

25 March 2009

Dear Councillor,

In pursuance of the provisions of the Local Government Act, 1993 and the Regulations thereunder, notice is hereby given that a **POLICY REVIEW COMMITTEE MEETING** of Penrith City Council is to be held in the Pasadena Room, Civic Centre, 601 High Street, Penrith on Monday 30 March 2009 at 7:30PM.

Attention is directed to the statement accompanying this notice of the business proposed to be transacted at the meeting.

Yours faithfully

Alan Stoneham
General Manager

BUSINESS

1. LEAVE OF ABSENCE

Leave of absence has been granted to:

Councillor Jim Aitken OAM - 30 March 2009 to 2 April 2009 inclusive.

2. APOLOGIES

3. CONFIRMATION OF MINUTES

Policy Review Committee Meeting - 9 March 2009.

4. DECLARATIONS OF INTEREST

Pecuniary Interest (The Act requires Councillors who declare a pecuniary interest in an item to leave the meeting during discussion of that item)

Non-Pecuniary Conflict of Interest – Significant and Less than Significant (The Code of Conduct requires Councillors who declare a significant non-pecuniary conflict of interest in an item to leave the meeting during discussion of that item)

5. ADDRESSING THE MEETING

6. MAYORAL MINUTES

7. NOTICES OF MOTION

8. MASTER PROGRAM REPORTS

9. URGENT REPORTS (to be dealt with in the master program to which the item relates)

10. CONFIDENTIAL BUSINESS

POLICY REVIEW COMMITTEE MEETING

MONDAY 30 MARCH 2009

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MEETING CALENDAR

CONFIRMATION OF MINUTES

MASTER PROGRAM REPORTS

2009 MEETING CALENDAR

February 2009 - December 2009

	TIME	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
		Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon
Ordinary Council Meetings	7.30 pm	2		6	4❖		13	3	7✓	12	9	14
		23	23		25	22*		24	28^		30	
Policy Review Committee	7.30 pm		9			15	6		14@			7
		16#+	30@	27	18#			17#+		19	16#	
Councillor Briefing / Working Party / Presentation	7.30 pm	9	2		11	1☆		10			2	
			16<	20<		29	27	31	21		23	

Meetings at which the Management Plan ¼ly reviews are presented

#+ General Manager's presentation – half year and end of year review

< Briefing to consider Draft Management Plan for 2009/2010

❖ Meeting at which the Draft Management Plan is adopted for exhibition

* Meeting at which the Management Plan for 2009/2010 is adopted

^ Election of Mayor/Deputy Mayor

@ Strategic Program progress reports [only business]

✓ Meeting at which the 2008/2009 Annual Statements are presented

☆ Management Plan Councillor Briefings/Public Forum (June)

- Council's Ordinary Meetings are held on a three-week cycle where practicable.
- Extraordinary Meetings are held as required.
- Policy Review Meetings are held on a three-week cycle where practicable.
- Members of the public are invited to observe meetings of the Council (Ordinary and Policy Review Committee). Should you wish to address Council, please contact the Public Officer, Glenn McCarthy on 4732 7649.

**UNCONFIRMED MINUTES
OF THE POLICY REVIEW COMMITTEE MEETING OF PENRITH CITY
COUNCIL HELD IN THE PASSADENA ROOM, PENRITH
ON MONDAY 9 MARCH 2009 AT 7:32PM**

PRESENT

His Worship the Mayor Councillor Jim Aitken OAM, Councillors Kaylene Allison, Robert Ardill, Kevin Crameri OAM, Greg Davies, Mark Davies, Tanya Davies, Ross Fowler OAM, Ben Goldfinch, Jackie Greenow, Prue Guillaume, Marko Malkoc, Karen McKeown, Kath Presdee and John Thain.

APOLOGIES

There were no apologies.

CONFIRMATION OF MINUTES - Policy Review Committee Meeting - 16 February 2009

PRC 8 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Marko Malkoc that the minutes of the Policy Review Committee Meeting of 16 February 2009 be confirmed.

DECLARATIONS OF INTEREST

His Worship the Mayor, Councillor Jim Aitken OAM declared a Pecuniary Interest in *Item 2 - Caddens draft Local Environmental Plan and draft Development Control Plan* as he owns property in the area. His Worship the Mayor, Councillor Jim Aitken OAM stated he would leave the meeting and take no part during discussion on the item.

Councillor Tanya Davies declared a Non Pecuniary Conflict of Interest – Less than Significant in *Item 3 - Penrith City Children's Services Co-operative Ltd* as she is a Director on the Board of the Children's Services Co-operative, Ltd.

Councillor Kath Presdee declared a Non Pecuniary Conflict of Interest – Less than Significant in *Item 1 - St Marys Release Area - Public Exhibition of draft Western and Central Precinct Plans* as she owns property which is in a suburb adjacent to the subject area.

Councillor Kath Presdee declared a Non Pecuniary Conflict of Interest – Less than Significant in *Item 3 - Penrith City Children's Services Co-operative Ltd* as she is a member of the Parent Advisory Committee of Werrianda Children's Centre.

Councillor Kaylene Allison declared a Non Pecuniary Conflict of Interest – Less than Significant in *Item 3 - Penrith City Children's Services Co-operative Ltd* as she is a Director on the Board of the Children's Services Co-operative, Ltd.

Councillor Kevin Crameri OAM declared a Non Pecuniary Conflict of Interest – Less than Significant in *Item 1 - St Marys Release Area - Public Exhibition of draft Western and Central Precinct Plan* as his home is located nearby to the subject area.

ADDRESSING THE MEETING

Mr Arthur Ilias

Item 1 - St Marys Release Area - Public Exhibition of draft Western and Central Precinct Plans

Mr Arthur Ilias, representing Delfin Lend Lease, spoke in support of the recommendation and stated that the Western and Central Precinct Plans demonstrate a strong commitment to sustainability, delivering a balance of environmentally sound, socially responsible and economically viable outcomes. Mr Ilias also stated that Delfin Lend Lease has executed a Planning Agreement with Penrith City Council which becomes effective upon adoption of the Precinct Plans by Council and that this provides delivery certainty and milestones for a range of facilities and services.

Mr Ilias concluded by stating that as a Regional City under the NSW Government's Metropolitan Strategy, Penrith Council needs to ensure it has appropriate strategies that can help achieve its target housing choice, jobs and economic growth to meet forecast population growth, and the Western and Central Precinct Plans assists meeting these targets.

Mr Geoff Brown

Item 1 - St Marys Release Area - Public Exhibition of draft Western and Central Precinct Plans

Mr Geoff Brown, representing ADI Residents Action Group (ADI RAG) spoke in opposition to the recommendation. Mr Brown asked Council to defer the decision on the St Marys Release Area. Mr Brown raised his concerns about the access points to the subject area, and its proposed central village, stating that they were insufficient and inconvenient.

PRC 9 RESOLVED on the MOTION of Councillor Jim Aitken OAM seconded Councillor Ross Fowler OAM that an extension of time be granted to Mr Geoff Brown, the time being 7:51pm.

Mr Brown was also concerned about the height of the buildings in the proposed area, stating that four to six storey buildings would be out of character for the area. Mr Brown continued, suggesting that the proposed Asset Protection Zone be reviewed and increased as a precautionary measure to lessen the risks of bush fire and the threat to life and property.

PRC 10 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Ross Fowler OAM that an extension of time be granted to Mr Geoff Brown, the time being 7:56pm.

Mr Brown concluded by raising issues to do with the removal of 20,000 trees, regional park usage and the creation of traffic and noise relating to the proposed development.

MASTER PROGRAM REPORTS

THE CITY AS A SOCIAL PLACE

1 St Marys Release Area - Public Exhibition of draft Western and Central Precinct Plans

Councillor Kevin Crameri OAM raised a number of issues concerning the proposed development and requested a formal written response in the form of a memorandum be issued to all Councillors.

Councillor Mark Davies left the meeting, the time being 8:13pm.

Councillor Prue Guillaume left the meeting, the time being 8:16pm.

Councillor Mark Davies returned to the meeting, the time being 8:17pm.

Councillor Prue Guillaume returned to the meeting, the time being 8:18pm.

PRC 11 RESOLVED on the MOTION of Councillor Ross Fowler OAM seconded Councillor Greg Davies

That:

1. The information contained in the report on St Marys Release Area - Public Exhibition of draft Western and Central Precinct Plans be received.
2. In accordance with the provisions of Sydney Regional Environmental Plan No 30 – St Marys, Council adopt the Western Precinct Plan and Central Precinct Plan with the amendments agreed to by the proponent, as outlined in the report.
3. Council write to all public authorities, Blacktown City Council and other persons who made submissions to the public exhibition for the draft Western and Central Precinct Plans advising them of Council's decision.
4. Delfin Lend Lease be advised of Council's decision.
5. Council congratulate current and past staff who have worked on this project.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

For
Councillor Jim Aitken OAM
Councillor Kaylene Allison
Councillor Robert Ardill
Councillor Greg Davies
Councillor Mark Davies
Councillor Tanya Davies
Councillor Ross Fowler OAM
Councillor Ben Goldfinch
Councillor Jackie Greenow
Councillor Marko Malkoc
Councillor Kath Presdee
Councillor John Thain

Against
Councillor Kevin Crameri OAM
Councillor Prue Guillaume (Abstained)
Councillor Karen McKeown (Abstained)

Note: In accordance with cl. 251 of the Local Government (General) Regulation 2005, a Councillor who fails to vote on a motion put to the meeting is taken to have voted against the motion.

Having previously declared a Pecuniary Interest in *Item 2 –Caddens draft Local Environmental Plan and draft Development Control Plan*, His Worship the Mayor, Councillor Jim Aitken OAM left the meeting, the time being 9:05pm.

The Deputy Mayor Councillor Ross Fowler OAM then took the Chair for consideration of Item 2, the time being 9:05pm.

2 Caddens draft Local Environmental Plan and draft Development Control Plan

PRC 12 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Marko Malkoc

That:

1. The information contained in the report on Caddens draft Local Environmental Plan and draft Development Control Plan be received.
2. The amended versions of the Caddens draft Local Environmental Plan and draft Development Control Plan, as tabled at the meeting, be adopted by Council in accordance with the Environmental Planning & Assessment Act (as amended) and Regulation.
3. In accordance with s68 (4) of the Environmental Planning & Assessment Act 1979 (as amended), the Caddens draft Local Environmental Plan be forwarded to the Department of Planning and the Minister for Planning be requested to make the plan.
4. In the event minor amendments to the Caddens draft Local Environmental Plan are required to be made by the Department of Planning's review of the instrument, Council authorises such amendments.
5. The Caddens draft Development Control Plan take effect upon gazettal of the Caddens draft Local Environmental Plan.
6. Council seek variation from the operation of NSW Housing Code for lots within Caddens which front Caddens Road in order to achieve an appropriate transition between the new urban areas of Caddens and the established non urban area of Orchard Hills.
7. All those who made written submissions regarding the draft plans be thanked for their representations and advised of Council's resolution.

In accordance with Section 375A of the Local Government Act 1993, a DIVISION was then called with the following result:

For
Councillor Kaylene Allison
Councillor Robert Ardill
Councillor Kevin Crameri OAM
Councillor Greg Davies
Councillor Mark Davies

Against

Councillor Tanya Davies
Councillor Ross Fowler OAM
Councillor Ben Goldfinch
Councillor Jackie Greenow
Councillor Prue Guillaume
Councillor Marko Malkoc
Councillor Karen McKeown
Councillor Kath Presdee
Councillor John Thain

His Worship the Mayor, Councillor Jim Aitken OAM, returned to the meeting the time being 9:08pm.

Councillor Kevin Crameri OAM left the meeting, the time being 9:08pm.

Councillor Ben Goldfinch left the meeting, the time being 9:09pm.

Councillor Ben Goldfinch returned to the meeting, the time being 9:10pm.

Councillor Greg Davies left the meeting, the time being 9:11pm.

Councillor Kevin Crameri OAM returned to the meeting the time being 9:14pm.

3 Penrith City Children's Services Co-operative Ltd

Mr Max Friend Chairperson of the Penrith City Children's Services Co-operative Ltd gave a presentation on the performance of the Co-operative over the last financial year.

PRC 13 RESOLVED on the MOTION of Councillor Ross Fowler OAM seconded Councillor Ben Goldfinch

That:

1. The information contained in the report on Penrith City Children's Services Co-operative Ltd be received.
2. Council agree to underwrite the operation of Penrith City Children's Services Co-operative Ltd until the presentation to Council of the Penrith City Children's Services Co-operative Ltd Annual Report for 2008/09.

Councillor Marko Malkoc left the meeting, the time being 9:21pm.

Councillor Marko Malkoc returned to the meeting, the time being 9:22pm.

Councillor Greg Davies returned to the meeting, the time being 9:27pm.

5 Penrith Performing and Visual Arts Ltd - Annual Report and Board of Directors

Messrs Peter Anderson AM, John Reed and John Kirkman made a presentation on the performance of the Penrith Performing and Visual Arts Board over the last financial year.

PRC 14 RESOLVED on the MOTION of Councillor John Thain seconded Councillor Karen McKeown

That:

1. The information contained in the report on Penrith Performing and Visual Arts Ltd - Annual Report and Board of Directors be received
2. Council agree to underwrite the operation of the Penrith Performing and Visual Arts Ltd until the presentation to Council of the Penrith Performing & Visual Arts Ltd Annual Report for 2008/09.
3. Council note the re-appointment of Peter Anderson AM, Tony Lackey and Barbara Magee that occurred at the third Annual General Meeting of the Penrith Performing and Visual Arts Ltd.
4. A further report providing more detail on the Penrith Performing and Visual Arts Ltd be forwarded to all Councillors from Mr John Kirkman CEO of the PPVA.
5. Council congratulate the Board, management and staff for their success and services to arts in Western Sydney.

LEADERSHIP AND ORGANISATION

4 Policy on the Payment of Expenses and Provision of Facilities to Mayor, Deputy Mayor and Councillors

PRC 15 RESOLVED on the MOTION of Councillor Kevin Crameri OAM seconded Councillor Jackie Greenow

That:

1. The information contained in the report on Policy on the Payment of Expenses and Provision of Facilities to Mayor, Deputy Mayor and Councillors be received
2. A reference group of available Councillors be formed to consider the draft Policy on the Payment of Expenses and Provision of Facilities to Mayor, Deputy Mayor and Councillors.

There being no further business the Chairperson declared the meeting closed the time being 10:14pm.

MASTER PROGRAM REPORTS

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THE CITY IN ITS BROADER CONTEXT

There were no reports under this Master Program when the Business Paper was compiled

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THE CITY AS A SOCIAL PLACE

Item

Page

1 Future Directions in Library Services

1



The City as a Social Place

1 Future Directions in Library Services

Compiled by: Colin Stevenson, Library Services Manager

Authorised by: Steve Hackett, Director - Special Projects

Strategic Program Term Achievement: *The City is widely recognised as a centre of cultural diversity, excellence and access.*

Critical Action: *Deliver quality Library Services responding to the community's needs for information, learning and leisure.*

Purpose:

To inform Council of the need for a forum to be established to discuss the direction of Library Services into the future. The report recommends that a Working Party be formed and recommends that terms of reference for that Working Party be established.

Background

With the increasing demand and use by the community of library services, including changes in technology and demographics, traditional library services need to adapt to community needs. Council has acknowledged this and a body of work has already been commissioned and completed to consider the future direction of library services. That work sets out a number of complexities and provides options that outline the where and how by which the Council may deliver its library services in the future.

It is thought that to fully consider the outcomes and recommendations of the research that has already been undertaken, that a Working Party needs to be formed for the sole purpose of considering and moving forward with a future direction plan for library services.

In order for the Working Party to focus on its work, the terms of reference for the Working Party needs to be established.

Current Situation

In the past six years, the Library has completed four major research projects that have provided information for the business planning process:

- 2002 - Retail Development Project (visual image and merchandising) by John Stanley Associates
- 2005 - Market Research Project (survey of library users and non-users) by Owl Research & Marketing Pty Ltd.
- 2006 - Service Specification Project by Penrith City Council.
- 2007/8 - Situational Analysis & Service Review by AEC Group Ltd.

The final AEC document foreshadows the need for the development of a directions plan for the provision of library services to Penrith City. Some of the options foreshadow significant changes to the way library services will be provided into the future. This may have impacts on future budgets.

In order for Council to fully consider options available, it is proposed that a Working Party be established.

Terms of Reference of Working Party

If a Working Party is established it is proposed that the terms of reference be as follows:

1. To consider the research undertaken by AEC Group Limited.
2. To identify the options available for the provision of library services into the future.
3. To consider the advantages and disadvantages of each of the options including the implications for future budgets.
4. To provide Council with advice as to the preferred approach for future library services.

It is proposed the Working Party would meet approximately four times to undertake this task.

The first session would set the background for the Working Party. The second session would be facilitated to provide relevant input from all Members of the Working Party. It is proposed that there would need to be two further sessions to finalise the work of the Working Party. It is considered that there would be approximately 6 weeks between each Working Party meeting, subject to Councillor availability.

Working Parties generally are available for all Councillors to attend and all Councillors will be provided with the Working Party documentation.

Conclusion

Council's library services are a major service provided to the Penrith City community. The public are making increasing demands on the provision of library services. Changing formats of information and recreational resources, together with Internet technologies, are impacting on customer expectations of library services. It is therefore timely for Council to consider a directions plan for library services into the future. Research has been undertaken and is now available for consideration in determining that direction.

The report suggests the formation of a Working Party and provides for a set of draft Terms of Reference in respect of the work of the Working Party.

RECOMMENDATION

That:

1. The information contained in the report on Future Directions in Library Services be received
2. A Working Party be established and made up of available and interested Councillors.

3. The Terms of Reference for the Working Party be as set out in the report on Future Directions in Library Services.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

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THE CITY IN ITS ENVIRONMENT

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THE CITY AS AN ECONOMY

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THE CITY SUPPORTED BY INFRASTRUCTURE

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LEADERSHIP AND ORGANISATION

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Leadership and Organisation

2 Penrith Whitewater Stadium - Annual Report and Board of Directors

Compiled by: Glenn Schuil, Senior Governance Officer

Authorised by: Stephen Britten, Group Manager - Legal & Governance

Strategic Program Term Achievement: *A commonly shared long-term vision for the City underpins strategic collaboration and community engagement.*

Critical Action: *Conduct a structured dialogue with the community around issues relating to the performance and management of the City.*

Presenters: Deputy Mayor, Clr Ross Fowler OAM Chairperson - Penrith Whitewater Stadium Limited - Chairperson's Annual Report
Jack Hodge, Stadium Manager - Penrith Limited Stadium - Stadium Manager's Report

Purpose:

To provide Council with details following the tenth Annual General Meeting of the Penrith Whitewater Stadium Ltd. The Chairperson and the Stadium Manager will make a short presentation. The report recommends that the information be received, that Council notes and endorses certain appointments to the Board and the Council agree to underwrite the Company for a further period of 12 months.

Background

Each year, following the Annual General Meeting of the Company, a report is presented to the Council on the year's activities, including the financial performance. That Council report also includes the Chairperson's and Stadium Manager's reports, which are extracted from the Company's Annual Report.

Annual Report

The Tenth Annual General Meeting of the Company was held on 16 October 2008 for the period ended 30 June 2008.

The Chairman of the Board and Stadium Manager will be in attendance tonight to make a short presentation which will focus on:

- The Past year – highlights, financial position and issues arising; and
- The Year ahead.

Following are their reports that have been extracted from the Annual Report of Penrith Whitewater Stadium Limited (PWS).

Chairman's Report

It gives me much pleasure to present the Chairman's Report to the Tenth Annual General Meeting of Penrith Whitewater Stadium Limited.

The operations for the year have produced a financial result that is very pleasing. Patronage for Whitewater rafting and canoeing based activities remains healthy. Revenue for the year was \$2,447,310 which is marginally more than \$2,436,755 for 2007. The financial outcome for the year ended 30 June 2008 resulted in a surplus before depreciation, amortisation and interest of \$444,022, an increase of 95% when compared to the surplus achieved in 2007 of \$227,657. During the year some \$141,605 was spent on capital improvements.

The Stadium continues to contribute to the overall Penrith economy and to the advancement of the sport of canoe slalom both locally and internationally.

Penrith Whitewater Stadium continues to generate a great deal of publicity both nationally and internationally, adding to its reputation as one of the world's premier sporting facilities. Again the venue has successfully hosted both international and local competitions and has continued to attract a significant number of athletes who see the Stadium as their preferred off-season training venue.

I would like to take this opportunity to thank Venue Manager, Jack Hodge and his management team (Simonetta, Jeff, Vicki and James) for leading the organisation throughout the year. Penrith Whitewater Staff continues to show great dedication and commitment to the business. The underlying enthusiasm and commitment of staff is fundamental to the Venue's continuing success.

I would also like to thank my fellow Directors for their continuing commitment and input to the operations of Penrith Whitewater Stadium. This year sees the retirement of a number of Directors, Pat Sheehy AM, Garry Rumble and Debbie Waugh. Debbie and Pat have been Directors since the incorporation of the Company and their enthusiasm and drive has been important in the development of the business. I wish them all the very best for the future.

Finally I would like to take the opportunity to congratulate the coach and members of the Australian Canoe Slalom Team on their outstanding successes throughout the year, particularly the excellent results achieved by Jacqui Lawrence and Robin Bell at the Beijing Olympics winning silver and bronze respectively and Robin Bell and Kate Lawrence who became the first Australian to win the Slalom World Cup Series in 2008.

Stadium Manager's Report

Overall participation in the activities offered by PWS remained steady. Canoe/ Kayak increased by 135% and rafting decreased by 13%.

Whitewater rafting remains the most popular activity and the highest revenue earner for PWS. Rafting participation decreased from 27,311 to 23,632 as the region experienced the coolest and wettest summer for approximately 55 years. Total revenue for rafting decreased by only 3% from \$1,816,279 to \$1,766,824 due to an 11% price increase.

Total revenue increased by 1% from \$2,458,319 in 2006-07 to \$2,490,794 in 2007-08. Total expenses decreased by 6% from \$2,543,562 resulting in an increase in operating profit from \$4,594 to \$160,113 and an increase in net profit from a loss of \$85,242 to a profit of \$98,374.

PWS maintained its strong support for the sport of canoe slalom throughout the year. The venue hosted the Australian Open as part of the Slalom World Series and the Australian Championships in January, the Oceania Championships Olympic Qualification event and the Australian Olympic Team Selection Trials in March. The venue also hosted the NSW State Slalom Championships, NSW Southern Zone Slalom Championships, PWS Winter Slalom Series and the PWS 'Concrete Classic' freestyle event. PWS facilitated over 775 hours of slalom training and races for Australian and International paddlers. This included 281 hours for the Australian team as part of the Canoe Slalom National Centre of Excellence (NCE) Agreement between PWS, the Australian Institute of Sport (AIS), the New South Wales Institute of Sport (NSWIS) and Australian Canoeing. The value of PWS's contribution to the agreement was approximately \$74,186.

PWS continued its support of various charitable and community organisations. This included the donation of 340 Gift certificates to the value of \$27,200 and the provision of swiftwater awareness training for river restoration volunteers to the value of \$7,740.

Thanks to all PWS staff for their assistance during the year. Thanks also to the PWS Board of Directors for their ongoing dedication and support. The successful operation of PWS relies upon the support of the general public and a network of companies and organisations. PWS would like to thank the general public, suppliers, venue stake holders and neighbouring organisations for their support and looks forward to working together more closely in the future to maximise the ongoing success of PWS and Penrith Lakes.

Board of Directors

The Constitution of the above Company provides, in part, that:

1. To provide continuity the members of the Board shall resign on a rotating basis. At the First Annual General Meeting, three (3) Directors (including one (1) Councillor) shall resign. At the Second Annual General Meeting, three (3) members shall resign (including one (1) Councillor). Thereafter, the members of the Board, except the Council Officer, shall resign after they have served on the Board for three (3) years after appointment or re-appointment to the Board.
2. All retiring Directors shall be eligible for re-appointment.

Council should note that, as per the Constitution, Debbie Waugh resigned as a Director of PWS effective from the date of the Annual General Meeting held on 18 October 2008. Additionally former Councillor Garry Rumble did not stand at the 2008 Council Elections.

Council at its Ordinary Meeting held on 29 September 2008 resolved to appoint the Mayor, Councillor Jim Aitken OAM, Councillor Kevin Crameri OAM and Councillor Kath Presdee to the Board.

It was also resolved that the Council's Director of Special Operations, Mr David Burns be the Council's General Manager's representative and Company Secretary on the Board.

Councillor Ross Fowler OAM was re-appointed Chairman and Helen Brownlee OAM was re-appointed as Deputy Chairman of the Board.

Financial Accountant – Entities Comment

Penrith Whitewater Stadium achieved an operating surplus before depreciation, amortisation and interest charges of \$444,022 (2007 - \$141,605). After accounting for depreciation, amortisation expenses \$235,831 (2007 - \$201,671) and interest expense \$109,817 (2007 - \$111,228) the Company reported a \$98,374 profit (2007 - \$85,242 loss). This is an excellent result considering the region experienced its coolest and wettest summer in 55 years. The improved result was mainly achieved by strong control of expenditure, particularly in employee costs \$1,092,591 (2007 - \$1,159,002) and promotion and marketing \$169,567 (2007 - \$260,962).

The Budget for 2008-09 projected a \$1,262 surplus with \$2,757,200 in Revenues and \$2,755,435 in expenses. The performance to February 2009 reports a loss of \$44,691 against a budgeted expectation of a \$94,923 loss, a favourable result of \$50,232. Actual revenue is \$214,268 lower than projected but this is offset by the actual expenditure being \$264,500 lower than projected.

RECOMMENDATION

That:

1. The information contained in the report on Penrith Whitewater Stadium - Annual Report and Board of Directors be received
2. Council agree to underwrite the operation of the Penrith Whitewater Stadium Limited until the presentation to Council of the Penrith Whitewater Stadium Limited Annual Report for 2008-09.
3. Council note and endorse the Board's nominations of Helen Brownlee OAM and Andrew Pearse as continuing Directors of Penrith Whitewater Stadium.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

Leadership and Organisation

3 Conflict of Interest in Tenders

Compiled by: Stephen Britten, Group Manager - Legal & Governance
Matthew Bullivant, Legal Officer

Authorised by: Stephen Britten, Group Manager - Legal & Governance

Strategic Program Term Achievement: *Council has implemented leading practice ethical and corporate governance standards.*

Critical Action: *Review and apply leading practice ethical and corporate governance standards.*

Purpose:

To provide information and propose policy changes to Council's tender procedures. The report recommends that the information be received and the policy changes be implemented.

Background

Council resolved at the Council meeting on 23 March 2009 to bring back a report to the Policy Review Committee to develop a Policy with respect to situations where Council receives tenders with conflicts of interest notifications within them. Recently in a report over a skate board facility the Group Manager - Legal & Governance indicated that a report would be provided over some improvements to the tender documents to deal with incidents of conflict of interests.

Policy

When Council commences public processes with respect to calling for tenders, Council cannot refuse to accept tenders on the basis that conflicts of interest may arise. Conflicts of interests can arise from a number of situations which include relatives of Councillors or Council staff who may work for contractors. Council may also engage designers who may have a relationship (business or personal) with certain construction firms who tender in a Council tender process. This has been highlighted by the recent process that occurred with respect to the construction of a skate board facility in the City.

The Legal Officer has contacted the corruption prevention unit at the Independent Commission Against Corruption (ICAC) to discuss this issue.

The ICAC has indicated that the Council must deal with the actual conflict, and if that can be alleviated, based on the evidence available, then the Council must address any perceived conflict.

In relation to the actual conflict of interest, the advice is that Council should enquire as to whether any transfer of information has taken place due to the conflict. It was suggested by ICAC that Council should make reasonable enquiries and put in place a process to satisfy

itself that no transfer of information has occurred. One of the procedures discussed was obtaining relevant Statutory Declarations.

If Council can satisfy itself that no information has passed because of the conflict of interest that leads to the construction or delivery body having an unfair advantage over other tenderers, then Council needs to address the *perceived* conflict that exists. The advice given is that Council should ensure that the process is transparent and that detailed records are maintained, which detail the assessment process (assessment against the selection criteria) and show how and why a particular tenderer is preferred over others.

Accordingly, it is suggested that Council's Policy should be that where it can be shown that there has been an unfair advantage provided to a Tenderer because of a conflict of interest, then Council should, subject to legal constraint, not consider the tender further. In establishing whether there has been unfair advantage then the tenders should be referred to a Tender Review Group to consider this. The Tender Review Group is discussed later in this report.

Tenders can become the subject of litigation and Council should acknowledge in this Policy that legal constraints and issues that might arise within litigation in these matters should be considered.

Improvements to the Tender Documentation and Process

Council uses standard templates in the calling of tenders.

It is proposed in the Council's standard Request for Tender document that the following enhancements be made to that document, the changes are bolded:

"Tenderers must complete and submit the conflicts of Interest declaration in Part 5 of this document whether or not a conflict of interest exists.

The declaration is as follows:

*To the best of the Tenderers' knowledge and belief, after due enquiry, the Tenderer shall confirm that no family, **business or other** relationship exists between:*

- * on the one hand, the Tenderer or any employee of the Tenderer directly or indirectly involved in the preparation or submission of the Tender; and*
- * on the other hand, any official, **contractor** or employee of Penrith City Council involved in the evaluation of the Tender or administration of the Tender or in possession of confidential information relating to the Tender.*

*Disclosure of family, **business or other** relationships with Council officials, **contractors** or employees must include details of the nature and extent of the relationship or association.*

The Tenderer must also not engage in any unethical behaviour or seek and/or obtain an unfair advantage in obtaining business with the Penrith City Council and will not in relation to this Tender.

The Tenderers must notify Council in writing immediately of any changes that occur which would cause the declaration given to be incorrect and state full details and reasons.

The second improvement to the process that is suggested is that the following clause be added at the end of the Conflict of Interest section of the Request for Tender stating as follows:

“If the Council establishes that there is a conflict of interest or the conflict of interest provisions have not been complied with in this Request for Tender, and the Council establishes on reasonable grounds having regard to the probabilities of the matter that the Tenderer has received unfair advantage, then the Council reserves the right to not consider the Tender any further.”

In any tender process the Council must consider any tenders received pursuant to the Request for Tender in accordance with that request. This is provided for in the Regulations to the Local Government Act 1993. Accordingly without the above clause the Council could not set a Tender aside where it considered that the Tenderer was given an unfair advantage. If an unfair advantage did occur because of a conflict of interest, without the improvements to the Request for Tender (suggested above), then the Council could only resolve to recall fresh Tenders.

As an added enhancement, a process has been established within the organisation so that before tender reports are presented to the Council for consideration that the matter has been considered by a Tender Review Group. It is suggested that Group would consist of a member from the Legal and Governance Department, Purchasing Section or Finance Department and the relevant Manager for the Tender process or Group Manager where the Manager has been involved in the assessment process. Tenders would still be considered by a Panel of at least 3 staff members but the outcomes of the tender evaluation would be reported to the Tender Review Group who would also make comment in the report to the Council. It should be the responsibility of the Tender Review Group to consider whether a Tenderer has received an unfair advantage as a result of any conflict of interest notified or established within the tender process. In larger tenders a representative of the Legal and Governance Department acts as a probity advisor on the tender evaluation group. The decision to include this is made on a merit assessment of the tender.

Conclusion

The report recommends that the Council implement a Policy that where it can be shown that there has been an unfair advantage provided to a Tenderer because of a conflict of interest then Council should, subject to legal constraint, not consider the tender. The report also recommends a number of improvements to the Tender process to reinforce the above Policy.

RECOMMENDATION

That:

1. The information contained in the report on Conflict of Interest in Tenders be received
2. The improvements to Council's tender processes as set out in the report to the Policy Review Committee be adopted.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

COMMITTEE OF THE WHOLE
MASTER PROGRAM REPORTS
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1 Presence of the Public

Everyone is entitled to attend a meeting of the Council and those of its Committees of which all members are Councillors, except as provided by Section 10 of the Local Government Act, 1993.

A Council, or a Committee of the Council of which all the members are Councillors, may close to the public so much of its meeting as comprises:

- (a) the discussion of any of the matters listed below; or
- (b) the receipt or discussion of any of the information so listed.

The matters and information are the following:

- (a) personnel matters concerning particular individuals;
- (b) the personal hardship of any resident or ratepayers;
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business;
- (d) commercial information of a confidential nature that would, if disclosed:
 - prejudice the commercial position of the person who supplied it; or
 - confer a commercial advantage on a competitor of the Council; or
 - reveal a trade secret.
- (e) information that would, if disclosed, prejudice the maintenance of the law;
- (f) matters affecting the security of the Council, Councillors, Council staff or Council property;
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.

The grounds must specify the following:

- (a) the relevant provision of section 10A(2);
- (b) the matter that is to be discussed during the closed part of the meeting;
- (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a

trade secret) an explanation of the way in which discussion of the matter in open meeting would be, on balance, contrary to the public interest.

Members of the public may make representations at a Council or Committee Meeting as to whether a part of a meeting should be closed to the public

The process which should be followed is:

- a motion, based on the recommendation below, is moved and seconded
- the Chairperson then asks if any member/s of the public would like to make representations as to whether a part of the meeting is closed to the public
- if a member/s of the public wish to make representations, the Chairperson invites them to speak before the Committee makes its decision on whether to close the part of the meeting or not to the public.
- if no member/s of the public wish to make representations the Chairperson can then put the motion to close the meeting to the public.

The first action is for a motion to be moved and seconded based on the recommendation below.

RECOMMENDATION

That:

Leadership and Organisation

2 Commercial Matter - Council Property - Cranebrook Village Shopping Centre

This item has been referred to Committee of the Whole as the report refers to commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it; or (ii) confer a commercial advantage on a competitor of the Council; or (iii) reveal a trade secret and discussion of the matter in open meeting would be, on balance, contrary to the public interest.

