



# Corporate & Works Committee

**Agenda:** *Corporate & Works Committee*

**Date:** *Monday 4 November 2013*

**Time:** *6.00pm*

### **Outline of Meeting Protocol & Procedure:**

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

### **Recommendation only to the Full Council:**

- Such matters as are specified in Section 377 of the Local Government Act and within the ambit of the Committee considerations.
- The voting of money for expenditure on works, services and operations.
- Rates, Fees and Charges.
- Donations
- Matters which involve broad strategic or policy initiatives within responsibilities of the Committee.
- Matters not within the specified functions of the Committee.
- Asset Rationalisation.
- Corporate Operations:-
  - Statutory Reporting;
  - Adoption of Council's Community Strategic Plan, Delivery Program and Operational Plan;
  - Delegations; and
  - Policies.
- Tenders as per Regulation requirements.
- Leases required to be determined by Full Council by specific legislative requirements
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

### **Delegated Authority:**

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

### **Committee Membership:**

7 Councillors

### **Quorum:**

The quorum for a Committee meeting is 4 Councillors.

# WOOLLAHRA MUNICIPAL COUNCIL

## Notice of Meeting

31 October 2013

To: Her Worship the Mayor, Councillor Toni Zeltzer ex-officio  
Councillors Peter Cavanagh (Chair)  
Anthony Boskovitz  
Andrew Petrie  
Deborah Thomas  
Elena Wise  
Susan Wynne  
Jeff Zulman (Deputy Chair)

Dear Councillors

### **Corporate & Works Committee Meeting – 4 November 2013**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Corporate and Works Committee** to be held in the **Miller Room (Councillors Room), 536 New South Head Road, Double Bay, on Monday 4 November 2013 at 6.00pm.**

Gary James  
General Manager

# **Additional Information Relating to Committee Matters**

**Site Inspection**

**Other Matters**

## Meeting Agenda

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

### **Items to be Decided by this Committee using its Delegated Authority**

D1	Confirmation of Minutes of Meeting held on 21 October 2013	1
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### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	Woollahra Village Weekend – 591.G	2
R2	Coolong Road, Vacluse – Road Infrastructure Works – Tender No. 13/11	16
R3	Conduct of Elections for Woollahra Council – 38.G 2011	21

**Item No:** D1 Delegated to Committee

**Subject:** **Confirmation of minutes of meeting held on 21 October 2013**

**Author:** Les Windle, Manager – Governance

**File No:** See Council Minutes

**Reason for Report:** The Minutes of the Meeting of Monday 21 October 2013 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

**Recommendation:**

That the Minutes of the Corporate and Works Committee Meeting of 21 October 2013 be taken as read and confirmed.

Les Windle  
Manager – Governance

**Item No:** R1 Recommendation to Council  
**Subject:** **Woollahra Village Weekend**  
**Author:** Kylie Walshe, Director Community Services  
**File No:** 591.G  
**Reason for Report:** To present a proposal from the Queen Street West Woollahra Association requesting Council support for the Woollahra Village Weekend.

**Recommendation:**

- A. THAT Council provide in-kind support and allocate \$12,000 to the Woollahra Village Weekend, with funds to be transferred from the allocation made in the 2013/14 budget to the Woollahra Festival.
- B. THAT an agreement between Council and Queen Street West Woollahra Association be entered into which sets out the terms under which the funding is to be provided. The terms of the agreement are to include, but are not limited to, key performance indicators which the Association agrees to satisfy.
- C. THAT the Queen Street West Woollahra Association present an annual business plan at the commencement of each calendar year for consideration by Council for funding in the following financial year.

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**Background:**

Council is committed to supporting local business and community groups in the coordination of activities that bring people into the area and promote local businesses. In 2013/14 Council has allocated \$8,000 to the Rose Bay Chamber of Commerce, \$45,000 to the Paddington Business Partnership and \$160,000 to the Double Bay Chamber of Commerce. These funds are used for the coordination of business development activities and events such as the Rose Bay Street Fair and the Double Bay Street Fair.

Council has also just provided \$8,000 in funding to the Queen Street West Woollahra Association (QSWWA) to assist the Association to undertake its activities, as resolved by Council on 12 August 2013:

- A. *That a contribution equivalent to the amount provided to the Rose Bay Chamber of Commerce is given to the Queen Street and West Woollahra Association on an annual basis.*

This funding was not tied to any particular activity and could be used for activities deemed most appropriate by QSWWA. This funding was used to launch the Queen St Book in August 2013 and will be used for the Carols event to be held in Chiswick Gardens in December 2013.

**Proposal:**

The Queen Street West Woollahra Association has approached Council to further contribute to its activities, in the form of financial and in-kind assistance for the Woollahra Village Weekend. This is a three day event to be held on the last weekend of November, aiming to foster community spirit among the local residents and businesses. A development application has been submitted for the event which is currently being considered and due for resolution in the next 2 weeks. Information regarding the proposed event is provided in Annexure A.

The QSWWA has requested \$20,000 in financial support from Council, with \$12,000 required to ensure that the event goes ahead. A request has also been made for waste collection, traffic management services and the installation of three permanent banner poles in the park at the intersection of Queen St and Oxford St. The provision of bins and waste collection is acceptable but traffic management will need to be organised by QSWWA. The permanent banner poles are unable to be installed at this late date and should be included in the consideration of any future capital works for the area.

The total budget for the Woollahra Village Weekend is \$59,700; with it anticipated that \$35,000 will be raised from sponsorship and ticket sales and the remainder provided by QSWWA. See Annexure B for the budget provided by QSWWA. It is recommended that Council provide financial support of \$12,000 and the provision of waste removal as in-kind support. If this is adopted it is appropriate that a funding agreement be drafted to include KPIs and budget acquittal following the event, similar to the agreement Council has with the Paddington Business Partnership. This will also ensure acknowledgement of Council's contribution to the event in all promotional material.

### **Identification of Income & Expenditure:**

Council's 2013/14 budget does not include an allocation for this event. There is a budget of \$25,000 allocated to the Woollahra Festival, a cultural event that has been held in November of each year since 2010. This event has been very successful over the past three years, with notification just received that it will not be conducted in 2013. The structure of the Festival will be reviewed and a further proposal provided to Council should the event be proceeding in 2014.

As there is \$25,000 allocated by Council to an event in Queen Street in 2013, should Council decide to financially support the Woollahra Village Weekend it is appropriate that the funding come from this allocation. The \$25,000 provided to the Woollahra Festival in 2012/13 made up approximately 10% of the total budget, with sponsorship and ticket sales the main source of funding for the event. As the Woollahra Village Weekend is a smaller event it is considered appropriate that Council cap the funding to \$12,000, with the remainder of the \$25,000 to be allocated back into general revenue at the next Budget Quarterly Review.

The QSWWA Financial Report for the Year ending 31 December 2012 has been provided and shows retained earnings of \$8,000 in cash. Further discussion revealed that from the recent \$8,000 of funding from Council \$4,000 will be used for the Carols event to be held in Chiswick Gardens in December 2013.

As QSWWA have requested funding for a number of activities in 2013 and this is anticipated to continue into the future, it is time to consider a more efficient way of managing these requests. As the Paddington Business Partnership and the Double Bay Chamber of Commerce are required to complete a business plan outlining the funds required and the activities they plan to undertake, it is recommended that this process be used for any future allocation of funds to QSWWA. This will ensure that Council has a longer term plan of activities to consider rather than individual requests throughout the year.

### **Options**

Council has the ability to provide this funding to QSWWA from the funding allocated to the Woollahra Festival in 2013/14. As the Woollahra Village Weekend is smaller in scale and reach, it is recommended that \$12,000 be allocated to the event.

Should Council not fund this proposal, the event will be in jeopardy, resulting in a much smaller street fair for Queen Street in 2013 if it is able to go ahead without Council support.

**Conclusion:**

The Woollahra Village Weekend is a community activity that aims to foster community spirit among local residents and businesses and bring people into Woollahra to create a vibrant and dynamic community. It is recommended that Council allocate funding to this event in 2013 and implement a new process for considering future funding requests from 2014.

Kylie Walshe  
Director Community Services

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**Annexures:**

- A. Woollahra Village Weekend 2013 – Development Application information
- B. Woollahra Village Weekend 2013 - Budget

**Item No:** R2 Recommendation to Council  
**Subject:** Coolong Road Vaucluse – Road Infrastructure Works  
**Author:** Jake Matuzic, Manager Capital Projects  
**File No:** Tender No 13/11  
**Reason for Report:** To recommend to Council the acceptance of a Tender

**Recommendation:**

- A. That Council enter into a Contract with Civil Works (NSW) Pty Ltd for Coolong Road Vaucluse – Road Infrastructure Works for the sum of \$196,777 (excluding GST).
- B. That successful and unsuccessful tenderers be advised accordingly.

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**Background**

Council has included the reconstruction of Coolong Road Vaucluse, from Nurran Road to Wentworth Road as part of its 2013/14 Capital Works Program. The area of works to be carried out under this contract is shown on the aerial photograph below:



**Location Map and Aerial Photograph**

Works include: Road pavement milling, excavation and correction and repair; removal and replacement of kerb and gutter; supply and laying stormwater connection pipes; construction of concrete footpaths, driveways and kerb ramps; relocation of Telstra pits as necessary and adjustment of services covers to suit new footpath and road pavement levels.

## Invitation to Tender

Tender 13/11 for Coolong Road Vaucuse – Road Infrastructure Works was advertised in the Tenders section of the Sydney Morning Herald commencing on Tuesday 24 September 2013, and in the Wentworth Courier on Wednesday 25 September 2013.

A Pre-Tender meeting was held on 9 October 2013. 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 17 October 2013. A total of eight (8) tenders were received prior to the closing date and time. No late tenders were received.

## Tender Assessment

The tender assessment panel comprised Mr David Byatt as the convenor and independent member of the tender panel, Mr Yoram Wise as the Commissioning Officer, and Mr Peter Cassilles 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	45%
Demonstrated experience and capability	25%
Program and methodology	15%
Management systems (OHS, quality and environment)	10%
Duration of works	5%

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

All figures in the tables are net of GST:

<b>TENDERER</b>	<b>LUMP SUM TENDER PRICE</b>	<b>TIME (Weeks)</b>
Civil Works NSW Pty Ltd	\$196,777.00	5
Melhemcorp Pty Ltd	\$223,507.00	5
Citywide Civil Engineering NSW Pty Ltd	\$231,925.89	5
Stateline Asphalt Pty Ltd	\$263,156.00	6
Statewide Civil Pty Ltd	\$247,263.45	4
Sydney Civil Pty Ltd	\$335,689.00	12
North Shore Paving Co Pty Ltd	\$361,983.20	11
Ally Civil Pty Ltd	\$298,376.00	12

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. The tenders were scored on each item of the qualitative criteria, lump sum prices and price components to achieve a total score out of 100. Tenderers were then ranked in accordance with their total scores.

TENDERER	CRITERIA						
	Demonstrated Experience and Capability (25%)	Program and methodology (15%)	Management Systems (OH & S, Environmental and Quality) (10%)	Duration of Works (5%)	Sub Total Non Pricing Criteria	Cost and Pricing (45%)	TOTAL SCORE (100%)
Civil Works NSW Pty Ltd	16.41	12.50	6.88	4.00	39.78	45.00	<b>84.78</b>
Melhemcorp Pty Ltd	20.31	12.50	6.88	4.00	43.69	39.62	<b>83.31</b>
Citywide Civil Engineering NSW Pty Ltd	19.53	8.75	8.75	4.00	41.03	38.18	<b>79.21</b>
Stateline Asphalt Pty Ltd	16.41	11.25	7.50	3.33	38.49	33.65	<b>72.14</b>
Statewide Civil Pty Ltd	18.75	5.00	6.88	5.00	35.63	35.81	<b>71.44</b>
Sydney Civil Pty Ltd	20.31	12.50	8.75	1.67	43.23	26.38	<b>69.61</b>
North Shore Paving Co Pty Ltd	21.09	1.25	8.75	1.82	32.91	24.46	<b>57.37</b>
Ally Civil Pty Ltd	17.19	0.00	5.63	1.67	24.48	29.68	<b>54.16</b>

**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 45%. The lowest tender price received the highest score, with all other prices ranked accordingly using the formula (lowest price/each price)x 45).
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. **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.
5. **Duration of Works:** The shortest duration of 4 weeks received the maximum score, with others ranked accordingly using the formula (shortest duration in weeks/each duration in weeks) x 5.
6. **Zero score is given when no information is provided.**

**Comment**

The Tender Panel conducted a post-tender interview with Civil Works NSW Pty Ltd and Melhemcorp Pty Ltd, the two highest ranked tenderers. The purpose of the interviews was to review and test the information provided by the tenderers with regard to the published selection criteria, and where necessary to raise concerns which the panel may have had with any aspect of the tender.

**1. Civil Works NSW Pty Ltd**

Civil Works NSW Pty Ltd are the highest ranked tenderer and provided the best price.

Civil Works NSW Pty Ltd are a small civil construction company and have been operating since 2009. They have not been previously engaged by Woollahra Municipal Council however they are experienced in civil construction of this type having completed a number of similar projects for other local and state government bodies.

The duration of works specified for on-site works (5 weeks) is equal with the 2nd highest ranked tenderer and the construction program and methodology demonstrates a good understanding of the project to be completed. They have the capacity to commence in December and complete the project by the end of January (allowing for a 2 week shutdown over the Christmas – New Year period).

Civil Works NSW Pty Ltd have well documented and comprehensive OH&S, environmental management and quality management systems.

Reference checks were sought from other local government authorities that have previously engaged Civil Works NSW Pty Ltd for similar projects. The reference checks indicated a positive response and identified the subject projects were constructed to an above average quality, on time and on budget, with minimal variation claims submitted.

## **2. Melhemcorp Pty Ltd**

Melhemcorp Pty Ltd scored a close second. They are an experienced company in civil construction and are well known to Woollahra Municipal Council. They are similarly capable to undertake the works however their submitted price was \$26,730.00 dearer than the highest ranked tenderer.

Melhemcorp Pty Ltd also indicated that they would not be able to commence works on site until February 2014.

### **Tender Assessment Panel Opinion**

The tender panel is of the opinion that the tender submitted by Civil Works NSW Pty Ltd is the most advantageous to Council in terms of value for money, quality of work and the ability to complete the works within an acceptable time frame.

### **Identification of Income and Expenditure:**

All figures in this report exclude GST. The preferred tenderer's lump sum price for this project is \$196,777.00. In addition, a contingency amount of approximately \$10,000 should be allowed for potential variation claims and \$5000 for project management. The total funding required for this project is estimated to be \$212,000.

Based on a pre-construction estimate, a budget of \$188,000 was allocated to this project. To date \$34,000 has been spent on survey, design and project management. The increased costs to this project are due to additional stormwater and kerb and gutter works that were identified during the detailed design process.

The shortfall of \$58,000 can be funded from the infrastructure levy reserve and will be reported in the next quarterly budget review.

### **Conclusion:**

The tender panel recommends that Council enter into a Contract with Civil Works NSW Pty Ltd for Coolong Road Vacluse – Road Infrastructure Works for the sum of \$196,777 (excluding GST).

Jake Matuzic  
Manager Capital Projects

Tom O'Hanlon  
Director - Technical Services

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**Annexures: Nil**

**Item No:** R3 Recommendation to Council  
**Subject:** **Conduct of Elections for Woollahra Council**  
**Author:** Les Windle - Manager Governance  
**File No:** 38.G 2011  
**Reason for Report:** To recommend that Council appoint the NSW Electoral Commissioner to administer elections, council polls and constitutional referendums for Woollahra Council until the end of the 2016 General Election

**Recommendation:**

That Woollahra Council (“the Council”) resolves:

- A. pursuant to s. 296(2) and (3) of the Local Government Act 1993 (NSW) (“the Act”) that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council.
- B. pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a council poll arrangement be entered into by contract for the Electoral Commissioner to administer all council polls of the Council.
- C. pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of the Council.

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**Executive Summary:**

Prior to the 2012 local government elections, the Local Government Act was amended to make General Managers responsible for the administration of Council elections. The amendment included provisions for a council to, by resolution, enter into a contract or make arrangements with the New South Wales Electoral Commission (NSWEC) for the NSWEC to administer elections on behalf of the council.

The 2012 election was conducted under Transitional Provisions of the Amending Act and Guidelines issued by the Division of Local Government under section 23 of the Local Government Act (DLG Guidelines).

On 28 November 2011 Council resolved to appoint the NSWEC Commissioner to administer all elections, council polls and constitutional referendums for Woollahra Council until the conclusion of the 2012 ordinary election of councillors.

Council must now consider the management of future elections, council polls and constitutional referendums. If Council does not appoint, by resolution, the NSWEC to conduct the elections for Council the General Manager is responsible for the administration of elections.

A resolution to enter an election arrangement with the NSWEC to conduct the Council elections will remain in force until the 2016 election and can be terminated by the Council or the Electoral Commissioner at any time after the 2016 election by giving written notice of termination. If the arrangement is not terminated by either party after the 2016 election, the arrangement is automatically terminated 18 months before the next ordinary election of councillors in 2020.

It is recommended that Council resolve that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council for the reasons discussed in this report including:

1. For the 2012 election the NSWEC provided no advice or support to those councils electing to conduct council administered elections and there is nothing to suggest that this approach will change for future elections.
2. Whilst General Managers are responsible for the conduct and result of council administered elections, they cannot be the Returning Officer or Substitute Returning Officer. Similarly a member of staff of the council cannot be the Returning Officer or Substitute Returning Officer. The General Manager would therefore need to recruit and hand over the day to day running of the election process to a Returning Officer with unknown skills and experience but still retain legislative responsibility for the election outcome.
3. The Council could go to Tender for a suitably qualified organisation to conduct the election process on Council's behalf however the General Manager is still responsible for the election and the concerns raised in point 2 above would still apply.
4. It is likely that there will be a shortage of people with the required skills and experience to undertake the role of Returning Officer or Substitute Returning Officer. It could be assumed that any people with those skills would have obtained those skills from prior employment with the NSWEC and may have an alliance or commitment to the NSWEC for future elections.
5. If Council was able to attract a suitably qualified Returning Officer, one of the key tasks for the Returning Officer prior to the election period would be to develop all of the election manuals/procedures for election officials to use during pre-poll, declared institution, postal and election day voting. This would also include associated printed materials such as postal vote application forms, declaration envelopes, candidate information sheets, candidate nominations, nomination deposit forms, claims for inclusion in non-residential roll or roll of occupiers and ratepaying lessees, scrutineer nomination forms, and information papers for intending candidates, to name a few.
6. As all election documents were previously provided by the NSWEC (as part of their core business), and given the NSWEC, unless their approach to providing assistance for General Manager administered elections changes, will not provide any support, advice or assistance to councils administering their own election, the Returning Officer would need to undertake significant research and spend considerable time drafting all the necessary manuals/forms. This would have a significant impact on the cost of employing the Returning Officer and any administrative/clerical assistance the Returning Officer may require for the task.
7. Given the integrity of the election and election result hinge on the quality and accuracy of the election material/documents, the General Manager would have no option but to obtain specialist legal advice on each document which would incur significant legal costs. The alternative, being a possible court challenge to the election result, could result in potentially even higher cost implications.
8. Whilst senior council staff with previous election experience, namely the General Manager, Director Corporate Services and Manager Governance could provide assistance to the Returning Officer, this would come at an operational cost to Council by creating disruptions to business operations and normal operational priorities for those staff for an extended period in the lead-up to and post the election.

9. The election counting process must also be considered. Because of the introduction of above the line voting, specialised software is required. The NSWEC has this software but in 2012 refused to allow councils that administered their own election to use the software. There is vote counting software available on the market however the integrity of the software to meet local government election requirements is not known at this stage which would create a further risk if Council was to consider a General Manager administered election.

Although the cost of administering an election needs to be considered, the primary concerns with a council administered election will be managing the significant risks associated with attracting the necessary skills and experience from an unknown market to set up and manage an election process that is governed by strict legislative requirements. Further, this has to be achieved potentially without any external assistance or advice from the NSWEC who will no doubt be competing in the market for the same skilled and experienced personnel. This presents as a significant challenge.

Local government concerns that led to the legislative change was that a number of larger councils were charged in excess of \$1m by the NSWEC under their full cost recovery model. Those councils could potentially achieve substantial savings by administering the election themselves, especially if they were able to use existing staff to support the Returning Officer. Unfortunately this is not an option for Woollahra without a substantial impact on efficient service delivery. Also as will be discussed in the report, Council's costs for a NSWEC administered election are considered relatively small, and within budget provisions.

It is important to note that even if the General Manager was able to recruit a Returning Officer with the requisite skills and experience to manage the election process, responsibility for the conduct of the election still rests with the General Manager, not the Returning Officer. As a consequence, the General Manager and other senior staff would need to play a significant role in overseeing the Returning Officer's preparation for, conduct of, and reporting on the outcome of the election for an extensive period both prior to and after the election to ensure legislative compliance is achieved and to minimise the potential for the election result to be challenged. This cannot be achieved without a major impact on the efficiency of Council's operations given the diversion of focus for the senior staff involved. It is strongly argued that is an unnecessary impost on the organisation's operations that is avoided through engaging the NSWEC to conduct elections.

Notwithstanding the concerns already raised, it is also argued that engagement of the NSWEC to conduct Council elections will also avoid any perceived conflict of interest that may arise from the General Manager and other senior staff's role in liaising with candidates and potential candidates during the election process. Again, these potential conflicts of interest are avoided through engaging the NSWEC to conduct the elections completely at arms-length from Council's staff and its operations.

### **Background:**

Until the late 1980s Town and Shire Clerks were responsible for council elections. In 1987 the *Local Government (Elections) Amendment Act* was introduced which transferred this responsibility to the NSW Electoral Commission (NSWEC). Town and Shire Clerks acted as the Returning Officer at the 1987 and 1991 elections with the NSWEC providing support by preparing election material including returning officer, polling officials and election count instruction manuals, statutory advertisements, candidate information material, candidate information sessions, polling screens and ballot boxes. The NSWEC also provided training and technical assistance and advice to the Returning Officers on all election matters.

From 1995 onwards independent Returning Officers were appointed by the NSWEC to run Council elections. The NSWEC invoiced the councils for certain costs such as the salary of the Returning Officer, however other costs were absorbed by both parties. Councils often made premises available for the Returning Officer and provided resources such as equipment and staff to assist the Returning Officer with election-related tasks. The NSWEC tended to attach a cost only to actual goods supplied rather than NSWEC overhead costs associated with the full range of services it provided.

The NSWEC moved to a full cost recovery model for the 2008 local government elections which saw Woollahra Council's election costs increase from \$152,440 for the 2004 election to \$250,300 for the 2008 elections. This represented a 64.2% increase.

The 2008 increase cost to Council was not as great as the increase experienced by a number of other councils however the significance of the increases caused widespread concern and complaints throughout local government.

After the 2008 elections the Local Government and Shires Associations commenced a lobbying campaign for the return of the responsibility of local elections back to local government. Following the March 2011 state election the new Government passed the Local Government Amendment (Elections) Act 2011 which removed the mandate of the NSWEC to run local government elections (including constitutional referendums and polls) and instead returned the responsibility for the elections to councils.

Section 296 of the Local Government Act has been amended to provide that elections are now to be administered by the General Manager (sec 296(1)). That may be done by the General Manager managing all operational functions to conduct the election or the council may resolve to enter into a contract or make arrangements with the Electoral Commissioner for the Electoral Commissioner to administer the election. (sec 296(2)). In that case the Electoral Commissioner manages all operational functions to conduct the election.

The cost for NSWEC to conduct the 2012 election was \$287,128.00 with Council spending an additional \$9,412.35 on advertising, furniture hire and office cleaning. The increase in NSWEC costs from 2008 to 2012 was 14.7% which reinforced a commitment given by the Electoral Commissioner prior to the 2012 election to negotiate services with individual Councils to meet their local needs rather than providing a one type service for every council.

If Council does not resolve to enter into a contract or make arrangements with the NSWEC the election is to be administered by the General Manager. Council has until March 2015 to resolve that the NSWEC administer the 2016 general election however it is considered prudent to consider this matter now as the reasons for recommending appointment of the NSWEC are unlikely to change between now and March 2015.

### **Proposal:**

Council is to determine whether to retain the Electoral Commissioner to administer elections until the end of the 2016 ordinary election or whether elections are to be administered by the General Manager.

### **Elections to be administered by the Electoral Commissioner**

The Electoral Commissioner would be solely responsible for all tasks for the election except for preparation of the roll of non-resident owners of rateable land and the roll of occupiers and rate-paying lessees which would continue to be the responsibility of Council.

Conducting elections is the core business of the NSWEC and it has the expertise and resources to conduct the election for the Council with independence at an arms length to the Council.

Specific details for any election would form part of the contract negotiations.

### **Elections to be administered by the General Manager**

If the election was to be administered by the General Manager then the General Manager assumes the same responsibilities as the NSWEC.

For the 2012 Election, the Division of Local Government issued Guidelines for Council Administered Elections which can be used as a guide to define the responsibilities of the General Manager to administer an election. The responsibilities include:

- Having a detailed knowledge of current elections legislative requirements and having mechanisms and strategies in place to ensure full compliance with the legislative requirements. Failure to do so could call into question the validity of the election,
- Appointing a suitably qualified and independent Returning Officer and Substitute Returning Officer,
- Appointing polling places,
- Determining the fees payable to the Returning Officer, Substitute Returning Officer and electoral officials
- Confirming the roll of non-resident owners of rateable land and the roll of occupiers and rate-paying lessees,
- Preparing a list of names of those on the residential roll, who appeared to have not voted at the election, and forwarding this list to the Electoral Commissioner within 14 days (or within a longer period if provided for in the Regulation) of the election,
- Managing the relevant election costs
- Preparing a report for the Minister for Local Government on the conduct of each election that must disclose, among other things, full and transparent costings for the election

Discussion on the General Managers responsibilities follows.

### **Having a detailed knowledge of current elections legislative requirements,**

The last time a General Manager (then called a town clerk) was totally responsible for a council election was 1991 and all elections conducted until this time were conducted in conjunction with the NSWEC providing comprehensive advice and assistance with all statutory requirements. The NSWEC also provided all relevant manuals for the elections. Elections from 1995 have been conducted by independent Returning Officers appointed and managed by the NSWEC except for a very small number of elections administered by general managers in 2012.

As could be expected, legislative requirements have changed since the last time a General Manager was responsible for running an election (1991), most notably in relation to introducing above the line voting and consequent vote counting requirements.

The General Manager would need to become fully conversant with all relative legislative provisions and ensure that mechanisms and strategies are in place to ensure full compliance with those provisions. Failure to do so could call into question the validity of the elections.

This would need to be done potentially without the assistance of the NSWEC, ironically the organisation with the expertise of conducting elections.

## **Appointing a suitably qualified and independent Returning Officer and Substitute Returning Officer**

A General Manager cannot be appointed as a returning officer or a substitute returning officer for any area and an employee of a council cannot be appointed as the returning officer or substitute returning officer for that council.

The General Manager would need to appoint an external suitably qualified and independent Returning Officer and Substitute Returning Officer who is capable of undertaking proficiently the following roles, as identified in the DLG Guidelines:

- managing the Returning Officer's office
- appointing and training staff including Polling Place Managers on how to conduct a count and how to determine formality of ballot papers
- developing procedures to be followed by electoral officials issuing pre-poll, declared institution, postal and election day votes
- preparing all necessary printed election materials such as forms, declaration envelopes, signs etc
- obtaining all necessary election material for use in pre-poll and election day venues such as voting screens, ballot boxes, pencils etc
- determining the quantity of ballot papers required and arranging for their printing, delivery and secure storage
- making Braille ballot papers available, if requested
- dealing with political parties, candidates and the public
- processing candidates' nominations including acceptance of the deposit and conducting the draw for position of candidates on the ballot paper
- registering how to vote material
- putting in place all necessary arrangements to enable pre-poll, declared institution, postal and election day voting
- ensuring delivery and collection of election materials to and from pre-poll and election day polling venues
- conducting the 'check count' of the votes and the distribution of preferences
- declaring the election
- arranging storage (and ultimate destruction) of ballot papers and voting-related materials for the statutory period of 6 months.

It is not known but considered unlikely that there would be many suitable candidates available that could undertake the complete role of Returning Officer or Substitute Returning Officer, particularly in relation to the requirements to developing appropriate election related procedures, manuals, training programs and most importantly the counting of votes with distribution of preferences.

In 2000 the Local Government Act was amended to introduce above the line voting to allow the voter to determine the preferences he or she wanted, by showing one or more preferences for groups or parties in the Group Voting Squares above the line.

This change has meant that specially designed software with a front end data entry module is required to count and distribute preferences as individual preference streams need to be tracked separately through the count and exhausted at the appropriate time. These counts cannot be reliably conducted without appropriate software.

The NSWEC has the required software but indications are that it will not allow councils which administer their own elections to use the software.

There is vote counting software available in the market however it is not known whether the functional specifications of that software will meet future local government legislative requirements without exhaustive testing by an experienced election expert. Council at this stage has not investigated further the vote counting software.

If the General Manager was to administer the election Council we would need to provide accommodation for the Returning Officer before and after the election, with the post-election period being determined by how long it takes to finalise the vote counting and declare the poll.

As space at the Council and Council owned venues is at a premium, office space in one of the Municipality's commercial centres would need to be leased. In the past, Returning Officers employed by the NSWEC were employed for approximately 10-12 weeks prior to the election date. However if the General Manager was to administer the election, the employment of the Returning Officer and possibly the Substitute Returning Officer and clerical staff would need to be much longer as all instruction, training, voting manuals and electoral print materials etc would need to be created prior to reaching the election period.

Employment of the Returning Officer and possibly Substitute Returning Officer and clerical staff may need to be up to 6 months prior to the election in order to complete these tasks which would have a high cost impact on the election salary and accommodation costs.

### **Appointing polling places**

This is an administrative task and with analysing the data of previous elections should be easily managed.

### **Determining the fees payable to the Returning Officer, Substitute Returning Officer and electoral officials**

The General Manager is required to determine the fees payable to all electoral officials.

### **Confirming the roll of non-resident owners of rateable land and the roll of occupiers and rate-paying lessees,**

This has always been the responsibility of the General Manager.

### **Preparing a list of names of those on the residential roll, who appeared to have not voted at the election, and forwarding this list to the Electoral Commissioner within 14 days (or within a longer period if provided for in the Regulation) of the election,**

This is an administrative task and should be easily managed.

### **Managing the relevant election costs**

This is an administrative task and should be easily managed.

### **Preparing a report for the Minister for Local Government on the conduct of each election that must disclose, among other things, full and transparent costings for the election**

The General Manager must prepare a full report within six months of the election for the Minister for Local Government on the conduct of the election. The DLG Guidelines provides a non-exhaustive list of items that should be reported on.

This is an administrative task and should be easily managed.

**Conclusion:**

Although the responsibility for local government elections has been returned to General Managers, the management model is completely different to the previous management model where elections were administered by General Managers. The management of those elections was through a close partnership between the Council and the NSWEC.

The new management model for elections has the election to be administered solely by the General Manager potentially without assistance from the NSWEC or for the Council to enter into a contract or make arrangements with the NSWEC to administer the election, with those contracts or arrangements to be negotiated on commercial terms.

For the reasons detailed in this report, it is recommended that Council resolve that an election arrangement be entered into by contract for the Electoral Commissioner to administer all elections of the Council until the 2016 election.

Les Windle  
Manager Governance

Stephen Dunshea  
Director Corporate Services

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**Annexures:**

Nil

**Political Donations – matters to be considered by Councillors at Meetings**

