

BUSINESS PAPER

COUNCIL MEETING

Tuesday, 19 March, 2013

Meeting commences at 6.30pm

**Council Chambers
Level 3, 2-14 Fisher Street
Petersham**

MARRICKVILLE COUNCIL

Administrative Centre
PETERSHAM













12 March 2013

Notice is given of the **COUNCIL MEETING**, to be held in the Council Chambers on Level 3 of the Administrative Centre, 2-14 Fisher Street, Petersham, on Tuesday, 19 March, 2013, commencing at 6.30pm.

Yours faithfully

Brian Barrett
A/General Manager

COUNCILLORS

	Chairperson Councillor Victor Macri (Mayor) Central Ward – Wirraga Ph: 0408 219 260 Fax: 9569 8750		Deputy Chairperson Councillor Emanuel Tsardoulis (Deputy Mayor) West Ward – Burraga Ph: 0432 684 120 Fax: 9335 2029
	Councillor Melissa Brooks West Ward – Burraga Ph: 0409 235 802 Fax: 9572 7982		Councillor Sylvie Ellsmore North Ward – Wali Ph: 0403 977 213 Fax: 9519 2973
	Councillor Mark Gardiner North Ward – Wali Ph: 0402 424 987 Fax: 9335 2029		Councillor Morris Hanna OAM South Ward – Magura Ph: 0417 660 997 Fax: 9349 5149
	Councillor Jo Haylen North Ward – Wali Ph: 0417 114 404 Fax: 9335 2029		Councillor Sam Iskandar Central Ward – Wirraga Ph: 0408 210 618 Fax: 9554 7841
	Councillor David Leary South Ward – Magura Ph: 0409 421 323 Fax: 9519 1425		Councillor Max Phillips Central Ward – Wirraga Ph: 0419 444 916 Fax: 9335 2029
	Councillor Rosana Tyler West Ward – Burraga Ph: 0414 859 630 Fax: 9335 2029		Councillor Chris Woods South Ward – Magura Ph: 0425 363 209 Fax: 9335 2029

Council and Committee Meetings

To enable Council to give consideration to items of business at each Meeting, a Business Paper, like this one, is prepared, containing reports by senior staff in relation to each item listed on the Agenda for the Meeting. The Business Paper for each Meeting is available for perusal by members of the public at Council's Libraries and Community Neighbourhood Centres on the Thursday prior to the Council/Committee Meeting.

Meetings are conducted in accordance with Council's Code of Meeting Practice. The order of business is listed in the Agenda. That order will be followed unless a procedural motion is adopted to change the order of business at the meeting. This sometimes happens when members of the public request to address the Council on an item on the Agenda.

Some items are confidential in accordance with S10A(2) of the Local Government Act. This will be clearly stated in the Business Paper. These items may not be discussed in open Council and observers may be asked to leave the Council Chambers when they are discussed. The grounds on which a meeting is closed to the public must be specified in the decision to close the meeting and recorded in the minutes of the meeting. The number of items that are dealt with as confidential are kept to a minimum.

Each of Council's committees has delegated authority to make decisions subject to a number of limitations. Matters which cannot be decided by the committees are referred to the Ordinary Council Meeting for decision.

More Information

Please visit Marrickville Council's website at www.marrickville.nsw.gov.au for more information on the following:

- Committee Structure and Delegations
- meeting dates for the remainder of the year
- information on attending Council and committee meetings, and on applying to speak at meetings

Persons in the public gallery are advised that under the Local Government Act 1993, a person may NOT tape record a Council or Committee meeting without the authority of the Council or Committee.

Council grants authority to an accredited television or radio media representative to record by the use of audio or video recording equipment, the proceedings of a Council or Committee meeting upon production of suitable identification and evidence of employment.

Any persons found tape recording without authority will be expelled from the meeting.

"Tape record" includes the use of any form of audio, video and still camera equipment or mobile phone capable of recording speech.

An audio recording of this meeting will be taken for minute taking purposes and will be destroyed upon confirmation of the minutes.

SUMMARY OF ITEMS

The following provides a summary of the items to be considered at the meeting.

MAYORAL MINUTES

Nil at the time of printing.

STAFF REPORTS

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REPORTS WITH CONFIDENTIAL INFORMATION

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PRECIS

1	Acknowledgement of Country	
2	Period of Silence for Prayer, Pledge or Contemplation	
3	Present	
4	Apologies	
	A leave of absence has been requested by:	
	<i>Councillor Mark Gardiner - 11 March 2013 to 22 March 2013 inclusive</i>	
5	Disclosures of Interest (Section 451 of the Local Government Act and Council's Code of Conduct)	
6	Confirmation of Minutes	Page
	Minutes of 19 February 2013 Council Meeting	11
7	Mayoral Minutes	
	Nil.	
8	Staff Reports	
C0313 Item 1	JULY-DECEMBER 2012 OPERATIONAL PLAN PROGRESS REPORT	25
	File Ref: 4717/16298.13	
	This report summarises Council's performance over the period 1 July – 31 December 2012 against the <i>Operational Plan 2012-13</i> and <i>Delivery Program 2011-2015</i> . Summary information on performance in each program area is provided below.	
	The report indicates that overall good progress was made over the financial year, with 97% of activities being reported as progressing or completed.	
	RECOMMENDATION	39
	THAT the report be received and noted.	

C0313 Item 2 ADVERTISING BILLBOARDS AT TEMPE 41

File Ref: 13/SF43/13936.13

This report provides information relating to a proposal to install billboards on Council land at Tempe. A number of land use planning issues need to be resolved in order for the proposal to proceed. On the basis of this it is recommended that Council engages an advertising consultant to undertake an initial analysis of the proposal, to determine the validity of a number of preliminary financial assumptions prior to proceeding any further.

RECOMMENDATION 47**THAT:**

- 1. Council receive and note this report;**
- 2. Council allocates an additional \$6,000 in the 2012/13 Operating Budget to engage an advertising consultant to undertake a desk top analysis of the billboard proposal for Tempe Lands; and**
- 3. following this analysis a further report is provided to Council for consideration.**

C0313 Item 3 COMMUNITY CULTURAL DEVELOPMENT OFFICER POSITION 48

File Ref: 190-01/15992.13

Culture and Recreation is seeking approval for the employment of a permanent part-time (30 hours per week) Community Cultural Development Officer that will be responsible for the delivery of community cultural initiatives, projects and programs that enhance and celebrate the diversity of Marrickville.

RECOMMENDATION 52**THAT:**

- 1. Council receives and notes the report; and**
- 2. Council endorses the permanent establishment of a Community Cultural Development Officer (30hrs per week); and**
- 3. funding be included in the 2013/14 budget.**

C0313 Item 4	CODE OF CONDUCT COMPLAINT - COUNCILLOR PHILLIPS - REPORT FROM SINGLE REVIEWER	53
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File Ref: 4792/17040.13

This report presents to Council the findings of the single reviewer appointed to investigate the complaint made pursuant to the Council's Code of Conduct against Councillor Max Phillips and provides the opportunity for Council to determine what action to take as a consequence of those findings.

RECOMMENDATION	54
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THAT Council:

1. receive and note the report from Ms Kathy Thane attached at ATTACHMENT 1;
 2. determine whether to make findings of a breach of the Code; and
 3. determine what action to take as a consequence of those findings.
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9 Notices of Motion

C0313 Item 5	NOTICE OF MOTION: SUPPORTING LIVE MUSIC	94
C0313 Item 6	NOTICE OF MOTION: TRANSPARENCY IN DEALING WITH VOLUNTARY PLANNING AGREEMENTS	96
C0313 Item 7	NOTICE OF MOTION: GREENWAY INFRASTRUCTURE	98

10 Reports with Confidential Information

Reports appearing in this section of the Business Paper are confidential in their entirety or contain confidential information in attachments.

The confidential information has been circulated to Councillors separately.

C0313 Item 8 SSROC TENDER - SUPPLY AND DELIVERY OF PHOTOCOPY PAPER 101

File Ref: 4717/15143.13

SSROC, on behalf of its member councils, recently conducted a tender for the supply and delivery of Photocopy Paper.

RECOMMENDATION 104

THAT:

1. Council move into closed session to deal with this matter as information contained in ATTACHMENT 1 of the Report is classified as confidential under the provisions of Section 10A (2)(c) and (d) of the *Local Government Act 1993* for the following reasons:
 - a) information within this report, if disclosed, could confer a commercial advantage on persons with whom the Council proposes to or may conduct business; and
 - b) it is not in the public interest to reveal all details of these Tenders or the assessment process. Companies have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by companies could result in the withholding of such information by companies and reduction in the provision of information relevant to Council's decision.

And in accordance with Sections 10A (4) of the *Local Government Act 1993*, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolve that ATTACHMENT 1 to the report be treated as confidential in accordance with Section 11(3) of the *Local Government Act 1993*, as it relates to a matter specified in Section 10A(2) of the *Local Government Act 1993*, and as such is to be treated as confidential;
2. the report be received and noted; and
3. Council adopt the recommendation contained in the CONFIDENTIAL ATTACHMENT 1.

C0313 Item 9 CHILDREN AND FAMILY SERVICES MANAGEMENT REVIEW AND RECOMMENDATIONS 105

File Ref: 4717/15654.13

In July 2012, Dr Frances Press from the Research Institute for Professional Practice, Learning and Education at Charles Sturt University was appointed as an independent consultant to undertake a review of Council's Children and Family Services Management. Council is advised that a final report and a series of recommendations were finalised by Dr Press in December 2012. This report outlines the key report findings and recommendations and includes an assessment of the financial impact, where applicable, of the implementation of the recommendations.

RECOMMENDATION 110**THAT:**

1. Council moves into closed session to deal with this matter as information contained in ATTACHMENTS 2 and 3 of the report is classified as confidential under the provisions of Section 10A (2)(a) of the Local Government Act 1993 for the following reason:

- personnel matters concerning particular individuals (other than councillors).

And in accordance with Sections 10A (4) of the Local Government Act 1993, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolves that ATTACHMENTS 2 and 3 to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2) of the Local Government Act 1993, and as such is to be treated as confidential;
2. Council adopts the recommendations contained in CONFIDENTIAL ATTACHMENTS 2 and 3.

C0313 Item 10 PETERSHAM PARK PLAYGROUND UPGRADE - TENDER EVALUATION - TENDER NUMBER 14/12 118

File Ref: 4729/11286.13

Petersham Park Playground Tender Number 14/12 applies to landscape construction of a new playground at Petersham Park, Petersham. The project aims to provide a new playground facility with barbeque and picnic settings. The works will run concurrently to the redevelopment of the Fanny Durack Aquatic Centre which is currently under construction. A report on the results of assessment of the received Tenders by the Tender Review Panel can be found in the **CONFIDENTIAL ATTACHMENT 1**. Construction is planned to commence in April 2013.

RECOMMENDATION 121

THAT:

1. Council move into closed session to deal with this matter as information contained in **ATTACHMENT 1** of the Report is classified as confidential under the provisions of Section 10A (2)(c) and (d) of the Local Government Act 1993 for the following reasons:
 - a) the information within this report, if disclosed, could confer a commercial advantage on persons with whom the Council proposes to or may conduct business; and
 - b) it is not in the public interest to reveal all details of these tender submissions or the assessment process. Companies have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by companies could result in the withholding of such information by companies and reduction in the provision of information relevant to Council's decision.

And in accordance with Sections 10A (4) of the Local Government Act 1993, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolve that **ATTACHMENT 1** to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2) of the Local Government Act 1993, and as such is to be treated as confidential;
2. the report be received and noted; and
3. Council adopt the recommendation contained in the **CONFIDENTIAL ATTACHMENT 1**.

Minutes of Council Meeting held on Tuesday, 19 February 2013**Meeting commenced at 6.34pm****ACKNOWLEDGEMENT OF COUNTRY BY CHAIRPERSON**

We meet tonight on the traditional land of the Cadigal people of the Eora nation. I acknowledge the terrible wrongs committed against the Aboriginal peoples of this country and their care of the land over many generations. I celebrate their ongoing survival and achievements in today's society.

COUNCILLORS PRESENT

Macri (Mayor)	Tsardoulis (Deputy Mayor)	Brooks	Ellsmore
Gardiner	Hanna	Haylen	Iskandar
Leary	Phillips	Tyler	Woods

APOLOGIES: Nil.**DISCLOSURES OF INTERESTS:*****Item 11- Code of Conduct Complaint – Councillor Dimitrios Thanos – Report from Single Reviewer***

Councillors Gardiner and Tyler declared a significant non pecuniary conflict of interest as former Councillor Dimitrios Thanos was a donor to the Liberal Party election campaign. Both Councillors will absent themselves from the Council Chamber and not take part in the debate or vote.

CONFIRMATION OF MINUTES**Motion:** (Macri/Leary)

THAT the Minutes of the Extraordinary Council Meeting held on Tuesday, 15 January 2013 be confirmed.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 1 MAYORAL MINUTE: SYDENHAM GREEN PLAN OF MANAGEMENT REVIEW**Motion:** (Macri)

THAT options for increased on-grade parking, with some metering, to address the needs of park users, local residents and businesses are considered within the review of the Plan of Management and Masterplan for Sydenham Green.

Motion Carried**For Motion:** Councillors Brooks, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis and Tyler**Against Motion:** Nil**Absent:** Councillors Ellsmore and Woods**C0213 Item 28 MAYORAL MINUTE: CLEAN UP AUSTRALIA DAY 2013 - CHALLENGE FOR COUNCILLORS****Motion:** (Macri)

THAT Councillors show community leadership on Clean Up Australia Day by getting involved. Councillors can either:

- a) select a site at which to volunteer from ATTACHMENT 1, and register at www.cleanup.org.au;
- b) take a leading role and sign up as a site supervisor; or
- c) visit schools, and participate at their Clean Up Day on Friday 1st March.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil**C0213 Item 29 MAYORAL MINUTE: RECREATION FACILITIES FOR OLDER YOUTH****Motion:** (Macri)

THAT Council officers prepare a report on the options to develop cultural and sporting facilities for older youth, in line with the adopted recommendations in the Recreation Needs Research – Strategic Directions for Marrickville report.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil

C0213 Item 2 ARLINGTON RESERVE PLAYING FIELD UPDATE

Public speakers: Sharyn Moses, Anthony May, Joe Pinto, John Theodoropoulos and Ian Holmes (Canterbury and District Football Association)

Motion: **(Macri/Iskandar)**

THAT:

1. the report be received and noted;
2. Council resolves to proceed with a Synthetic Turf surface at Arlington Oval;
3. funding be allocated to meet the cost of works in the 2013/14 budget from –
 - a. unallocated s94 funds; and/or
 - b. loan funds to be repaid from:
 - i. maintenance costs savings;
 - ii. an increase in user charges based on current hours of use; and/or
 - c. other available funding sources.
4. Council endorses the terms of reference and expression of interest process for the establishment of a community group.
5. Council reiterates its commitment to the current plan of management and resolves that it remains unchanged.

Motion Tied

For Motion: Councillors Haylen, Iskandar, Macri, Tsardoulis, Tyler and Woods

Against Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Leary and Phillips

The Chairperson used his Casting Vote and the **Motion** was **Carried**.

C0213 Item 3 DESTINATION 2036 - LOCAL GOVERNMENT REFORM PROGRAM

Motion: **(Macri/Tsardoulis)**

THAT:

1. Council forms a Working Party to examine the draft recommendations of the ILGRP;
2. the Working Party's Terms of Reference include to take urgent action to respond to the report's funding including community consultation; and
3. the Working Party comprises the Mayor (Chair) and 3 Councillors (Clrs Woods, Leary and Tyler).
4. the Working Party provide regular reports to Council.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 4 MARRICKVILLE COMMUNITY FUND - SUBFUND OF THE SYDNEY COMMUNITY FOUNDATION**Motion:** (Haylen/Macri)

THAT this item be deferred to enable the Marrickville Community Fund to continue the relevant conversations with Councillors and Council officers and provide a report to Council.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil**C0213 Item 5 MOST (MARRICKVILLE OPEN STUDIO TRAIL) 2013 BUDGET ADJUSTMENT****Motion:** (Macri/Leary)

THAT:

1. the report be received and noted; and
2. Council endorses a budget adjustment of \$8,000 to produce MOST 2013.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil**C0213 Item 6 JACK SHANAHAN RESERVE UPGRADE CONCEPT PLAN****Motion:** (Tsardoulis/Brooks)

THAT Council:

1. endorse the Jack Shanahan Reserve Upgrade Concept Plan as the basis for detailed design and tender; and
2. undertake further community engagement regarding possible conversion of the tennis court to a multiuse court for tennis, basketball and other uses; and
3. continues to strongly pursue the incorporation of the disused rail corridor into Jack Shanahan Reserve, due to this corridor's importance as the designated southern starting point of the Cooks River to Sydney Harbour GreenWay off-road trail.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil

C0213 Item 7 DRAFT RECREATION POLICY AND STRATEGY**Motion: (Macri/Woods)**

THAT Council endorse the draft Marrickville Recreation Policy and Strategy for public exhibition for a period of 42 days.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 8 DEPLOYMENT OF WI-FI INTERNET AT COUNCIL'S MAIN PARKS FEASIBILITY REPORT**Motion: (Macri/Tyler)**

THAT Council does not proceed with the provision of free wifi access in all LGA major parks.

Motion Lost

For Motion: Councillors Hanna, Macri and Tyler

Against Motion: Councillors Brooks, Ellsmore, Gardiner, Haylen, Iskandar, Leary, Phillips, Tsardoulis and Woods

Motion: (Ellsmore/Tsardoulis)

THAT:

1. the report be received and noted;
2. a further report be urgently provided to Council with options for a low-cost trial of 5-8 wireless internet 'hot spots', similar to the trial currently being implemented in an adjoining Council, for Council's consideration and funding in the coming financial year;
3. the trial sites investigated include one or more of each of the following:
 - parks in an around major Council infrastructure – for example in and around pools located in public parks;
 - sections of parks which are known to have the highest density of visitors, for example Camperdown Memorial Rest Park;
 - squares or public spaces around Council buildings where Council is seeking to encourage greater resident use, including places identified by the Marrickville Council Public Domain Study;
 - one main street (following consultation and support from relevant local businesses which may be affected);
 - Newtown Square and the Newtown Art Seat, or another suitable Council supported public art project;
4. the report investigate, in relation to the trial sites:
 - cost savings from appropriately capped download speeds;
 - very low or no cost options with private providers;
 - low cost, environmental friendly technology options including solar powered equipment; and
5. consultation be undertaken with other local Councils as appropriate to share lessons learnt from similar trials, and to discuss potential cooperative approaches to providing free wifi in overlapping areas.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Haylen, Iskandar, Leary, Phillips, Tsardoulis and Woods

Against Motion: Councillors Hanna, Macri and Tyler

C0213 Item 9 QUARTERLY BUDGET REVIEW STATEMENT FOR THE PERIOD ENDED 31 DECEMBER 2012

Motion: (Macri/Tsardoulis)

THAT:

1. the report be received and noted; and
2. Council approve the variations identified as matters requiring budget adjustments.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 10 RMS, SALE OF LAND AT 40 OLD CANTERBURY ROAD, LEWISHAM

Motion: (Tsardoulis/Macri)

THAT the report be received and noted.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 11 CODE OF CONDUCT COMPLAINT - COUNCILLOR DIMITRIOS THANOS - REPORT FROM SINGLE REVIEWER

Having declared an interest in this item (C0213 Item 11), Councillors Gardiner and Tyler left the Council Chambers.

Motion: (Macri/Tsardoulis)

THAT:

1. Council receive and note the report by Conduct Reviewer Ms Jodie Wauchope; and
2. Clause 9.13 (f) of the Code of Conduct be applied broadly to include both individual and groups of staff.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Hanna, Haylen, Iskandar, Leary, Macri, Tsardoulis and Woods

Against Motion: Councillor Phillips

Absent: Councillors Gardiner and Tyler

C0213 Item 12 ADOPTION OF THE NEW CODE OF CONDUCT AND PROCEDURES**Motion: (Macri/Brooks)**

THAT Council adopt:

1. the Code of Conduct for Councillors;
2. the Code of Conduct for Staff, Delegates and Volunteers; and
3. the Procedures for the Administration of the Code of Conduct.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil**C0213 Item 13 NEW COUNCILLOR PRIMARY DISCLOSURE OF INTEREST FORMS - SECTION 449(1) OF THE LOCAL GOVERNMENT ACT 1993****Motion: (Macri/Gardiner)**

THAT the report be received and noted.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil**C0213 Item 14 NOTICE OF MOTION: HUNTING IN NATIONAL PARKS, NATURE RESERVES AND STATE CONSERVATION AREAS**

Public speakers: Kevin Evans and Justin McKee

Motion: (Leary/Brooks)

THAT:

1. Council notes with concern that the NSW State Government has amended the *Game and Feral Animal Control Act 2002* allowing amateur hunters to eradicate feral animals in 79 of the State's 799 national parks, nature reserves and state conservation areas;
2. Council acknowledges that feral animals are one of the greatest threats to Australia's biodiversity, but that amateur hunters will have a minimal effect on feral animal numbers and result in needless animal suffering;
3. Council notes that feral animal control should be undertaken professionally and humanely, not by amateurs who have a vested interest in maintaining feral animal numbers to sustain their sport;
4. Council calls on the State government to repeal the recent amendments to the *Game and Feral Animal Control Act 2002* aforementioned;
5. Council informs the local community about its concerns;
6. the Council writes to the Local Government and Shires Association (LGSA) seeking their support for a repeal of the amendments to the *Game and Feral Animal Control Act 2002* mentioned above and informs the LGSA of the terms of this motion;

7. the Council also writes to the Premier of NSW and Minister for the Environment calling on the state government to repeal its recent amendments to *Game and Feral Animal Control Act 2002* and expressing the following concerns:
 - (a) recreational amateur hunters represent an unacceptable safety risk to visitors to our national parks, state conservation areas and nature reserves and an unacceptable occupational health and safety risk to the numerous rangers, scientists and other state government employees who work in these areas;
 - (b) existing government codes of practice that clearly specify that ground shooting is ineffective in controlling feral animals should be followed;
 - (c) amateur hunters are not trained or skilled enough to ensure that feral animals are humanely culled;
 - (d) eradicating introduced pest animals in our parks should only be implemented by professionals, in a systematic and evidence based way;
 - (e) there is evidence that recreational hunting is not cost effective and will undermine existing whole of government integrated feral animal control programs.
8. copies of the letters mentioned at (6) and (7) above be tabled at the next Ordinary Council Meeting for noting by Council.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Haylen, Iskandar, Leary, Phillips, Tsardoulis and Woods

Against Motion: Councillors Gardiner, Hanna, Macri and Tyler

C0213 Item 15 NOTICE OF MOTION: COMMUNITY TRANSPORT FOR ELDERLY RESIDENTS

Motion: (Leary/Gardiner)

THAT:

1. Council's Strategic Transport Planner, in consultation with the Seniors Reference Group, prepare a report with data to support the case for the re-routing of the 418 or 348 bus route to provide direct access to Marrickville metro for residents of Sydenham, Tempe and St Peters.
2. The report shall cover, inter alia, gaps in coverage of existing services, possible routes, frequency and other appropriate issues to support the case for a proposed re-routing of the 418 or 348 bus route.
3. Council's strategic Transport Planner, in consultation with the Seniors Reference Group, use the report to lobby Sydney buses to achieve a suitable re-routing.
4. Funding to implement this motion (if required) be sourced from within existing budget allocations.

Motion Carried

For Motion: Councillors Brooks, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

Absent: Councillor Ellsmore

C0213 Item 16 NOTICE OF MOTION: PLANNED WORKS FOR THE ADMINISTRATION CENTRE UPGRADE**Motion: (Hanna/Brooks)**

THAT the refurbishment of the Information and Communications Technology Section be completed as a matter of priority.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 17 NOTICE OF MOTION: ENFORCEMENT OF 'NO SMOKING' IN OUTDOOR AREAS**Motion: (Phillips/Brooks)**

THAT Council:

1. strictly enforce the regulation prohibiting smoking in footpath outdoor dining areas;
2. provide adequate educational information to assist business owners and their customers to understand this regulation; and
3. write to owners of outdoor dining on private property and request that they enforce a similar 'No Smoking' rule.

Motion Lost

For Motion: Councillors Brooks, Ellsmore, Iskandar, Leary and Phillips

Against Motion: Councillors Gardiner, Hanna, Haylen, Macri, Tsardoulis, Tyler and Woods

Motion: (Woods/Tsardoulis)

1. encourage the uptake of the regulation prohibiting smoking in footpath outdoor dining areas;
2. provide adequate educational information to assist business owners and their customers to understand this regulation; and
3. write to owners of outdoor dining on private property and request that they encourage a similar 'No Smoking' rule.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 18 NOTICE OF MOTION: ESTABLISHMENT OF AN AFFORDABLE HOUSING COMMITTEE**Motion: (Ellsmore/Haylen)**

THAT:

1. Council establishes an advisory Special Committee entitled the Affordable Housing Committee;
2. Council nominates Councillors Ellsmore and Haylen as Co-Chairs of the Committee;
3. the Terms of Reference for the Committee will be to:
 - a) support Marrickville Council in its efforts to ensure that the Marrickville Local Government Area remains a diverse, inclusive and accessible area to live;
 - b) monitor and take action to implement Council's Affordable Housing Strategy and other relevant actions, policies and plans related to affordable housing, with affordable housing defined to incorporate low cost, social, community, essential worker, student and Indigenous housing, and boarding houses;
 - c) facilitate Marrickville Council working with other Councils, community housing providers and residents to develop and promote best practice models for maintaining and increasing affordable housing in the LGA and across the inner west;
 - d) facilitate Marrickville Council's support for and development of partnerships with community housing providers in order to advance substantive affordable housing projects and proposals;
 - e) undertake research and consult with organisations with experience and expertise in affordable housing including the Centre for Affordable Housing and larger community housing providers;
 - f) undertake research and develop strategies for the use of Council's planning and development powers and controls to protect and increase affordable housing; and
 - g) promote affordable housing through a range of means including working with residents and other stakeholders with an interest in affordable housing.
4. a priority action for the Committee will be to ensure development and implementation of significant affordable housing on the Old Marrickville Hospital site;
5. the Committee will meet bi-monthly, with the option for additional meetings, working groups or forums to be held to advance urgent projects; and
6. meetings of the Committee will be open to the community, and active steps will be taken to encourage participation from stakeholders with an interest in affordable housing.
7. Council employ a part time Affordable Housing Officer.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Councillor Macri

C0213 Item 19 NOTICE OF MOTION: AFFORDABLE HOUSING AT THE OLD MARRICKVILLE HOSPITAL SITE

Public speaker: Jon Atkins

Motion: (Gardiner/Tsardoulis)

THAT the Motion be put.

Motion Tied

For Motion: Councillors Gardiner, Haylen, Iskandar, Tsardoulis, Tyler and Woods

Against Motion: Councillors Brooks, Ellsmore, Hanna, Leary, Macri and Phillips

The Chairperson used his Casting Vote and the **Motion** was **Lost**.

Motion: (Ellsmore/Brooks)

THAT:

1. Council affirms its commitment to the delivery of affordable housing on Council owned sites proposed for development;
2. in light of Council's commitment to the inclusion of affordable housing at the Old Marrickville Hospital site (as adopted by Council at its 4 December 2012 meeting), Council undertake urgent further modelling on a range of affordable housing options for the site, focused on precincts C, D, E and F;
3. the modeling report/s will include:
 - a) options to deliver affordable housing on the site while maintaining a high level of Council control, including through the maintenance of freehold ownership by Council and/ or long term leasing arrangements;
 - b) options for engaging private contractors to develop the site that do not require the majority of land at the site to be transferred to a private developer;
 - c) examination of successful models for the delivery of affordable housing which have been implemented in other Council areas; and
 - d) any modeling previously commissioned by Council regarding affordable housing at the site.
4. the modeling report/s will also include examination of financing options including but not limited to:
 - a) debt financing;
 - b) design and construction contractual arrangements whereby Council commissions a developer to develop the site, but maintains ownership, control and/or some form of ongoing, long term revenue stream from the site;
 - c) mixed residential models whereby a percentage of resident housing is developed and initially rented at a market rate, but converted over time to low income, social and/or community housing;
 - d) advice on possible financial benefits and risks for Council from retaining ownership of land and/or dwellings on the site; and
 - e) the availability of grants and tax incentives for development undertaken by Council or a community housing provider, to deliver affordable housing on the site;

(noting that a number of these options are not mutually exclusive).
5. consistent with existing Marrickville Council policies and plans, and legislative requirements:

- a) the modeling report/s will identify potential community housing providers that Council could partner with to develop affordable housing at the site;
 - b) Council will develop and implement strategies to encourage community housing providers to either participate in the EOI process, or otherwise partner with Marrickville Council outside the EOI process, to deliver affordable housing at the Old Marrickville Hospital site; and
 - c) in order to prepare the modeling report/s Council staff and interested Councillors will consult with relevant stakeholders including successful community housing providers, developers that have a proven track record for delivering affordable housing and expert bodies.
6. as per funding for the EOI process underway for the Old Marrickville Hospital Site, funding for these activities is to be drawn from the Property Reserve, and where possible costs minimized by use of publicly available information about the operation of successful affordable housing projects in other local government areas.
 7. Consistent with Council's resolution of 4 December 2012 affordable housing is to be included as part of the full community consultation which will be undertaken about the options being considered for the Old Marrickville Hospital site.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Councillor Macri

C0213 Item 20 NOTICE OF MOTION: BMX TRACK AT CAMDENVILLE PARK, ST PETERS

Public speakers: Peter Erling

Motion: (Woods/Tsardoulis)

THAT Council:

1. officers provide a report on options, concept designs and budget estimates for the construction of a BMX (pump) track to be installed in Camdenville Park St Peters and report to the Council Meeting on 20 May 2013;
2. staff consult with interested community members on the design and construction of the track; and
3. endorse this as a park's project and that the budget for the facility is sourced from Section 94 contribution funding and sponsors.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

C0213 Item 21 NOTICE OF MOTION: FLYING THE RAINBOW FLAG DURING SYDNEY GAY AND LESBIAN MARDI GRAS FESTIVAL**Motion: (Haylen/Brooks)**

THAT during the annual Sydney Gay and Lesbian Mardi Gras Festival from the 20th February - 3rd March 2013, and from the second week of February until the end of the first week of March in 2014, 2015.

THAT:

1. Council fly the Rainbow Flag at the Marrickville Town Hall and Petersham Town Hall;
2. Petersham Town Hall be lit up in pink lighting during the Mardi Gras Festival;
3. "Happy Mardi Gras" be stencilled in pink chalk around the Marrickville Local Government Area (LGA); and
4. Council officers proceed with works to install a fourth flagpole at the Town Halls within the Marrickville LGA, to enable flags other than the national, state and Indigenous flags to be flown.

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis and Woods

Against Motion: Councillor Tyler

C0213 Item 22 QUESTION ON NOTICE: COMPANION ANIMALS FURTHER INFORMATION

The response to the Question on Notice was noted.

C0213 Item 23 QUESTION ON NOTICE: NEWTOWN MARKETS

The response to the Question on Notice was noted.

C0213 Item 24 QUESTION ON NOTICE: WESTCONNEX TASKFORCE ACTION ON ITEMS

The response to the Question on Notice was noted.

C0213 Item 25 QUESTION ON NOTICE: ROOFTOP PARKING - ILLAWARRA ROAD

The response to the Question on Notice was noted.

REPORTS WITH CONFIDENTIAL INFORMATION**C0213 Item 26 INDUSTRIAL ISSUES/WORKERS COMPENSATION/INJURY RATES****Motion:** (Macri/Brooks)

THAT:

- 1A. the Council resolve that ATTACHMENT 1 to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2)(a) of the Local Government Act 1993, as it concerns personnel matters concerning particular individuals (other than councillors) and as such is to be treated as confidential;
2. Council receive and note the information contained in CONFIDENTIAL ATTACHMENT 1.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil**C0213 Item 27 WINGED VICTORY STATUE - ALTERNATE OPTIONS**

Public speakers: Alex Kolozsy and Marilyn Kolozsy

Motion: (Phillips/Haylen)

THAT:

1. Council move into closed session to deal with this matter as information contained in CONFIDENTIAL ATTACHMENTS 1 and 2 of the report is classified as confidential under the provisions of Section 10A (2)(c), (d) and (g) of the Local Government Act 1993 for the following reasons:
 - a) the information contained in CONFIDENTIAL ATTACHMENTS 1 AND 2 of this report, if disclosed, could confer a commercial advantage on persons with whom the Council proposes to or may conduct business;
 - b) the information contained in CONFIDENTIAL ATTACHMENTS 1 AND 2 contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

And in accordance with Sections 10A(4) of the Local Government Act 1993, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

2. the report be received and noted;
3. Council adopt the recommendation contained in the CONFIDENTIAL ATTACHMENT 1.

Motion Carried**For Motion:** Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods**Against Motion:** Nil

Meeting closed at 11.12pm.

CHAIRPERSON

Item No: C0313 Item 1

Subject: JULY-DECEMBER 2012 OPERATIONAL PLAN PROGRESS REPORT

File Ref: 4717/16298.13

Prepared By: Nick Murphie - Manager, Corporate Strategy and Communications

SYNOPSIS

This report summarises Council's performance over the period 1 July – 31 December 2012 against the *Operational Plan 2012-13* and *Delivery Program 2011-2015*. Summary information on performance in each program area is provided below.

The report indicates that overall good progress was made over the financial year, with 97% of activities being reported as progressing or completed.

RECOMMENDATION

THAT the report be received and noted.

BACKGROUND

This report details the status of the projects and services contained in the Operational Plan 2012-13. Progress on these programs and activities contributes to the implementation of strategies that have been identified to achieve Key Result Areas (KRAs) for Council as mapped out in the Marrickville Community Strategic Plan and the Marrickville Council Delivery Program 2011-2015 (Version 2). The KRAs are:

- KRA1: A diverse community that is happy, healthy and fair
- KRA2: A robust economy with flourishing urban centres and a range of creative and other industries
- KRA3: A well planned, sustainable and accessible urban environment
- KRA4: An innovative, effective and representative Council

Each project or service is assessed against performance indicators and associated targets that provide a basis for measuring the performance and uptake of each service. They provide an indication of how well the program is performing overall and the benefits being received by the community.

DISCUSSION

Status of Programs and Activities at 31 December 2012

Of the 491 programs and activities in the 2012-13 Operational Plan, 476 (97%) were reported as 'progressing' or 'complete'.

There were 16 (3%) projects and services reported as 'Not progressing/will not complete'. The details of these projects are at page 15.

A report summarising Council progress against Operational Plan targets is included on the following pages.

Item 1

A detailed report on Council's performance across all Key Result Areas on each project and service, is provided as Attachment 1. Each activity report provides information on overall progress including a percentage overall assessment (e.g. 50% is typical for ongoing programs after 6 months). It may also include a performance comment and, where applicable, provide achieved results against Operational Plan performance targets.

KRA 1: A diverse community that is happy, healthy and fair

- Marrickville History Collection acquired 3 oral histories, 1 plaque, 33 photographs by Jonny Darker of Marrickville Road 1956, Municipality of Newtown medal for 1912. Marrickville Council Archives received 30 Heritage reports.
- Cheques presented to 22 organisations during Anti Poverty Week. Planning to commence 2013 Community Grants and ClubGrants, opening May 2013.
- Open Marrickville Grants were marketed to the community. Council received 38 applications and 21 projects were approved.
- A range of events were organised across NAIDOC week from 1 - 8 July 2012. The main event was held at Addison Rd Centre (ARC) on 7 July in collaboration with ARC, MYRC and ANTaR. There were performances throughout the day from a number of Aboriginal artists as well as a didge and dance session. A BBQ raised money for White Ribbon Day and there was also face painting for the children and an evening film screening.
- Four citizenship ceremonies were held in the reporting period, with 133 new Australian citizens conferred.
- Council supported the Groovability festival organised in partnership with Ageing Disability and Home Care and Inner West Councils. The event was held in Burwood on 6 December 2012 and attracted several hundred people with disabilities and their carers including local people.
- International Day of Volunteers was celebrated in December at Tom Foster Community Care with a luncheon event to acknowledge the 90+ volunteers that do Meals on Wheels and Social Support for Tom Foster clients. The Mayor gave out Certificates of Appreciation to the volunteers.
- A range of activities to improve health and wellbeing of seniors were provided at the Tom Foster Community Care Centre. Some memorable activities include the Olympic opening and closing ceremonies where they had games, relays and trivia and Harmony Day celebrated by Chinese Seniors.
- Utilisation rate of 99.24% achieved for care and education services for children from birth to 5 years at Council's early learning centres.
- During July to December 2012 the utilisation across Before School Care services was 74% and across After School Care services was 93.3% (including Marrickville West).
- Magic Yellow Bus playgroup sessions attended by 9,802 children and 7,953 parents/carers, averaging 71 children and 58 adults per session.

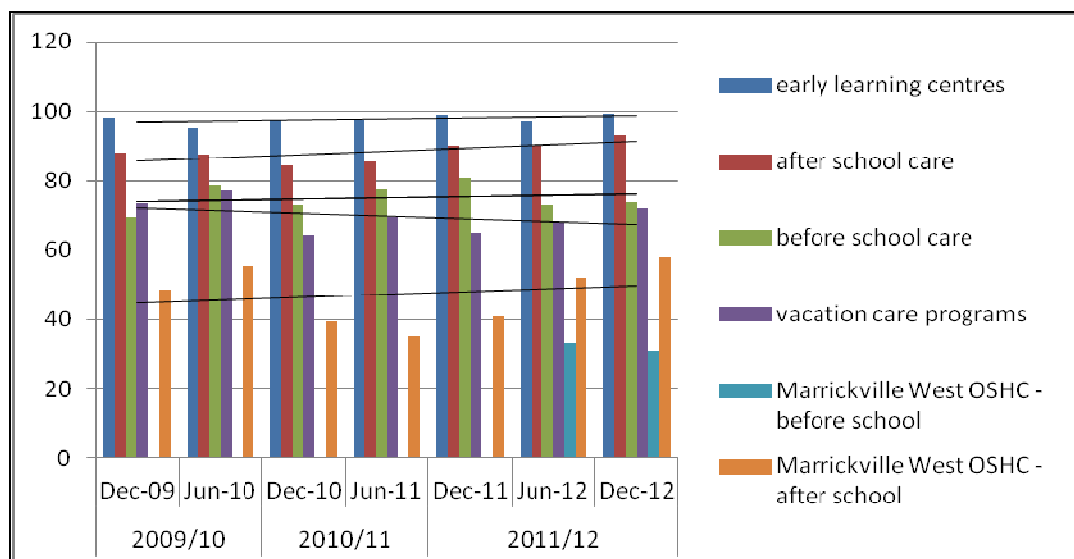


Figure 1: Family & Children Services Utilisation Rates

- Enmore Resource Centre Upgrade works completed including the installation of an accessible toilet and a minor kitchen refurbishment.
- Draft Memorandum of Understanding exchanged with the Cancer Council of NSW with the objective of reducing the incidence of cancer in the local community.
- Council implemented a smoke free outdoor environment, using an educative approach with local businesses and in parks and outdoor areas.
- **Major Project:** Upgrade works of existing facilities at the Fanny Durack Aquatic Centre are underway with target completion by the end of September 2013.
- AKAC attendance of 250,290 (July - December), which is in excess of forecasts.
- Council representatives participated in two Sydney Airport Coordinator Forums and three Sydney Airport Community Forums.
- **Major Project:** Following Council's resolution to re-activate the SES Headquarters project at Sydenham Green, work has been undertaken to resolve ground contamination, archaeological and design and documentation matters. Acoustic issues associated with overflying planes is being investigated.
- Roll out of the Council of Australian Governments (COAG) reforms by the Department of Education & Communities and the Australian Children's Education & Care Quality Authority (ACECQA) have been slower than anticipated. Two centres have been assessed under the new National Quality Standard.
- The Family Day Care service was one of the first services assessed under the new National Quality Standard. Significant training and support continues to be provided to staff and educators.
- Library Services branches in Marrickville, Stanmore, St Peters and Dulwich Hill received 146,444 visits and provided 233,152 loans. Current members numbered 27,752. Library users accessed 21,392 hours of fixed internet and 6,386 hours of wireless internet services.
- Over 6,100 children attended Library Services learning programs.
- Library and History Services released a suite of new publicity and information material.

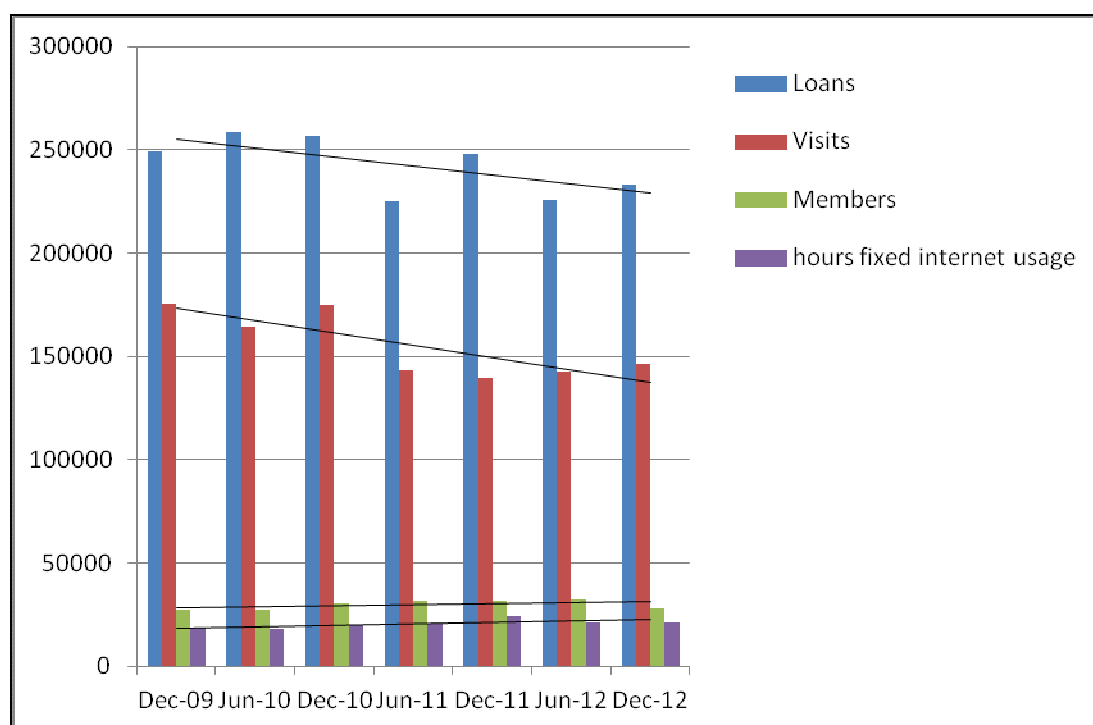


Figure 2: Library & History Services

- **Major Project:** Demolition works at Old Marrickville Hospital site were completed. Further geotech and contamination matters are being investigated. Archaeological assessments commenced.
- Safety in Marrickville Consultative Committee meetings were well attended, with citizens, police and NGOs all actively involved. Topics discussed have included safety in laneways, safety concerns of seniors, ACON's safe places GLBTI project, site lines in parks, uneven pathways causing problems for pedestrians and wheelchair users, emerging alcohol issues, and regular area command updates.
- The Chrissie Cotter Gallery hosted 18 exhibitions between July - December. Exhibitors reported high visitation rates. The Australia Street Art Camp, ATSI studio and Artist Residency have been fully occupied.
- The Marrickville Festival was held on 21 October 2012 with approximately 50,000 people attending. It featured a diverse program of local foods, hand made items and an array of entertainment, further enhancing the strong sense of community and celebrating the diversity of the area.
- Approximately 5,000 people attended the Dulwich Festival held on 2 December 2012. With both a Kids' Play Park and Santa's Play Park, the event was highly successful with neighbouring residents who celebrated a great family day out, further fostering community spirit.
- The 10th Annual Bali Memorial was held on 12 October and once again celebrated the lives of the four locals lost in the Kuta bombings in October 2002.
- There were 280 enquiries concerning public health and safety received in the reporting period, with 75% of investigations commencing within 35 days of receipt.
- The Draft Recreation Policy and Strategy was completed.

- Affordable Housing: New legislation was introduced by the NSW Government giving tenants rights to boarding house residents, effective January 2013. Affordable housing initiatives at Lewisham Estates site being negotiated as part of Voluntary Planning Agreement (VPA) process.

KRA2: A robust economy with flourishing urban centres and a range of creative and other industries

- The Economic Development Unit partnered with Westpac Bank to produce a series of small business skills workshops and seminars which are very hands on and of interest to local businesses. Two were held to date in the reporting period, attracting over 30 participants to each. The Small Business Expo also incorporates a series of information seminars and workshops on topical issues for small business.
- Draft Public Domain Study project brief finalised and internal stakeholder meetings conducted.
- Marrickville Metro Shopping Centre, Masters, Victoria Road corridor and Carrington Road industrial precinct planning processes all in progress.
- A Manufacturers Forum was held which included a round table with the NSW Parliament's Special Committee for Regional Development. A Parramatta Road Forum was also held in partnership with Leichhardt Council to look at the section of that road which constitutes the LGA boundary. Forums are planned for Petersham and Stanmore businesses.
- Marrickville Women in Business meet every month at Seed Cuisine in Petersham. The group continues to grow and had a large presence at the 2012 Small Business Expo.
- The 'pop-up' shop in the Marrickville Metro at Christmas was well received by local shoppers with many businesses buying gifts for their staff. A monthly full page advertisement featuring local manufacturers and special offers also worked very well.
- The growth of the food cluster has attracted other manufacturing sectors interested in forming additional clusters. Currently under development are clusters for clothing & textiles and health/beauty products.
- A business confidence survey was conducted. The data base supplied by the ATO has been refined to segment local businesses using ANZIC (Australian and New Zealand Industry Codes).

KRA 3: A well planned, sustainable and accessible urban environment

- The Draft Carbon Management Strategy, incorporating a new Energy Savings Action Plan, has been prepared.
- On-going review and implementation of the Cycleway Strategy is being undertaken. The development of cycleway route concepts for Regional Route 7 connecting Stanmore and Lewisham is well advanced.
- In order to promote innovative sustainable transport projects, Council has progressed development of new cycle map, piloted new cycle confidence training courses, and hosted the Cooks River and Cycle to Work Day event.
- Streetscape concept designs completed for New Canterbury Rd, Dulwich Hill, & Unwins Bridge Rd, Sydenham.

Item 1

- Traffic facilities designs completed:
 - Beach Rd pedestrian crossing modification
 - Federation Rd, Camperdown - median island
 - Holbeach Ave, proposed roundabout, and
 - Station St West, Tempe - traffic alterations.
- Footpaths: Designs completed for the following footpath projects: Corunna Rd, Stanmore Park Rd, Sydenham Holmesdale St, Marrickville.
 - 2,344 square metres brick/paved heritage footpaths maintained
 - 4,546 square metres concrete footpaths repaired/replaced
- Road maintenance: All service level agreements and construction and maintenance programs were delivered. In the period, 1,390 square metres of asphalt was re-sheeted. Targeted production costs were achieved.
- In keeping with plan to develop staged bus stop modifications program to meet accessibility standards, modifications were undertaken to 13 stops in Illawarra Rd and Parramatta Rd. Designs were completed for a further 11 sites on Salisbury Rd.
- Continued liaison with GreenWay partner. Councils to develop various initiatives along the GreenWay corridor. Regular attendance by Council staff at GreenWay Steering Committee Meetings and Inner West Light Rail Liaison Meetings.
- The Local Area Traffic Management (LATM) facilities construction program is on track.
- Promoting road safety:
 - A workshop was held on 5 September 2012 and a child restraint check day was held 20 November 2012.
 - Bicycle safety promotion events were held at Marrickville Festival on 21 October 2012 and a family bike ride was held on 23 September 2012.
 - A pedestrian safety presentation was conducted in Greek to a seniors group on 11 December 2012
 - Police enforcement operations were supported for the 2012 October long weekend and for the 2012 Christmas and New Year period. Operation RoadSafe was supported with three local licensed premises in the Marrickville LGA nominated for breath testers over the 2012 Christmas period.
- Parking Studies: The Tempe Parking Study was adopted. The Marrickville Parking Study went on public exhibition, and the Sydenham Parking Study initial draft was received. The Lewisham Parking Study initial draft was received, and the Newtown Enmore Parking Study surveys were completed and are being analysed.
- The installation of new LED Lights at Loftus Street Car Park, Dulwich Hill, was completed.

- Council staff provided advice in relation to the WestConnex motorway proposal; contributed to the TfNSW Long Term Transport Master Plan, and assisted with local parking studies carried out near the Sydney Airport. Undertook close liaison with TfNSW (and partners) regarding ongoing development of Inner West Light Rail Extension; provided advice on major development proposals, and advocated for enhancement of accessible transport networks.
- Litter collections: Car parks 38,053; Street litter bins 55,752
- Annual program to replace existing street litter bins with new stainless steel model is on track.
- All nature strip mowing and street sweeping service delivery programs are reported as on track.
- Illegal dumping: All reports of illegal dumping are responded to and investigated within the required time frame by area Rangers (95% commenced within 48 hours), with 777 tonnes of illegally dumped rubbish collected.
- On-call recovery & waste collection services for residents:
 - Number of whitegoods collections: 2,629
 - Number of mattresses recovered: 3,344
 - Number of general clean up collections: 11,233
- target sustainability @ Marrickville and Green Living Centre programs: Local businesses have been supported through the target sustainability @ marrickville program with numerous initiatives implemented. This includes the set up of compost bins and/or worm farms and training in their use at a childcare centre, a kindergarten, two cafes and a yoga studio cafe. The target team also assisted businesses with advice on how to make changes to waste service contracts to include greater recycling being diverted from landfill.

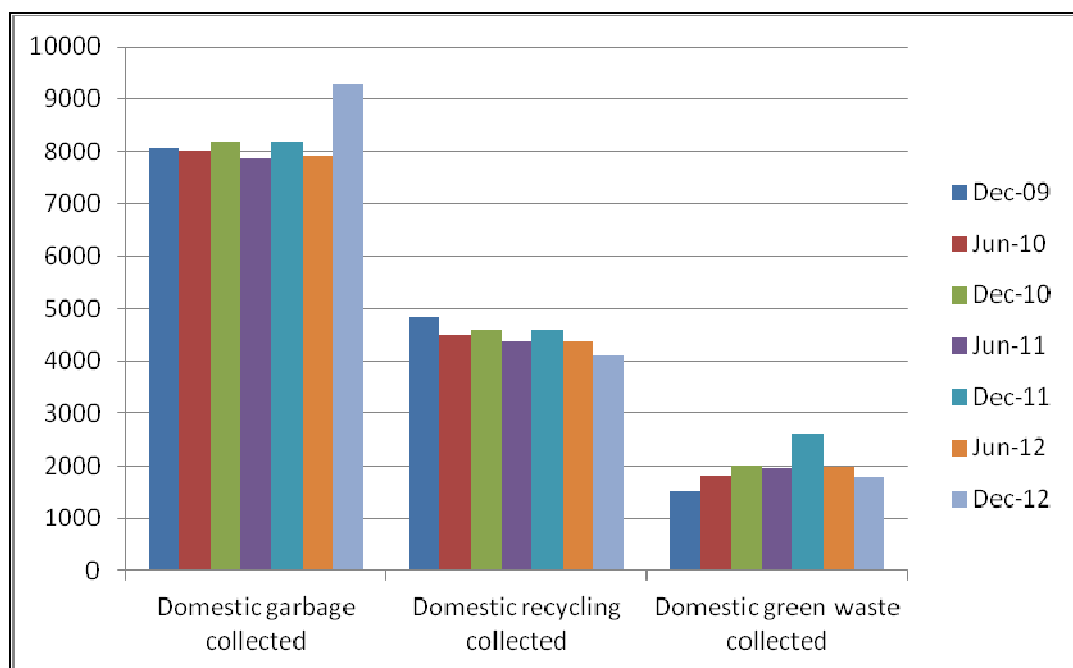


Figure 3: Weekly domestic collections

- Recycling and waste reduction:
 - Diversion of waste from landfill using Bower Referral Service: 539 Cubic metres
 - Tonnes domestic recycling collected: 4,118 (459,090 collections)
 - 1,298 on call green waste collections
 - Community sharps collection service diverted 247 kg of waste from landfill
 - 96 tonnes of waste diverted from landfill through the household chemical clean out and e-Waste events and 5 zero waste promotions and campaigns undertaken
- Graffiti removal:
 - 5,301 sq metres of graffiti removed from streets
 - 3,776 sq metres of graffiti removed from parks

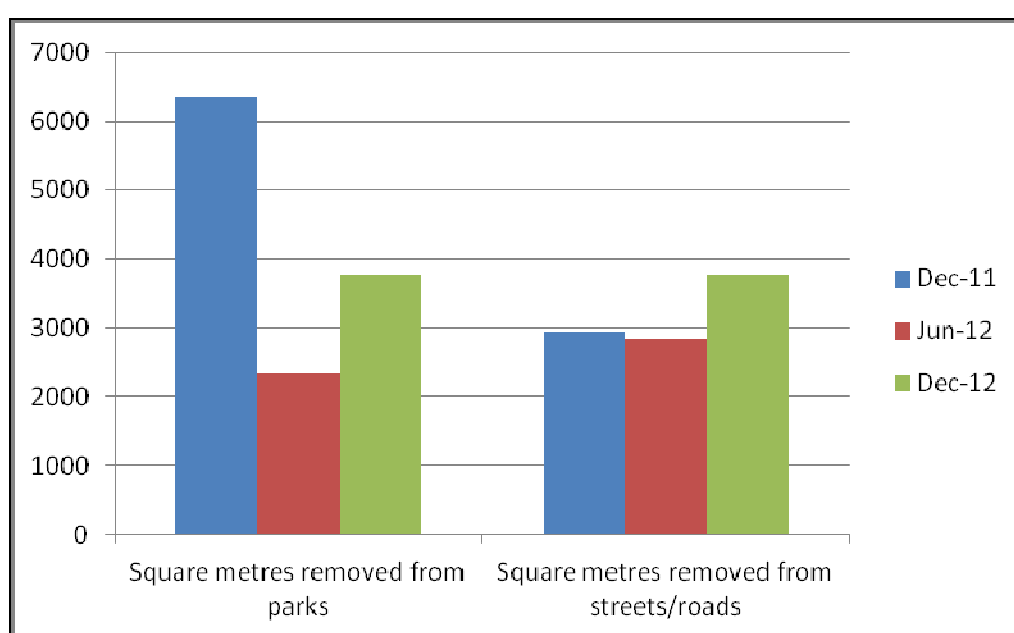


Figure 4: Graffiti removed

- Verge gardens: Community response has been significantly greater than that expected and has placed high demand on existing resources. In addition to the 49 community verge garden beds created in the first 6 months of the financial year, Council's capital works program installed a further 291 verge garden beds.
- Marrickville Community Nursery: During July-December 2012, there were 1,110 volunteer hours recorded and 13,090 plants propagated.
- Stormwater infrastructure designs completed for following projects:
 - Sydenham Rd/Henson Park groundwater management
 - Pile St, Marrickville drainage upgrade
 - 228 Denison Rd, Dulwich Hill - pipe relining
 - Addison Rd at Penny St, Marrickville - drainage upgrade
 - Newington Rd at Fotheringham Street, Marrickville, and
 - Wardell Rd, north at Vernon St, Marrickville - drainage upgrade.

- Stormwater capital works construction on schedule. Additional major subsoil drain project at Henson Park to commence February 2013.
- Stormwater planning and flood mitigation: Cooks River Floodplain Risk Management Study and Plan draft completed, Hawthorne Canal Flood Study commenced, Marrickville Valley Flood Study - community consultation on draft completed.
- Development Assessment:
 - Gross average DA determination time: 95 Days
 - Number DAs lodged: 343
 - Number DAs undetermined: 332
 - Net median DA determination time (stop the clock): 38 Days

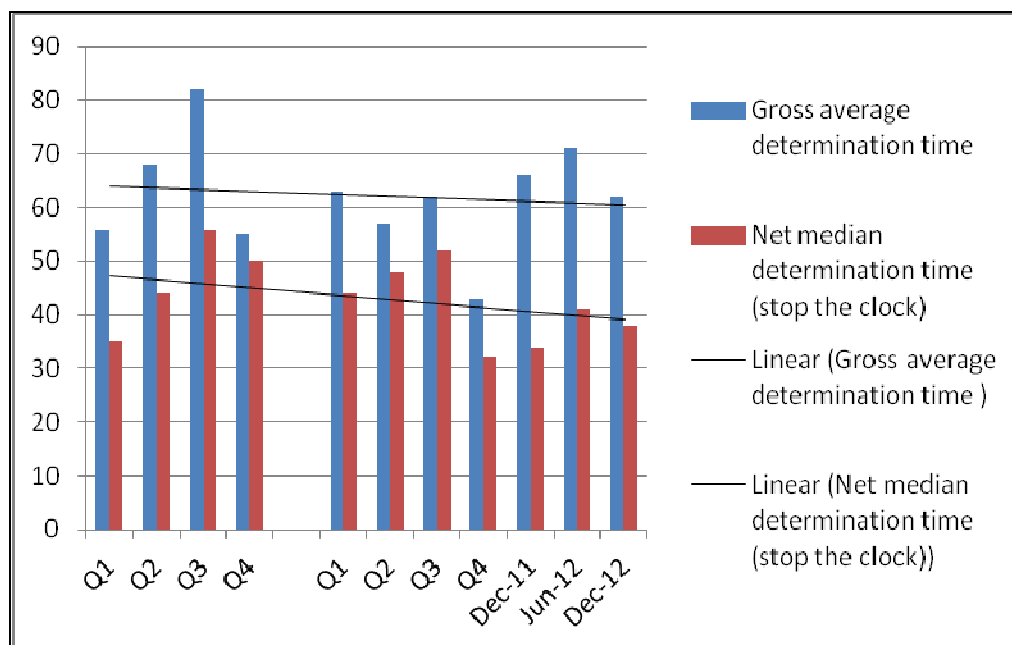


Figure 5: Development Assessment

- Council successfully applied for funding support through the NSW Local Infrastructure Renewal Scheme (LIRS) and undertook on-going maintenance works at Council's public buildings and completed upgrade works in accordance with the Asset Management Plan.
- A new accessible toilet was installed at Petersham Town Hall.

Item 1

KRA 4: An innovative, effective and representative Council

- Council received 52,915 calls to the call centre during this period and answered 52,410 of which 43,287 were answered within 2 minutes. During the period the Customer Service section received 8 complaints and 16 compliments for service.

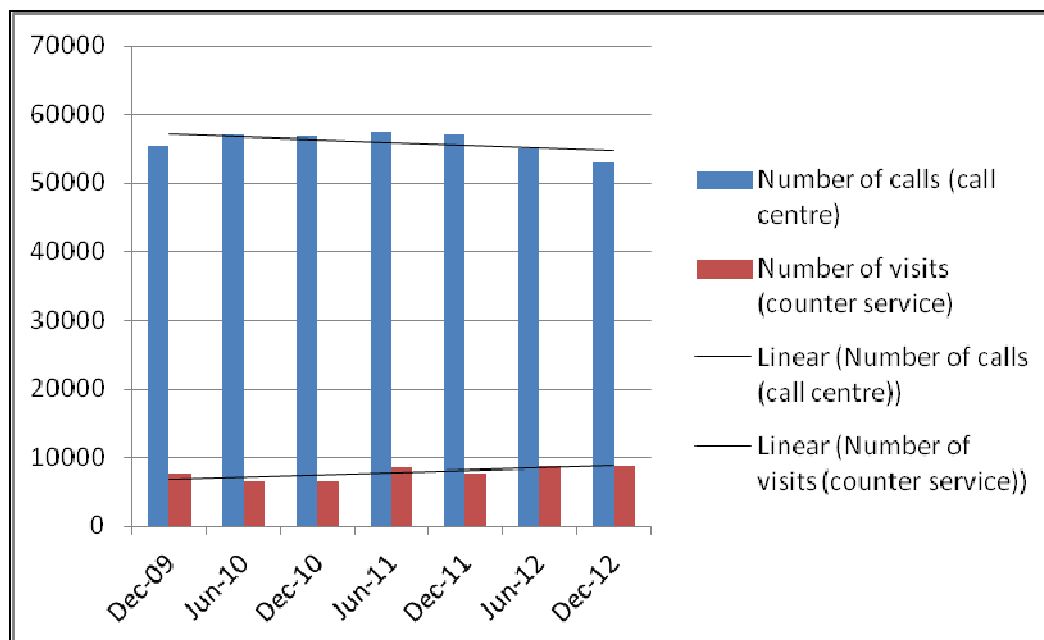


Figure 6: Customer Service volumes

- Average citizen waiting time at the Citizen Service Centre front counter was 3 minutes 36 seconds.

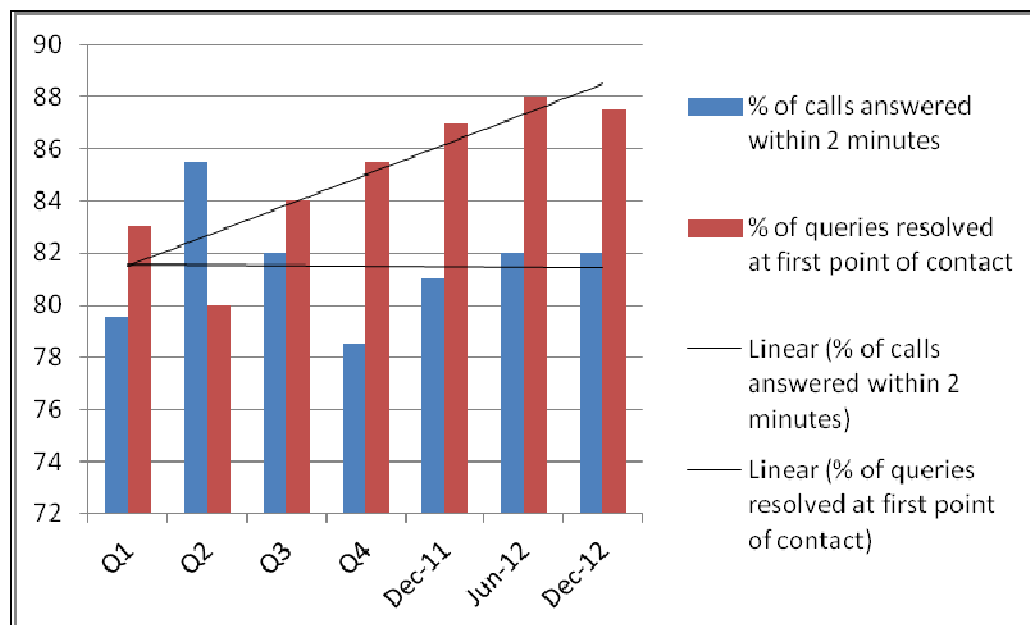


Figure 7: Customer Service performance

- **Major Project:** New reception area in the Administration Centre was completed in the reporting period. Planning for relocation of IT server room is underway.
- There are a number of customer service improvement projects underway. The most significant is a pilot project testing out a mobile customer service solution for staff to use whilst out in the community. The key benefits of this will be significant efficiencies in reducing the double handling of information as well as enabling the workforce to proactively log issues that they see in the community. Another project of significance is an upgrade to the system that our external call centre agency use that will provide them with increased functionality which in turn will lead to an improved level of service for our customers.
- Council's Annual Financial Reports achieved an unqualified Audit Report.
- The development of Council's 2013/14 budget and review of the Community Strategic Plan, Delivery Program and Operational Plan 2013/14 began in November 2012.
- Council communications:
 - 33,000 copies of *Marrickville Matters* were distributed each quarter.
 - Council's website received 1625 average daily visits.
 - 6 issues of Council's e-newsletter were produced sent to 2,000 active subscribers.
 - *FYI* staff newsletter was produced bimonthly.
 - The Intranet was maintained and Intranet review began.
 - Councillor Briefing Notes were produced weekly.
- Completed the Draft Procurement Policies and Procedures
- All Councillor requests received in the past reporting period were actioned within 24 hours. Following the election in September 2012, all Councillors were provided with appropriate facilities in accordance with the Expenses and Facilities Policy in order to effectively undertake their civic duties.
- The Councillors training program is currently under development for the new Council. Following the election, Councillors were provided an overview of the Code of Conduct. New Councillors attended the Division of Local Government's Councillor Workshop *Hit the Ground Running* and have been invited to participate in the LGSA Councillor Development Program. Individually tailored learning and development programs for each Councillor will be completed in 2013.
- New planning and reporting software was installed which will be used to produce reports showing progress against the Operational Plan in 2013, and used to develop new plans for 2013/14.
- The Marrickville Council Annual Report 2011/12 was completed on schedule. The document was posted on Council's website and provided to the Department of Local Government.
- The six monthly review of Council's risk register has been undertaken by Managers for each section of Council.
- All classes of insurances were insured through Metro Pool and UIP in a cost effective manner. In the July – December period, 50 claims were submitted to Council, 6 rejected and 11 accepted.

Item 1

- The Internal Audit work plan was adopted by the Audit Committee at its June 2012 meeting. Work has continued on the 2012/13 Audit Plan as scheduled.
- Privacy Management training has been scheduled for the next period to complement the new Privacy Management Plan which will be presented to Council for adoption in March 2013.
- Corruption Prevention Training has been scheduled for the second half of the reporting cycle. A staff training program has been developed to be implemented following the adoption of the new Code of Conduct for staff in early 2013. Code of Conduct training has been delivered by the Governance team for all new starters attending staff induction as part of the Workplace Ethic training program.
- Almost all the planned cabling and communications infrastructure work has been completed at the Administration Centre and Petersham Town Hall.
- Most of Council's Information System applications have been updated to latest release. A major upgrade to Trim version 7.2 and Sharepoint has been initiated. All licensing has been upgraded.
- Over 1200 Information Systems Help Desk queries were received during the period. Help desk calls were generally actioned within a day.
- Implementing the mobility solution for the Building Certificates Inspections is currently in the final stages of a trial.
- Assetmaster and Finance1 systems have been set up for integration in a test environment. The live Finance1 System has been upgraded to the most current version at the end of 2012 to enable the live integration.
- The Business Papers electronic solution has been deployed using iPads and the Dashboard software.
- To reduce energy use, a server room energy monitoring system has been implemented. A power management solution is currently been implemented. To reduce the use of paper, a number of internal electronic forms are in production with others currently under trial.
- The Draft Corporate Waste Plan has been prepared and implementation of priority waste projects is underway.
- Records management and archives service report performance tracking on or close to performance measure targets.
- An in-depth review and an internal staff survey to determine the requirements for a new corporate intranet site. The current site was overhauled in September 2012 with a new design and a simplified navigation structure. While this addressed much of the staff feedback within the limits of the existing software, the project will continue into the second reporting period of 2012-13 as we trial new software to enhance the functionality and utility of the site.
- Council has achieved an excellent annual performance as disclosed in the Annual Financial Reports for the year ending 30 June 2012 with the audited outstanding rates and charges ratio of 3.16%.
- Payments are now being managed electronically with all creditors being requested to submit invoices electronically.

- The Annual Rating Compliance report was prepared and audited by Council's External Auditor – PriceWaterhouseCoopers - and submitted to the Division of Local Government as required.
- Asset management: Rolling capital works programs were prepared for transport, stormwater and open space infrastructure. New data collection for roads, footpaths and K&G being reviewed. CCTV (year 2 of 5) to inspect stormwater pipes underway.
- 639 informal access applications were processed during the six-month reporting period. 99% of applications were processed within Council's service standard of seven working days.
- Council's staff competency system has been reviewed and consultation with union and staff is underway for including the improved approach into Council's new Achievement Planning system.
- Staff safety: There is a high level of awareness of reporting incidents immediately by the majority of staff and supervisors. This allows speedy medical intervention and case management. Incidents are reviewed and actions reported to the SAFE Committee monthly. Council received \$40,000 following StateCover audit of OHS system. This incentive bonus is used for Workers' Health & Safety programs.
- Council continues to work through the strategies and implement actions outlined in its Aboriginal Employment Strategy. It continues to attract and retain a healthy number of staff from Aboriginal and Torres Strait Islander background, and undertakes affirmative action in increasing job opportunities through apprentices and traineeships and maintaining identified positions. Council will continue on making Marrickville an inclusive workplace for ATSI staff by increasing Aboriginal culture awareness among its staff and supporting a formal network of Aboriginal staff.
- Implementing 50:50 Vision Councils for Gender Equity Program: Council has received a report and formally adopted a statement to support the 50:50 Vision program within the organisation.

Exception summary

In this mid-year report, 16 Projects and services have reported that they are not progressing or will not be completed in the financial year. They are as follows:

1.3.1.6 Convene and resource the Marrickville-Inner West Disability Services Network

The Inner West Disability Network no longer operates. It was found that the group was duplicating the aims and initiatives of the longstanding Inner West Disability Forum. Consequently it was decided to disband the network and encourage anyone who wasn't already attending the Forum to do so. Council staff have also maintained their participation on the Inner West Disability Forum and focussed support towards the Forum's activities.

1.3.2.01 Develop action plan and co-ordinate implementation of priorities under Council's Inclusion (Disability) Action Plan

The project has been suspended awaiting decisions on the nature of a social plan or similar document for Marrickville and related strategies and or plans.

1.3.5.4 Standardise Council contracts

No work has been carried out as yet on this action due to workload pressures. It is expected that some work will occur prior to June 2013.

2.1.1.1 Establish a local cultural network to share resources and information and promote collaboration by arts and culture groups and peak bodies

No work has been done to date on this project.

2.2.1.3 Maintain a database of vacant properties in Marrickville's industrial areas to identify potential for new enterprises and live/work opportunities

The measure is being reviewed due to the difficulty in monitoring vacancy turnover.

3.02.3.1 Undertake 5-yearly review of the 2007 Marrickville Integrated Transport Strategy and implement recommendations

Project expected to commence 2013/14.

3.07.3.2 Work with the GreenWay councils on water quality projects in Hawthorne Canal

This project ceased in June 2012.

3.08.1.6 Undertake Marrickville South LGA heritage study

Project not commenced due to resourcing constraints.

3.09.1.1 Implement the Plastic Bag Reduction Program

Project ceased at the end of 2011/12 financial year.

3.09.2.09 Plan, develop and implement the replacement program for mobile bin assets

Friday zone recycling bins yet to be replaced. Develop a plan for replacement schedule for all residential bins

3.09.2.11 Conduct annual audits of residential recycling and audits of other waste streams as required

Recycling is audited by the contractor at its facility. Recycling crews inspect bins on the kerbside and reject contaminated bins; households are then contacted and advised about correct recycling practices.

4.2.2.2 Prepare Sustainability Scorecard for inclusion in Annual Report

Project delayed due to staff changes and other corporate priorities.

4.3.1.1 Develop and promote an innovation vision for the organisation

This has been delayed due to several changes in management of the responsible section. Initial work has started on reviewing Council's values and guiding principles.

4.4.1.7 Conduct a test of the Business Continuity Plan

The Business Continuity Plan testing program is scheduled to commence in February 2013.

4.4.3.9 Undertake scoping around introduction of SharePoint for Council intranet

Decision is to be made about the solution to replace the existing intranet software.

4.6.1.02 Develop a revised Council Communication Strategy, incorporating print publications and digital/online channels

Delayed due to staff vacancies.

CONCLUSION

Marrickville Council made good progress in implementing the Operational Plan 2012-13, in turn contributing to the achievement of the Delivery Program 2011-2015. A significant majority (97%) of programs and activities were reported as progressing or completed.

FINANCIAL IMPLICATIONS

The financial implications associated with the delivery of programs and activities contained in the Operational Plan 2012-13 will be the subject of a separate report.

OTHER STAFF COMMENTS

All Managers and other staff responsible for quarterly reporting have provided their comments directly through Council's performance planning software. These comments are collated in the attachment.

PUBLIC CONSULTATION

Nil.

RECOMMENDATION

THAT the report be received and noted.

Brian Barrett
A/General Manager

ATTACHMENTS

1. July-December 2012 Operational Plan Progress Report (circulated as a separate document)

**Item 1 Attachment 1
July-December 2012 Operational Plan Progress Report**

Circulated as a separate document

Item No: C0313 Item 2
Subject: ADVERTISING BILLBOARDS AT TEMPE
File Ref: 13/SF43/13936.13

Prepared By: Justin Fitzpatrick-Barr - Manager, Property Services

SYNOPSIS

This report provides information relating to a proposal to install billboards on Council land at Tempe. A number of land use planning issues need to be resolved in order for the proposal to proceed. On the basis of this it is recommended that Council engages an advertising consultant to undertake an initial analysis of the proposal, to determine the validity of a number of preliminary financial assumptions prior to proceeding any further.

RECOMMENDATION

THAT:

1. Council receive and note this report;
2. Council allocates an additional \$6,000 in the 2012/13 Operating Budget to engage an advertising consultant to undertake a desk top analysis of the billboard proposal for Tempe Lands; and
3. following this analysis a further report is provided to Council for consideration.

BACKGROUND

At its meeting on 20 November 2012 Council resolved to seek a staff report outlining a proposal for the installation of advertising billboards in Tempe, including costs associated with billboard construction, potential revenue that could be derived, and any potential land use planning issues and/or other factors that may be relevant to such a proposal. This report provides detail in relation to these items.

DISCUSSION

The Council owned 'Tempe Lands' is an irregular shaped area covering approximately 40 hectares. It is bounded by Alexandra Canal to the south-east, Sydney Airport Corporation Limited land to the east, Bellevue Street to the north, Tempe IKEA & an industrial area to the north west, a residential area backing South Street to the west and Tempe Recreational Reserve to the south-west.

Tempe Lands consists predominately the former Council landfill site that was remediated and rehabilitated in the period between 2004 and 2006. The remediation and rehabilitation works undertaken included the construction of a leachate cut-off wall and collection system along the eastern boundary of the site, adjacent to Alexandra Canal. The remediation works also included the construction of a crushed sandstone VENM cap over much of the old landfill site.

Item 2

In recent years Sydney Water has constructed a water supply pipeline through Tempe Lands as part of the new desalination plant & supply network. This pipeline runs along the south eastern edge of Tempe Lands, adjacent to Alexandra Canal, at the toe of the old land fill embankment. Sydney Water has an eight metre wide easement supporting the new pipeline.

The top of the old landfill embankment, immediately to the north of the desalination pipeline, is considered the most appropriate location for a series of advertising billboards due to its elevation relative to Airport Drive. The proposed location is represented in Figure 1 below.



Figure 1. An aerial view of the southern edge of Tempe Lands showing the preferred location for the proposed billboards

This report provides preliminary information in relation to the proposed installation of a series of advertising billboards at the top of the subject embankment, running along the boundary of the Tyne container yard (as shown in Figure 1). The proposal initially assumes that the billboards will be spaced at 1m intervals along the entire 330m length of the Tyne boundary. The billboards will face the main road running adjacent to Sydney Airport, immediately to the south east of Tempe Lands.

Land Use Planning Implications

The following discussion provides a summary of the land use planning provisions concerning advertising signage for third party purposes relevant to this report.

There are two alternate site options to accommodate the proposed billboards;

- Option 1 - billboards along the outside perimeter of the Tyne container yard,
- Option 2 - billboards along the inside perimeter of the container yard.

The land use planning implications for each of these options is explored below.

The preferred location for the proposed billboards is shown in Figure 1. As noted above, the site extends along a length of approximately 330 metres, running parallel to an existing perimeter fence that delineates the Tyne Container yard. This area adjoins Alexandra Canal, which is a heritage item and zoned SP 2 Stormwater Management System under MLEP 2011. Sydney Airport and Airport Drive lie south east of Alexandra Canal.

The land on the southern side of the Tyne container yard perimeter fence is zoned RE1 Public Recreation under MLEP 2011. This land is classified as community land and is governed by Council's Plan of Management for Tempe Lands Community Lands 2006.

Under MLEP 2011 the billboard proposal is not permitted on land zoned RE1 Public Recreation. It is therefore prohibited on the land on the southern side of the Tyne container yard unless this land is rezoned to a business, industrial or SP2 Infrastructure zoning. This rezoning could be supported on the basis of continuity of the subject land with the adjacent container yard.

Following the rezoning process Council would need to also alter the Plan of Management for Tempe Lands Community Land.

The land supporting the Tyne container yard is zoned IN1 General Industrial. Under MLEP 2011, the proposal is permissible on this land. However, the Tyne land is currently burdened by a commercial lease which expires in 2014, with an option to extend this lease for a further five years.

The Tyne container yard land is also burdened by a road reservation, being identified in MLEP 2011 as Classified Road (SP2), land to be acquired for infrastructure purposes by Roads and Maritime Services (RMS). Consent of this agency would be required as part of any development application (DA) process. The concurrence of RMS will also be required at the DA stage under SEPP 64 – Advertising and Signage. Both of these processes would run in parallel if a DA was lodged for the billboards.

It must be noted that in 2008 Council sought the concurrence of RMS (formerly known as the Roads and Traffic Authority (RTA)) for a previous DA for Tempe Lands, when it lodged an application for consolidation of Council land to then subdivide into four allotments (now known as Lots 303, 304, 305 & 306 of DP 1136081). This DA was referred to the RTA under Clause 65 of the Marrickville Local Environmental Plan 2001.

In reviewing the subject DA in 2008 the RTA provided the following advisory comments to Council for consideration in its determination:

- 1. The RTA has received legal advice which states that the development application requires the concurrence of the RTA.*
- 2. The RTA recommends that Council grant approval for a 5 year + 5 lease for the proposed subdivision.*
- 3. The subject property is within a County Road Reservation as shown on Council's Planning Scheme Maps and pink colour in the attached plans.*
- 4. There are no objections on property grounds, provided no new buildings or structures are erected within the County Road Reservation.*

Item 2

Given the RTA's response to Council's subdivision DA in 2008, along with the State Government's recent WestConnex announcement, which proposes a new freeway through the Tempe Lands area, it is unlikely that RMS will concur with the proposed installation of billboards within the Tyne container yard.

Billboard Construction Costs and Potential Revenue

The following table provides an initial outline of the range of potential costs and annual returns for common types of standard industry billboards. The income rentals and construction cost estimates are based on previous advice from the industry*¹.

It must be noted that the estimates are very preliminary and will need to be verified. They are provided as a guide only of what may be achieved at the Tempe site if the land use planning obstacles can be overcome.

	85m ²			42m ²	
Sign size	18.99m x 4.5m	18.99m x 4.5m		12.66m x 3.35m	12.66m x 3.35m
Initial cost range to build	\$75,000	\$100,000		\$50,000	\$100,000
Annual rental range	\$25,000	\$40,000		\$15,000	\$25,000
Annualised construction cost range	\$7,500	\$10,000		\$5,000	\$10,000
Annualised range of cost of funds	\$6,000	\$8,000		\$4,000	\$8,000
Net rental range per billboard	\$11,500	\$22,000		\$6,000	\$7,000
Max No. billboards (min 1 metre gap)	16	16		24	24
Max Net rental stream - all signs	\$184,000	\$352,000		\$144,000	\$168,000

*¹cost estimates were supplied in 2011 by a representative from within the advertising sign industry.

The above table provides an estimate of the cost of construction of two common billboard sizes, one of 85m² and the other 42m². The estimates are shown in a range. For example, it is estimated that an 85m² billboard would cost between \$75,000 and \$100,000 to erect subject to site conditions, location etc. and would generate a rental stream of between \$11,500 and \$22,000 per annum. The costs shown aim to annualise the construction costs and the cost of financing them. The net rental range per billboard is then multiplied by the maximum number of billboards that could potentially be constructed in the space available to arrive at the maximum net rental range.

As previously noted, the above estimates are very preliminary and Industry advice indicates that the rate of return on investment depends largely on demand for the advertising space provided by the billboards. There are a number of factors controlling the demand, including size of the advertising market, location, size, orientation and effectiveness of the billboards i.e. 'the wow factor'.

Given that there are already a significant number of billboards in place along Airport Drive it is questionable whether the market has an appetite for a further sixteen to twenty four billboards on the opposite side of Alexandra Canal.

In light of the above, it is recommended that if Council elects to proceed with the proposal it engages an advertising consultant initially to undertake a desk top analysis of the Tempe billboard proposal. A recently received fee proposal indicates that the desk top analysis would cost in the order of \$5,000 to \$6,000.

Existing Container Yard Lease

The Council owned container yard, comprising Lots 303 & 304 in DP 1136081, is currently leased to Tyne Container Services Pty Ltd. The current Lease terminates on 30 June 2014. There is an option to renew the Lease for a further five years from this date. The Lease currently provides Council with an annual revenue stream in excess of \$2.5M.

The Lease rent is determined by a calculation that takes into account the actual area of the leased premises and the permissible container stacking heights, as defined by a series of surveyed zones across the site. These zones are required to meet Sydney Airport Corporation Limited (SACL) height restrictions.

The permissible stacking height of containers immediately adjacent to the location of the proposed billboards, which is shown in Figure 2 below, is four containers high. The four container high zones within the Tyne container yard attract the greatest rental return for Council.

If Council elects to install billboards within the Tyne container yard it will need to re-negotiate a new Lease with Tyne Container Services Pty Ltd to take into account any loss of premises as a result of the proposed billboards. The actual loss will not be known until a final concept proposal is drafted. However as an example, assuming a 10metre clearance is required along the perimeter fence of the Tyne yard to house the billboards, the loss of usable premises will be in the order of 3300m², which equates to a potential rental loss in excess of \$80,000 per annum.



Figure 2 – An aerial view of the southern edge of the Tyne Container Yard showing the location of a proposed series of billboards inside the Tyne perimeter fence

CONCLUSION

The report highlights a number of obstacles that Council will need to overcome prior to proceeding with any billboard proposal at Tempe Lands. The report also highlights the uncertainty of the preliminary return on investment estimates for the billboard proposal. Industry advice indicates that there a myriad of factors influencing this rate of return.

It is recommended that Council allocates \$6,000 to undertake a desk top analysis of the proposal in order to better understand the advertising market risks associated with the proposal and determine whether the anticipated return on investment is sufficient to warrant progressing any further.

FINANCIAL IMPLICATIONS

Nil cost to date.

An initial desk top analysis of the billboard proposal can be undertaken by an advertising consultant at a cost of approximately \$5,000 - \$6,000.

OTHER STAFF COMMENTS

The Manager Planning Services has provided input into the Land Use Planning Implications Section of this report.

PUBLIC CONSULTATION

Nil to date.

A full communication / community engagement strategy will be required once a decision is made by Council to further progress this matter.

RECOMMENDATION**THAT:**

1. Council receive and note this report;
2. Council allocates an additional \$6,000 in the 2012/13 Operating Budget to engage an advertising consultant to undertake a desk top analysis of the billboard proposal for Tempe Lands; and
3. following this analysis a further report is provided to Council for consideration.

Simone Schwarz
A/Director, Corporate Services

ATTACHMENTS

Nil.

Item No: C0313 Item 3**Subject: COMMUNITY CULTURAL DEVELOPMENT OFFICER POSITION****File Ref: 190-01/15992.13****Prepared By:** Caroline McLeod - Arts and Cultural Development Coordinator**SYNOPSIS**

Culture and Recreation is seeking approval for the employment of a permanent part-time (30 hours per week) Community Cultural Development Officer that will be responsible for the delivery of community cultural initiatives, projects and programs that enhance and celebrate the diversity of Marrickville.

RECOMMENDATION**THAT:**

1. **Council receives and notes the report;**
2. **Council endorses the permanent establishment of a Community Cultural Development Officer (30hrs per week); and**
3. **funding be included in the 2013/14 budget.**

BACKGROUND

In July 2006, Council engaged a temporary part-time Events Project Officer for the delivery of Council's Community Cultural Events Program (CCEP) for 21 hours per week. The Program delivered eight events per year that celebrated the African, Arabic speaking, Chinese, Greek, Pacific Islander, Portuguese and Vietnamese communities.

Following a Review of the Major Community Events and Community Cultural Events Program in 2010, Council agreed to replace the CCEP with the Open Marrickville Program (S1210, Item 4). The Open Marrickville Program is an umbrella-style festival comprising approximately 20 smaller events over a 10 day period. The events provide opportunities for deeper cultural understanding and exchange between communities, with a focus on youth involvement. The primary aim of the program is to encourage younger CALD and Sister Cities' generations to connect with and learn about their individual cultures, and share and celebrate their cultures with the broader community. This program involves extensive engagement with up to 20 community groups over a 12 month period; including in the lead up to the grants program, the productions of events in the Open Marrickville Program, and throughout the grants acquittal process.

As part of the 2011 Internal Organisational Review, it was agreed that the temporary Events Project Officer position be replaced with a temporary, part-time (30 hours / week) Community Cultural Development Officer (CCDO). The CCDO coordinates community cultural initiatives, projects and programs that enhance and celebrate the vitality and diversity of Marrickville, support communities to participate in their chosen cultural lives, and facilitate community involvement in the collective culture of the local area.

In 2012, Council was recognised for its commitment to cultural development at the Local Government Association of NSW (LGSA) Arts and Cultural Awards by winning the category Leading Arts and Culture: Building Capacity of the Arts and Culture category and the Open Marrickville Program was a finalist in two categories. Council received an award for Best Overall Program at the Sister Cities Australia National Awards Program in 2012.

DISCUSSION

The role of the Community Cultural Development Officer is essential to the service of Council's Culture & Recreation activities. The officer:

- coordinates community cultural initiatives, projects and programs to enhance and celebrate the vitality and diversity of Marrickville
- provides support to communities to participate in their chosen cultural lives
- facilitates community involvement in the collective culture of the local area.

The position is currently a temporary part-time position based on a 30-hour week and has sufficient funding until June 2013.

The CCDO delivers programs that contribute to key goals in Council's *Our Place, Our Vision* Community Strategic Plan 2021, including supporting a diverse community that values and celebrates cultural diversity. The current responsibilities of the role include:

Open Marrickville Festival

- The Open Marrickville Program delivers approximately 20 community cultural development events to the local Marrickville community through the facilitation and management of the Open Marrickville grants process that allows communities to host their own cultural events. In addition to the coordinating the grant process, the CCDO provides grant recipients (often community groups) with one-on-one support and relevant workshops such as marketing, media relations, event management, food safety etc. The role is also responsible for the overall delivery of the Open Marrickville Festival such as the preparation of marketing material, and internal communications.
- The Social Aims and Assessment of Open Marrickville 2012 were presented to Council in October 2012 (C1012(1) Item 4) and reported:
 - It is estimated that over 6,000 people attended an Open Marrickville event;
 - that over 1,000 people, the majority of whom were local, actively participated in an Open Marrickville event either through performing, attending workshops, providing catering, equipment and services, managing an event or as an associated partner;
 - The cultural groups represented included Aboriginal and Torres Strait Islander, Pacific Islander, African, Vietnamese, Turkish, Anglo-Australian, Chilean, Spanish, Greek, Italian, Brazilian, Lebanese, Palestinian, Arabic, South East Asian, Chinese, Portuguese, Cyprian, South American, Mexican (as well, there were many other cultural and ethnic groups who were represented as performers or entertainers at the festival);
 - Open Marrickville recipients reported that they gained a range of knowledge and skills and were satisfied or extremely satisfied with their event;
 -

Item 3

- and Open Marrickville attendees also reported that they enjoyed that the events were community run (75%), that they attended the event because it was a family day out or something to do, and when asked what they would like at next year's events the most outstanding response was "more of the same" and that they "like to see all communities united".

Graffiti Alternatives Management Project

The CCDO assists with the delivery of the Graffiti Alternatives Management Project which includes the co-ordination and delivery of *Graffiti Proofing Your Property* workshops, the implementation of Crime Prevention Through Environmental Design projects funded by the NSW Attorney General & Justice Hotspot Grants (\$218,300) (CO212(1) Item 11), and responding to enquiries regarding forum sentencing and legal walls.

The CCDO is currently working on the delivery of the *Create Not Destroy Program*, a two year program funded by the Commonwealth Attorney-General's Proceeds of Crime Act 2002 Grants. The program involves a series of school incursions (school visits) to students in year 5 and year 8 that educate students on the social and financial costs of unwanted graffiti. As part of the *Create Not Destroy Program*, the CCDO will work with local artists to deliver free workshops to students that encourage them to participate in legal artistic practises, rather than illegal. The CCDO was instrumental in securing the funding of \$149,596 for the project.

Sister Cities Program

The CCDO coordinates the Sister Cities Program, including implementation of the Sister Cities Strategic Plan, facilitating and resourcing the Sister Cities Committee and managing resources allocated to the program. Past activities have included delegation visits, Marrickville Festival craft stalls, Bairro Portuguese photographic, Sister Cities events, community liaison etc.

Some examples of Sister City activities organised and run by the CCDO include:

- Stall at the Bairro Portugues Festival to educate the community about Council's Sister City relationship with Funchal, Madeira, comprising a photo booth where event-goers posed for photos that were then superimposed over a typical scene from Funchal, such as the old city, the harbour and the fruit markets. The photos were then printed as postcards from Funchal, with text about interesting facts and information about Funchal. The stall also displayed information about the city Funchal. The stall was highly successful with 880 postcards printed throughout the day, a constant queue for photos and lots of interest in what was going on. The Portuguese community were especially excited and taken with the stall. People from all nationalities and all ages had their photos taken.
- Traditional craft workshop at the Marrickville Festival, representing four of Council's active sister cities for the Sister Cities Marrickville Festival Stall. Traditional crafts from Funchal (Portugal), Kos, (Greece), Larnaca (Cyprus) and Bethlehem (Palestine) were represented with cross stitch, hand held embroidery and crochet. The stall was fully utilized for the entire day and gave the opportunity for residents to learn from and talk with women about their traditional handicrafts. Over 100 people signed up to be notified about future activities.
- Council received an award for Best Overall Program at the Sister Cities Australia National Awards Program in 2012.

Art Post Newsletter

This Art Post newsletter is a fortnightly e-newsletter that is distributed to over 1,000 people that are interested in arts and cultural activities. The newsletter is well received and informal feedback from the community indicates that it is a valuable resource for the community. The newsletter takes approximately two days / fortnight for research and preparation and these duties are currently shared between the CCDO and Arts and Cultural Development Coordinator.

Day to day enquiries and additional support

The CCDO responds to day to day enquiries about arts and cultural activities in the area. Depending on the projects at the time, it is estimated that this would entail responding to approximately 20 emails or phone calls per day from community about general programs.

The CCDO provides additional support to the Manager Culture and Recreation, and Arts and Cultural Development Coordinator when required. This includes meeting and greeting artists that are hiring the Chrissie Cotter Gallery or residency programs, site visits for graffiti alternative projects, photographing events, assisting with the set-up of meetings, responding to enquiries about Council grants, the collation of grant materials, assisting with the preparation of grant applications and award submissions, data entry and assessment of surveys and liaising with Property Services regarding maintenance issues.

From 2006 to June 2011 the temporary Events Project Officer, and from July 2011 the position of CCDO, have been essential to the delivery of Council's community cultural development programs within Culture & Recreation. The Draft 2013/2014 budget has allocated sufficient funds for the delivery of Open Marrickville 2014, the Sister Cities initiative, Art Post and the *Create Not Destroy* Program. The role is essential to the delivery of the above programs.

CONCLUSION

From 2006 to June 2011 the temporary Events Project Officer, and from July 2011 the CCDO, have been essential to the delivery of Council's community cultural development programs. The role is essential to the delivery of the award winning arts and cultural development programs.

FINANCIAL IMPLICATIONS

An annual allocation of \$88,000 is required to fund this position.

Of the \$149,596 received by Commonwealth Attorney-General's Proceeds of Crime Act 2002 Grants for the delivery of the *Create Not Destroy* Project, \$15,000 has been allocated towards the funding of the CCDO position.

OTHER STAFF COMMENTS

The Community Development team in Council endorses the ongoing need for this role to support community cultural development programs. The role complements the work of the Community Development team to achieve the outcomes articulated in the Community Strategic Plan for meeting the needs of our diverse communities.

Item 3**PUBLIC CONSULTATION**

There has been no public consultation.

RECOMMENDATION**THAT:**

1. Council receives and notes the report;
2. Council endorses the permanent establishment of a Community Cultural Development Officer (30hrs per week); and
3. funding be included in the 2013/14 budget.

Josephine Bennett
A/Director, Community Services

ATTACHMENTS

Nil.

Report No: C0313 Item 4

Subject: CODE OF CONDUCT COMPLAINT - COUNCILLOR PHILLIPS - REPORT FROM SINGLE REVIEWER

File Ref: 4792/17040.13

Prepared By: Monique Dunlop - Manager, Governance and Risk

SYNOPSIS

This report presents to Council the findings of the single reviewer appointed to investigate the complaint made pursuant to the Council's Code of Conduct against Councillor Max Phillips and provides the opportunity for Council to determine what action to take as a consequence of those findings.

RECOMMENDATION

THAT Council:

1. receive and note the report from Ms Kathy Thane attached at ATTACHMENT 1;
2. determine whether to make findings of a breach of the Code; and
3. determine what action to take as a consequence of those findings.

BACKGROUND

On 11 December 2012, the Acting General Manager received a complaint from five Councillors alleging a breach of the Council's Code of Conduct ("**Code**") by Councillor Max Phillips.

The complaint related to the disclosure of information contained in a confidential report known as Item 17 (Confidential Attachment) *Peer Review of Proposed Amendments to Lewisham Estates Concept Plan Approval* considered at the Development Assessment Committee on the evening of 11 December 2012.

Then General Manager, Ken Gainger assessed the complaint recommending it be referred to a single reviewer to investigate and report back to Council. The report has been provided to Council and is attached at ATTACHMENT 1.

DISCUSSION

Pursuant to section 440 of the *Local Government Act 1993* ("**Act**"), the Council must adopt a code of conduct which must be complied with by all Councillors and staff of Council.

The Code and related guidelines published by the Department of Local Government prescribes a procedure that must be followed in relation to a code of conduct complaint. Council recently adopted a new Code of Conduct and Procedures that came into force on 1 March 2013. As this complaint was made prior to 1 March 2013, it was reviewed in accordance with the provisions of the Code of Conduct for Councillors and procedures in force at that time. In this instance, the complaint was referred to a single reviewer who was chosen from a panel established by SSROC for its member Councils.

Item 4

The single reviewer investigated the complaint and, based on the evidence, for the reasons outlined in her report found that the allegations against Councillor Phillips were sustained and his conduct constituted a breach of clauses 6.1, 6.8, 10.9 (d), 10.10 and 10.11 (a), (b), (c), (e) and (g).

Pursuant to clauses 12.24 and 12.25 of the Code, the Council must deal with the subject matter by determining itself:

1. whether there has been a breach of the Code in this instance; and, if so
2. whether to impose one or more of the sanctions identified in clause 12.25 of the Code as a consequence of such breach.

In relation to the first matter, Council will need to consider all of the circumstances surrounding the complaint including the findings of the reviewer.

In relation to the sanction of “censuring”, section 440G of the Act only permits a formal censure motion if notice has been duly given in accordance with the Council’s Code of Meeting Practice. In other words, if Council determines that there has been a breach of the Code and proposes to pass a formal censure motion, it will need to do so at a subsequent meeting by giving the requisite notice.

FINANCIAL IMPLICATIONS

Not applicable.

OTHER STAFF COMMENTS

Nil.

PUBLIC CONSULTATION

Nil.

RECOMMENDATION

THAT Council:

1. receive and note the report from Ms Kathy Thane attached at **ATTACHMENT 1**;
2. determine whether to make findings of a breach of the Code; and
3. determine what action to take as a consequence of those findings.

Simone Schwarz
A/Director, Corporate Services

ATTACHMENTS

1. Code of Conduct Review - Cllr Max Phillips - Final Report by Single Reviewer

**REPORT**

Client:	Marrickville Council
Job Type:	Code of Conduct Complaint
Allegations:	Alleged breach of clauses 6.1, 6.8, 10.9 (d), 10.10, 10.11 (a), (b) (c) (e) and (g)
Complainant:	5 Councillors (not disclosed)
Respondent:	Councillor Max Phillips
Date of Report:	8 March 2013

1. Introduction:

- 1.1** The author of this report ("the reviewer") is a Sole Code of Conduct Reviewer and Member of the Marrickville Council Conduct Review Committee Panel appointed on 31 March 2009 pursuant to clause 12.12 of Council's code of Conduct for Councillors.
- 1.2** Council's Manager, Governance and Risk, Ms Monique Dunlop initially discussed the matter with the reviewer on 22 January 2013. The documents pertaining to the complaint were later forwarded on 23 January 2013 following execution of confidentiality agreement and declaration of interests and disclosures statement.
- 1.3** On 29 January 2013, after the reviewer had perused the complaint material she had a further telephone discussion with Ms Dunlop regarding her intended approach to the matter. Ms Dunlop agreed to such an approach and the review commenced.

2. The Brief:

- 2.1** The Acting General Manager, Brian Barrett referred a complaint made by five Councillors against Councillor Max Phillips pursuant to clause 12.9 (d) of the Code of Conduct and requested that the complaint be dealt with pursuant to the provisions of the Marrickville Council Code of Conduct for Councillors.



3. Particulars of the Complaint:

- 3.1** The matter concerns allegations made by five Marrickville Councillors that Councillor Max Phillips publicly disclosed information contained in a confidential report known as Item 17 (Confidential Attachment) considered at the Development Assessment Committee on the evening of 11 December 2012.
- 3.2** In particular it is alleged that he discussed the information during an interview on 702 ABC Sydney Radio at 8.36am on 11 December 2012. It is also alleged that Councillor Phillips “possibly” leaked the report to the Sydney Morning Herald for an article on the same matter which appeared on 11 December 2012.
- 3.3** The Complainants produced a copy of an email which was sent by Councillor Phillips on 11 December 2012 to a number of recipients. The email urges members of the public to come to the meeting to object (although the matter in question was part of a closed session of Council) and he states “I may get a code of conduct charge against me for exposing this issue to the public light.”
- 3.4** It is claimed that Councillor Phillips’ conduct constitutes a breach of clause 6.1, 6.8, 10.9 (d), 10.10 and 10.11 (a) (b) (c) (e) and (g) of the Marrickville Council Code of Conduct for Councillors.

4. Disclaimer:

- 4.1** This report is made in good faith and to the best of the reviewer’s ability.
- 4.2** The report is not intended to serve as legal advice nor should the reviewer’s comments herein be relied on as a substitution for legal advice.

5. Written and Other Material:

- 5.1** The bundle of complaint documents provided to the reviewer on 23 January 2013 are summarised as follows:
- Marrickville Code of Conduct for Councillors;
 - Copy of email dated 13 December 2012 from Complainants to Acting General Manager Mr Brian Barrett with letter of complaint attached;
 - Copy of further email from one Complainant to Mr Brian Barrett dated 13 December 2012 headed NLT BIG TROUBLE;
 - Copies of letters dated 24 December 2012 from the then General Manager, Mr Ken Grainger to Complainants and Councillor Phillips advising of assessment pursuant to clause 12.8 of the Code;



- Further advice dated 23 January 2013 to Complainants and Councillor Phillips from Mr Barrett advising that Reviewer has been appointed;
- Copy of confidential business paper report Item 17 from the Development assessment Committee Meeting dated 11 December 2012 – *Peer Review of Proposed Amendments to Lewisham Estates Concept Plan Approval*;
- Copy of transcript from 702 ABC Sydney radio interview between Linda Mottram and Councillor Phillips held on 11 December 2012;

5.2 Following a request from the reviewer, additional documents were provided on 6 February 2013 as follows:

- Background to briefing held on 27 November 2012 prepared by Ms Dunlop;
- Slide presentation viewed at the 27 November 2012 briefing;
- Email forwarded to Councillors on 11 December 2012 by Ms Dunlop (after becoming aware of Councillor Phillips' interview with Linda Mottram) reminding Councillors of the confidential nature of the report and reiterating the meaning of section 10A (4) *Local Government Act 1993*¹.

5.3 Following a further request from the reviewer, a Code of Conduct Review Report prepared by Bronwyn Connolly, Sole Reviewer was provided on 25 February 2013.²

6. The Review Process:

6.1 The Reviewer had an initial telephone discussion with Monique Dunlop on 22 January 2013. The documents outlined in paragraph 5.1 were forwarded by email on 23 January 2013.

6.2 On 29 January 2013 the Reviewer, after having read through the complaint material had further communications with Ms Dunlop (requesting additional documents).

6.3 The reviewer spoke to Complainant 1 on 30 January 2013 who indicated that he did not wish to make any further submission in relation to the matter.

6.4 The documents sought from Ms Dunlop were provided on 6 February 2013. After perusing that material the reviewer scheduled a meeting with Marcus Rowan, Manager Planning Services.

6.5 The reviewer conducted an interview with Mr Rowan on 12 February 2013. That interview is summarised at part 8 of this report.

¹ Section 10A (4) allows members of the public to make representations as to whether a meeting should be closed, it does not, however allow for general discussion on the item in question.

² This involved an allegation that Councillor Olive had disclosed confidential information, although the circumstances were different to the present matter.



6.6 Telephone interviews were scheduled and arranged with all Councillors between 18 February 2013 and 28 February 2013. Summaries of those interviews are contained in part 8 of this report.

6.7 Councillor Phillips was interviewed in person on 22 February 2013. A summary of that interview is contained in part 9 of this report.

7. Complainants' Submissions:

7.1 The letter of complaint to the acting General Manager dated 13 December 2012 is reproduced in full below:

This is a report pursuant to clause 11.1 of the Marrickville Council Code of Conduct (the Code) of a breach of the Code by Councillor Max Phillips (Phillips).

In my view Phillips has failed to comply with an applicable requirement of Code in a manner that constitutes misbehavior pursuant to Section 440F of the Local Government Act.

You are requested to investigate these matters in accordance with clause 12.3 of the Code.

The breaches have occurred in relation to disclosures relating to Item 17 (Confidential Attachment) considered at the Development Assessment Committee of 11 December, 2012.

The Sydney Morning Herald (SMH) of 11 December, 2012 contained an article which discloses information contained in the confidential report provided to Councillors. The article states that the SMH has seen documents containing the information. That can only have been the report. It does not disclose who provided the document but quotes Cllr Phillips as being totally against the proposal.

An interview was aired on radio station 702 ABC Sydney at 8.36am on 11 December, 2012.

In that interview Cllr Phillips again discusses the information contained in the confidential report. He also claims that he was provided that information prior to the DAC report which contained the information now the subject of the confidential report. He claims that the briefing wasn't deemed confidential. He then proceeds to discuss the details of the offer reported in the confidential report as well as offering general comments of opposition to Voluntary Planning Agreements. He indicates that he will be voting to reject negotiations.

On 10 December, 2012 at 9.29 AM, an email was sent to a number of recipients by Tamara Winikoff, who is quoted in the SMH article, indicating she had received a call from a sympathetic councilor advising the terms of Meriton's confidential offer.

She further states "At this stage its confidential but he's trying to get that lifted so residents can speak at the meeting". She further states that a story will probably be in the SMH tomorrow.



This exchange identifies the person as a male and leads one to consider the SMH article being sourced from the same caller.

A further email was sent, this time by Clr Phillips on 10 December at 8.51PM. In that email he again asserts that he had gained knowledge of Mertion's offer from a briefing not deemed confidential. He outlines the essence of the offer in the email. He indicates that the item is on the agenda as a "controversial" item which can be assumed to be an error and meant confidential.

Finally on 11 December, 2012, a further email is sent to various persons by Clr Phillips including a link to the SMH article and advice that he had been interviewed on 702 radio.

He urges people to come to the meeting and comments "I may get a code of conduct charge against me for exposing this issue to the public light."

I believe that the latter statement is a clear indication that Clr Phillips knew he was breaching the code of conduct and had continued to act in a manner contrary to the Code

It is my belief that Clr Phillips has breached the following sections of the code.

Clause 6.1 in that he has conducted himself in carrying out his functions in a manner that is likely to bring Council or holders of civic office into disrepute. Specifically, he has been made aware that certain information was confidential and he has deliberately chosen to breach that confidentiality. His email acknowledging that he may face a Code of Conduct Charge shows his blatant disregard of his duties as a councillor in a way that:

- contravenes the Act, associated regulations, Council's relevant administrative requirements and policies*
- is detrimental to the pursuit of the charter of Council*
- is improper or unethical*

Clause 6.8 in that he has not ensured that development decisions are properly made and that parties involved in the development process are dealt with fairly.

Clause 10.9 (d) in that he has released Council information in a manner which was not in accordance with established Council policies and procedures and not in compliance with relevant legislation.

Clause 10.10 in that he has not maintained the integrity and security of confidential documents or information in his possession, or for which he was responsible.

Clause 10.11 (a), (b), (c), (e), (g). in that he:

- a) Did not protect confidential information*
- b) Released confidential information when he did not have the authority to do so*



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c) Use confidential information for other than the purpose it was intended to be used

e) Used confidential information with the intention to cause harm or detriment to Council or any other person or body

g) Take care to maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible

I believe the actions and behaviour of Phillips is reprehensible in the extreme in that he had deliberately for political purposes released commercial information knowing he was in breach and making unauthorised comment in the media using this information. This behaviour has seriously impacted Council's credibility with a major developer and will have an ongoing negative impact in developers and other businesses and there preparedness to deal with Council in important planning matters.

8. Submissions from Complainants and Others³:

The following paragraphs are summaries of the key points of interviews conducted with Councillors and staff from 18 to 26 February 2013. Interviews were not sound recorded, but the reviewer took notes. There was no objection to such a process.

8.1 Marcus Rowan (MR) Manager Planning Services:

8.1.1 MR said that there was a long running history with this proposed development and Meriton have only been involved since purchasing the site.

8.1.2 He said that Ken Hawkes told him that he had been approached by Meriton some time ago, who mentioned that they would be keen to talk about offering a "Voluntary Planning Agreement" (VPA) or having some sort of information session to revisit the development. He said that there was nothing unusual about this as many developers would approach Council about proposals from time to time.

8.1.3 MR said that VPA's were quite a new concept (brought into EP and A Act in 2005) and were more flexible than the s94 contributions scheme.

8.1.4 MR said that he did not think that it was rare to talk in large sums of money, although \$5mill could be large for Marrickville.

8.1.5 He said that he understood that in relation to the present matter the idea was to initially have an in confidence meeting to "test the waters". He said that

³ All Councillors were approached to be interviewed as part of this Code of Conduct review. However, at the request of the Complainants, the reviewer has not identified which of the Councillors interviewed made the subject complaint.



Meriton did not intend to proceed with negotiations if there was no interest at all from the Councillors. This was a way of throwing around some ideas to see if it was something that could be approved down the track.

8.1.6 MR said that as a Council officer it wasn't for him to comment or to say no to such a proposal, so he just took on the task of setting up the meeting. The difficulty was finding a suitable time to fit it into the Councillors' schedule – this was his main concern at the time.

8.1.7 He said that Councillor Briefings were not always confidential – it would depend on the subject matter.

8.1.8 MR said that to be honest he didn't focus on whether the meeting was confidential or not, he was initially just trying to get the meeting organised.

8.1.9 He said that there is really no clear guidelines about Councillor briefings and they are often arranged from different sources (ie it is not always a planning matters) and there is no central person who schedules them. He said that often they are just cobbled together or piggybacked on other meetings.

8.1.10 He said the reason that they were flexible and informal was to enable open discussion and to allow people to speak freely – Councillors behaved quite differently in briefing meetings than they did in open Council meetings.

8.1.11 MR said that he found a date and it got put in with something else that was on and then the venue got changed. Something else was the "main event" that day (the library tour) and this is why it was put on at that time.

8.1.12 MR said that he was pretty sure that the item before was not confidential.

8.1.13 He said that they were not in a conference room at least one council staff member was still hanging around. However he said that it was a sealed area and there was no public access to the area.

8.1.14 He said that a Council briefing is not an open Council meeting and often certain matters that are discussed are not appropriate to release in the public domain.

8.1.15 He said that during the first matter on the agenda (not a matter he was directly involved in) he was standing near the door and directing people. He said that he was not paying too much attention to what was going on.



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- 8.1.16** He said that when that matter was over, all the people involved left as it was not appropriate that they stay for the Meriton matter.
- 8.1.17** MR said that he remembers that he then had some sort of IT problem which he was trying to sort out.
- 8.1.18** He said that he then did a brief introduction, gave some background information and introduced the people from Meriton. He said that he gave a bit of an overview of the offer.
- 8.1.19** MR explained that Council was not the consent authority on this development anyway. He said that Meriton wanted to get a sense of the feeling from Councillors and if it was going to be a clear “no” they would walk away.
- 8.1.20** MR said that he did not recall saying anything about the meeting being confidential, but thought that it was pretty clear that the offer was an in-confidence offer.
- 8.1.21** He said that Peter Spira from Meriton then stood up. MR said that he is “pretty sure” that Peter said that the offer was confidential offer – a communication in confidence or words to that effect.
- 8.1.22** MR said that even if this wasn’t spelt out by Peter Spira he thought that one would conclude in the circumstances that it was confidential.
- 8.1.23** He said that the architect spoke and the rest of the meeting was spent discussing things; was the “trade off” worth it, the logistics etc. MR said that it was a good discussion and quite different to what would have been said in an open meeting.
- 8.1.24** He mentioned that there was a previous issue some years ago involving Councillor Olive; he said that he thought it was a similar scenario.

8.2 Melissa Brooks (MB) Greens Councillor:

- 8.2.1** MB said that she was at the briefing in the library and recalls that lots of other council staff were present at the time, which would be unusual for a confidential meeting.
- 8.2.2** She said that the invite for the briefing was an ordinary invite and there was no mention of it being confidential.

Attachment 1



- 8.2.3 She said that she felt that she would remember if there was any requirement to keep the contents of the briefing confidential.
- 8.2.4 MB said that immediately after the meeting she spoke to the Greenway Cycle Path Committee about the proposal, in good faith and no one has lodged Code of Conduct complaint against her.
- 8.2.5 She said that it was possible that there was some misunderstanding about whether the briefing was confidential or not and she said that if indeed it was mentioned it could not have been very detailed.
- 8.2.6 She said that the meeting got sandwiched between two other important projects and the Councillors had been listening already for a couple of hours.
- 8.2.7 MB said that she understood that Meriton wanted to gauge the response of the proposal before they put in amended plans (as this would have added considerably to the cost).
- 8.2.8 She said that it is possible that the manager was told at a different time that the offer was confidential and people are confusing the briefing discussions with different conversations.

8.3 Mark Gardiner (MG) Liberal Councillor:

- 8.3.1 MG said that he was at the briefing on 27 November 2012.
- 8.3.2 He said that it was held in the old library as there was to be a tour as there were some issues around the library to be discussed. He said that there were a number of other issues being discussed at the same meeting.
- 8.3.3 He remembers that the Mayor or the GM introduced Meriton and gave some background about the VPA.
- 8.3.4 MG said that he has racked his brain and he cannot remember whether the issue of confidentiality was actually mentioned at the briefing or at some other time.
- 8.3.5 He said that he knew it was not something to be discussed in the public arena.
- 8.3.6 He said that other council staff were present; most were at Director level but there were also some junior staff members hanging around (because of the library tour).

**8.4 Morris Hanna (MH) Independent Councillor:**

- 8.4.1 MH said he was at the Councillor briefing and remembers it quite well.
- 8.4.2 He said that honestly he did not hear the words “confidential” or “commercial in confidence” being used at any time. He said that he is 99.9% sure of this.
- 8.4.3 MH said that he does not recall the mayor or anyone else asking the Meriton representatives whether their offer was being made in confidence.
- 8.4.4 He said that he asked a lot of questions about the proposal – he said that he wasn’t happy about the amount of money being offered as he felt it was quite small in relation to the money that would be made from the development.
- 8.4.5 MH said that voluntary planning agreements were a relatively new concept and Marrickville Council has not really had to deal with them; certainly on this scale, so he could not comment on whether preliminary discussions of this nature were usually made in confidence.
- 8.4.6 He said that it was Council’s usual practice to have a “red paper” if a matter was confidential, so that the issue was clear.
- 8.4.7 He said that he was surprised that the business paper published after the briefing was marked confidential since he thought that the prior briefing was not.

8.5 Rosana Tyler (RT) Liberal Councillor:

- 8.5.1 RT said that she recalls attending the Councillor Briefing held on 27 November 2012 in the Library.
- 8.5.2 She said that there were a couple of things on the agenda - the Westconnex proposal was discussed first, however she arrived a little late and missed the beginning of those discussions.
- 8.5.3 She said that she was there for all of the Meriton briefing and thinks that there were several people from Meriton present.
- 8.5.4 RT said that she could not recall the man’s name from Meriton who spoke to the group first, but she said that he told them that Meriton had put various plans forward already but wanted to see the Councillor’s attitude towards another proposal they were considering – this would require additional plans and approval.



- 8.5.5 She said that the man said that if Councillors were favourable about the proposal Meriton would like to discuss it further and they were looking to see the Councillors' attitude to the proposal and what Councillors thought about it.
- 8.5.6 She said that the man said that if Councillors did not view the proposal favourably, the discussions would go no further.
- 8.5.7 RT said that she had the distinct impression that what was being put by Meriton was being put on a confidential basis.
- 8.5.8 She said that she could not remember the exact words used, or whether he actually used the word confidential initially; however she said that she definitely remembers him saying that the amount of money being discussed was to be kept confidential.
- 8.5.9 RT said that she understood that Meriton wanted the amount being offered to remain confidential because they were in the process of negotiating and they had similar discussions with other councils on the same basis.
- 8.5.10 RT said that she had seen the mayor at a meeting earlier that day and he had told her that Meriton wanted to put a confidential offer to Councillors to get their views on it. So she said she went to the meeting knowing that the matters raised were done so on a confidential basis.
- 8.5.11 She said that she thought all the matters on the agenda at that meeting may have been confidential, although she is not sure.
- 8.5.12 She said that when Meriton was finished all of the Councillors were very quiet and no one wanted to say anything.
- 8.5.13 She said that when Meriton left, the Councillors were all giving the Greens a hard time and having a bit of a joke because everyone knew that they would be dead against the proposal.

8.6 Sylvie Ellsmore (SE) Greens Councillor:

- 8.6.1 SE said that she remembers the meeting well – it was held in one of the rooms above the library. She said that she recalls that a number of council staff were around.
- 8.6.2 SE said there was a short presentation about the Meriton proposal.



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- 8.6.3** She said that she had not been a Councillor for a long period so was not aware of the history of the site; also the matter did not involve a site in her ward so it was not a matter she was directly involved with.
- 8.6.4** She said that she does not recall the word “confidential” being raised at any time.
- 8.6.5** She said that she thought that the matter was being discussed in terms of Meriton wanting to make an offer, but wanting to see what Council thought in the first instance.
- 8.6.6** SE said that she thought this was the wrong way around of going things and felt that there should have been an opportunity for the community to see what they thought before the Councillors commented on the proposal.
- 8.6.7** She said that there was no thought of the matter being confidential – she even left the meeting and discussed it with others.
- 8.6.8** She confirmed that she gave her notes to Max Phillips and said she would be prepared to sign a statement stating that the notes were hers and a true record of the meeting etc.
- 8.6.9** SE said that she was under the impression that a memo was to be sent to Councillors after the meeting to provide additional information, but this did not happen and in fact the contents of the meeting were then put in a confidential business matter and the matter scheduled for meeting to be voted on.
- 8.6.10** She said that she felt that this had not been done in good faith as the feeling from the meeting was that the matter was not going to go any further.
- 8.6.11** She said that the whole issue is a bit of a grey area and it should be made very clear as to whether something is to be confidential and what process is going to be adopted.
- 8.6.12** SE said that she felt that from a planning perspective there should be a presumption of transparency

8.7 Emanuel Tsardoulis (ET) Labor Councillor:

- 8.7.1** ET said that he did not attend the briefing meeting on 27 November 2012, so could not comment on what occurred during the meeting.

**8.8 David Leary (DL) Greens Councillor:**

- 8.8.1** DL said that he remembers the briefing but only has a fair recollection of precise details.
- 8.8.2** He said that it was held in the library building in an office space. He said that it was there because a library tour had been arranged on the same occasion.
- 8.8.3** He said that he recalled that some Council staff (unrelated to the matter) were still floating around, however there was no public access as such.
- 8.8.4** DL had a vague recollection that some people from the Westconnex were still in the room for the Meriton talk although he couldn't be sure. [He initially thought that the Westconnex matter was on after Meriton, but agreed that Westconnex was first when told what the agenda stated].
- 8.8.5** He said that he was left with the impression that no one within council was going to support the (Meriton) proposal.
- 8.8.6** DL recalls one of the Councillors saying something about it being an "insult" to offer such a ridiculous sum of money. However he said that the mayor and another Liberal Councillor appeared to be seriously discussing the matter.
- 8.8.7** He said that he told Max Phillips (who was not present) afterwards what had been said at the briefing because he knew that he was interested in proposals for that site.
- 8.8.8** He said that he didn't really have any recollection of the briefing being confidential and does not remember anything being said about this. DL said that generally Councillor briefings are closed meetings, but they are not necessarily confidential.
- 8.8.9** He said that he didn't really turn his mind to the issue (of confidentiality) at the time.
- 8.8.10** DL remembers Ken Gainger saying something like, "Meriton wants to put this proposal to you, the discussions haven't got very far, if you aren't at all interested, both parties can walk away" or something like that.
- 8.8.11** He said that after the briefing, Councillors were talking quite light heartedly about it and actually laughing.
- 8.8.12** DL said that he was surprised that the matter was later put to a meeting as he thought it would go no further than the briefing.



8.8.13 He said that it is not clear who made the call on the business paper (for the later meeting) being confidential and he didn't see why it would be confidential and how long the confidentiality was supposed to last.

8.9 Sam Iksandar (SI) Labor Councillor:

8.9.1 SI said that he recalls the meeting on 27 November 2012 held in the library and he said that he was there for the entire meeting.

8.9.2 He said that he could not be 100% certain about the exact words that were used by the Meriton representative, but he understood that it was a preliminary negotiation and this means that "it stays with the Councillors" and is not to be disclosed.

8.9.3 He said that it was his clear understanding that the dollars and the amount of units being discussed were not to be discussed publicly.

8.9.4 SI said that he believes that the Councillors all knew that the matter was confidential and was not to be openly discussed and to do so could have been detrimental to Meriton and damaging to Council's relationship with Meriton.

8.9.5 He said that he thought that the Councillor who disclosed the details in the press was extremely irresponsible.

8.10 Victor Macri (VM) Independent Councillor and Mayor:

8.10.1 VM said that he remembers the briefing on 27 November 2012 very well.

8.10.2 He said that they had the briefing and spoke about the offer.

8.10.3 VM said that he asked Peter Spira (MD of Meriton) in the open meeting whether the offer was a commercial in confidence offer and he replied yes.

8.10.4 He said that by being confidential, Meriton's business interests were protected but Council was also being protected because they were able to debate the issues fairly before the matter was in the public domain.

8.10.5 He said that because of what happened (after the briefing) no one seriously looked at the proposal and there was no fair assessment of it – he said that this is exactly what the Greens wanted to achieve.

8.10.6 VM said that Max Phillips was not even at the meeting and he leaked the confidential document to the press.



8.10.7 He said that Max argued with the General Manager about whether the matter should rightly have been confidential or not; which was not his call.

8.10.8 He said that he was horrified when he heard Max talking on the radio about this proposal; he said that it was “just wrong.”

8.10.9 He said that it makes a mockery of Council and reflects very poorly on us as Councillors.

8.10.10 VM said to look closely at the timing of when things occurred and it shows that Max was not acting in good faith.

8.11 Jo Haylen (JH) Labor Councillor:

8.11.1 JH advised that she was not in attendance at the briefing held on 27 November 2012, although was happy to discuss the matter more broadly if required⁴.

8.12 Chris Woods (CW) Labor Councillor:

8.12.1 CW said that he recalls the meeting in the library. He said that there was a briefing regarding the Westconnex motorway proposal, something going on with the library and the Meriton matter.

8.12.2 He said that there was a lot of discussion still going on about the Westconnex matter because it was quite a big thing for the area. He said that he remembers someone asking whether the Westconnex matter involved confidential material and was told that it was not as this was the publicly released policy. CW said that Councillors were talking and texting details.

8.12.3 Then he recalls that the Meriton briefing was on; this was after several hours and lots of paperwork. He said that there was a lot happening and people were tired. He said that people were a bit “gob smacked” by the Westconnex matter and perhaps were not focused on the Meriton matter initially.

8.12.4 CW said that he thought the Meriton briefing was confidential and was fairly sure in his mind that this was the case. He said that he was surprised that other Councillors were not aware of this, although admits that he cannot recall the words confidential being used and with everything going on and any reference to the matter being confidential that may have been made could have been missed.

⁴ The reviewer did not consider that further discussion with Councillor Haylen was necessary.



- 8.12.5** CW said that he recalls the issues being discussed were the proposed 20 storeys and the development being consolidated on the site with funds being used for a green way.
- 8.12.6** He said that he remembers thinking that there was to be some further documents to be provided to Council with perhaps some plans before the matter was put to the public. He said that the discussions with Meriton were at a very preliminary stage.
- 8.12.7** He said that he thinks the paper for the 11 December meeting (which was marked confidential) arrived on the Thursday before. CW thought that this had considerably more details than what was disclosed at the briefing.
- 8.12.8** He said that he was quite shocked that the matter was in the press before the meeting and he thought that Meriton would not be happy, as there had been no opportunity for Councillors to properly consider their proposal.
- 8.12.9** CW said that he remembers that Councillor Phillips was not at the briefing on 27 November, so when he was told about it he may not have realised it was confidential. He said that perhaps telling someone about the proposal under these circumstances was understandable. However, he said that this was one thing; releasing the paper after being told that the material was confidential was quite another.

9. Respondent's Submission / Interview:

- 9.1** Councillor Phillips provided a submission in response to the complaint which is reproduced below:

Dear [Reviewer];

I have received the letter regarding a code of conduct complaint against me alleging that I disclosed confidential information relating to Item 17 Peer Review of Proposed Amendments to Lewisham Estates Concept Plan Approval of the Development Assessment Committee Meeting of 11 December 2012.

While I understand why a complaint has been lodged, I reject the allegation that I breached confidentiality. I believe the primary motivation for those making the complaint is political. I would like to state my case below.



1) The substance of the issue was disclosed at a non-confidential meeting.

A Councillor conference was held at the Marrickville Library on the evening of Tuesday the 27 November 2012. At this meeting a number of issues were discussed including the new Marrickville Library project.

Representatives of Meriton addressed the conference putting forward a proposal for a voluntary planning agreement that proposed that Council would support increased density for the Lewisham Estates development, namely a 20 storey tower, in return for a monetary contribution of \$5 million.

I did not attend the Councillor conference as I was in Armidale with my family that week.

I was phoned by a fellow Greens Councillor, David Leary, that night after the meeting and he informed me of the proposal from Meriton, the reaction of some of the Councillors, and what our response could be. At no stage did Councillor Leary mention that the proposal from Meriton was confidential.

Councillor Leary has also informed me that he recalls that Council staff from a range of areas, including the library section were present in the room while the Meriton proposal was discussed. It would be unusual for library staff in particular to be present at a confidential planning briefing and this reinforces the point that the this briefing on the 27 November was not confidential.

My other Greens colleagues Councillors Melissa Brooks and Sylvie Ellsmore have told me that at no stage during the Councillor conference were they told that the proposal from Meriton nor any discussion at the conference was deemed confidential. Councillor Ellsmore is an extensive note taker and a lawyer. If the meeting was told that confidentiality applied, she would almost certainly have made a note of this. She has examined her notes and there is no notation that the meeting or proposal was confidential. I enclose Councillor Ellsmore's notes.

Councillor Brooks approached members of the Greenway Committee at some stage after the meeting and informed them of the proposal from Meriton. This is a clear indication that she did not understand the meeting or the proposal to be deemed confidential.

Given that I was not told that the proposal was confidential and that my colleagues have no indication that the meeting was confidential, I do not believe it was deemed confidential. To deem it confidential in retrospect would be bad practice.

2) Information disclosed publicly was from a non-confidential meeting.

Given the initial meeting and the broad parameters of the proposed voluntary planning agreement disclosed at the Councillor briefing on the 27 November, and relayed to myself and others were not deemed confidential, I attempted to base all my public comments on information from this meeting rather than the details disclosed in the report in the business paper.

I believe my attempts to relay only information disclosed at the meeting will be obvious, particularly from my interview on ABC 702 radio where I recall saying that I could not provide all the information and had to stick to what had been disclosed without being deemed confidential.



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The relevant parts of the transcript are:

Max Phillips:

"So we have been successful in that regard. And then Meriton bought the project off Debian Developments in July this year, and recently, they came up to council in a briefing that - as far as I know - wasn't deemed confidential. And it made an offer of \$5 million as part of the voluntary planning agreement to have increased density on the site which included a 20 storey tower. Now that's coming up to council, and unfortunately it's deemed - the details have been deemed confidential in the business paper, so I'm limited in what I can say about the details. But that's the general gist of it."

3) Lack of justification for confidentiality of the business paper report

The only basis that reports can be deemed confidential is outlined in Section 10A and B of the Local Government Act. I do not believe that these basis were satisfied.

The Code of Conduct complaint refers to several sections of the Councillor's Code of Conduct. The Code of Conduct operates under the framework of the Local Government Act 1993, especially sections 10A and 10B.

The Act makes it clear that there is an clear assumption in favor of making all information considered by Councillors at meetings public. If the Council decides that something should be confidential there are significant limits on when Councillors can choose to deem something confidential and close a meeting.

I note that s10B of the Act states:

(4) For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

(a) a person may misinterpret or misunderstand the discussion, or

(b) the discussion of the matter may:

(i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or

(ii) cause a loss of confidence in the council or committee.

(5) In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must have regard to any relevant guidelines issued by the Director-General.

As outlined in the September 2012 edition of the "Councillor Handbook" of the Division of Local Government Department of Premier and Cabinet in cooperation with the Local Government Association of NSW and the Shires Association of NSW:

"Section 10B provides that a council meeting should only be closed to preserve the relevant confidentiality, privilege or security. In determining whether the discussion of a matter in an open meeting would be contrary to the public interest, embarrassment to the council, councillors or its



employees is irrelevant."

I also note that the concern of other Councillors about my decision to release the information at the Council meeting, as discussed at length in a closed session at the meeting of 4 December 2012 - the issue of embarrassment and "loss of confidence" were the primary concerns expressed.

I believe that these are the motivation behind the Code of Conduct complaint against me. However they are not relevant considerations.

The Act makes it clear that there is an assumption that information should be made public, and that Councillors need to discount their personal concerns about embarrassment, and that if something is to be deemed confidential it can only be made so in limited circumstances - which I believed in good faith were not met here.

I do not believe that adequate justification was given or has been given as to why the business paper was deemed confidential.

The supplementary business paper was delivered on the evening of Friday 7 December 2012. I was surprised to see that Council was seriously being asked to consider entering into a voluntary planning agreement of this nature and confused as to why the matter was deemed confidential by the staff preparing the report.

I emailed the Director of Planning, Ken Hawke at 12.23am 8 December 2012 asking:

"Can you provide more details on why the report on Meriton's offer over the Lewisham Towers is confidential?"

I did not receive a response from Mr Hawke until 2.20pm 10 December 2012. The response stated:

"Meriton advised that they submitted their offer as commercially in confidence,

We accepted this argument, hence the item being confidential"

I believe this response to be inadequate.

For something to be 'commercial in-confidence' one would have to reasonably expect that disclosure of the information would disadvantage the company by revealing a tender bid, or a cost structure, or a timeline. Furthermore, such information would have to disadvantage the company in a competitive market or process.

Given there was no tender process or competition among developers for the Lewisham Estates proposal, I cannot see how Meriton would be commercially disadvantaged by the disclosure of their voluntary planning agreement proposal.

I do not believe that potential adverse public reaction to the proposal is an issue of 'commercial in-confidence' and it is certainly not a duty of a Council to protect the public relations reputation of a developer by disclosing truthful information.



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The information contained in the report regarding proposed floor space ratios, building heights and the sum proposed for the planning agreement is not substantially different to information disclosed in regular, publicly available development application reports.

I expected to receive a more detailed justification from staff as to exactly why the report might adversely affect the company and therefore why their request for commercial in-confidence should be agreed to. Furthermore, given that as a general rule planning matters are conducted publicly by Council to ensure transparency and public confidence, I expected staff to provide justification as to why any 'commercial in-confidence' reasons were more important than the need for transparency on planning matters. No justification of this nature was forthcoming from staff – the only information provided was that the company had requested it.

Furthermore, as stated in the report, the details of a voluntary planning agreement must be publicly exhibited and public consultation sought prior to its adoption. It is hard to fathom why something that must be publicly exhibited at some stage should be deemed confidential at this particular stage.

At the Council meeting of 11 December 2012 I asked the Director of Planning, Mr Hawke, at what stage the confidentiality of the proposal would be lifted? In particular, would a decision to enter into negotiations be confidential or a public fact? Or would negotiations be deemed confidential until an agreement is reached in the future? Mr Hawke could not provide an answer, saying he did not know. I do not believe that public disclosure should only occur after a deal has been made.

I consulted with my fellow Greens Councillors and others regarding the issue of 'commercial in-confidence' for planning matters. There was general consensus that there was little or no justification for 'commercial in-confidence' in this case and that confidentiality would erode public confidence in Council.

The Lewisham Towers proposal has been a big community issue for four years. Large public meetings, letter writing campaigns, petitions, stalls and a community action group have been campaigning to ensure that any development of the site is of a reasonable scale and will not adversely affect the local community.

Given the lack of justification for confidentiality, the public interest in the Lewisham Towers proposal, and the fact that the key facts of the proposal had been disclosed at a meeting that was not deemed confidential, I decided to speak to the media regarding the matter, while attempting to be careful only to disclose information I had garnered from reports of the Councillor briefing. In addition I was critical of the matter being dealt with by Council as confidential.

As I understand it, confidentiality is a matter for the elected Council to decide. The fact that a report comes as a confidential report from staff does not preclude Council from deciding to make the report and decision publicly available.

I argued at the Council meeting of the 11 December 2012 that Council should not be dealing with this matter confidentially, that the justification for 'commercial in-confidence' was very weak, that the issue was primarily a planning matter and that planning matters, particularly large developments of public interest, should be not dealt with in closed session.



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The eventual resolution adopted by Marrickville Council in fact does not recognise the confidentiality of the item. The minutes record:

D1212(1) Item 17 PEER REVIEW OF PROPOSED AMENDMENTS TO LEWISHAM

ESTATES CONCEPT PLAN APPROVAL

MOTION: Iskandar / Tsardoulis

That:

- 1 The report be received and noted.*
- 2 Council resolve to not endorse the proposed amendments and notify the proponent of its decision.*

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Haylen, Iskandar, Leary, Macri, Phillips, Tsardoulis, Tyler and Woods

Against Motion: Nil

Normally if an item is resolved by the Council to be confidential the minutes would record the confidentiality such as in this example from the Council meeting 4 December:

C1212(1) Item 25 SSROC TENDER - TEMPORARY STAFF

Motion: (Ellsmore/Macri)

THAT:

- 1. Council resolve that ATTACHMENT 1 to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2) of the Local Government Act 1993, and as such is to be treated as confidential.*
- 2. the report be received and noted; and*
- 3. Council adopt the recommendation contained in the CONFIDENTIAL ATTACHMENT 1, and give first preference to SSROC contracted suppliers, unless it can be demonstrated that the service cannot be supplied to Council's requirements.*

Motion Carried

For Motion: Councillors Brooks, Ellsmore, Gardiner, Hanna, Haylen, Iskandar,



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Leary, Macri, Phillips, Tsardoulas, Tyler and Woods

Against Motion: Nil

The fact that the Council resolved unanimously that the item itself was not confidential (therefore dismissing the staff decision to deem the item as confidential) indicates that all Councillors were of the belief that the information contained in the report was not confidential. A conclusion can therefore be drawn that lodging the code of conduct complaint against me was not due to a concern about confidential information being revealed, but is clearly a politically motivated vexatious complaint that should be dismissed.

4) A clear record of respecting confidentiality

I have been a member of Marrickville Council for over four years. In that time I have received probably hundreds of confidential reports.

All of these previous confidential reports have had, to my mind, a clear justification as to why they are deemed confidential. Usually it is because it involves a public tender and genuinely sensitive commercial information, or it is because the report contains legal advice for Councillors to consider that may prejudice Councils legal position if disclosed.

Since September 2008 I have always respected the confidentiality of these reports. This was the first confidential report that I have questioned the rationale for confidentiality.

I believe that the staff erred in deeming the written report confidential. I believe that after Meriton's request the staff probably thought it was easier to err on the side of caution and agree to confidentiality rather than apply a rigorous test of whether the report merited confidentiality against the public interest and principle of transparency in planning.

5) The public interest and transparency in governance and planning matters

An elected Council is a public body of local representatives. The Council conducts its business primarily in public, with business papers publicly available, opportunities made available for members of the public to address council, a gallery for the public to observe proceedings, and a strong advertising and public consultation on most critical council decisions.

In regards to planning, there is a public expectation that planning decisions are made in a transparent manner.

For example, the current Minister for Planning, The Hon. Brad Hazzard MP writes in his forward to A New Planning System for NSW Green Paper:

"The NSW Government is creating a planning system for the 21st century. A planning system focussed on the public interest. A planning system that places people and their choices at the heart of planning decisions about their future."

The first two paragraphs of the Green Paper promotes "up front community participation" and that "the new planning system will be based on transparency in process and decision making."



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What happened with the Lewisham Estates voluntary planning matter at Marrickville Council was antithesis of transparency in planning. It became a farce when the Mayor closed the meeting forcing dozens of people in the public gallery to leave, including three members of the public who had registered to speak to the matter.

Many members of the public later said they are absolutely appalled that the discussion and decision were made behind closed doors and that members of the public were denied a chance to address the meeting.

At least one Councillor accused me of “forcing their hand” by speaking publicly about the proposal. This makes me wonder exactly what Councillors were contemplating of deciding behind closed doors if the proposal had not been made public.

Many members of the community have thanked me for going public on this matter. The most common comment I have received is that the proposal seems to be little more than a bribe to discard planning regulations. I ask you to imagine the public outrage if we had negotiated a voluntary planning agreement along the lines of \$5 million for 20 storeys and presented it to the public.

I believe that revealing the broad details of the proposal, as disclosed in the non-confidential 27 November Councillor briefing, was in the public interest.

It is for the above reasons that I believe I have not breached Council’s code of conduct and therefore the complaint should be dismissed.

Response to clause specific allegations:

In light of everything I’ve said above, I’ll now respond to the clause specific allegation.

- 1. Clause 6.1 - I have not brought Council or the holders of civic office into disrepute. Specifically I did not directly criticise Marrickville Council or any Councillor or staff member. Rather I criticised the nature of the voluntary planning agreement being proposed and that an important planning matter had been deemed confidential. That being said, public criticism is part of a robust democracy and should only be interpreted as a breach of the Code in extreme circumstances.*
- 2. Clause 6.8 - Their must be public scrutiny for development decisions to be properly made and for all parties involved dealt with fairly. Almost by definition by limiting information to a proponent only, you are disadvantaging any opponent of a proposal. The elected Council represents the broader public interest. By alerting the public to the nature of the planning matter being decided I, in fact, ensured that all interested parties were dealt with fairly and prevented a potential injustice. To conduct a debate on this important planning matter in secrecy would be to unfairly disadvantage the broader community, including residents neighbouring the proposed development, and advantage the developer.*



3. *Clause 10.9 (d) - As stated previously, there was widespread opinion that information revealed at the Councillor briefing was not confidential. The Council staff failed to provide timely and adequate justification for the business paper being deemed confidential. Furthermore, a planning matter of this nature (a VPA) being deemed confidential had no precedent, so therefore there is no 'established practice' to accord by.*
4. *Clause 10.10 - I only released information to the public that was given at an oral briefing that was not confidential. Therefore I did not breach the security of confidential documents.*
5. *Clause 10.11 (a,b,c,e,g) See answer above.*

Yours sincerely

Max Phillips

Greens Councillor for Central Ward

Marrickville Council

9.2 An interview was conducted with Councillor Phillips on 22 February 2013 which is summarised below:

9.2.1 Councillor Phillips said that he did not attend the Councillor briefing on 27 November 2012, but his fellow Greens Councillor, David Leary telephoned him afterwards to inform about what was conveyed. He said that Councillor Leary did not mention to him that the briefing was confidential.

9.2.2 Councillor Phillips said that Councilor briefings were not usually confidential. He said that unless something is deemed confidential he believed that it should be shared with the community. He said that he believed that this was the view of most Councillors and it was a matter of transparency in local government.

9.2.3 He said that he thought it needed to be expressed very clearly whether a particular meeting or information being conveyed is intended to be confidential. He said that Council staff should discuss such an issue at length and decide what they feel is appropriate in the circumstances and communicate this clearly to the Councillors.

9.2.4 Councillor Phillips said that whilst his personal views might not be relevant to the present matter he did not think that Voluntary Planning Agreements really had a place in the planning process. He also felt that the



negotiations should not be behind closed doors because the community had a right to know what was going on in their local area.

9.2.5 He said that he was not surprised to hear that the Meriton briefing was not confidential, but he did think it was strange that the subsequent report for the meeting had been put in a red paper (meaning that it was confidential). He said that he queried this with Ken Hawke as soon as he received the paper on 8 December, but Ken did not respond to his email until 10 December.

9.2.6 Councillor Phillips said that if he had waited for Mr Hawke's reply he would not have been able to get the story to the Sydney Morning Herald before the meeting scheduled for 11 December, 2012. He acknowledged that he showed the press a copy of the paper (which had been deemed confidential) but he said that he told the journalist that the material could not be published.

9.2.7 Councillor Phillips said that he had to show the press the business paper so that they would know that the story was genuine. He stressed that the only information that he publicly spoke about was that which was gleaned from the briefing on 27 November 2012 (which he says was not confidential).

9.2.8 He said that he did not believe that what he did was dodgy or unethical; in fact he honestly believed that he was acting in an extremely ethical way as it was the right thing to do for the community.

9.2.9 He said that the issue was too important; Council was voting on whether to spend \$1000.00, this involved a major development that would have an enormous effect on the community and the local area.

9.2.10 Councillor Phillips said he understood that there could be consequences for his actions (and hence his claims in an email to others that he could get a Code of Conduct lodged against him). He said that he also took the risk that he could be sued by Meriton over his actions.

9.2.11 He said that he did not accept that the paper should have been confidential because (a) the briefing was not confidential and (b) there were no legitimate commercial reasons to warrant it being confidential.

9.2.12 He said that he questioned at the meeting why it was confidential and he did not get a satisfactory answer. He said that he asked how long it would remain confidential and no one in planning could answer this. He said that he felt this was unacceptable.



9.2.13 He believes that because the story was in the public domain it caused some Councillors to vote differently, which he believed was a good thing.

9.2.14 Councillor Phillips said that if the briefing had been deemed confidential he may not have gone public with it initially as there would have been more time to question the confidentiality issue before the meeting. He said that the way Council officers handled the matter was not good and perhaps in bad faith; they released the red paper at the last minute and not a week before the meeting, which is the usual practice.

9.2.15 He said that he was generally worried for his community and these sorts of issues always create a moral dilemma. Councillor Phillips said that he felt that this particular matter really restricted him in doing his job properly. He said that this why he did what he did.

10. The Code of Conduct:

The relevant clauses of the Marrickville Council Code of Conduct are reproduced below:

6 GENERAL CONDUCT OBLIGATIONS

General conduct

6.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring Council or holders of civic office into disrepute. Specifically, you must not act in a way that:

- contravenes the Act, associated regulations, Council's relevant administrative requirements and policies
- is detrimental to the pursuit of the charter of Council is improper or unethical
- is an abuse of power or otherwise amounts to misconduct
- causes, comprises or involves intimidation, harassment or verbal abuse
- causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
- causes, comprises or involves prejudice in the provision of a service to the community. (*Schedule 6A of the Act*)

Development decisions

6.8 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process. This includes during site visits.



Use of certain Council information

10.9 In regard to information obtained in your capacity as a Councillor, you must:

- a) only access Council information needed for Council business
- b) not use that Council information for private purposes
- c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with Council
- d) only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.

Use and security of confidential information

10.10 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.

10.11 In addition to your general obligations relating to the use of Council information, you must:

- a) protect confidential information
- b) only release confidential information if you have authority to do so
- c) only use confidential information for the purpose it is intended to be used
- d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- e) not use confidential information with the intention to cause harm or detriment to Council or any other person or body
- f) not disclose any information discussed during a confidential session of a Council meeting
- g) take care to maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible

11. REPORTING BREACHES

11.1 Any person, whether or not a Council official, may make a complaint alleging a breach of this Code.

12. COMPLAINT HANDLING PROCEDURES AND SANCTIONS

12.8 The general manager is responsible for assessing complaints, made under



Section 11, alleging breaches of this Code by councillors, in accordance with the assessment criteria provided in Section 13, in order to determine whether to refer the matter to the conduct review committee/reviewer.

12.9 The general manager must determine either to:

- (a) take no further action and give the complainant the reason/s in writing as provided in Section 13 of this Code, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- (b) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing, or
- (c) discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing, or
- (d) refer the matter to the conduct review committee/reviewer.

13 COMPLAINT ASSESSMENT CRITERIA

13.1 The general manager or Mayor, in the case of a complaint about the general manager, will assess a complaint alleging a breach of this Code to determine if the matter should be referred to the conduct review committee/reviewer. In assessing the complaint, the general manager and Mayor will have regard to the following grounds:

- (a) whether there is any prima facie evidence of a breach of this Code
- (b) whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office or duties as general manager
- (c) whether the complaint is trivial, frivolous, vexatious or not made in good faith
- (d) whether the conduct the subject of the complaint could reasonably constitute a breach of this Code
- (e) whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Department of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
- (f) whether there is an alternative and satisfactory means of redress
- (g) how much time has elapsed since the events the subject of the complaint took place
- (h) how serious the complaint is and the significance it has for Council
- (i) whether the complaint is one of a series indicating a pattern of conduct.

13.2 Complaints that are assessed as not having sufficient grounds to warrant referral to the conduct review committee/reviewer or that are to be referred to a more appropriate person or body can be finalised by the general manager or the Mayor, in the case of complaints about the general manager.

13.3 If a matter is referred to the conduct review committee/reviewer, then the



conduct review committee/reviewer should use the above criteria for its initial assessment of the complaint and determination of the course to follow in dealing with the complaint.

14 CONDUCT REVIEW COMMITTEE/REVIEWER OPERATING GUIDELINES

14.1 Jurisdiction of the conduct review committee/reviewer

The complaint handling function of the conduct review committee/reviewer is limited to consideration of, making enquiries into and reporting on complaints made under clause 11.1, about councillors and/or the general manager.

Complaints regarding pecuniary interest matters should be reported to the Director General of the Department of Local Government and will not be dealt with by the conduct review committee/reviewer.

Sole reviewers and members of the conduct review committee are subject to the provisions of this code of conduct.

11. Discussion:

The Allegations:

11.1 The present matter concerns allegations made by five Marrickville Councillors that Councillor Max Phillips publicly disclosed information contained in a confidential report known as Item 17 (Confidential Attachment) considered at the Development Assessment Committee on the evening of 11 December 2012.

11.2 In particular it is alleged that he discussed the information during an interview on 702 ABC Sydney Radio at 8.36am on 11 December 2012. It is also alleged that Councillor Phillips "possibly" leaked the report to the Sydney Morning Herald for an article on the same matter which appeared on 11 December 2012.

11.3 The Complainants produced a copy of an email which was sent by Councillor Phillips on 11 December 2012 to a number of recipients. The email urges members of the public to come to the meeting to object (although the matter in question was part of a closed session of Council) and he states "I may get a code of conduct charge against me for exposing this issue to the public light."

11.4 In response to the allegations, Councillor Phillips claims that the only information he spoke about publicly was the information which was disclosed at a non-



confidential Councillor briefing on 27 November 2012.⁵ He said that he was very careful to distinguish the briefing material from the material contained in the 11 December 2012 business paper during his interview on 702 ABC radio.

11.5 Councillor Phillips admitted that he showed a Sydney Morning Herald journalist his copy of the 11 December business paper, but claims that he did this so he could verify his information (which had been disclosed at the briefing). He said that he told the journalist that the information in the business paper could not be published as it had been deemed confidential.

11.6 Councillor Phillips said that he felt there was no justification for the business paper being confidential and he did not believe that it represented a genuine commercial in confidence offer. He said that he tried to raise the issue with Ken Hawke, but he did not respond to his email in time; he explained that if he had waited for Mr Hawke's response he would not have been able to take the story to the press before the meeting on 11 December 2012.

11.7 Councillor Phillips said that the only basis on which a report can be deemed confidential is pursuant to s10A and B of the Local Government Act, 1993 and he does not believe that the requirements were satisfied in the circumstances.

11.8 He said that it was important that the community knew what was happening and his actions were justified because releasing the information was in the public interest and was consistent with his obligations as a Councillor to ensure transparency in governance and planning matters.

11.9 Councillor Phillips said that he felt that he was doing the right thing, although he knew that there was a risk that he could be sued by Meriton or have a code of conduct complaint made against him. He said that the fact that his actions prevented the matter from going further was a good thing for the community and he has subsequently been praised by residents for acting the way he did.

Was the information disclosed in Councillor Briefing on 27 November 2012 confidential?

11.10 The first question for consideration is whether the information disclosed at the Councillor Briefing on 27 November 2012 was confidential. It is common ground that the meeting was held in an office above the library and that a number of Council staff (including junior library staff) were present. There is also no dispute that the invitation to the meeting contained no reference to the matter being confidential or that that the matter being discussed was an in confidence offer.

⁵ Note that Councillor Phillips was not at the briefing but obtained information about it (including that it was not apparently confidential) from the other Greens Councillors



11.11 No minutes were taken at the briefing and no written material was provided to Councillors. All information was conveyed orally and through a slide show presentation.

11.12 The accounts from those present of what was actually said in relation to the issue of confidentiality are varied. In this regard:

- Marcus Rowan said that he was “pretty sure” that Peter Spira from Meriton said that the offer was a confidential offer, but at the time he was preoccupied with letting people into the room and dealing with an IT issue;
- Melissa Brooks said that if confidentiality was mentioned it could not have been very detailed as she does not remember if there was a requirement to keep the information conveyed confidential. In fact she said that she mentioned the proposal to the Greenway Cycle Path Committee after the briefing in good faith and on her understanding that the information was not confidential;
- Mark Gardiner said that he had racked his brain and cannot recall whether the issue of confidentiality was mentioned at the briefing or at some other time. However, he said that he knew that this was not something to be discussed in the public arena;
- Morris Hanna said that he was 99.9% sure that the words confidential or in confidence were not spoken at the meeting. He said that he was surprised that the later business paper was marked confidential when the briefing meeting was not confidential;
- Rosana Tyler said that she had the distinct impression that what was being put by Meriton was being put on a confidential basis. She said that she cannot remember the words used but definitely remembers that the amount of money being discussed was to remain confidential. Also, she said that the mayor had told her during the day that a confidential offer was going to be discussed at the briefing;
- Sylvie Ellsmore said that she does not recall the word confidential being raised at any time;
- David Leary said that he did not really have any recollection of the briefing being confidential;



- Sam Iksandar said that he could not be 100% certain about the exact words used but understood that it was a preliminary negotiation and this meant to him that it stays with the Councillors. He said that he had a clear understanding that the dollars and amount of units being discussed were not to be discussed publicly;
- Victor Macri said that he asked Peter Spira whether the offer was a commercial in confidence offer and he replied yes;
- Chris Woods said that he thought the briefing was confidential, although admitted that any reference to it being confidential may have been missed because at the start of the Meriton briefing there was still a lot of discussion going on between Councillors over the Westconnex proposal.

11.13 When considering the circumstances of the meeting and the evidence from the Councillors and staff member present, it is difficult to conclude on balance that it had been appropriately communicated to those present that the Meriton offer was being communicated on an in confidence basis.

11.14 Whilst Councillor Macri (the Mayor) may have asked Peter Spira from Meriton whether the offer was made in confidence, it is apparent from the Councillors' evidence that either no one in the room heard him or perhaps the Mayor is mistaken and the question was asked on another occasion prior to the briefing.

11.15 It is common ground that there was a lot going on at the start of the Meriton session. Councillors were still discussing the Westconnex proposal and some were sending text messages, people were coming and going from the room and there was a problem with the computer which staff were trying to rectify.

11.16 Many Councillors said that they were quite tired and they already taken in a lot of information before the Meriton session commenced. On this basis it seems most likely that no one was paying attention or heard the introduction to the briefing where the issue of confidentiality may have been raised, if at all.

11.17 As Marrickville Council has had limited experience dealing with Voluntary Planning Agreement negotiations there is no precedence on practice and procedure dealing with these matters; including the issue of confidentiality. It therefore cannot be assumed that Councillors should have been aware that the matters being discussed were confidential.

11.18 It is therefore concluded that the information disclosed at the Councillor briefing on 27 November 2012 was not confidential.



11.19 Having said this, based on the available evidence, it is considered that it was perhaps the intention that the briefing be confidential, but no one sufficiently turned their mind to the issue when the meeting was arranged.

11.20 The issue is complicated by the need to schedule the attendance of Councillors at a number of briefings for a number of Council Divisions, some of which are confidential and others which are not. The shortage of Council space to accommodate meetings of this nature is also a factor.

Can information be retrospectively declared confidential?

11.21 The second question for consideration is whether the information conveyed at the Councillor Briefing can retrospectively be declared confidential. Whilst there is some evidence that the information was released to a small group of people after the briefing, it is fair to say that the information was not generally in the public domain, which in theory would not prevent it from being confidential in nature.

11.22 It is, however difficult to see how information which has already been released on a non-confidential basis (even unintentionally) can be transformed into confidential information after the fact and without the express agreement and understanding of those who have received the information. On this basis, therefore it is not considered that the information *as conveyed at the briefing* can be declared confidential retrospectively.

11.23 However, the fact that there was a clear attempt to deem all the information released at the briefing confidential, should have sent a message to Councillors (on 6 or 7 December, 2012 when the business paper was released) that it was Meriton's intention that their offer be considered on a in confidence basis. It follows therefore that Councillors should have also been aware that releasing the information possibly carried some risk to Council's reputation and Meriton's commercial position.

11.24 Further, whilst it may not be possible to retrospectively declare something confidential, (and hence there may be no breach for releasing information disclosed at the briefing) the release of the information under these circumstances may give rise to a general breach of the Code for acting improperly or unethically. This is discussed later in this report in more detail.

Was some or all of the information in the business paper confidential?

11.25 The business paper contained significantly more detailed information than that which was disclosed at the briefing. There was also some new information which it was intended would assist with the preliminary debate on the issue. This more detailed and new information was clearly confidential.



11.26 The Hassell peer review report contained in the business paper was dated 29 November 2012 and had obviously not been in existence at the time of the briefing. The letter from Tony Bellingham, Meriton Development Manager to Ken Hawke, Director of Planning and Environmental Services dated 29 October 2012 apparently was not previously public knowledge. The report prepared by Council offices is a discussion of the proposal which takes into account the peer review and other facts which were not specifically raised at the briefing on 27 November 2012.

11.27 The plans and diagrams were substantially the same as what was shown to Councillors at the briefing, and the monetary offer is as it was presented, so on this basis this information in the business paper may not strictly have been confidential.

11.28 However, this information had not previously been provided to Councillors in writing; and in written form the information had more value than that which was presented orally. This is because it provided the proof required for any story⁶. On this basis, it is difficult to see how the non-confidential information could be released without also releasing that material which was clearly confidential.

Was Councillor Phillip's conduct justified in the circumstances?

11.29 Councillor Phillips claims that he acted in the public interest, although this is a matter of opinion. It should not be forgotten that the proposal being put was at this stage in its infancy. Meriton merely wanted to gauge the response of Councillors to this particular proposal and perhaps open the door to discuss and negotiate a range of proposals, some which may have been acceptable to Councillors.

11.30 Council was not the authority for approving any application on this site and Council was not being asked to enter into a Voluntary Planning Agreement at that time. Meriton was merely requesting that Council agree to enter into preliminary negotiations.

11.31 This means that if Council had elected to open the door to negotiations with Meriton, there was a long road to travel before any application was approved by the planning authority. Extensive input from the local community would have been required pursuant to the relevant planning laws and controls.

11.32 Councillor Phillip's actions effectively closed the door on any preliminary discussions or debate of the issues on their merit and it is difficult to see on balance how this can be in the best interests of the public.

⁶ Councillor Phillips in fact stated that he had to produce the confidential document to the SMH journalist to verify his claims of what was said in the briefing on 27 November 2012.



11.33 Councillor Phillips argues that there was no basis to debate the proposal in a closed session of Council because section 10A and B *Local Government Act 1993* were not satisfied in relation to the information being discussed. He maintains that because Meriton's offer did not relate to a commercial tender bid, cost structure or timeline there could be no commercial detriment by its disclosure. He said that because there was no competition for the Lewisham Estate site, Meriton had nothing to lose commercially by making its proposal public at this time.

11.34 The reviewer does not accept Councillor Phillips' view as it fails to recognise the detriment that could be caused in relation to the proposal which has existing approval for the site and the possible effect that disclosure could have on Meriton's wider business interests, perhaps involving negotiations with other Councils and/or competitors for other sites.

11.35 On this basis the reviewer considers that information in question falls squarely within the broad meaning of section 10e (d) (i) and is "commercial information of a confidential nature that would if disclosed prejudice the commercial position of the person who supplied it".

Is Councillor Phillips in breach of the Code of Conduct?

11.36 Councillor Phillips has admitted that he showed the 11 December 2012 business paper to a Sydney Morning Herald journalist so that he could verify the terms of the Meriton offer. He claims that his actions are justified because he told the journalist that this material could not be published in the paper and he could only publicly speak about matters which were raised in the 27 November 2012 briefing.

11.37 As already discussed, whilst some of the information in the business paper may not strictly have been confidential, other information clearly was. It is considered that whether Councillor Phillips agrees with such a position is irrelevant and in any event, it is considered that such an argument does not justify his actions in the circumstances.

11.38 It is not clear from the evidence whether Councillor Phillips also showed 702 ABC Radio the confidential material and/or whether he showed the material to members of the public. However it is clear that at the time he appeared on the ABC and sent his flurry of emails he was well aware that Council did not want the information released and he went ahead anyway with reckless disregard for the consequences.

11.39 Councillor Phillips admitted that he was aware that his actions carried the risk of not only a Code of Conduct complaint being lodged against him but also legal action being commenced by Meriton.



11.40 In choosing the path he did, it is considered that Councillor Phillips breached his general obligation as outlined in clause 10.9 (d) of the Code by releasing Council information in a manner that was not in accordance with established Council policies and procedures and in compliance with relevant legislation; and clause 10.10 of the Code by failing to maintain the integrity and security of confidential documents or information in his possession, or for which he was responsible.

11.41 His conduct also amounts to a breach of clause 10.11 (a), (b), (c), (e) and (g) of the Code of Conduct by his:

- Failure to protect confidential information;
- Release of confidential information when he did not have the authority to do so;
- Use of confidential information for the purpose that it was not intended to be used;
- Use of confidential information with the intention of causing harm or detriment to Council or Meriton;
- Failure to take care to maintain the integrity and security of confidential documents or information in his possession, for which he was responsible

11.42 It is considered that Councillor Phillips has breached clause 6.8 of the Code because his actions had the effect of ensuring that Meriton was not treated fairly and their proposal *to enter into further negotiations* was not considered on its merits. On his own admission, Councillor Phillips said that because of his actions the debate on the proposal went no further and Councillors in fact voted differently because of the public attention that he had created.

11.43 Finally, whilst Councillor Phillips may have believed that he was acting in good faith and in the best interests of his local community; it is considered that his conduct could have compromised Council's position in the community, was improper and was likely to bring Council or holders of civic office in disrepute and as such, constitutes a breach of clause 6.1 of the Code.

12. Findings:

12.1 For the reasons as outlined in this report the reviewer is satisfied on the balance of probabilities and based on the available evidence that the allegations against Councillor Phillips are sustained and his conduct constitutes a breach of clauses 6.1, 6.8, 10.9 (d) , 10.10 and 10.11 (a), (b), (c), (e) and (g)



- 12.2** Before making any recommendations that Council take particular action in relation to the above mentioned breaches in question, the reviewer is required to have regard to those matters as outlined in section 14.9 of the Code of Conduct (on page 37). These matters are discussed in the paragraphs which immediately follow.
- 12.3** *The seriousness of the breach:* The breaches are considered to be serious as they relate to how Council is seen by the community when exercising its functions and in particular the perceived fairness and integrity of its decisions.
- 12.4** *Whether the breach can be easily remedied or rectified:* It is difficult to see how the breaches could be easily remedied or rectified when Councillor Phillips is unlikely to publicly acknowledge that his conduct was inappropriate and that conduct of this nature would not be repeated.
- 12.5** *Whether the subject has remedied or rectified their conduct:* Councillor Phillips has not remedied or rectified his conduct and it is considered that he is unlikely to do so.
- 12.6** *Whether the subject has expressed contrition:* Councillor Phillips has not expressed contrition because he does not accept that his conduct was inappropriate and he believes that he acted ethically.
- 12.7** *Whether the breach is technical or trivial only:* It is not considered that the breach could be described as being technical or trivial in nature.
- 12.8** *Whether the breach represents repeated conduct:* There was no evidence presented on which the reviewer could conclude that the breach represents repeated conduct. Further, Councillor Phillips stated in his submission that he has a “clear record of respecting confidentiality” in the period he has been a Councillor.
- 12.9** *The age, physical or mental health or special infirmity of the subject:* There is no suggestion that age, physical health or special infirmity of the Respondent is relevant factors.
- 12.10** *The degree of reckless intention or negligence of the subject:* There is a high degree of reckless intention in his actions. Councillor Phillips admitted that he took a risk with the knowledge that there could be consequences for his conduct.
- 12.11** *The extent to which the breach has affected other parties or Council as a whole:* It is not clear from the material gathered as part of the review as to whether the breach has had any effect on other parties or Council as a whole.
- 12.12** *The harm or potential harm to the reputation of local government and of Council arising from the conduct:* It is not clear from the available evidence as to whether



Councillor Phillip's conduct has caused any actual harm to the reputation of local government and of Council. However, the issue has been quite public as a result of the Sydney Morning Herald article and Councillor Phillip's interview on 702 ABC radio. There is therefore the potential for harm to Council's reputation and that of local government.

12.13 Whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny: The Reviewer considers that the conclusions reached in this review are based squarely on the available evidence and the context in which the complaint was made and in this sense the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny.

12.14 Whether an educative approach would be more appropriate than a punitive approach: It is considered that an educative approach would not be more appropriate than a punitive approach. This is because Councillor Phillips appears to have been aware of his obligations, yet he chose to ignore them.

12.15 The relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action: The referral of the subject complaints by the General Manager to an independent reviewer is a serious matter and constitutes formal action. It is considered that the benefits of dealing with the matter as recommended in this report outweigh the likely cost to Council and the community that could be associated with taking no action or taking a more punitive enforcement approach.

12.16 What action or remedy would be in the public interest: It is considered that the action and/or remedy as outlined in the reviewer's recommendations in this report would be in the public interest.

12.17 Where to comply with a Councillor's obligations under this Code would have had the effect of depriving Council of a quorum or otherwise compromise the capacity of Council to exercise its functions: This item is not applicable in the circumstances.



13. Recommendations:

13.1 For the reasons as outlined in this report and after considering those matters as outlined in clause 14.9 of the Code of Conduct, the reviewer makes the following recommendations:

13.1.1 *It is recommended that* Councillor Phillips be censured for misbehaviour pursuant to the procedures as set out in section 440G (1) to (5) of the *Local Government Act 1993*;

13.1.2 *It is recommended that* Councillor Phillips be required to apologise to Council and Meriton unreservedly for his actions;

13.1.3 *It is recommended that* the findings of inappropriate conduct by Councillor Phillips be made public;

13.1.4 *It is recommended that* Council takes steps to prepare and adopt specific policies and procedures for conveying and dealing with information that is intended to be confidential so that there is no potential for confusion by Councillors and Council staff as to whether information is confidential, the period for which it is to remain confidential and Councillors' (and staff) obligations in respect to maintaining that confidentiality⁷.

13.1.5 Should there be any further enquiries please do not hesitate to contact the writer directly.

A handwritten signature in blue ink, appearing to read "Kathy Thane".

Kathy Thane
Sole Conduct Reviewer

⁷ It is noted that a similar recommendation was made by Bronwyn Connolly Sole Reviewer in her report of a review into allegations of a breach of the Code of Conduct by Councillor Olive in November 2009.

Item No: C0313 Item 5
Subject: NOTICE OF MOTION: SUPPORTING LIVE MUSIC
File Ref: 4674/14473.13
From Councillor Jo Haylen

MOTION:**THAT Council:**

1. reiterates its commitment to the local live music industry, to music venue operators, performers and entrepreneurs, and notes the contribution they make to keeping our community lively and diverse;
 2. appoints the Events Coordinator, a Councillor or appropriate representative to the City of Sydney Live Music Taskforce and notes the key role this taskforce plays in the development of uniform live music friendly policies across the inner city;
 3. officers prepare a report for the next Council meeting proposing measures for supporting the growth and diversity of live music and small bars and restaurants, which can be incorporated into Council's development controls, community and cultural plan and events program; and
 4. publicises its commitment to convene a consultation meeting of local music venue operators, performers and entrepreneurs involved in the live music industry to request their input into the taskforce.
-

Background

Live music venues are an integral part of the Sydney experience as they provide aspiring musicians with opportunities to launch their careers, a space for friends to come together and enhance the cultural vibrancy of an area. Recently, popular venues such as the Annandale Hotel and Sandringham Hotel have struggled to keep their doors open and have relied on community support for their continuity.

Councils such as the City of Sydney and Leichhardt Municipal Council are currently assessing ways the Live Music Industry in Sydney can be promoted and strengthened, and it is important Marrickville Council is involved with this.

A/Director, Community Services Comments:

Marrickville Council has long supported live music, through its Live Music Taskforce in the late nineties, which lead to Council funding a series of live music events in parks for 10 years and now takes the form of The Break Stage at the Marrickville Festival. With the advent of the City of Sydney Live Music Taskforce, it is timely to review Council's support of live music.

Manager, Community Development Comments:

The Newtown Police have identified increasing issues with alcohol related behaviour alongside the increase in small bars in Enmore and South King Street; these issues need to be considered when approving hours of operation for existing and new venues.

Resource Implications:

A full report to Council can be prepared within normal resources.

ATTACHMENTS

Nil.

Item No: C0313 Item 6
Subject: NOTICE OF MOTION: TRANSPARENCY IN DEALING WITH VOLUNTARY PLANNING AGREEMENTS
File Ref: 4674/16417.13
From Councillor Max Phillips

MOTION:**THAT:**

1. Council develop a policy which outlines the principles, how and on what terms Council will consider negotiating and entering voluntary planning agreements;
2. offers of voluntary planning agreements be dealt with as openly as possible by Marrickville Council;
3. the general nature of a voluntary planning agreement be made clear to the public as part of the publicly available business paper, when the elected Council is deciding whether or not to enter into negotiations;
4. where a voluntary planning agreement involves any significant exceedance of planning regulations or Council's policies or plans or involves a substantial decision that affects Council infrastructure or services, that the general nature of the above be made public and that public consultation occur to inform Councillor's prior to a decision to enter negotiations;
5. any confidentiality relating to a voluntary planning agreement be restricted only to specific information when confidentiality is required under legislation or regulations, and that the reason for confidentiality is clearly articulated and justified to Councillors and the public, and that where an item is considered confidential, every reasonable efforts will be made to provide a public version of Council papers which omits any confidential details, but still allows the community to be informed about the general terms of the proposed voluntary planning agreement.

Background

Voluntary Planning Agreements were brought in by the State Government in 2005. They allow a developer to negotiate exceedances to existing planning regulations in return for a monetary or other contribution to Council.

Many believe the very concept of voluntary planning agreements undermine the existing planning system, the public's confidence in there being equality before the planning system, and are little more than an inducement to break the rules. After all, what is the point in the community deciding on the provisions of their Local Environment Plan and Development Control Plans, only to allow these provisions to be set aside by a voluntary planning agreement?

Marrickville Council has had three voluntary planning agreements presented to it for consideration in recent months. All these voluntary planning agreements proposed major exceedances to planning regulations with major impacts on the local community and the built environment. These proposals have also proposed fairly major public infrastructure or service changes.

The community expects that planning decisions should be conducted in public. The Hon. Brad Hazzard MP writes in his forward to A New Planning System for NSW Green Paper:

“The NSW Government is creating a planning system for the 21st century. A planning system focussed on the public interest. A planning system that places people and their choices at the heart of planning decisions about their future.”

The first two paragraphs of the Green Paper promotes “up front community participation” and that “the new planning system will be based on transparency in process and decision making.” Councillors obligations as Councillors, under the EP&A Act there is a strong assumption in favour of transparency, when making a decision. Council is only able to close meetings in limited circumstances, including where it is against the public interest. Section 10B of the Act states:

- (4) For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
 - (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the Council or Committee concerned, or to Councillors or to employees of the Council, or
 - (ii) cause a loss of confidence in the Council or Committee.

Voluntary planning agreements by their very nature involve important planning decisions. Wrapping a commercial negotiation in with a planning decision does not mean that a planning decision should become secret by default. Council should endeavour to ensure that the planning implications of a voluntary planning agreement are public for the very start, while protecting necessary commercial information.

A/Director, Planning and Environmental Services Comments:

A draft Voluntary Planning Agreement (VPA) Policy has been prepared and is scheduled to be reported to Council in April 2013. The draft Policy details the protocols and processes that are required to be undertaken in the VPA process and specifies the roles and responsibilities of all participants in the process.

Resource Implications:

Nil.

ATTACHMENTS

Nil.

Item No: C0313 Item 7
Subject: NOTICE OF MOTION: GREENWAY INFRASTRUCTURE
File Ref: 4674/16435.13
From Councillor Melissa Brooks

MOTION:**THAT:**

1. Marrickville Council write to the NSW Minister of Transport:
 - a) to emphasise that the on-road option for the GreenWay currently being considered in the Cooks River to White Bay cycle way study is not acceptable because:
 - i we already have an on road alternative currently being marked out;
 - ii it is not suitable or safe for children and many less confident adult cyclists;
 - iii it will not encourage more people to walk or cycle; and
 - iv the four GreenWay Councils and the GreenWay Steering Committee are committed to an off road shared walking and cycling path.
 - b) to formally request to the Minister for Transport a copy of the plans for the GreenWay that were drawn up as part of the Inner West Light Rail planning process to enable the GreenWay Councils to undertake an independent costing of the planned GreenWay trail. This will enable the GreenWay Councils to participate in future discussions on the GreenWay trail in an informed manner and develop other funding and resourcing models.
 2. Marrickville Council, together with the other Greenway Councils, (Ashfield, Leichhardt and Canterbury), ensure that in negotiations with Transport for NSW over the Biodiversity Compensation package that the priority is on achieving the best possible outcome for the GreenWay Biodiversity Corridor with the offset sites for the Biodiversity Compensation Package being preferably located within the rail corridor in consideration of the GreenWay Revegetation and Bushcare Plan rather than on council owned land. The conditions of approval require that the bush care sites are maintained 'in perpetuity'.
-

Background

At the Greenway Steering Committee Meeting on Monday 11 February 2013 held at Ashfield Council with attendees from Marrickville Council of the Strategic Transport Planner and Cllr Melissa Brooks, it was agreed that in order to progress the resolutions adopted by the Steering Committee urgently the Councillors from the 4 Greenway Councils would bring the resolutions to their individual Councils for adoption.

Transport for NSW (TfNSW) has recently developed a Cooks River to White Bay cycleway study (covering much of the route of Greenway). The study is currently with the Minister for consideration. The study includes an on-road cycleway option which, in fact, is the current default situation and is far from acceptable to the 4 Greenway Councils as it does not meet the key objective of providing a safer off road shared walking and cycle path along the corridor which is needed to encourage more people to walk and cycle.

Detailed plans were developed by Transport for NSW for the Greenway which were discussed with staff and members of the Steering Committee on a number of occasions before the funding was removed. The Councils are requested to seek to obtain a copy of these plans from Transport for NSW to enable the Greenway Steering Committee to undertake independent costing of the Greenway trail and develop alternative funding and resourcing proposals to build the Greenway.

The Biodiversity Compensation package which is part of the conditions of approval, involves the establishment of an area of bush care that is equivalent to the area of clearing for the light rail stops. This is approximately 1.1ha of land.

The Greenway Steering Committee puts a strong preference on these sites being within the rail corridor and hence best meeting the objectives of the Greenway Re-vegetation and Bushcare Plan as well as requiring that TfNSW meet the “in perpetuity” conditions of the approval rather than the 4 Councils.

Manager, Planning Services Comments:

The first point of this Motion is fully supported. It is agreed that the on-road (out-of-corridor) option, currently being considered by TfNSW, is inferior to the originally planned off-road (within-corridor) option. The NSW Government had claimed that the high cost of the off-road option was one of the main reasons why the GreenWay had been deferred. There has always been general acceptance that there would be particular places where the GreenWay path would need to exit the corridor. However, there remains dispute over the Government’s claim that the tunnelling through culverts of the road bridges over the light rail corridor (necessary to keep the path within the corridor for most of its length) is prohibitively expensive and technically difficult. However, no study has been undertaken to verify this claim. It is agreed that the Councils call for an independent costing study of the prior GreenWay plans so that this dispute can be resolved. It would be more appropriate for this study to be fully funded by Transport for NSW and commissioned and managed by the GreenWay councils.

Whilst the tunnelling would make the off-road option more expensive than the on-road option, the councils contend these added costs would not be prohibitive, and would be easily justified in terms of the considerable benefits of the off-road option. A within-corridor path would be consistent with an important part the councils’ and community’s long-standing vision for the GreenWay – that everyone, including family groups and unescorted older children, could walk or cycle along the corridor comfortably and safely – for recreation and to access the many schools along the corridor. This important benefit would not be realised if the on-road option were to be implemented.

Manager, Environmental Services Comments:

The second point of this Motion is also fully supported. This recommendation and position from the GreenWay Steering Committee is in complete alignment with Council’s current plans and strategies. The biodiversity offsets proposed by Transport for NSW were intended to fall within the rail corridor as compensation for loss of bush care sites.

Council’s current Biodiversity Strategy 2011 supports the development of biodiversity areas within the corridor and it acknowledges the significance of the GreenWay corridor as a Priority Biodiversity Area especially given the many constraints across the local government area for biodiversity.

Item 7

Resource Implications:

Should Transport for NSW grant the councils access to the prior GreenWay plans, the Councils would need to fund the independent costing study. It is recommended that Transport for NSW be requested to fully fund the study, with the councils responsible for commissioning and managing the consultant. In this way, there would be no financial resource implications for the councils, only staff time taken to manage the study which can be managed within existing resources.

ATTACHMENTS

Nil.

Item No: C0313 Item 8

Subject: SSROC TENDER - SUPPLY AND DELIVERY OF PHOTOCOPY PAPER

File Ref: 4717/15143.13

Prepared By: Lyn Blain - Strategic Procurement Coordinator

SYNOPSIS

SSROC, on behalf of its member councils, recently conducted a tender for the supply and delivery of Photocopy Paper.

RECOMMENDATION

THAT:

1. Council move into closed session to deal with this matter as information contained in ATTACHMENT 1 of the Report is classified as confidential under the provisions of Section 10A (2)(c) and (d) of the *Local Government Act 1993* for the following reasons:
 - a) information within this report, if disclosed, could confer a commercial advantage on persons with whom the Council proposes to or may conduct business; and
 - b) it is not in the public interest to reveal all details of these Tenders or the assessment process. Companies have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by companies could result in the withholding of such information by companies and reduction in the provision of information relevant to Council's decision.

And in accordance with Sections 10A (4) of the *Local Government Act 1993*, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolve that ATTACHMENT 1 to the report be treated as confidential in accordance with Section 11(3) of the *Local Government Act 1993*, as it relates to a matter specified in Section 10A(2) of the *Local Government Act 1993*, and as such is to be treated as confidential;
2. the report be received and noted; and
3. Council adopt the recommendation contained in the CONFIDENTIAL ATTACHMENT 1.

BACKGROUND

With the expiry of the existing SSROC agreement for the supply and delivery of photocopy paper, the member councils decided that a new agreement would be beneficial to all councils. Benefits were expected to be the achievement of cost savings and meeting the environmental and sustainability initiatives of each council.

Item 8

An advertisement for the tender was placed on Tuesday 14 August 2012 and the tender closed on Tuesday 4 September 2012.

DISCUSSION

The Councils participating in the tender were:

- Ashfield Council
- Botany Bay City Council
- Canterbury City Council
- City of Canada Bay Council
- City of Sydney Council
- Hurstville City Council
- Kogarah Council
- Leichhardt Council
- Marrickville Council
- Randwick City Council
- Sutherland Shire Council
- Waverley Council

There were five tender submissions received. The tenders were opened in accordance with the appropriate procedures.

The Tender Evaluation Panel consisted of representatives from:

- City of Sydney Council
- Kogarah Council
- Marrickville Council

The Tender Evaluation Panel agreed to the evaluation of weightings against the published selection criteria prior to the tender closing date and time.

The panel assessed the submissions against the following Evaluation Criteria set out in the Tender Specification

Environmental Management and consideration of sustainability issues
Consistency with the desired specifications
Proven capacity to meet the contract based on past experience and capacity to meet current service standards and methodology
Quality management assurance systems
Capacity to provide standard and custom reports
Workplace Health & Safety
Financial and Commercial Trading Integrity

Details of the weightings can be found in the Confidential Attachment.

A basket of twenty (20) items were included in the tender schedule which covered all the photocopy paper requirements of the participating councils.

CONCLUSION

The tender panel decided to recommend the appointment of a panel of preferred suppliers for the supply and delivery of photocopy paper. The contract term is for three years with two (2) optional twelve (12) month extensions.

FINANCIAL IMPLICATIONS

Council has allocated a budget for the proposed supplies.

OTHER STAFF COMMENTS

Environmental Services supports the SSROC tender for supply and delivery of copy paper. The environmental evaluation is extremely thorough, considering aspects of the supply chain beyond recycled content such as packaging and the company's environmental record.

For Council to garner the full benefits of this group tender, Environmental Services suggests that a cross council policy is implemented ensuring all employees who purchase paper order 80% recycled content as a minimum standard where technology supports.

This tender process supports Marrickville's quadruple bottom line reporting through its consideration of the health impacts of chlorine bleaching (social); ensuring Council receives the best value for money through group tendering as well as supporting recycling markets (economic); the environmental requirements aim to conserve resources and reduce waste to landfill and greenhouse gas emissions (environmental); and utilising the collective expertise of SSROC delivers a good governance model.

Item 8

RECOMMENDATION**THAT:**

1. Council move into closed session to deal with this matter as information contained in ATTACHMENT 1 of the Report is classified as confidential under the provisions of Section 10A (2)(c) and (d) of the *Local Government Act 1993* for the following reasons:
 - a) information within this report, if disclosed, could confer a commercial advantage on persons with whom the Council proposes to or may conduct business; and
 - b) it is not in the public interest to reveal all details of these Tenders or the assessment process. Companies have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by companies could result in the withholding of such information by companies and reduction in the provision of information relevant to Council's decision.

And in accordance with Sections 10A (4) of the *Local Government Act 1993*, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolve that ATTACHMENT 1 to the report be treated as confidential in accordance with Section 11(3) of the *Local Government Act 1993*, as it relates to a matter specified in Section 10A(2) of the *Local Government Act 1993*, and as such is to be treated as confidential;
2. the Report be received and noted; and
3. Council adopt the recommendation contained in the CONFIDENTIAL ATTACHMENT 1.

Simone Schwarz
A/Director, Corporate Services

ATTACHMENTS

1. SSROC Confidential Photocopy Paper Report - *Confidential*

Item No: C0313 Item 9

Subject: CHILDREN AND FAMILY SERVICES MANAGEMENT REVIEW AND RECOMMENDATIONS

File Ref: 4717/15654.13

Prepared By: Lynne George - Manager, Children and Family Services

SYNOPSIS

In July 2012, Dr Frances Press from the Research Institute for Professional Practice, Learning and Education at Charles Sturt University was appointed as an independent consultant to undertake a review of Council's Children and Family Services Management. Council is advised that a final report and a series of recommendations were finalised by Dr Press in December 2012. This report outlines the key report findings and recommendations and includes an assessment of the financial impact, where applicable, of the implementation of the recommendations.

RECOMMENDATION

THAT:

1. Council moves into closed session to deal with this matter as information contained in ATTACHMENTS 2 and 3 of the report is classified as confidential under the provisions of Section 10A (2)(a) of the Local Government Act 1993 for the following reason:
 - personnel matters concerning particular individuals (other than councillors).

And in accordance with Sections 10A (4) of the Local Government Act 1993, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolves that ATTACHMENTS 2 and 3 to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2) of the Local Government Act 1993, and as such is to be treated as confidential;
2. Council adopts the recommendations contained in CONFIDENTIAL ATTACHMENTS 2 and 3.

BACKGROUND

A review of Council's Children and Family Services Management was undertaken by an independent consultant during July – December 2012. The Consultant's Brief is at Attachment 1.

The key drivers for this review identified in the brief were:

- the large number of direct reporting relationships (currently 14 staff; was previously 16) that the Coordinator of Early Childhood Services has, in a work environment that requires significant human resource planning and management that is done in a consultative manner and meets both Council's and the relevant union's expectations and standards.

Item 9

- the day to day management and administrative tasks that fall to the Manager of CFS as a result of significant workload in human resource management and the requirements of budget control and financial monitoring. This impacts negatively on the capacity of both the Manager and CFS Management Team to be engaged in strategic direction setting;
- the additional Marrickville West OSHC service and staff added to the Coordinator of Middle Childhood Services' workload and responsibilities since the 2008 review as well as responding to the future regulation of OSHC services that is being implemented as part of the ongoing COAG reform agenda; and
- the administration workload and time involved in overseeing all staff planned leave and the allocation of the permanent relief pool, casual staff and additional hours worked by part-time staff where they are most needed, to replace staff on RDOs and leave as well as vacant positions.

"All of these situations are not sustainable and also impact on the capacity of the CFS Management Team to be engaged in strategic direction setting, new initiatives and cross-Directorate and cross-Council work.

Discussions have been previously held with both People and Workforce and Finance about the scale of the management responsibilities relating to human resources and financial monitoring and payments that rest with the CFS Management team.

A review of the existing CFS Management functions and structure should be undertaken to address these issues."

The objectives for this review were:

- To clarify all the management and administration requirements in the operations of the Children and Family Services Section;
- To review current processes within Children and Family Services (between centres and the management team and within the management team) and with other sections of Council such as People and Workforce and Finance so as to ascertain the most effective and efficient ways of performing these tasks and by whom; and
- To recommend a Children and Family Services Management structure that:
 - is sustainable both financially and in regard to Management staff workloads and capacity for the day-to-day supervision required to ensure regulatory compliance and required levels of support for CFS staff;
 - can effectively address all management and administration requirements and allocate tasks on a sound and efficient basis;
 - ensures appropriate and effective risk management practices with the required management staff support and supervision provided to ensure appropriate and effective compliance with all procedures and regulations;
 - supports procedures and practices that provide for genuine and increased participation opportunities for parent communities and promote effective relationship management with key stakeholders, including families and schools; and
 - allows CFS Management staff to deliver on strategic objectives as well as day to day operational matters.

The final consultant's report on the outcomes of the review and a list of recommendations is at **CONFIDENTIAL ATTACHMENT 2.**

DISCUSSION

Key Findings and Review Recommendations

1. Administrative Issues

- The CFS Section has responsibility for large numbers of staff / educators and very high numbers of casual staff. Maintaining the numbers of staff with the right qualifications is imperative to ensure Council's duty of care to children and obligations under the new National Regulations and the National Quality Standards are all met on a daily basis.
- The Section works very closely with Finance and People and Workforce, including Learning and Development.
- Routine tasks undertaken or supported by these sections of Council have an impact on the customer service interface in CFS, particularly when there are delays, as well as on the capacity to ensure regulatory compliance.
- Significant amounts of time are spent on ongoing recruitment, induction, strategic placement of educators, casual staff review and recruitment, and frequent demands for temporary maternity leave staff replacements as well as family-friendly work arrangements that support part-time / job-share arrangements for staff returning to work from maternity leave. Casual recruitment is an ever-present need and planning for replacement of staff taking leave has to occur on a daily basis.
- A number of administrative tasks, such as timesheets requiring multiple sign-offs, rely on manual procedures that are time-consuming.
- Work, health and safety is a priority for the management team, both for the health of workers as well as the need to manage and replace staff who are absent due to incidents or injury or on suitable duties. Because Centre Directors and Coordinators are unable to leave the premises because of regulatory requirements, any injured staff have to be picked up and transported to Immex by the CFS management team. It is common for this whole process to take up half a day.
- There is a noticeable lack of administrative support to the CFS Manager and Coordinators. Employment of an office manager should occur as a matter of urgency.

"The absence of ongoing administrative support to the CFS unit had an evident adverse impact. The capacity of CFS management staff to support child and family services to meet long term challenges is thwarted by having to respond to important immediate challenges AND to undertake administrative tasks, which ideally they should be able to delegate and oversee."
(p. 11 of consultant's report)

2. Strategic Leadership

"Early Childhood Centre Directors and Middle Childhood Coordinators feel supported in their delivery of high quality services. They are highly appreciative of the CFS management's role in administrative support, pedagogical leadership and human resource management, especially in supporting them to deal with difficult issues concerning staff and parents. However, the many demands upon the CFS management mean that pressing issues such as dealing with critical incidents and ensuring immediate staffing requirements are met, take precedence. CFS Co-ordinators / management do not get to exercise the pedagogical and strategic leadership to the extent which they should, and at times administrative matters, especially around the many routine HR and finance related issues, are not addressed as quickly as would be ideal.

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Notwithstanding, it is evident that the CFS Unit has succeeded in achieving significant, positive cultural change. It has, in recent years:

- increased the financial viability of children's services;
- actively placed the quality of children's care and education at the centre of decision making;
- actively intervened to prevent adverse conditions escalating, especially around staffing issues;
- strategically planned for services to respond constructively to changes in the external regulatory and quality assurance environment; and
- implemented administrative changes, such as the centralised waiting list and casual and permanent relief staff pools, which streamline administration and increase the effectiveness of systems for families and services.

These changes have been highly beneficial for the quality of service provision. However, the introduction and implementation of the new National Quality Standards and Education and Care Services National Regulations are placing a new set of demands upon CFS management which require responsive, thorough and targeted professional support. There is considerable stress on the CFS management unit and current staffing arrangements and workloads are unsustainable." (p. 11 of report.)

3. Compliance with Regulatory Requirements and Delivery of High Quality Services

Significant work and leadership has been and will continue to be needed to support educators and staff to meet new national regulatory compliance requirements and the higher standards of quality care in the new National Quality Standard (NQS).

In order to embed high quality practices in Family Day Care (FDC) and meet new higher quality standards, the review report has identified the need for additional professional development and mentoring of FDC educators through increased home visits and the playgroup program. The current staffing profile of the FDC service offers significantly less coordination staff hours than other equivalent FDC services, including some with less educators than Marrickville FDC.

Currently, playgroup is offered once per week only and educators can access playgroup only once every 6-8 weeks. Regulatory compliance and the implementation of high quality practices require a minimum of monthly playgroup attendances.

Support for Implementation of Higher Quality Practices

The new NQS established additional standards set at higher levels than in the previous accreditation system. The consultant report recommends the establishment of a temporary (2 year) Educare Training and Development position to provide NQS related support across all Children and Family Services – early and middle childhood, and FDC. This recommendation is a strategic proposal aimed at ensuring compliance and forestalling potential breaches, penalties and/or loss of customer service base and reputation if the new quality standards are not met.

4. Report Recommendations

The recommendations made by the consultant and their financial implications (where these exist) are addressed in detail in **CONFIDENTIAL ATTACHMENT 2**. A two stage implementation plan is recommended in order to manage financial impacts on Council's budget bottom line and fees.

CONCLUSION

Consultant Report Conclusion

There is an urgent need to address the workforce demands placed upon the CFS management team. Leaving the current situation unaddressed is likely to have the following impacts (see p. 15 of **CONFIDENTIAL ATTACHMENT 2**):

- The loss of highly skilled CFS management staff because of the pressure of workload. Leadership has a direct impact upon quality (*Siraj-Blatchford et al. 2006*) and the quality of the Council's children's services will deteriorate. It is much more costly and time intensive to improve poor quality services, than to sustain high quality.
- The already high workload will preclude the CFS section from being able to offer / maintain the appropriate level of support for all services to meet the standards established by the NQS. Inability to meet standards has the following possible consequences:
 - Families lose access to Child Care Benefit (CCB), which is dependent upon services meeting the requirements of the NQS.
 - Breaches of National Regulations, which incur fines of up to \$2,000 per breach.
 - Non-compliance with various conditions of approval and breaches, which incur fines of up to \$50,000 per breach under the *NSW Children (Education and Care Services National Law Application) Act 2010 No 104*.
 - Suspension of approvals to operate (NSW Act 2010 cl.25).
 - Cancellation of approval to operate (NSW Act 2010 cl.31).
- Poor quality services are more likely to generate parent complaints and thus to have a *negative impact upon Council's reputation. At worst, they are more likely to breach their duty of care* to children, possibly resulting in legal action by parents and the regulatory authority. In the case of potential negligence, action might be taken against the organisation and individuals who represent the approved provider (the General Manager and Manager CFS); and the nominated supervisors (Centre Directors and Coordinators).

FINANCIAL IMPLICATIONS

Financial impacts are addressed in detail in **CONFIDENTIAL ATTACHMENT 2**.

OTHER STAFF COMMENTS

The Finance Department has been provided with financial information and consulted in relation to financial implications in the report in **CONFIDENTIAL ATTACHMENT 2**.

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PUBLIC CONSULTATION

Consultation with the CFS Management Team, Centre Coordinators and Directors and some administration staff was undertaken as part of the review and outcomes have been incorporated into the consultant's report.

RECOMMENDATION**THAT:**

1. Council moves into closed session to deal with this matter as information contained in ATTACHMENTS 2 and 3 of the report is classified as confidential under the provisions of Section 10A (2)(a) of the Local Government Act 1993 for the following reason:
 - personnel matters concerning particular individuals (other than councillors).

And in accordance with Sections 10A (4) of the Local Government Act 1993, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolves that ATTACHMENTS 2 and 3 to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2) of the Local Government Act 1993, and as such is to be treated as confidential;
2. Council adopts the recommendations contained in CONFIDENTIAL ATTACHMENTS 2 and 3.

Josephine Bennett
A/Director, Community Services

ATTACHMENTS

1. Approved Consultant Brief for Review of CFS Management Structure 2012
2. Confidential Attachment 2 - *Confidential*
3. Confidential Attachment 3 - *Confidential*



CONSULTANT'S BRIEF – SELECTIVE TENDER

REVIEW OF CHILDREN AND FAMILY SERVICES MANAGEMENT STRUCTURE

1. Background

Council's Children and Family Services (CFS) section is a major provider of high quality children's services across the local government area. Currently, CFS operates:

- Six early learning centres (long day care);
- One preschool;
- Five Out of School Hours Care services and three Vacation Care services;
- A Family Day Care Scheme;
- The Magic Yellow Bus mobile playgroups service operates 2 buses in a different park location every day;
- Various early intervention and family support projects; and
- Facilitation of the Marrickville, Leichhardt and Glebe Child and Family Interagency and associated projects with other levels of Government and not for profit sector agencies.

Currently 127 full and part time staff and a casual pool of 30 staff are employed in the section with a range of parent and other volunteers participating in the service delivery operations. The annual budget for CFS is approximately \$10 million, with Council providing an annual funding subsidy of approximately \$400,000 after revenues from child care fees and grants are applied.

Over the past 2 years, the reforms have seen the budget position improve to its historic subsidy level and Council has successfully recruited and retained a larger number of teacher and TAFE trained staff and received excellent feedback from independent service reviews and accreditation authorities. The budget result at the end of the 2010/11 financial year saw a nil subsidy level provided by Council.

Previous Review of CFS Staffing and Finances

In 2008, Council conducted a review of the operations of CFS following a significant budgetary overrun that had been developing over the previous 4 years. The review recommended and Council implemented a series of changes to staffing arrangements, within the regulatory requirements for children's services, that reduced Council's reliance on externally provided and costly casual agency staff whilst maintaining the high quality of service, the workplace flexibility with staffing arrangements and provided further career development opportunities for existing staff and casuals who had been used on a regular and consistent basis for many years.

This Review did not consider the management structure or the impact on management workload and responsibilities of establishing a permanent relief pool of six positions. Nor did that Review take into consideration the additional responsibilities and staff associated with the Marrickville West Before and After School service, which was not in operation at the time the review commenced.

2. Current Context

2.1 COAG Reform Agenda and Management Accountabilities

The CFS area is one of high risk for OH&S matters, especially with an ageing workforce of unqualified and semi-skilled staff and an environment where risk variables and unpredictable responses from children can pose constant challenges to successfully manage. The scale of the operations and the diverse range of employment and workplace arrangements with significant job

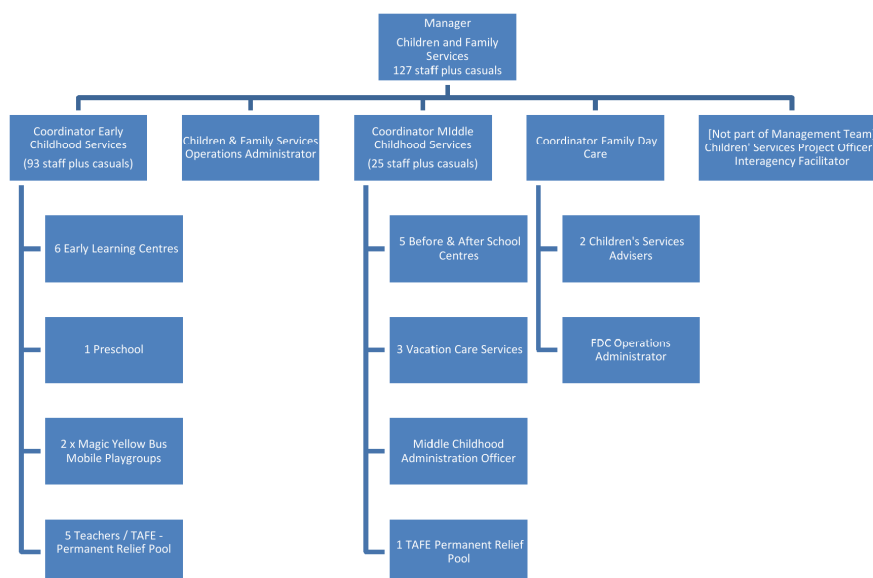
sharing, maternity leave replacements and an historically strong industrial relations culture means that CFS management has a very high level of parent and community relationships management as well as significant human and financial resource management matters to address on a daily basis as well as the variety of challenges in operating a quality and effective curriculum and quality care provision in decentralised settings that are highly regulated.

In addition, the implementation of the COAG early childhood reforms over the next five years, will entail further ongoing reforms to staffing ratios and minimum qualifications, new national curriculum frameworks and regulations applying to all services, and a new national quality assurance system. These changes will contribute to an increased workload and require excellent strategic, human resource and financial planning and management by the CFS Management Team to secure ongoing financial viability, affordability and the continuing high quality service provision that Marrickville families expect for their children.

2.2 Current Management and Administration Structure of Children and Family Services Section

The current Management Team comprises:

- 3 full-time Coordinators who directly supervise the day-to-day operations of all of the services (excluding the Interagency projects and work); and
- 1 full-time Operations Administrator who manages the significant early childhood wait list and the allocation of CFS permanent relief pool and casual staff; monitors vacancies, utilisation and new enrolments; and provides support and mentoring to centre-based administration staff.



The Administration team that provides support to the Management Team includes:

- 1 part-time Middle Childhood administration officer who completes the CCMS data entry for OSHC services, coordinates the OSHC wait list and undertakes the twice weekly courier run (there are no centre-based administration staff at OSHC centres); and

- 1 FDC Operations Administrator who coordinates the FDC wait list; coordinates child placements with FDC Educators, undertakes family enrolment interviews and organises for the fortnightly 'pays' to Educators (ie. CCB payments due to Educators and Educators' and parents' fees and levies due to Council).

The 'management' responsibilities of Early Childhood Centre Directors and OSHC Centre Coordinators are significantly limited by the regulatory and quality assurance requirements that prioritise the direct service provision over and above their management responsibilities. This involves:

- active supervision and individual and small group quality interactions with children, families and staff; and
- compliance with staff to child ratios and qualification requirements; and
- the requirement to be on-site at all times; and
- a focus on providing leadership to other staff in relation to curriculum and program planning and implementation; and
- office time required to undertake their day-to-day duties

As a result, some management functions which might ideally be administered by these staff are retained and implemented by the CFS Management Team, adding to their already substantial range of tasks. It should be noted that, when a centre-based staff member has an incident at work involving a potential injury, their direct supervisor (the Director or Coordinator) is unable to leave the premises to accompany that person to see a doctor or IMMEX because staff to child ratios cannot be met. As a result, the CFS Management Team also transports all potentially injured staff to see a doctor or IMMEX, often resulting in 4 hours being taken out of the work day.

Of particular current concern are:

- the large number of direct reporting relationships (currently 14 staff; was previously 16) that the Coordinator of Early Childhood Services has, in a work environment that requires significant human resource planning and management that is done in a consultative manner and meets both Council's and the relevant union's expectations and standards.
- the day to day management and administrative tasks that fall to the Manager of CFS as a result of significant workload in human resource management and the requirements of budget control and financial monitoring. This impacts negatively on the capacity of both the Manager and CFS Management Team to be engaged in strategic direction setting; and
- the additional Marrickville West OSHC service and staff added to the Coordinator of Middle Childhood Services' workload and responsibilities since the 2008 review as well as responding to the future regulation of OSHC services that is being implemented as part of the ongoing COAG reform agenda.
- The administration workload and time involved in overseeing all staff planned leave and the allocation of the permanent relief pool, casual staff and additional hours worked by part-time staff where they are most needed, to replace staff on RDOs and leave as well as vacant positions.

All of these situations are not sustainable and also impact on the capacity of the CFS Management Team to be engaged in strategic direction setting, new initiatives and cross-Directorate and cross-Council work.

Discussions have been previously held with both People and Workforce and Finance about the scale of the management responsibilities relating to human resources and financial monitoring and payments that rest with the CFS Management team.

A review of the existing CFS Management functions and structure should be undertaken to address these issues.

3. Marrickville Council's Corporate and Strategic Priorities

In 2010 Marrickville Council prepared a Community Strategic Plan '*Our Place, Our Vision*' after extensive engagement with and input from the Marrickville community. Along with Council's Delivery Program and Operational Plan, the Strategic Plan outlines four Key Result Areas and Outcome Statements. Those most relevant to Children and Family Services are set out below.

KRA 1 A diverse community that is happy, healthy and fair

1.2 Marrickville communities have access to a range of services for people of all ages and abilities

- (a) Ensure that all members of the community have fair and equitable access to responsive services that promote wellbeing
- (b) Ensure children's education and care services are high quality and accessible
- ...
- (f) Collaborate in planning and delivering services that produce better outcomes for people of all ages and abilities

1.5 Marrickville communities have access to learning opportunities at all stages of life

- (b) Ensure that all members of the community have fair and equitable access to a range of learning resources and activities
- (c) Ensure that children's education and care services provide a strong foundation for lifelong learning

1.6 The community feels safe and connected

- (a) Encourage citizen participation in community life, helping to foster connections and a sense of belonging

KRA 4 An innovative, effective and representative Council

4.5 Council is financially viable and provides value for money in the delivery of its services

- (a) Maintain Council's long term financial viability
- (c) Deliver cost effective and affordable services to the community

4. Project Objectives

Council Management has identified a need to obtain specialist consultancy advice provided by an independent person/company with skills and experience in the operation of complex children's services or similar human services operation.

The project objectives are:

- To clarify all the management and administration requirements in the operations of the Children and Family Services Section;
- To review current processes within Children and Family Services (between centres and the management team and within the management team) and with other sections of Council such as

People and Workforce and Finance so as to ascertain the most effective and efficient ways of performing these tasks and by whom; and

- To recommend a Children and Family Services Management structure that:
 - is sustainable both financially and in regard to Management staff workloads and capacity for the day-to-day supervision required to ensure regulatory compliance and required levels of support for CFS staff;
 - can effectively address all management and administration requirements and allocate tasks on a sound and efficient basis;
 - ensures appropriate and effective risk management practices with the required management staff support and supervision provided to ensure appropriate and effective compliance with all procedures and regulations;
 - supports procedures and practices that provide for genuine and increased participation opportunities for parent communities and promote effective relationship management with key stakeholders, including families and schools; and
 - allows CFS Management staff to deliver on strategic objectives as well as day to day operational matters.

5. Project Deliverables

Council is seeking the following deliverables from the review:

- An initial report outlining all of the management and administration responsibilities and tasks required of the CFS Management and Administration Team including observations and preliminary findings
- A Final Report that outlines:
 - Findings and recommendations based on evidence
 - Proposed / revised organisational structure for CFS Management
 - Draft Job and Person Specifications (JPS) for new or revised roles
 - Indicative Gradings obtained through an OOSoft evaluation, where required
 - Pre and post costing, including cost of non-compliance with all regulatory and risk management requirements; and cost of maintaining the status quo

6. Methodology

The successful consultant is expected to:

- Conduct group and individual interviews with CFS Management team
- Sample interviews with staff who report directly to the Manager and Coordinators
- Review all existing JPSs and Organisation Chart and business processes documentation
- Discuss preliminary and final findings with EMT and the Children and Family Services management team
- Examine best practice examples of CFS structures that have comparable responsibilities and standards for service delivery

7. Communication Plan

The Manager CFS is to draft a brief information sheet to be distributed to CFS staff through Centre Directors and Coordinators and to the USU, outlining the reasons for the review, review objectives, methodology and options available for input.

The consultant will:

- meet with EMT inviting input at the commencement of the review and at the preliminary and final report stages
- Discuss preliminary and final findings and recommendations as well as the next steps with the CFS Management Team

8. Selection Criteria

Organisations responding to this selective tender should ensure their submission outlines how they meet the following selection criteria:

- Demonstrated recent experience and expertise in providing consultancy services to large local government, non-government or private children's services operators to review and improve the capacity of their management structure to effectively manage workload requirements and ensure compliance with relevant State government and national legislative requirements and standards
- Demonstrated skills and experience, preferably in the operation of complex child and family services, or similar human services operation
- Value for money
- Demonstrated understanding of the project scope and brief and the relevant state and federal policy and governance requirements for providing children's services
- Demonstrated ability to deliver the specified deliverables in a timely manner

Marrickville Council is not bound to accept the lowest quotation or any offer and will not, in any circumstances, be responsible for the costs incurred in preparing a submission.

9. Quotation submission requirements

All submissions must:

- Provide a written response to this brief addressing all selection criteria
- A company profile outlining ABN with copies of current insurances (professional indemnity and public liability), and the main operational aspects of your firm, including key personnel who would undertake this review
- A detailed budget and total cost
- Your company's hourly and daily rates, preferred payment methods and milestones
- Proposed methodology and timeframe
- References from and contact details for two client referees for projects of similar scope
- A statement confirming there is no conflict of interest involved in undertaking this project or submitting a tender / quotation

- Completion of Selective Purchasing Policy Declaration and Supplier Environmental Questionnaire

10. Ownership

Council will enter into a written agreement with the consultant and retain ownership of any documentation produced as part of the consultancy.

11. Submissions

Submissions should be addressed to:

Director, Community Services

Marrickville Council

PO Box 14, Petersham NSW 2049 or emailed to dcsc@marrickville.nsw.gov.au

By 5pm on Friday 24 February, 2012

12. Further information

Should you require further information, please contact Council's Manager, Children and Family Services, Lynne George, on 9335 2141 or mcs@marrickville.nsw.gov.au

Item No: C0313 Item 10
Subject: PETERSHAM PARK PLAYGROUND UPGRADE - TENDER EVALUATION -
TENDER NUMBER 14/12
File Ref: 4729/11286.13
Prepared By: Sarah Christie - Landscape Architect

SYNOPSIS

Petersham Park Playground Tender Number 14/12 applies to landscape construction of a new playground at Petersham Park, Petersham. The project aims to provide a new playground facility with barbeque and picnic settings. The works will run concurrently to the redevelopment of the Fanny Durack Aquatic Centre which is currently under construction. A report on the results of assessment of the received Tenders by the Tender Review Panel can be found in the **CONFIDENTIAL ATTACHMENT 1**.

Construction is planned to commence in April 2013.

RECOMMENDATION

THAT:

1. Council move into closed session to deal with this matter as information contained in **ATTACHMENT 1** of the Report is classified as confidential under the provisions of Section 10A (2)(c) and (d) of the Local Government Act 1993 for the following reasons:
 - a) the information within this report, if disclosed, could confer a commercial advantage on persons with whom the Council proposes to or may conduct business; and
 - b) it is not in the public interest to reveal all details of these tender submissions or the assessment process. Companies have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by companies could result in the withholding of such information by companies and reduction in the provision of information relevant to Council's decision.

And in accordance with Sections 10A (4) of the Local Government Act 1993, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolve that **ATTACHMENT 1** to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2) of the Local Government Act 1993, and as such is to be treated as confidential;
 2. the report be received and noted; and
 3. Council adopt the recommendation contained in the **CONFIDENTIAL ATTACHMENT 1**.
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BACKGROUND

Petersham Park Playground Upgrade Tender Number 14/12 applies to development of a new playground at Petersham Park, Petersham. The project will redevelop the existing playground area and will complement the upgrade of the Fanny Durack Aquatic Centre.

The works include demolition of the existing playground, minor earthworks, new play equipment, softfall surfacing, concrete paving, entrance area with large deck structure, new barbeque and picnic tables, and new landscaping including new advanced tree planting.

A select Tender process was undertaken and Tender documents were issued to five (5) Contractors from Council's list of prequalified contractors for Landscape Construction Projects (refer Tender 11/11). Four Tenders were received (in alphabetical order):

1. Design Landscapes Pty Ltd
2. Ford Civil Contracting Pty Ltd
3. The Glascott Group Pty Ltd
4. Regal Innovations Pty Ltd

DISCUSSION

Tender Assessment

Tenders were assessed by the Tender Review Panel in accordance with the adopted assessment method and criteria. A report outlining the tender assessment results was prepared by the Tender Review Panel. The report can be found in **CONFIDENTIAL ATTACHMENT 1** and includes details of all Tenders, the Tender scoring methods and Tender evaluation results.

The adopted tender assessment criteria and the weighting attached to each criterion are as follows:

Adjusted Tender Price	40%
Past Experience and Performance	25%
Program	20%
Works Methodology	10%
Accurate and complete return of all tender schedules	5%
	100%

Price: The Tender document required the work to be priced as a lump sum based on a schedule of works and prices for the various components of the works. A schedule of discretionary items for additional portions of work was also required to be priced. Price is considered of high importance within the Tender criteria.

Past Experience & Performance: Previous experience and past performance of companies in completing similar works was assessed and is considered important to ensure efficiency and good quality finish in the works.

Program: Contractors were required to provide a detailed project program outlining the time frame and sequence of activities in completing the works.

Works Methodology: Tenders were required to provide information on their understanding of the project and their methodology in completing the works. Methodology was considered important to meet site management, resourcing, quality and Work Health & Safety requirements.

Contract Program

Upon Council's acceptance of a Tender, the Contract will be awarded with construction scheduled to commence in April 2013.

CONCLUSION

The Tender process has yielded a number of Tenders which are considered to be suited to Council's project.

FINANCIAL IMPLICATIONS

The estimated cost of the project based on the recommended Tender is within the available budget. A budget of \$609,780 (excluding GST) has been allocated in Council's 2012/13 Capital Budget.

OTHER STAFF COMMENTS

The Tender assessment and recommendations have been endorsed by members of the Tender Review Panel.

PUBLIC CONSULTATION

A consultation process was undertaken in early 2011 for the overall Petersham Park Masterplan and the playground area (refer March Land Use, Assets and Corporate Committee Meeting, L0411 Item 5). Community feedback was taken into account in the design development of the playground area. Community notification of the playground construction will be completed prior to commencement of works on site.

RECOMMENDATION**THAT:**

1. Council move into closed session to deal with this matter as information contained in ATTACHMENT 1 of the Report is classified as confidential under the provisions of Section 10A (2)(c) and (d) of the Local Government Act 1993 for the following reasons:
 - a) the information within this report, if disclosed, could confer a commercial advantage on persons with whom the Council proposes to or may conduct business; and
 - b) it is not in the public interest to reveal all details of these tender submissions or the assessment process. Companies have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by companies could result in the withholding of such information by companies and reduction in the provision of information relevant to Council's decision.

And in accordance with Sections 10A (4) of the Local Government Act 1993, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, WHERE THE MEETING IS NOT CLOSED:

- 1A. the Council resolve that ATTACHMENT 1 to the report be treated as confidential in accordance with Section 11(3) of the Local Government Act 1993, as it relates to a matter specified in Section 10A(2) of the Local Government Act 1993, and as such is to be treated as confidential;
2. the report be received and noted; and
3. Council adopt the recommendation contained in the CONFIDENTIAL ATTACHMENT 1.

Neil Strickland
Director, Infrastructure Services

ATTACHMENTS

1. Confidential Report to Tender Review Panel - Tender Assessment - *Confidential*