a small workshop room on the first floor of the Drill Hall Extension at Sir David Martin Reserve, Rushcutters Bay for a 3 year term with a 3 year option to renew, at a rent of \$5,200 per annum plus GST and outgoings, with annual review to CPI.*

Since the expiry of this licence, Critical Path Incorporated has continued in occupation on a yearly basis, on the same terms and conditions. Rental has been increased by CPI on each anniversary of the licence.

Proposal

Critical Path Incorporated is a highly regarded choreographic research and development programme for dance artists in NSW that has earned significant national and international profile. Detailed information on Critical Path Incorporated's Program for April to December 2009 is contained in Annexure 3.

Working with Council, Critical Path Incorporated has also developed programmes and projects that have specifically targeted the local community. At the meeting of 17 December 2007, Council adopted a recommendation to support a proposal by Critical Path Incorporated for additional use of the Workshop Room located downstairs at Drill Hall. In return for a waiver on hire fees for the Workshop Room, Critical Path Incorporated deliver a research residency program and community benefits in consultation with Council. The value of this has been costed as more than Council would otherwise receive for a subsidised hire fee rate for the room. Furthermore, both the research residency and community benefits programs are in line with strategies adopted in Councils 2008 – 2011 Management Plan (pg 116) and identified in Objective 4 of the Woollahra Social and Cultural Plan 2008 to 2013.

During the time Critical Path Incorporated has occupied the premises, Woollahra Council has been in receipt of a grant from Arts NSW under the Capital Infrastructure Programme. This grant provided improvements to the licensed area of the ground floor of the Drill Hall including sound minimising drapes, noise assessment reports, and the installation of a sound system with noise limiters. The Sydney Opera House has also provided a floating dance floor. Council is currently working with Critical Path Incorporated in relation to a forthcoming Capital Infrastructure funding application to Arts NSW for further improvements to the building.

As the Drill Hall and Extension does not have Council staff on site, Critical Path Incorporated provides a *caretaker role*, which includes showing potential new users through the building. The Drill Hall is available to other community groups for the balance of the remaining three months of the year, whilst “The Studio” is available to other community groups for twelve months of the year.

Critical Path Incorporated has requested a fresh licence for a three year term, with two 3 year options to renew, on the same terms and conditions as the existing agreement such that the term coincides with its triennial cycle of core Program Funding applications from Arts NSW. Critical Path Incorporated has also advised that such *security of tenure* will greatly assist in its funding application to Arts NSW. A copy of Critical Path Incorporated’s letter to Council dated 15 June 2009 is attached as Annexure 4.

Conclusion:

Critical Path Incorporated is a not for profit organisation, funded by Arts NSW (State Government) and the Australia Council (Federal Government) that makes a valuable contribution to the independent dance sector in NSW.

The continued use of the Drill Hall and Extension by Critical Path Incorporated supports several key strategies within Objective 4 of the Woollahra Social and Cultural Plan 2008 - 2013 which recognises that *‘Cultural partnerships are nurtured and support for artistic development occurs at the Drill Hall, Rushcutters Bay, where Critical Path is committed to choreographic research and development’* (pg. 41).

It is clearly beneficial for Council to agree to the licence agreement so the Drill Hall income will continue to be generated, and further programmes of activities that specifically address target groups within the Woollahra community continue to be developed with Critical Path Incorporated.

Zubin Marolia
Manager – Property & Projects

Jo Jansyn
Cultural Development Coordinator

Kylie Walshe
Director Community Services

Annexures:

1. Plan of Sir David Martin Reserve, New Beach Road, Rushcutters Bay, including Drill Hall, Drill Hall Extension Buildings Shown Hatched
2. Building and Facilities Layout, Sir David Martin Reserve, New Beach Road, Rushcutters Bay
3. Critical Path Incorporated Program April to December 2009
4. Letter from Critical Path Incorporated to Council Dated 15 June 2009

Item No: R4 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 6 July 2009 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 1 December 2008. (Annexure 1)

Section 252 of the Local Government Act requires Councils to adopt, after complying with the 28 day consultation period requirements contained in Section 253 of the Local Government Act, an expenses and facilities policy within 5 months after the end of each financial year. The policy must comply with the guidelines issued under Section 23A of the Local Government Act by the Director General of the Department of Local Government. Council's Policy complies with those Guidelines.

Proposal:

Council must now undertake the yearly review of the Policy.

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 current Policy has been structured in accordance with the format suggested by the Director General Guidelines and contains the following scope and level of expenses and facilities available to the Councillors:

Conferences and Seminars

The policy provides for Councillors to attend specified conferences and seminars with Council responsible for registration, travel, accommodation and incidental expenses associated with attendance at the conferences and seminars.

Child care costs

The policy allows Councillors to claim reimbursement of reasonable child/dependant care costs incurred while attending Council meetings, committee meetings, workshops, briefing sessions and site inspections relating to Council's operations to a maximum of \$3,000 per annum per Councillor.

Insurance cover

The policy provides for Council to take out insurance cover for Councillors for:

- personal injury whilst on Council business except for medical expenses,
- professional liability for matters arising out of a Councillor's performance of civic duties or exercise of their functions as a Councillor,
- public liability for matters arising out of a Councillor's performance of civic duties or exercise of their functions under the Local Government Act.

Legal expenses and assistance

The policy provides for Council to indemnify or reimburse Councillors reasonable legal expense for the following:

- a Councillor defending an action arising from the performance, in good faith, of a function under the Local Government Act; or
- a Councillor defending an action in defamation provided the statements complained of were made in good faith in the course of exercising a function under the Act; or
- a Councillor for proceedings before the Local Government Pecuniary Interest Tribunal or an investigative body provided the subject of the proceedings arises from the performance in good faith of a function under the Act and the Tribunal or investigative body makes a finding substantially favourable to the Councillor.

Facilities to the Mayor and Councillors

The policy provides for the following facilities to be made available to the Mayor, Deputy Mayor and Councillors:

- use of official stationery
- Typing of official correspondence
- Postage of official correspondence – all mail is to be directed through the Council's own mailing system. Reimbursement of expenses will only be made where expenses can be verified.
- Meals at Council Meetings, Committee Meetings, working party meetings and workshops
- Transport to official functions (if needed) when deputising for the Mayor
- E-mail Account on Council's IT system

The following additional facilities are provided for use by the Mayor:

- Use of a prestige Council vehicle and Chauffeur for official purposes
- Secretarial services
- Administrative assistance associated with functions, meetings and the like
- Office refreshments
- Mobile telephone
- Mayoral Office
- Light refreshments

Reimbursement of expenses incurred by the Mayor, Deputy Mayor and Councillors

The policy allows Councillors to claim reimbursement of the following expenses:

- Fixed line rental for phone and/or fax lines to a maximum of \$50.00 per month per Councillor,
- Mobile phone calls to a maximum of \$50.00 per month per Councillor,
- Home Internet usage charges to a maximum of \$50.00 per month per Councillor.

In relation to the mobile phone call expense, Council may wish to consider amending the provision to allow a maximum claim per annum rather than a monthly amount. This would allow for monthly variations in phone usage without incurring additional costs to Council. An amount of \$600 per annum would equate to the same level of expense allowed under the existing policy. This approach would be similar to the operation of the provisions for the claiming of child care costs.

Funding of additional facilities purchased by the Mayor, Deputy Mayor or Councillors

The policy recognises that some Councillors may wish to purchase additional facilities to assist them with their civic duties and to aid Councillors with the purchase of the additional equipment which may otherwise place an undue financial disadvantage on a Councillor, Council will, upon written request of a Councillor, purchase the additional equipment with all costs associated with the purchases being repaid to Council through deductions from that Councillors allowance.

Facilities that are able to be funded in this manner include:

- personal or lap top computers,
- printers
- facsimile machines
- mobile telephones
- answering machines
- land lines and/or Internet broadband installation and usage charges

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 Director General of the Department 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 expenses and facilities policy within five months of the end of the (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 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 (December 2008)

Item No: R5 Recommendation to Council
Subject: **STRUCTURED FINANCE INVESTOR CLAIM AGAINST LEHMAN BROTHERS AUSTRALIA LIMITED**
Author: Stephen Dunshea, Director Corporate Services
File No: 349G CDOs
Reason for Report: To recommend to the Committee Council's participation in a Structured Finance Investor Claim against Lehman Brothers Australia.

Recommendation:

- A. Council note the invitation received from IMF (Australia) Ltd for Council to participate in a Structured Finance Investor Claim against Lehman Brothers Australia.
- B. Council note the advice received from Council's investment adviser in respect of the IMF (Australia) Ltd proposal.
- C. Council agree to participate in the Structured Finance Investor Claim against Lehman Brothers Australia as detailed in the invitation from IMF (Australia) Ltd
- D. That Council authorise the General Manager to execute the IMF Lehman Brothers Australia Ltd Investigation, Management and Funding Agreement included in Annexure 1 to the report and return the signed agreement to IMF (Australia) Ltd by 20 July 2009.
- E. That a further report be presented to Council prior to the end of the 21 day cooling off period confirming Council's continued participation in the Structured Finance Investor Claim.
- F. The Confidential Annexures to this report remain confidential.

Background

In a report to the Corporate and Works Committee on 1 June 2009, Councillors were advised of the outcome of a Meeting of Creditors held on 27 May 2009 in relation to a proposed Deed of Company Agreement (DOCA) relating to the administration of Lehman Brothers Australia. Whilst Council voted at the creditors meeting in favour of the liquidation of Lehman Brothers Australia (Lehmans) in accordance with a prior resolution of Council, the majority vote at the creditors meeting was in favour of executing the DOCA.

Council has subsequently received an invitation from IMF (Australia) Ltd (IMF) to participate in a Structured Finance Investor Claim against Lehmans, including a class action conducted by Piper Alderman, for losses sustained from investing in certain structured investment products from or through Lehman Brothers. The first step for Piper Alderman in proceeding with such class action is to seek to have the DOCA set aside.

This report presents Council with details of the IMF proposal and recommends that Council accept the invitation to participate in the class action.

Discussion

At a meeting of creditors held on 27 May 2009 in relation to a proposed Deed of Company Agreement (DOCA) relating to the administration of Lehman Brothers Australia, the majority vote was in favour of executing a proposed Deed of Company Agreement (DOCA) relating to the administration of Lehmans. Detailed advice has previously been presented to Council in relation to the DOCA following which Council resolved to not support the DOCA but rather vote at the creditors meeting on 27 May 2009 in favour of the liquidation of Lehmans. The voting at the creditors meeting however was 61 to 58 in favour of the DOCA, meaning that Council's preference for the liquidation of Lehmans was defeated. Under the DOCA, Council:

- retains the CDO investments it made through Lehmans,
- could expect to receive between 10-13% of CDO losses assessed at 28 September 2008, and
- retains any legal rights against non-Lehman entities

Subsequent to the decision at the creditors meeting, Council received an invitation from IMF (Australia) Ltd, to participate in a Structured Finance Investor Claim against Lehman Brothers Australia and potentially other parties. IMF is a public company listed on the Australian Securities Exchange and holds an Australian Financial Services Licence. IMF provides funding for significant and large scale litigation. The invitation extended to Council, is to participate in a class action conducted by Piper Alderman, for losses sustained from investing in certain structured investment products from or through Lehman Brothers.

Details of the invitation received from IMF were forwarded to Councillors by way of email on 15 June 2009. A copy of this information previously forwarded to Councillors is provided as Confidential Annexure 1 to this report.

IMF Proposal

A summary of the proposal is as follows:

- IMF propose to fund Piper Alderman's action to overturn the DOCA
- Should action to overturn the DOCA fail, the DOCA stands
- IMF to conduct an investigation into Council's potential claim against Lehmans (and potentially other parties) and to pay for any legal proceeding brought against Lehmans on Council's behalf.
- IMF to pay for any legal costs awarded against plaintiffs if any legal action taken on Council's behalf is not successful.
- Unless Council is successful in obtaining either a settlement or judgment, Council will not have to make any payments, i.e., the action is undertaken on a "no win, no pay" basis.
- If the IMF action undertaken on Council's behalf is successful then IMF will be entitled to reimbursement of the costs incurred, management fee and a commission, but only out of the proceeds of successful action.

The IMF proposal is predicated on them receiving sufficient support to make the project commercially viable.

Councillors' attention is also drawn to the "Overview of the Claim" provided in Confidential Annexure 1 for detailed information regarding the claim.

Investment Working Party Review

Council's Investment Working Party met on Monday 22 June 2009 to consider the proposal in consultation with Mr Andrew Vallner, who is currently engaged by Council to provide investment advice. Generally the view of Working Party members was that provided Council was not likely to be placing itself in a potentially worse position financially through participation in the class action than the outcomes that could reasonably be expected through the DOCA, then a recommendation would be made to the Corporate and Works Committee in favour of joining the class action. The Working Party also requested a comprehensive review of the proposal be undertaken by Mr Vallner and his advice provided by way of a written report.

A copy of Mr Vallner's report dated 1 July 2009 and received as "Commercial in Confidence" is provided as Confidential Annexure 2 to this report. Councillors' attention is drawn to the advantages and disadvantage of participating in the agreement which are highlighted in Mr Vallner's report, along with his recommendations.

Conclusion

Council has until 20 July 2009 to advise IMF if it wishes to participate in the Structured Finance Investor Claim. In order to participate, Council is required to execute and return to IMF the "IMF Lehman Brothers Australia Ltd Investigation, Management and Funding Agreement" provided in Confidential Annexure 1.

The Funding Agreement provides Council with the opportunity to withdraw from the agreement by giving written notice to IMF within 21 days after the "Commencement Date" (the cooling off period). The commencement date being the date the Agreement signed by Council reaches IMF. In effect, this means that subject to Council agreeing to participate in the claim, should Council's signed acceptance reach IMF on 20 July 2009, then Council has until 10 August 2009 to resolve any outstanding enquiries regarding the proposal and if necessary, advise IMF of its withdrawal from the Agreement.

On this basis, it is considered that there is sufficient time to investigate any outstanding enquiries Council may have in relation to the IMF proposal and for the Investment Working Party to report back to the Corporate & Works Committee prior to the conclusion of the cooling off period. This recommended course of action is in accordance with the Working Party's Terms of Reference and consistent with the following Council resolution from its 25 May 2009 Meeting:

"That the Investment Working Party receive updated legal advice in respect of potential litigation against both Lehman Brothers Australia and Oakvale Capital, and in respect of protecting Council's interests generally in this matter, having regard to current circumstances."

Stephen Dunshea
Director Corporate Services

Confidential Annexures:

1. Structured Finance Investor Claims against Lehman Brothers Australia:
 - Invitation
 - Overview of Claim
 - Lehman's – Proposed Action by Investors – Frequently Asked Questions
 - IMF (Australia) Ltd – Combined Financial Services Guide and Product Disclosure Statement
 - Investigation, Management & Funding Agreement
 - Supporting Schedules 1, 2 & 3
2. Report from Mr Andrew Vallner dated 1 July 2009

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

