

2 March 2012

Dear Councillor,

In pursuance of the provisions of the Local Government Act, 1993 and the Regulations thereunder, notice is hereby given that an **ORDINARY MEETING** of Penrith City Council is to be held in the Council Chambers, Civic Centre, 601 High Street, Penrith on Monday 5 March 2012 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 Jackie Greenow
2. **APOLOGIES**
3. **CONFIRMATION OF MINUTES**
Ordinary Meeting - 20 February 2012.
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 COUNCIL**
6. **MAYORAL MINUTES**
7. **NOTICES OF MOTION TO RESCIND A RESOLUTION**
8. **NOTICES OF MOTION AND QUESTIONS ON NOTICE**
9. **ADOPTION OF REPORTS AND RECOMMENDATION OF COMMITTEES**
10. **DELIVERY PROGRAM REPORTS**
11. **REQUESTS FOR REPORTS AND MEMORANDUMS**
12. **URGENT BUSINESS**
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ORDINARY MEETING
MONDAY 5 MARCH 2012
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ADVANCE AUSTRALIA FAIR

**Australians all let us rejoice,
For we are young and free;
We've golden soil and wealth for toil;
Our home is girt by sea;
Our land abounds in nature's gifts
Of beauty rich and rare;
In history's page, let every stage
Advance Australia Fair.**

**In joyful strains then let us sing,
Advance Australia Fair.**

**Beneath our radiant Southern Cross
We'll toil with hearts and hands;
To make this Commonwealth of ours
Renowned of all the lands;
For those who've come across the seas
We've boundless plains to share;
With courage let us all combine
To Advance Australia Fair.**

**In joyful strains then let us sing,
Advance Australia Fair.**

Statement of Recognition of Penrith City's Aboriginal and Torres Strait Islander Cultural Heritage

Council values the unique status of Aboriginal people as the original owners and custodians of lands and waters, including the land and waters of Penrith City.

Council values the unique status of Torres Strait Islander people as the original owners and custodians of the Torres Strait Islands and surrounding waters.

We work together for a united Australia and City that respects this land of ours, that values the diversity of Aboriginal and Torres Strait Islander cultural heritage, and provides justice and equity for all.



PRAYER

“Sovereign God, tonight as we gather together as a Council we affirm that you are the giver and sustainer of life. We come together as representatives of our community to make decisions that will benefit this city and the people within it.

We come not in a spirit of competition, not as adversaries, but as colleagues. Help us to treat each other with respect, with dignity, with interest and with honesty. Help us not just to hear the words we say, but also to hear each others hearts. We seek to be wise in all that we say and do.

As we meet, our concern is for this city. Grant us wisdom, courage and strength.

Lord, help us. We pray this in the name of Jesus Christ our Lord. Amen.”



Council Chambers Seating Arrangements

For members of the
public addressing
the meeting

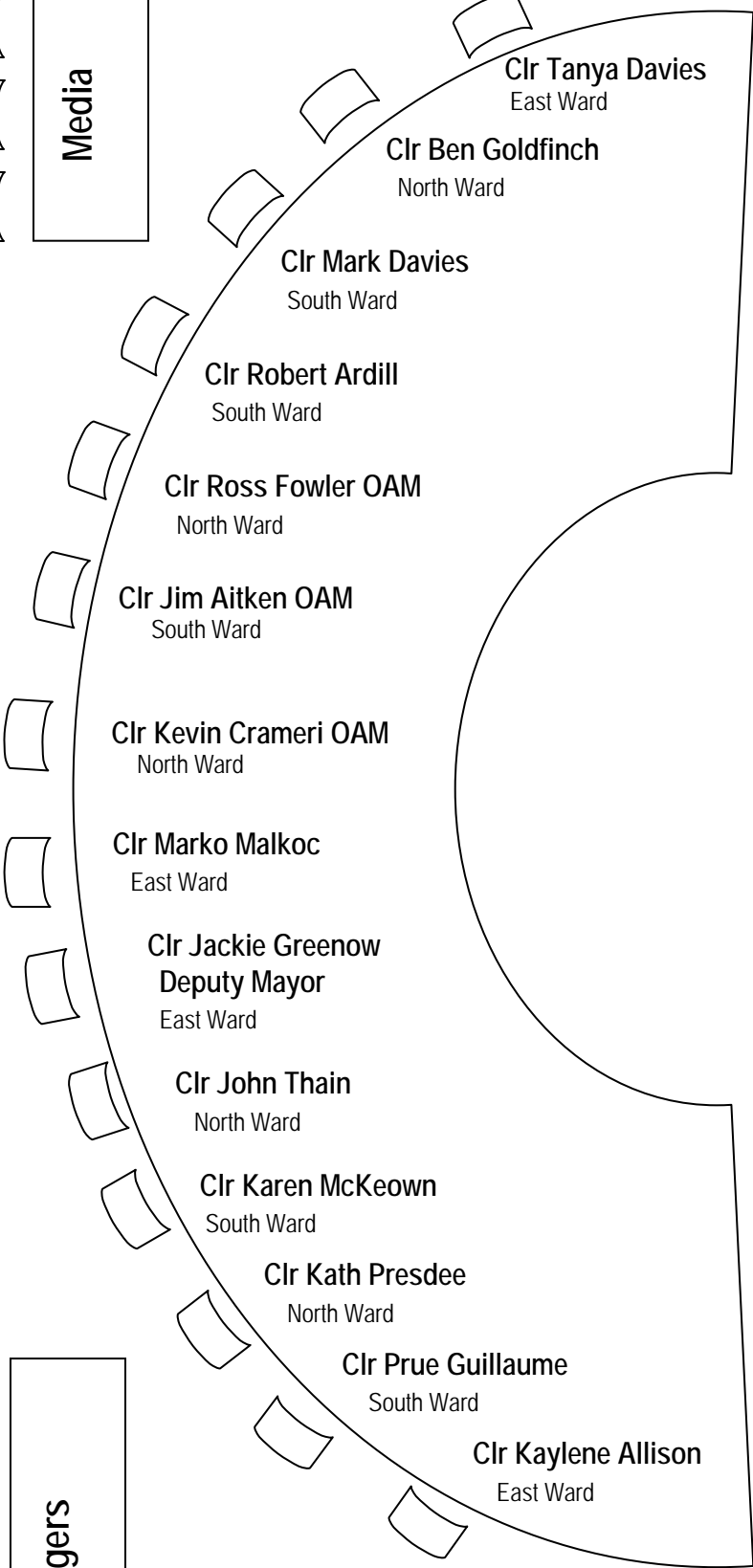
Lectern

Group Managers

Media

Public Gallery

Managers



Director
Craig Butler

Director
Barry Husking

General
Manager
Alan Stoneham

**His Worship
the Mayor**
Councillor
Greg Davies
East Ward

Senior
Governance
Officer
Glenn Schuil

Minute Clerk

Group Managers

2012 MEETING CALENDAR

January 2012 - December 2012
(adopted by Council on 21 November 2011)

	TIME	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
		Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon	Mon
Ordinary Council Meeting	7.30pm		6 20#@	5 26				9 23	20#@	3✓ 24^\ (7.00pm)	15∞	5 19#	10 (7.00pm)
Policy Review Committee	7.00pm		13	19	16	7	4	2 30	13		8	12	3
Operational Plan Public Forum	6.00pm					Wed 28							

- ❖ Meeting at which the Draft Operational Plan for 2012-2013 is endorsed for exhibition
 - * Meeting at which the Operational Plan for 2012-2013 is adopted
 - # Meetings at which the Operational Plan quarterly reviews are presented
 - @ Delivery Program progress reports
 - ^ Election of Mayor/Deputy Mayor
 - ✓ Meeting at which the 2011-2012 Annual Statements are presented
 - ∞ Meeting at which any comments on the 2011-2012 Annual Statements are presented
 - \ The opportunity may be taken to move this meeting to the 17 September 2012, should the election result be declared early.
The Ordinary Council Election will be held on 8 September 2012
- Extraordinary Meetings are held as required.
 - 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 Senior Governance Officer, Glenn Schuil.

UNCONFIRMED MINUTES

OF THE ORDINARY MEETING OF PENRITH CITY COUNCIL HELD IN THE COUNCIL CHAMBERS

ON MONDAY 20 FEBRUARY 2012 AT 7:35PM

NATIONAL ANTHEM

The meeting opened with the National Anthem.

STATEMENT OF RECOGNITION

His Worship the Mayor, Councillor Greg Davies read a statement of recognition of Penrith City's Aboriginal and Torres Strait Islander Cultural Heritage.

PRAYER

The Council Prayer was read by Rev Neil Checkley.

PRESENT

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

LEAVE OF ABSENCE

Leave of Absence was previously granted to Deputy Mayor, Councillor Jackie Greenow for a period of 22 days, as disclosed in her Councillor request.

26 RESOLVED on the MOTION of Councillor John Thain seconded Councillor Marko Malkoc that Leave of Absence be granted to Councillor Kevin Crameri OAM for the period 20 February 2012 to 24 February 2012.

APOLOGIES

27 RESOLVED on the MOTION of Councillor Mark Davies seconded Councillor Robert Ardill that an apology be received from Councillor Ben Goldfinch.

CONFIRMATION OF MINUTES - Ordinary Meeting - 6 February 2012

28 RESOLVED on the MOTION of Councillor Marko Malkoc seconded Councillor John Thain that the minutes of the Ordinary Meeting of 6 February 2012 be confirmed.

DECLARATIONS OF INTEREST

Councillor Jim Aitken OAM declared a Pecuniary Interest in the *Report and Recommendations of the Policy Review Committee Meeting held on 13 February 2012* as he owns a property in the area to which *Item 6 - Billington Place Car Park, Emu Plains - Request for Provision of 2-Hour Parking Restrictions* relates to. Councillor Jim Aitken OAM indicated he intended on staying in the Chambers, unless discussion takes place, at which

place he would leave the Chambers.

Councillor Jim Aitken OAM declared a Pecuniary Interest in *Committee of the Whole - Item 4 Land and Environment Court ruling, North Western Surveys Pty Ltd v Penrith City Council* as he owns property in the area referred to in the report. Councillor Jim Aitken OAM indicated he would leave the Chambers for consideration of the item.

MAYORAL MINUTES

1 [The passing of Isobel Lowe](#)

29 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Tanya Davies that the Mayoral Minute on The passing of Isobel Lowe be received.

Following the reading of the Mayoral Minute, a one minute silence was observed at 7.48pm.

2 [Community pulls together over severe storm event](#)

Councillor John Thain spoke in support of the Mayoral Minute.

30 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor John Thain

That:

1. That the Mayoral Minute on Community pulls together over severe storm event be received.
2. Council write to the State Emergency Service, Rural Fire Service and other emergency services thanking them for their assistance and efforts throughout the storm event.

3 [Nepean Legacy 50th Anniversary](#)

Councillor Ross Fowler OAM spoke in support of the Mayoral Minute.

31 RESOLVED on the MOTION of Councillor Greg Davies seconded Councillor Ross Fowler OAM that the Mayoral Minute on Nepean Legacy 50th Anniversary be received.

REPORTS OF COMMITTEES

1 [Report and Recommendation of the Local Traffic Committee Meeting held on 6 February 2012](#)

32 RESOLVED on the MOTION of Councillor Marko Malkoc seconded Councillor Karen McKeown that the recommendations contained in the Report and Recommendations of the Local Traffic Committee meeting held on 6 February, 2012 be adopted.

2 [Report and Recommendations of the Policy Review Committee Meeting](#)

held on 13 February 2012

Having previously declared a Pecuniary Interest, Councillor Jim Aitken OAM, left the meeting the time being 7:52pm.

33 RESOLVED on the MOTION of Councillor Karen McKeown seconded Councillor Robert Ardill that the recommendations contained in the Report and Recommendations of the Policy Review Committee meeting held on 13 February, 2012 be adopted subject to an amendment to *Item 6 - Billington Place Car Park, Emu Plains - Request for Provision of 2-Hour Parking Restrictions*, so that it now reads:

“That:

1. *The information contained in the report on Billington Place Car Park, Emu Plains - Request for Provision of 4-Hour Parking Restrictions be received.*
2. *Council prepare a detailed submission to Transport for NSW seeking their urgent review and reconsideration of our request for the allocation of not less than 61 (4P) parking spaces in Billington Place, Emu Plains.*
3. *Council further write to Transport for NSW, the minister for Transport, the Minister for Roads and the local Members of Parliament to seek engagement in the review process of parking requirements around Railway Stations including Emu Plains Railway Station.*
4. *A detailed audit be conducted to determine the current usage and demand within the Billington Place car park and other surrounding car parks in the vicinity.*
5. *Council investigates the implementation of a park in marked bay scheme along the length of Railway Row.*
6. *The shop owners and shop keepers who signed the petition be advised of the response from the Roads and Maritime Services and Council’s resolution.”*

Councillor Jim Aitken OAM returned to the meeting, the time being 7:58pm.

DELIVERY PROGRAM REPORTS

A LEADING CITY

1 Delivery Program Six Month Progress Report

34 RESOLVED on the MOTION of Councillor Jim Aitken OAM seconded Councillor Marko Malkoc that the information contained in the report on Delivery Program Six Month Progress Report be received.

4 Summary of Investments for the period 1 January 2012 to 31 January 2012

35 RESOLVED on the MOTION of Councillor Jim Aitken OAM seconded Councillor Marko Malkoc

That:

1. The information contained in the report on Summary of Investments for the period 1 January 2012 to 31 January 2012 be received.
2. The Certificate of the Responsible Accounting Officer and Summaries of Investments and Performance for the period 1 January 2012 to 31 January 2012 be noted and accepted.
3. The graphical investment analysis as at 31 January 2012 be noted.

2 2011-12 Operational Plan - December Quarter Review

36 RESOLVED on the MOTION of Councillor John Thain seconded Councillor Ross Fowler OAM

That:

1. The information contained in the report on 2011-12 Operational Plan - December Quarter Review be received.
2. The 2011-12 Operational Plan Review as at 31 December 2011, including the revised estimates and revotes identified in the recommended budget outlined in this report and detailed in Attachment 1 – *2011-12 Operational Plan, Services Performance and Financial Review Summary* be adopted.

3 2012 Australian Local Government Association (ALGA) National General Assembly of Local Government

37 RESOLVED on the MOTION of Councillor Karen McKeown seconded Councillor Ross Fowler OAM

That:

1. The information contained in the report on 2012 Australian Local Government Association (ALGA) National General Assembly of Local Government be received.
2. Council nominate His Worship the Mayor, Councillor Greg Davies as its voting delegate for the 2012 National General Assembly of Local Government.
3. Council nominate Councillor Marko Malkoc and any other interested Councillors to attend as observers at the 2012 National General Assembly of Local Government.
4. Leave of Absence be granted to all Councillors attending the 2012 National General Assembly of Local Government to be held in Canberra from 17-20 June 2012.
5. A further report detailing suggested motions be considered at Council's Policy Review Committee meeting to be held on 16 April 2012.

A CITY OF OPPORTUNITIES

- 5 [Development Application DA11/1034 existing masonry outbuilding, front boundary fence and entrance gate at Lot 816 DP 1068323 \(No. 174 - 186\) Capitol Hill Drive, Mount Vernon](#) Applicant: Patrick Hurley;
Owner: Cornelius D Cipri & Catrina Stylianou

38 RESOLVED on the MOTION of Councillor Marko Malkoc seconded Councillor Kath Presdee

That:

1. The information contained in the report on Development Application DA11/1034 existing masonry outbuilding, front boundary fence and entrance gate at Lot 816 DP 1068323 (No. 174 - 186) Capitol Hill Drive, Mount Vernon be received
2. That DA11/1034 for Masonry Outbuilding Front Boundary Fence and Entrance Gate Masonry Outbuilding Front Boundary Fence and Entrance Gate at 174-186 Capitol Hill Drive MOUNT VERNON NSW 2178, be approved subject to the attached conditions (Development Assessment Report Part B)
3. **Standard Conditions**
 - 3.1 A008 – Works to BCA requirements
 - A009 – Residential Works DCP
 - A019 – Occupation Certificate
 - A020 – Use of Building
 - D001 – Sedimentation and Erosion Controls
 - D009 – Covering Waste Storage area
 - E001 – BCA compliance
 - F010 – Septic distance from house
 - H001 – Stamped plans and erection of site notice
 - H041 – Hours of work
 - K017 – Stormwater and sewerage plan
 - L008 – Tree preservation order
 - Q01F – Notice of commencement and appointment of PCA2

Special Conditions

- 3.2 The development must be implemented substantially in accordance with the plans drawn by Mira Husar Design and Drafting Services Drawing Number A-01 to A-06, dated July 2011, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions

- 3.3 All boundary fences are to be low profile, open style and rural in character. The front fence is not to exceed 1.8m in height
- 3.4 You are required to submit a construction certificate for the yet to be constructed portion. An engineer's certificate is to form part of the application attesting to the structural adequacy of the existing building. Note: This relates to the portion of the building yet to be constructed
- 3.5 Prior to the issue of a Construction Certificate for the development, the variation of the Restriction on the Use of land numbered 4(b) in DP 1068323, shall be registered with the Land and Property Information division of the Department of Lands

The variation to the covenant shall be in the terms approved by resolution of Penrith City Council. The plan attached to the documentation shall indicate that an additional building envelope is to be provided which represents the footprint of the outbuilding approved by this development

- 3.6 All house sewer and plumbing work shall be carried out in accordance with Sydney Water's requirements or the Local Government (Water, Sewerage and Drainage) Regulation 1993
- a) Penrith City Council is both the consent authority and certifying authority for the installation of the On Site Sewage Management System (OSSM), otherwise known as a septic tank system. It is your responsibility to contact Council's Building Approvals and Environment Protection Department to organise all inspections required for the installation of the system. In this regard, the following will require inspection:
- All internal and external drainage lines and septic tanks before they are backfilled/covered
 - On completion of the system's installation and prior to its commissioning, ensuring compliance with those conditions specific to the installation of the system

A copy of the satisfactory inspection reports carried out by Council shall be submitted to the Principal Certifying Authority if Council is not the Principal Certifying Authority

- i. The septic tank and drainage lines shall not be altered without the prior approval of Council. In addition, the septic tank shall not be buried or covered
- ii. There shall be no effluent runoff from the subject property to adjoining premises, public places or reserves
- iii. There shall be available all year round, adequate water supply that is available to the property

- 3.7 **Prior to the commencement of construction works:**

- (a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:
- A standard flushing toilet connected to a public sewer, or
 - If that is not practicable, an accredited sewage management facility approved by the council, or
 - Alternatively, any other sewage management facility approved by council
- 3.8 Roof and surface water shall be disposed of in accordance with the approved drainage design. Overflow from the existing in-ground rainwater tank is to be disposed of via a level spreader system
- 3.9 All landscaping works are to be constructed in accordance with the stamped-approved plan by PGH Environmental Planning drawing No. PGH-110397-LS0001 dated 26/10/2011 and sections F5 "Planting Techniques", F8 "Quality Assurance Standards", F9 "Site Management Plan" of Penrith Councils Landscape Development Control Plan
- Landscaping shall be maintained:
- In accordance with the approved plan, and
 - In a healthy state, and
 - In perpetuity by the existing or future owners and occupiers of the property
- If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity, as the vegetation which dies or was removed
- 3.10 A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority. In the event that a Compliance Certificate was issued by the Principal Certifying Authority certifying compliance that all conditions of the development consent required to be met has in fact been met as well as any documentation stated above, shall be submitted to Penrith City Council if Council is not the Principal Certifying Authority.

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

For

Against

Councillor Kaylene Allison
Councillor Prue Guillaume
Councillor Karen McKeown
Councillor Kath Presdee
Councillor Greg Davies
Councillor John Thain
Councillor Marko Malkoc

Councillor Ross Fowler OAM
Councillor Robert Ardill
Councillor Jim Aitken OAM
Councillor Mark Davies
Councillor Tanya Davies

A LIVEABLE CITY

6 [Tender Reference 11/12-06, Scheduled Maintenance of Mechanical Services Minor Buildings](#)

39 RESOLVED on the MOTION of Councillor Marko Malkoc seconded Councillor John Thain

That:

1. The information contained in the report on Tender Reference 11/12-06, Scheduled Maintenance of Mechanical Services Minor Buildings be received.
2. CBD Mechanical Electrical be appointed as the preferred contractor for the provision of Scheduled Maintenance of Mechanical Services in Minor Buildings for a period of 3 years for a lump sum price of \$13,500 (ex GST, with the option to extend for a further two (2) X one (1) year periods subject to satisfactory performance.

7 [Tender Reference 11/12-07, Scheduled Maintenance of Mechanical Services Major Buildings](#)

40 RESOLVED on the MOTION of Councillor Marko Malkoc seconded Councillor John Thain

That:

1. The information contained in the report on Tender Reference 11/12-07, Scheduled Maintenance of Mechanical Services Major Buildings be received
2. Hirotec Maintenance Pty Ltd be appointed as the preferred contractor for the provision of Scheduled Maintenance of Mechanical Services in Major Buildings for a period of 3 years for a lump sum price of \$170,994.78, with the option to extend for a further two (2) X one (1) year periods subject to satisfactory performance.

REQUESTS FOR REPORTS AND MEMORANDUMS

RR 1 Hoon Driving and Anti-Social Behaviour - Tukara Street, South Penrith

Councillor John Thain requested a memo reply concerning Council making representations to the Penrith Local Area Command to seek their assistance in providing increased monitoring of the area surrounding Tukara Street, South Penrith due to recent increases, in hoon driving and anti-social behaviour. The area near the Masonic Lodge on Homestead Road, should also be included in this request.

RR 2 Restoration of Nature Strips

Councillor Kath Presdee requested a memo reply in relation to the restoration of nature strips and in particular who is responsible for restoring them to original condition after the work is complete. If it is not Council's responsibility to restore the land, what role does Council have in ensuring that other service providers restore land appropriately so that public safety is not compromised.

RR 3 Contamination - 92 Mulgoa Road, Jamisontown

Councillor Prue Guillaume requested a memo reply requesting that the State Government Urgently advise Jamisontown residents about how they will be affected by the disclosure of contaminants coming from 92 Mulgoa Road, Jamisontown.

RR 4 Roundabout Audit

Councillor Greg Davies requested a report to the Local Traffic Committee providing an audit on roundabouts within council's LGA which details issues in relation to visibility caused by overgrowth.

COMMITTEE OF THE WHOLE

41 RESOLVED on the MOTION of Councillor Kath Presdee seconded Councillor Prue Guillaume that the meeting adjourn to the Committee of the Whole to deal with the following matters, the time being 8:12pm.

1 Presence of the Public

CW1 RESOLVED on the motion of Councillor Kath Presdee seconded Councillor Prue Guillaume that the press and public be excluded from Committee of the Whole to deal with the following matters:

A Leading City

2 [Property Matter - Assignment of Lease by Sapphires Cafe at 31 Blue Hills Drive Glenmore Park](#)

This item has been referred to Committee of the Whole as the report refers to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and discussion of the matter in open meeting would be, on balance, contrary to the public interest.

3 [Property Matter - Penrith Swimming Pool Site off Station Street Penrith](#)

This item has been referred to Committee of the Whole as the report refers to information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business and discussion of the matter in open meeting would be, on balance, contrary to the public interest.

4 [Land and Environment Court ruling, North Western Surveys Pty Ltd v Penrith City Council](#)

This item has been referred to Committee of the Whole as the report refers to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and discussion of the matter in open meeting would be, on balance, contrary to the public interest.

The meeting resumed at 8:26pm and the General Manager reported that the Committee of the Whole met at 8:12pm on Monday, 20 February 2012, the following being present

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

and the Committee of the Whole excluded the press and public from the meeting for the reasons set out in CW1 and that the Committee of the Whole submitted the following recommendations to Council.

CONFIDENTIAL BUSINESS

2 [Property Matter - Assignment of Lease by Sapphires Cafe at 31 Blue Hills Drive Glenmore Park](#)

RECOMMENDED on the MOTION of Councillor Marko Malkoc seconded Councillor Ross Fowler OAM

CW2 That:

1. The information contained in the report on Property Matter - Assignment of Lease by Sapphires Cafe at 31 Blue Hills Drive Glenmore Park be received.
2. Council grant an Assignment of Lease to Jenna Vicary, Tarryn Ireland, Jack Vicary and Kelly Vicary in accordance with the terms and conditions as outlined in the report.
3. The Common Seal of the Council of the City of Penrith be placed on all necessary documentation.

3 [Property Matter - Penrith Swimming Pool Site off Station Street Penrith](#)

RECOMMENDED on the MOTION of Councillor Ross Fowler OAM seconded Councillor Jim Aitken OAM

CW3 That:

1. The information contained in the report on Property Matter - Penrith Swimming Pool Site off Station Street Penrith be received.
2. Council agree to purchase Part Lot 1 DP 998482 from the subject owner in accordance with the purchase price as indicated in the Summary of the report.
3. Funding for the proposed acquisition be financed by way of loan borrowing with debt servicing costs to be funded from the Property Development Reserve.
4. Investigations commence to reclassify the land subject of this report from "Community" to "Operational", in accordance with the Local Government Act, 1993.
5. The Common Seal of the Council of the City of Penrith be placed on all necessary documentation.

4 [Land and Environment Court ruling, North Western Surveys Pty Ltd v Penrith City Council](#)

Having previously declared a Pecuniary Interest, Councillor Jim Aitken OAM left the meeting the time being 8:17pm.

RECOMMENDED on the MOTION of Councillor Ross Fowler OAM seconded Councillor John Thain

CW4 That:

1. The information contained in the report on Land and Environment Court ruling, North Western Surveys Pty Ltd v Penrith City Council be received.
2. The General Manager be given delegated authority to instruct Council's external legal advisors to lodge an appeal against the Commissioner's decision in the matter of North Western Surveys Pty Limited v Penrith City Council.
3. A further report be presented to Council upon resolution of the appeal.
4. Council continue to lobby the Minister for Planning and Infrastructure and the Department of Planning and Infrastructure, and local Members of State Parliament to achieve either abandonment of the cap or its significant amendment to ensure essential local infrastructure can be provided without further burden on ratepayers.
5. A further report on the planning options in response to the ruling be presented to Council in the near future.
6. A written request be made to the Local Government Association seeking monetary contributions towards Council's legal costs for this matter.

Councillor Jim Aitken OAM returned to the meeting, the time being 8:28pm.

ADOPTION OF COMMITTEE OF THE WHOLE

42 RESOLVED on the MOTION of Councillor Marko Malkoc seconded Councillor Kath Presdee That the recommendation contained in the Committee of the Whole and shown as CW1, CW2, CW3 and CW4 be adopted.

There being no further business the Chairperson declared the meeting closed the time being 8:28pm.

PENRITH CITY COUNCIL

Procedure for Addressing Meetings

Anyone can request permission to address a meeting, providing that the number of speakers is limited to three in support of any proposal and three against.

Any request about an issue or matter on the Agenda for the meeting can be lodged with the General Manager or Public Officer up until 12 noon on the day of the meeting.

Prior to the meeting the person who has requested permission to address the meeting will need to provide the Public Officer with a written statement of the points to be covered during the address in sufficient detail so as to inform the Councillors of the substance of the address and a written copy of any questions to be asked of the Council in order that responses to those questions can be provided in due course.

In addition, prior to addressing the meeting a person addressing Council or Committee will be informed that they do not enjoy any privilege and that permission to speak may be withdrawn should they make inappropriate comments.

It should be noted that persons who wish to address the Council are addressing a formal part of the Council Meeting. All persons addressing the Meeting should give consideration to their dress attire. Smart casual is a minimum that is thought to be appropriate when addressing such a forum.

It should be noted that speakers at meetings of the Council or Committee do not have absolute privilege (parliamentary privilege). A speaker who makes any potentially offensive or defamatory remarks about any other person may render themselves open to legal action.

Prior to addressing the meeting the person will be required to sign the following statement:

“I (name) understand that the meeting I intend to address on (date) is a public meeting. I also understand that should I say or present any material that is inappropriate, I may be subject to legal action. I also acknowledge that I have been informed to obtain my own legal advice about the appropriateness of the material that I intend to present at the above mentioned meeting”.

Should a person fail to sign the above statement then permission to address either the Council or Committee will not be granted.

The Public Officer or Minute Clerk will speak to those people who have requested permission to address the meeting, prior to the meeting at 7.15pm.

It is up to the Council or Committee to decide if the request to address the meeting will be granted.

Where permission is to be granted the Council or Committee, at the appropriate time, will suspend only so much of the Standing Orders to allow the address to occur.

The Chairperson will then call the person up to the lectern or speaking area.

The person addressing the meeting needs to clearly indicate:

- Their name;
- Organisation or group they are representing (if applicable);
- Details of the issue to be addressed and the item number of the report in the Business Paper;
- Whether they are opposing or supporting the issue or matter (if applicable) and the action they would like the meeting to take;
- The interest of the speaker (e.g. affected person, neighbour, applicant, applicants spokesperson, interested citizen etc).

Each person then has five minutes to make their address. Those addressing Council will be required to speak to the written statement they have submitted. Permission to address Council is not to be taken as an opportunity to refute or otherwise the points made by previous speakers on the same issue.

The Council or Committee can extend this time if they consider it appropriate, however, everyone needs to work on the basis that the address will be for five minutes only.

Councillors may have questions about the address so people are asked to remain at the lectern or in the speaking area until the Chairperson has thanked them.

When this occurs, they should then return to their seat.

Glenn McCarthy
Public Officer
02 4732 7649

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MAYORAL MINUTES

Item

Page

- 1 [Awarding of the Louise Petchell 'Learning for Sustainability' Scholarship 2012](#)

1



Mayoral Minute

Awarding of the Louise Petchell 'Learning for Sustainability' Scholarship 2012

Strategic Objective: *A Regional City that provides our jobs, education, services and entertainment (1)*

In late 2009 Council created a \$5000 scholarship in recognition of former Sustainability Coordinator, Louise Petchell, who passed away suddenly in April 2009.

The scholarship was developed as a lasting legacy to Louise, built around her passion for encouraging staff from across the organisation to recognise the opportunities in their role and embrace the principles of sustainability. The scholarship also provides recognition of the value that Louise placed on lifelong learning and skills development, and encouraging everyone to reach their full potential.

This year, seven applications were received from staff. Four of these applications, involving five staff members, were chosen by the selection committee to share the scholarship.

Congratulations to **Ruth Byrnes, Monique Desmarchelier, Tracy Leahy, Krystie Race and Ajmal Siddiq** who have been successful in accessing funds under the scholarship.

Ruth Byrnes is Council's Senior Traffic Officer and will be attending the Bike Futures Conference in Melbourne later this year. This information will be used to inform a feasibility study into a bike share scheme for Penrith City.

Monique Desmarchelier is Council's Health Strategy Officer and will be completing a short course in Community Development to investigate how the principles can be incorporated into the Health Strategy.

Tracy Leahy is Council's Community Programs Coordinator and will be completing a short course in Social Planning and Development as part of the Graduate Diploma in Local Government Management at the University of Technology. This will further build on Tracy's existing skills in this area and enhance the delivery of a range of Community Development activities.

Council's Urban Designer, Ajmal Siddiq, and Sustainability Research Planner, Krystie Race, submitted a joint application and will be undertaking a study tour to visit several councils in the Melbourne area who are leaders in sustainable building design policy. This will contribute to the development of a policy which seeks to ensure that sustainability is embedded in the design of Council buildings.

All of the applicants will be sharing what they have learnt with staff from across the organisation and I look forward to hearing more about their activities throughout the year.



Councillor Greg Davies
Mayor

RECOMMENDATION

That the Mayoral Minute on Awarding of the Louise Petchell 'Learning for Sustainability' Scholarship 2012 be received.

DELIVERY PROGRAM REPORTS

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A LEADING CITY

Item

Page

- 1 [Determination by the Chief Executive, Division of Local Government regarding the conduct of Councillor Kevin Crameri OAM](#)

1



1 Determination by the Chief Executive, Division of Local Government regarding the conduct of Councillor Kevin Cramer OAM

Compiled by: Glenn Schuil, Senior Governance Officer

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

Objective	<i>We demonstrate accountability, transparency and ethical conduct</i>
Community Outcome	<i>A Council that behaves responsibly and ethically (5)</i>
Strategic Response	<i>Champion accountability and transparency, and responsible and ethical behaviour (5.1)</i>

Executive Summary

This report provides information regarding the outcome of the referral of a letter to the Division of Local Government (DLG) on 1 March 2011 about the conduct of Councillor Kevin Cramer OAM, following an overseas delegation to Korea, China and Japan in late 2010.

Mr Ross Woodward, the Chief Executive from the DLG advised the Council on 24 February 2012 that after taking into consideration an internal Report from the DLG he has decided to suspend Clr Kevin Cramer OAM from civic office from 2 March 2012 to 31 March 2012.

Background

Following the referral of complaints to the Council's General Manager alleging a breach of the Council's Code of Conduct by Councillor Kevin Cramer OAM the matter was referred to a Conduct Review Committee. On 28 February 2011 the Council considered a report from the Conduct Review Committee regarding the conduct of Clr Kevin Cramer OAM whilst on an overseas delegation to Korea, China and Japan and resolved the following:

- 1. The information contained in the report on Code of Conduct – Mayor Councillor Kevin Cramer OAM be received.*
- 2. Council receive and note the report of the Conduct Review Committee.*
- 3. The Council determines that the Mayor, Councillor Kevin Cramer OAM has breached clauses 6.1 (c), 6.2 and 6.3 of Penrith City Council's Model Code of Conduct.*
- 4. The Mayor, Councillor Cramer OAM be censured for misbehaviours in (22) of (38) allegations, defined in the Report through (22) Breaches of the Penrith City Council Code of Conduct identified by Clauses 6.1 (c), 6.2 and 6.3.*
- 5. The Mayor, Councillor Cramer OAM be required to provide to the Council, the Penrith Business Alliance and to the leaders of the host delegations in the Cities visited, an unreserved written apology for his inappropriate behaviour while on a trade delegation*

to China, Korea and Japan between 14 October 2010 and 3 November 2010. The written apology is to be copied to all Councillors and to the General Manager.

- 6. The Mayor, Councillor Crameri OAM be required to participate in a planned Counselling Program. The Program is to be determined by an appropriate independent person.*
- 7. The censuring, apologies and counselling are to be completed within 30 days of the Council decision on this report.*
- 8. That the Council considers the conduct of the Mayor, Councillor Kevin Crameri OAM to be of such a nature that warrants the Division of Local Government to consider suspension of the Mayor as a Councillor under Section 440H (1) (a) of the Local Government Act, 1993, and that the Council Officers write to the Division seeking the Division of Local Government consider the suspension of the mayor, Councillor Kevin Crameri OAM at the request of the Council.*
- 9. Council moves that it has no confidence in Councillor Crameri OAM as Mayor.*
- 10. This Council call Councillor Crameri OAM to resign as Mayor effective immediately.*

On 1 March 2011 a letter was sent to the Division of Local Government (DLG) in terms of the Council's resolutions made on 28 February 2011.

Councillor Crameri OAM stood aside from the position of Mayor effective from 26 February 2011 until such time as the DLG concluded any investigations or processes being made on the matter.

In respect of the Council's Resolution numbers 4-6, these have been undertaken by Councillor Kevin Crameri OAM.

Current Position

The DLG wrote to the Council's General Manager on 24 February 2012 (copy attached as Appendix 1) advising, in part, that:

"Having considered the Division's [Division of Local Government] report, I have decided to suspend Clr Crameri from civic office for a period of one month commencing on 1 March 2012 and ending on 31 March 2012.

As the Division was unable to effect service of the order on Clr Crameri until today [Friday 24 February 2012] by operation of section 440 L of the Act the suspension period will commence on 2 March 2012 and will end on 31 March 2012.

Please note that under section 440K (3) a councillor, while suspended from civic office is not entitled to exercise any of the functions of the civic office, and is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the civic office".

Appropriate administrative arrangements will be implemented in accordance with the DLG's advice.

RECOMMENDATION

That the information contained in the report on Determination by the Chief Executive, Division of Local Government regarding the conduct of Councillor Kevin Crameri OAM be received

ATTACHMENTS/APPENDICES

1. Determination by the Division of Local Government 6 Pages Appendix



Premier & Cabinet
Division of Local Government

5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

Our Reference
Your Reference
Contact
Phone

A266544
Doug Friend
02 4428 4201

Mr Alan Stoneham
General Manager
Penrith City Council
PO Box 60
PENRITH NSW 2751

Dear Mr Stoneham

I refer to the request made by Penrith City Council concerning alleged misbehaviour on the part of Cllr Kevin Cramer pursuant to Chapter 14 Part 1 of the *Local Government Act 1993*.

I am writing to provide you with advice of my decision under section 440K in response to the departmental report on the investigation connected with the request made by Council concerning alleged misbehaviour on Cllr Cramer's part.

Having considered the Division's report, I have decided to suspend Cllr Cramer from civic office for a period of one month commencing on 1 March 2012 and ending on 31 March 2012.

A copy of my order under section 440K and a statement of reasons for my decision under section 440Q are enclosed.

As the Division was unable to effect service of the order on Cllr Cramer until today, by operation of section 440L of the Act the suspension period will commence on 2 March 2012 and will end on 31 March 2012.

Please note that under section 440K(3) a councillor, while suspended from civic office is not entitled to exercise any of the functions of the civic office, and is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the civic office.

Should you wish to discuss any matter raised in this letter, please contact David Rolls of the Division's Legal Services Branch on 02 4428 4210.

Yours sincerely

A handwritten signature in black ink that reads 'Ross Woodward' followed by the date '24/2/12'.

Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

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COPY

LOCAL GOVERNMENT ACT 1993

SECTION 440K(1)(a)

**ORDER SUSPENDING COUNCILLOR KEVIN CRAMERI OF PENRITH CITY COUNCIL
FROM CIVIC OFFICE**

I, Ross Woodward, Chief Executive of the Division of Local Government, Department of Premier and Cabinet, acting under authority delegated to me by the Director General of the Department of Premier and Cabinet, hereby order that Councillor Kevin Crameri of Penrith City Council be suspended from civic office for a period of one month commencing on 1 March 2012 and ending on 31 March 2012.

Dated: 17 February 2012



ROSS WOODWARD
Chief Executive, Division of Local Government,
Department of Premier and Cabinet

LOCAL GOVERNMENT ACT 1993

SECTION 440Q

**STATEMENT OF REASONS FOR SUSPENSION OF COUNCILLOR KEVIN CRAMERI
OF PENRITH CITY COUNCIL**

1. I, Ross Woodward, Chief Executive, Division of Local Government, Department of Premier and Cabinet, having considered a departmental report prepared under section 440J of the Local Government Act 1993, am satisfied, for the purposes of section 440I(1)(b) of the Act, that Councillor Cramer's behaviour has involved an incident of misbehaviour that is of such a sufficiently serious nature as to warrant his suspension from civic office.

RELEVANT LEGISLATION

2. Section 440H(1)(a) of the Act provides that the process for the suspension of a councillor from civic office may be initiated by a request made by the council by resolution communicated to the Director-General, in which the council states its belief that grounds may exist that warrant the councillor's suspension.
3. Section 440I(1)(b) provides that a councillor may be suspended from civic office if the councillor's behaviour has involved one incident of misbehaviour that is of such sufficiently serious nature as to warrant the councillor's suspension.
4. Section 440I(2)(b) provides that the process for the suspension of a councillor from civic office cannot be initiated by a request made by the council unless, where section 440I(1)(b) applies, the councillor has-
 - (a) been formally censured for the incident of misbehaviour concerned, or
 - (b) been expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
5. Section 440J provides that the Director-General may arrange for a departmental report to be prepared into the matters raised by or connected with a request referred to in section 440H. The preparation of such a report is a prerequisite to a decision by the Director-General to suspend the councillor from office.
6. Section 440K(1)(a) authorises the Director-General to suspend a councillor from civic office for a period not exceeding one month if the Director-General has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant the councillor's suspension.
7. "Misbehaviour" is defined by section 440F of the Act to include a failure by a councillor to comply with an applicable requirement of a code of conduct as required under section 440(5).

- 8 Section 440(5) provides that councillors must comply with the council's adopted code of conduct.
- 9 Section 745 provides that the Director-General may delegate to any person any of the Director-General's functions under the Act, other than the power of delegation.

THE INCIDENT

10. The incident occurred while Cllr Crameri, as Mayor of Penrith City Council, was representing Council as part of a delegation that visited China, Korea and Japan in October and November 2010.
11. Cllr Crameri's behaviour involved an incident of misbehaviour on 1 November 2010, where he deliberately touched a member of the delegation on her neck with his hand, without permission to do so.

REASONS FOR SUSPENDING COUNCILLOR CRAMERI FOR ONE MONTH UNDER SECTION 440K OF THE LOCAL GOVERNMENT ACT 1993

12. I have carefully considered the departmental report prepared under section 440J of the Act into the behaviour of Cllr Crameri. I have also taken into account Cllr Crameri's response to the departmental report together with his submissions on a possible penalty of suspension. I acknowledge Cllr Crameri's full assistance with the investigation. I also note that at the time of the commencement of the investigation Cllr Crameri was the Mayor of Penrith City Council, a position he held at the time of the alleged misbehaviour. Cllr Crameri is no longer the Mayor.
13. I have come to the conclusion that, despite Cllr Crameri's record of service to the community, the embarrassment already caused to him through publicity and the loss of the Mayoral annual fee by voluntarily standing aside from the Mayoral role, this incident is serious enough to warrant the application of the maximum penalty available to me under the Act that is, suspension from civic office for a period of one month.
14. I am convinced that the incident did occur (as acknowledged by Cllr Crameri) and that Council's code of conduct does apply under the circumstances. Of major concern is that Cllr Crameri has not acknowledged that his behaviour was an act of misbehaviour as defined by the code of conduct and the Act but rather, regards it as a "bit of silliness" or "a joking thing".
15. Despite numerous opportunities to reflect on his behaviour, Cllr Crameri has admitted to merely going through the motions of reparation through a written apology only to appease perceptions by others.
16. In particular, I have noted that Cllr Crameri's conduct had been of concern to a number of delegates for some time prior to the incident. Cllr Crameri has acknowledged that during the delegation and prior to 1 November 2010 there were between six to eight occasions where different people had spoken to him about concerns about his conduct. Given this, it was not unreasonable to expect him to be mindful of paying

attention to ensuring his conduct was appropriate on the day of the incident. His apparent failure to have due regard for this is therefore serious.

17. I am satisfied that Cllr Cramer's behaviour on the occasion of the incident was in breach of clause 6.3 of Council's adopted code of conduct which stipulates that Council officials must treat others with respect at all times. His conduct, touching another person, a delegate, on their neck without their permission and without asking, was disrespectful. This breach of Council's adopted code of conduct constitutes an incident of misbehaviour under section 440F(1)(b).
18. I am satisfied that Cllr Cramer's behaviour on the occasion of the incident was also in breach of clause 6.2 of Council's adopted code of conduct which stipulates that Council officials must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act or any other Act. Specifically, his behaviour was a failure to exercise a reasonable degree of care and diligence. This breach of Council's adopted code of conduct constitutes an incident of misbehaviour under section 440F(1)(b).
19. I am satisfied that Cllr Cramer is a very experienced Council official who was present when Council adopted its code of conduct and who had the benefit of attending training and information sessions where the code was discussed.
20. As noted above, Cllr Cramer was warned about his conduct on several occasions by a number of different persons during the course of the delegation. The exercising of a reasonable degree of care would have seen him upholding the highest standards of probity on 1 November 2010. He failed to do so.
21. Further, I am satisfied that Cllr Cramer's behaviour on the occasion of the incident was in breach of clause 6.1 of Council's adopted code of conduct which stipulates that Council officials must not conduct themselves in carrying out their functions in a manner that is likely to bring the Council or holders of civic office into disrepute. Cllr Cramer's conduct was improper, having regard to its nature, his role and the limited nature of his acquaintance with the delegate he touched. This breach of Council's adopted code of conduct constitutes an incident of misbehaviour under section 440F(1)(b).
22. I am satisfied that the physical contact between Cllr Cramer and the delegate was uninvited and unwelcomed by the delegate. His conduct caused the delegate concern.
23. I am satisfied that Cllr Cramer is a very experienced councillor and as such, had the benefit of that experience to guide him as to the appropriate standard of conduct expected of Council officials. His apparent disregard for the appropriate standard is therefore serious.
24. I am satisfied that Cllr Cramer was aware of the general conduct obligations imposed by Council's adopted code of conduct prior to the incident. His apparent disregard for the appropriate standards is therefore serious, despite his assertion that he was unaware that what he has submitted was an inappropriate joke could constitute a breach of the Council's adopted code of conduct.

25. While there is evidence that indicates that Cllr Cramer benefited from the counselling he received in compliance with a resolution of Council made on 28 February 2011, he continues to demonstrate a lack of awareness that he has engaged in misbehaviour.

 17/2/12

ROSS WOODWARD
Chief Executive, Division of Local Government,
Department of Premier and Cabinet

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A CITY OF OPPORTUNITIES

Item

Page

- 2 [No Boundaries - Grant Applications Arts NSW and Australia Council for the Arts](#)

13



2 No Boundaries - Grant Applications Arts NSW and Australia Council for the Arts

Compiled by: Robyn Brookes, Disability Services Officer
Joe Ibbitson, Community Programs Co-ordinator

Authorised by: Erich Weller, Community and Cultural Development Manager

Objective	<i>We have access to what we need</i>
Community Outcome	<i>A City with equitable access to services and facilities (7)</i>
Strategic Response	<i>Base the provision of services and facilities on principles of social justice and equity (7.1)</i>

Executive Summary

This report provides information on the outcomes of the grant applications submitted to support the No Boundaries Project. A previous report on the grant applications to Arts NSW and the Australian Council for the Arts was provided to the Council Ordinary meeting of 15 August 2011. At this meeting Council endorsed the submission of these two funding applications.

The No Boundaries project is a large scale projection art project that will enhance and extend inclusive arts practice and experience for people with disability. It will also present the unique experience of people living with disability in the Penrith and Western Sydney region through the creation of a high quality, innovative multi-media and digital art projection onto the external walls of the Joan Sutherland Performing Arts Centre.

This project is a complex, cross sectoral collaboration between various community partners and will take about nine months to complete. The report in August identified that substantial resources will be required to fund the high cost of the technical and multi-media equipment and support required to implement this project.

An application to Arts NSW for \$60,000 to support the creation and presentation of the No Boundaries project was submitted by Council officers on 20 June, 2011. Council also applied for \$35,000 to the Australia Council for the Arts' Community Partnership funding program under the Projects with Public Outcomes category.

In November 2011 Council was notified that the application to the Community Partnerships section of the Australia Council for the Arts was successful. The Community Partnerships section approved \$35,000 for a 'Public Art and Performance Project by artists with disabilities in interdisciplinary collaborations

On 1 December 2011 Council received notification that the grant application for \$60,000 to Arts NSW in the category Creation and Presentation had also been successful.

Implementation of the No Boundaries Project is consistent with Council's endorsed Penrith Inclusion Plan – People with Disability.

The report recommends that the information on the No Boundaries - Grant Applications Arts NSW and Australia Council for the Arts be received.

Background

Over the past few years, Council officers have been working with local disability and arts organisations to provide opportunities for people with disability to engage in arts and cultural development programs and activities. This work has included special events and workshops at both the Joan Sutherland Performing Arts Centre and the Penrith Regional Gallery and The Lewers Bequest to celebrate International Day for People with Disability (IDPwD). Information about these initiatives is available at the following link to the Accessible Arts Western Sydney webpages:

<http://www.aarts.net.au/westernsydney/penrith-disability-arts-and-culture-network/>

Through this innovative work, Council officers have consolidated strong community partnerships with many local and regional disability and arts organisations including:

- Sylvanvale Foundation
- Accessible Arts NSW
- Nordoff-Robbins Music Therapy Centre
- University of Western Sydney
- Sunnyfield Independence
- Nepean Area Disabilities Organisation (NADO)
- Flintwood Disability Services

The broad aim and objective of this work has been around the ‘capacity building’ of individuals with disability as well as local groups to participate and engage in a diverse range of arts and cultural development activities.

No Boundaries Project

Based on this strong, collaborative partnership work, a proposal was developed, in late 2010, for a large scale art projection project to present high quality artwork produced by artists and people with disability. The No Boundaries project will enhance and extend inclusive arts practice and experience for people with disability. It will also present the unique experience of people living with disability in the Penrith and Western Sydney region through the creation of a high quality, innovative multi-media and digital art projection. It is proposed that the final artwork will be projected onto the external walls of the Joan Sutherland Performing Arts Centre. The project will also incorporate a focus on the use of social media to encourage broad community participation and inclusion.

The project is the result of continuing collaboration between Council officers, the Sylvanvale Foundation and Accessible Arts NSW. The project will be implemented with the support of Cindi Drennan from Illuminart Productions which specialises in illuminated audiovisual environments and projection art. Ms Drennan has worked on similar projects in South Australia including The Ribbon and most recently Port Inhabited for the Port Adelaide festival in October 2011.

Additional partners and collaborators on this project include the Penrith Performing and Visual Arts Ltd, Westfield and the University of Western Sydney as well as disability organisations NADO, Sunnyfield Independence, the Brain Injury Association, Psychiatric Rehabilitation Australia and the Penrith Disability, Arts and Culture Network. Local and regional artists with disability will also be invited as facilitators and mentors on the project.

This project is a complex, cross sectoral collaboration between various community partners and will take about nine months to complete. The promotion of the project to engage people with disability and disability organisations and register their interest in participation in the project has begun and Council Officers have already received a number of responses. Workshops accompanied by mini events and presentations will begin in April culminating in a final event in late September.

Funding Applications – Australia Council for the Arts and Arts NSW

Funding is provided under Projects with Public Outcomes category in the Australia Council for the Arts' Community Partnership funding program for one-off community arts and cultural development projects that have a public outcome and involve collaborations with a range of cross-sectoral partners. People with disability are identified by the Australia Council for the Arts as one of the key priorities for Community Partnerships funding.

In November 2011 Council was notified by the Australia Council for the Arts that it had been successful in its application for Projects with Public Outcomes funding and would receive \$35,000 to support the No Boundaries project.

Through Arts NSW funding programs, the NSW Government seeks to promote:

- A creative and diverse arts and cultural sector
- Sustainable arts and cultural organisations, services and infrastructure across NSW
- Increased access to arts and cultural activities across NSW.

Areas highlighted by Arts NSW include opportunities for people with disability to participate fully in arts and cultural activities and support their artistic aspirations, achievements and activities in Western Sydney. The Creation and Presentation funding category is available to support any stage in the creative development and public presentation of arts and cultural work. Council applied for \$60,000 to support the creation and presentation of the No Boundaries project. Council was notified in December that it had been successful and will receive \$60,000 to support the No Boundaries project.

Conclusion

Council officers have been pursuing strong collaborations with Council's community partners around the inclusion of people with disability in arts and cultural activities to progress the implementation of the Penrith Inclusion Plan. As the next stage in this development, the No Boundaries project is a large scale art projection project to be produced by people with disability and shown on the walls of the Joan Sutherland Performing Arts Centre.

Funding applications were submitted to support the project under the Arts NSW 2011-2012 Funding Program and to the Australia Council for the Arts' Community Partnership Program. Council has recently received notification that both applications were successful. Council will receive \$60,000 from Arts NSW to support the creation and presentation of the No

Boundaries project and \$35,000 from the Australia Council for the Arts. Competition for project grants from these arts funding bodies is intense and Council's success is recognition of the quality of the No Boundaries project and the extensive involvement of a number of key project partners. The No Boundaries project will assist in the implementation of the Penrith Inclusion Plan.

RECOMMENDATION

That the information contained in the report on No Boundaries - Grant Applications Arts NSW and Australia Council for the Arts be received.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

A GREEN CITY

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3 Domestic Waste Service Collection Contract

Compiled by: Geoff Brown, Waste Management Co-ordinator
Authorised by: Tracy Chalk, Waste and Community Protection Manager
Requested By: Councillor Jim Aitken OAM

Objective	<i>We use our resources wisely, and take responsibility for our levels of consumption</i>
Community Outcome	<i>A City with a smaller ecological footprint (12)</i>
Strategic Response	<i>Respond to the impacts of climate change, by mitigating and adapting what we do (12.1)</i>

Executive Summary

This report provides information about the methods employed to deliver Domestic Waste Services to multi unit dwellings (MUDs), charges to the ratepayer and service efficiencies.

The report has been provided at the request of Councillor Aitken OAM. The report recommends that the information be received.

Background

Council introduced the 240L Mobile Garbage Bin (MGB) to residential properties including MUDs in 1981. Bins were provided at the ratio of one bin per residential dwelling or unit. MUDs range in size from three unit developments to 171 unit developments. Most are low rise containing up to about five storeys. Currently these developments comprise a total of more than 10,800 residential dwellings.

Prior to 2002 residents of MUDs were provided with a 240L MGB for each unit and residents were required to present the bins on the nature strip for collection each week. As MUDs grew in size the number of bins presented for collection became a concern. For example a 25 unit development would present up to 50 MGBs (garbage and recycling bins) on the nature strip each fortnight and 25 bins on the alternative week. In most circumstances there was not sufficient space to present bins for collection, bins would obstruct the nature strip and the number of bins impacted on the visual amenity of the streetscape. Residents would also leave their bins on the nature strip for days on end. As a result, a review of the collection service for MUDs was requested.

In 2002 Council requested a review of the domestic waste collection service for MUDs. At the time bins from MUDs were collected utilising three staff (one driver and two runners) and a rear load garbage truck. Bins were presented on the nature strip by residents and were collected, emptied and returned to the nature strip by the garbage collection crew. As mentioned above, this method of service created bin congestion on the nature strip which impacted on the visual amenity of the streetscape.

A number of councils, including Fairfield City Council, Liverpool City Council and Hornsby Shire Council, at the time provided an alternative method of garbage and recycling collections for MUDs. The collection methods basically required collection staff to enter the site and collect the bins from a bin storage room, empty the bins at the kerbside and return the bins to the storage room. The bins used for this method of service ranged from 240L MGBs to larger bulk bins up to three cubic metres in capacity.

Investigations of the services provided by the three councils identified above revealed the following:

Use of bulk bins (660L- 3000L)

- Bins were provided on a shared arrangement for all residents of each development
- Garbage storage rooms for the larger bins were too small or did not exist. Subsequently, bins and waste was visible from the street
- The majority of sites were found to have full and overflowing bins due to the bins being used for disposal of large bulky items including furniture
- Bins become a dumping ground by others
- Due to the larger size of the bins they needed to be stored close to the front of the allotment to be accessed
- Some sites had bins stored on the nature strip or roadway due to the characteristics of the site
- Some sites necessitated vehicular access creating safety and indemnity issues
- The larger bins impacted the visual amenity of the streetscape

Use of 240L MGBs

- Bins were found to be stored in specifically designed garbage rooms
- Bin rooms were designed to compliment the architectural features of the main building
- There were little if any waste problems associated with the use or storage of the bins
- Bins were accessed by the collection contractors and returned to the bin bay empty

Current Situation

Based on the investigation results outlined above, Council introduced the Collect and Return Service for MUDs in July 2002.

The service involves residents shared use of 240L MGBs for garbage and recycling. Both the garbage and recycling contractors use 23cubic metre rear load garbage trucks and two staff to perform the collection program. The garbage bins are emptied twice weekly and recycling bins are emptied weekly. Bins are stored on site in specifically designed garbage rooms. The contractors enter the site, collect the bins for emptying at the kerbside and return the bins on completion. This service has now been operating satisfactorily for 10 years.

The Collect and Return service, when introduced, generally extended to MUDs with seven units or more and only to existing developments having a common storage area for bins. All applications for new developments, however, are required to include a common garbage storage room to accommodate the bins for the service. There are 318 MUD sites containing

over 4,780 dwellings that are currently provided with the Collect and Return service. The residents of the remaining MUDs present their bins at the kerbside for collection.

Waste planning requirements for MUDs is included in the Penrith Development Control Plan 2006.

Services Provided at Other Councils

A survey was conducted of the WSROC councils to ascertain the waste service method and charge imposed for the delivery of services to MUDs within those areas. The details are provided in the following table:

Council	Domestic Waste Charge	Service Method – Garbage only	Service Issues
Auburn	\$371	240LMGBs & 660L Bulk Bins	<ul style="list-style-type: none"> - Majority of service 240L MGB kerbside presentation - Illegal dumping with bulk bins - Bulk bins filled with bulky waste (i.e., furniture, etc) - Bins containing bulky waste are not emptied
Bankstown	\$325	660L & 1100L Bulk Bins	<ul style="list-style-type: none"> - Severe dumping issues in and around bins - Significant recycling contamination problems
Baulkham Hills	\$335	240L MGBs & 660L & 1100L Bulk Bins	<ul style="list-style-type: none"> - No major issues provided
Blacktown	\$320	240L MGBs & 1100L & 3000L Bulk Bins	<ul style="list-style-type: none"> - Majority of service 240L MGB kerbside presentation - Bins filled with bulky waste (i.e., furniture, etc) - Some private collections – collections stopped through non-payment to the contractor
Blue Mountains	\$309	240L MGBs	<ul style="list-style-type: none"> - Bins presented at the kerbside for collection
Fairfield	\$368	240L MGBs & 1500L Bulk Bins	<ul style="list-style-type: none"> - 240L MGBs Collect and Return service – generally no issues - Illegal dumping and bulky waste problems with bulk bin use
Hawkesbury	\$373	240L MGBs	<ul style="list-style-type: none"> - 240L MGBs presented at kerbside – generally no issues
Holroyd	\$356	240L MGBs & 1100L Bulk Bins	<ul style="list-style-type: none"> - Majority of service 240L MGB kerbside presentation – generally no issues - Dumping of bulky waste in bulk bins can be a problem
Liverpool	\$308	240L MGBs	<ul style="list-style-type: none"> - Combined 240L MGBs presented at kerbside and Collect and Return service – no major issues
Parramatta	\$290	140L & 240L MGBs	<ul style="list-style-type: none"> - Kerbside presentation - No service to high rise - Considering bulk bins with new tender
Penrith	\$279	240L MGBs	<ul style="list-style-type: none"> - Combined 240L MGBs presented at kerbside and Collect and Return service – no major issues

The information in the above table was recently sought from officers at the identified WSROC councils. Ten of the eleven councils are using 240L MGBs for the majority of services provided to MUDs. Six of those councils, however, also use bulk bins to an extent in combination with the 240L. Recycling services, however, by all the councils are provided with the use of 240L MGBs. Bankstown, however, trialled the use of bulk bins for recycling and the audit results revealed a 38% increase in contamination.

Some councils allow the domestic waste service to be provided by private contractors; however, this does not exempt the property owner from being levied the charge for domestic waste management services.

Any proposal to Council for the provision of private services to any residential development would require the developer/owner to provide details and methods on how they would meet the State Government's strategy of reducing their waste from landfill by 66%. This would also require the submission to Council of ongoing data detailing target achievements.

Further, even though a private service may be provided, there is no exemption of the domestic waste management service charge as the *Local Government Act* provides that a council must levy the charge to all properties where the service is available.

Domestic Waste Management Service Charge

The *Local Government Act* provides that a council must make and levy a charge for each year for the provision of domestic waste management services for each parcel of rateable land for which the service is available. In Penrith, the service is available throughout the city to all land zoned to permit residential development. The domestic waste management service charge must be developed from the reasonable cost to the council of providing those services.

Legal opinion has been sought in regard to this issue by other councils, which confirmed that councils are within their rights to levy a domestic waste management service charge to all properties where the service is available whether a private service is provided or otherwise.

The domestic waste management service charge applied by all the WSROC councils range from \$279 (Penrith) to \$367 (Fairfield). The charge is for a standard service and applies to single unit dwellings as well as MUDs.

Conclusion

The Collect and Return service for MUDs was developed in 2002 after surveys of other council services to determine the most effective means of delivering garbage and recycling collections to overcome bin congestion at the kerbside and to improve the visual amenity of the streetscape.

The service provided by Penrith was subject to tender and complies with the *Department of Environment & Climate Change NSW Better Practice Guide for Waste Management in Multi Unit Developments*.

RECOMMENDATION

That the information contained in the report on the Domestic Waste Service Collection Contract be received.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

4 Waste 2012 Conference

Compiled by: Tracy Chalk, Waste and Community Protection Manager

Authorised by: David Burns, Group Manager - City Presentation

Objective	<i>We use our resources wisely, and take responsibility for our levels of consumption</i>
Community Outcome	<i>A City with a smaller ecological footprint (12)</i>
Strategic Response	<i>Respond to the impacts of climate change, by mitigating and adapting what we do (12.1)</i>

Executive Summary

The Waste 2012 Conference will be held from 1-3 May 2012 at the Opal Cove Resort, Coffs Harbour. The program will focus on practical outcomes and will include keynote addresses from both international and national leaders, case studies, workshops and panel discussions. This two-day event will include over 60 presentations, 40 exhibitors, 350 delegates and three networking events.

This report suggests that Council nominates interested and available Councillors to attend the Waste 2012 Conference.

Background

The Waste 2012 Conference is attended by professionals from a diverse range of sectors. Conference delegates have the opportunity to listen to keynote speakers and take part in workshops and panel discussions. Further information is available online at www.impactenviro.com.au/waste2012.

The program will focus on real issues and practical solutions and will include keynote addresses from both international and national leaders, case studies workshops and panel discussions.

Topics to be covered at the Conference include:

- Clean Energy Bill and waste management
- Waste policies and targets
- Waste to energy
- Education and communication
- Food and garden organics
- Commercial and industrial waste
- Hazardous waste
- Service and infrastructure procurement
- Waste policy leadership
- Recycling collection and markets
- Recovery of e-waste

- Landfill management
- AWT options and residuals
- Innovation and technology
- Tendering and contracts

There will be a pre-conference tour of six waste facilities between Sydney and Coffs Harbour. The tour departs from Sydney Central Station on Monday, 30 April 2012 and arrives at Opal Cove Resort, Coffs Harbour on Tuesday, 1 May 2012.

It is suggested that Council nominates interested Councillors to attend the Waste 2012 Conference.

RECOMMENDATION

That:

1. The information contained in the report on Waste 2012 Conference be received.
2. Council nominate interested and available Councillors to attend the Waste 2012 Conference.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

5 Hawkesbury River County Council request for support regarding NSW State funding

Compiled by: Janet Rannard, Bushland Management Officer
Graham Liehr, Environmental Health Manager

Authorised by: John Gordon, Parks Manager

Objective	<i>Our natural habitats are healthy</i>
Community Outcome	<i>A City with healthy waterways and protected natural areas (11)</i>
Strategic Response	<i>Protect and conserve the natural areas under Council's responsibility (11.2)</i>

Executive Summary

In 2009 the NSW Government amended the funding process for noxious weed control, devolving decision making from the local level to the regional level. This new approach has resulted in reduced funding to the Hawkesbury River County Council (HRCC), the Council controlling noxious weeds within the Penrith Local Government Area. This change will result in a reduction in service levels to Penrith City Council.

HRCC has requested written support from Council to the Sydney Weeds Committee and to the Minister for Primary Industries to preserve all Local Government funding rather than have it re-allocated to regional level committees.

Background

Hawkesbury River County Council (HRCC) is the Local Control Authority under the Noxious Weeds Act 1993 for the management and control of declared noxious weeds within the Penrith Local Government Area. Council's representatives on the board of the HRCC are the Deputy Mayor, Councillor Jackie Greenow and Councillor Kevin Crameri OAM.

Services typically include control of noxious weeds on both public and private land through the use of chemical, biological and mechanical resources. The service provided can be either reactive – in response to landowner requests, or part of a planned strategic management approach.

HRCC receives annual funding from each of its four constituent Councils - The Hills, Blacktown, Hawkesbury and Penrith. Penrith City Council's current contribution is \$128,000. The HRCC has indicated that they will request an increase in funding for the 2012/13 financial year. This request will be the subject of a further report to Council. To carry out its full range of services the HRCC also relies on State Government noxious weed grants. Previously HRCC received between \$496,000 and \$288,000 annually. The attached tables show HRCC revenue versus expenditure in recent years.

In 2009 the funding process was restructured to allow regional decision making. The Sydney region responded by amalgamating all four Regional Weeds Committees into a single Sydney

Weeds Committee, administered by a board of eight members. The Board devolves the available funding to individual entities.

Decisions made by the Sydney Weeds Committee resulted in HRCC having its funding reduced by \$68,000 annually without any written justification. An appeal to have the funding level re-instated was unsuccessful.

This decision impacts on HRCC directly, placing a strain on its financial resources and the employment of fewer staff. This has had a flow on effect of a reduction in services to local Councils.

Aquatic Weed Harvester

The Hawkesbury-Nepean River plays a key ecological role and also brings significant social and economic benefits to the region through tourism and recreational activities. Aquatic weed issues throughout the river system pose a risk for navigation and safety risks to recreational and tourism activities including the Penrith rowing course.

In 2008 the Federal Government funded the capital costs of an aquatic weed harvester for the Hawkesbury-Nepean. The Hawkesbury River County Council (HRCC) took possession of the harvester in early 2009. Whilst limited funding for the operation of the harvester was provided by the State Government at the time, there is currently no ongoing funding commitment to enable the operation of the harvester.

The Penrith rowing course will likely be used for training during the World Rowing Cup at the Sydney International Regatta Centre in 2013 and 2014. There is also strong community expectation that HRCC will use the harvester to control all problematic aquatic weeds in the Penrith rowing course. To preserve these benefits it is essential to secure ongoing funding for the continued operation and maintenance of the aquatic weed harvester and enable a sustainable approach to aquatic weed management.

In October 2011, a letter was sent to the Minister for the Environment, The Hon Robyn Parker MP seeking support for sufficient funding to enable sustainable aquatic weed management in the Hawkesbury –Nepean River. Letters were sent to local members of Parliament, Stuart Ayers, Bart Bassett, Tanya Davies and Andrew Rohan, seeking their support on the funding issue. In November 2011 the Office of Environment and Heritage wrote to Council and advised that Council's letter to the Minister for Environment had been referred to the Minister for Primary Industries, the Hon Katrina Hodgkinson MP. Council has not received further correspondence responding to Council's letters and will be writing to the Minister for Primary Industries directly reconfirming the request and also writing to the local Federal Member seeking support.

Concurrently, Council staff have recently met with staff from the Office of Hawkesbury Nepean and staff from the HRCC working in a coordinated approach for funding for the operation and maintenance of the harvester.

Conclusion

HRCC has requested written support from Council to the Sydney Weeds Committee and to the Minister for Primary Industries to preserve all Local Government funding rather than have it re-allocated to regional level committees.

Specifically, the HRCC has requested that Council writes to the Sydney Weeds Committee requesting that “ HRCC funding levels be restored to previous levels in line with CPI and any NSW State Budget increases”. HRCC also requested “that an appeal is made in writing to the Minister for Primary Industries to preserve all local government funding devolved via the NSW Weed Action Committee Program to meet the obligations of the Noxious Weeds Act 1993, and not permit regional level committees to reallocate this to other State Government entities.”

On the basis that these actions will result in a reduced level of service provide by the HRCC within the Penrith local government area, it is recommended that Council support the request from the HRCC.

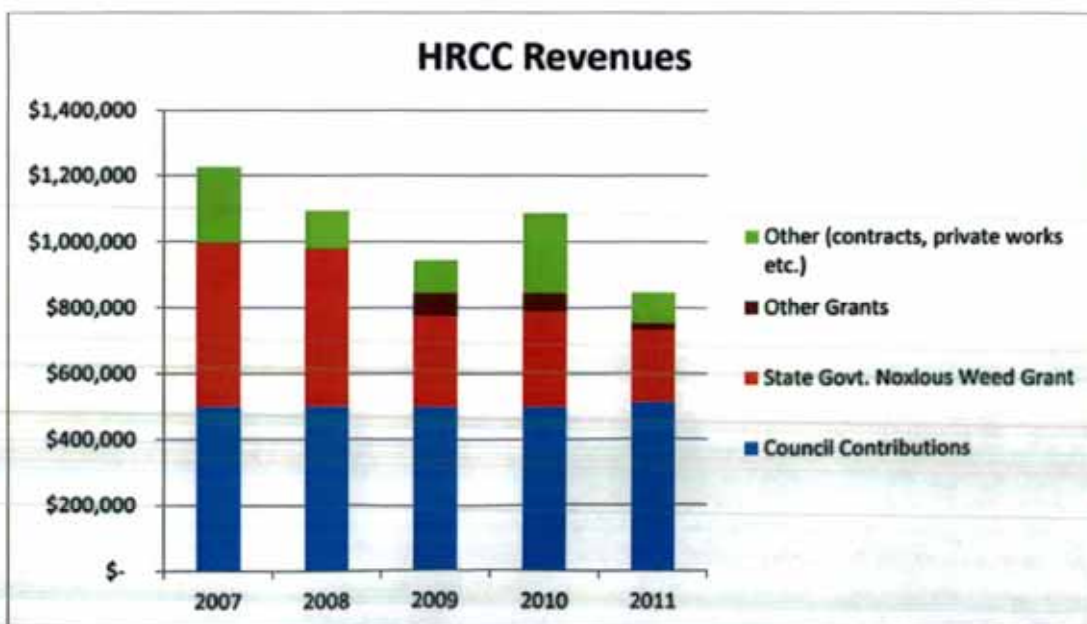
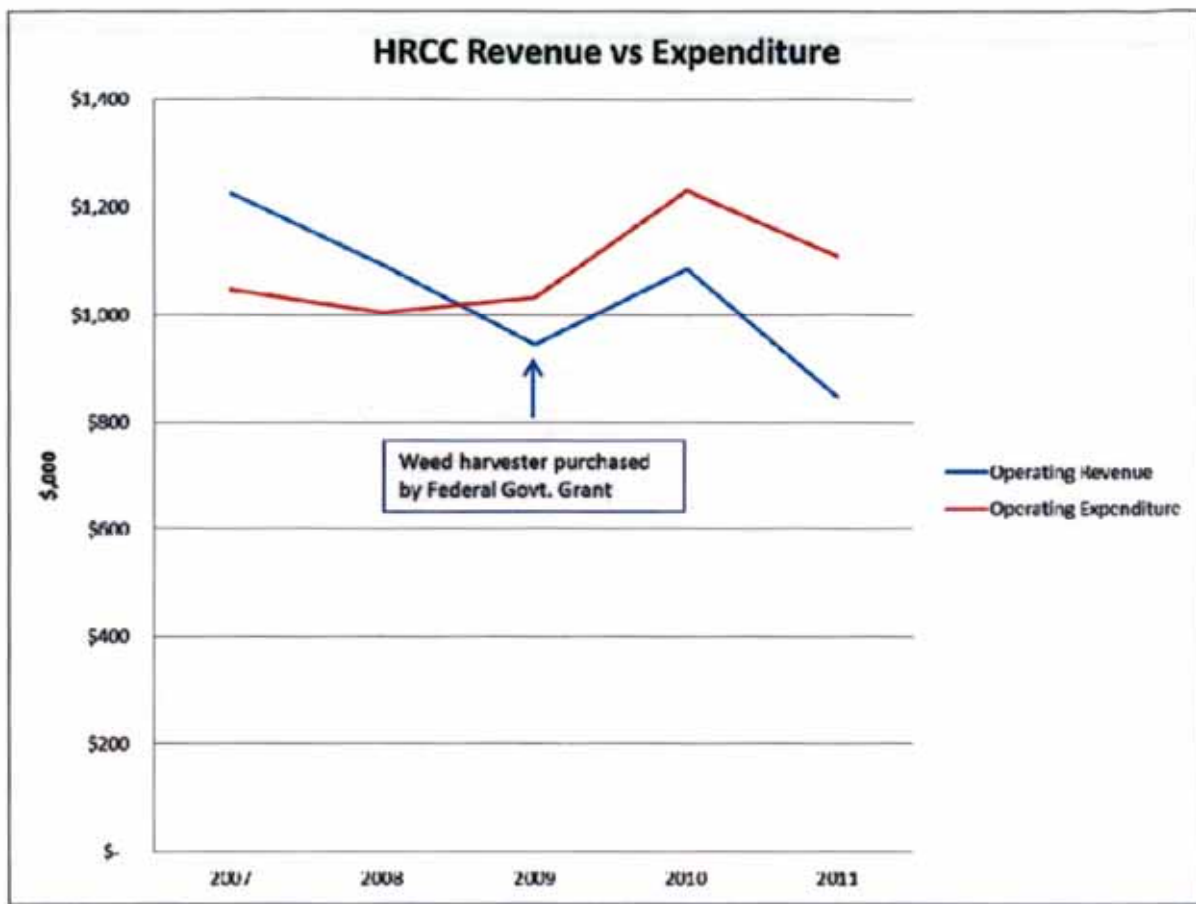
RECOMMENDATION

That:

1. The information contained in the report on Hawkesbury River County Council request for support regarding NSW State funding be received
2. Council write to the Sydney Weeds Committee requesting that HRCC funding levels are restored to previous levels in line with CPI and any NSW State Budget increases.
3. Council write to the Minister for Primary Industries appealing to preserve all Local Government funding devolved via the NSW Weed Action Program to meet the obligations of the Noxious Weeds Act 1993, and not permit regional level committees to re-allocate this to other State Government entities.
4. Council write to local state members of Parliament seeking support for the restoration of funding to the HRCC as part of the development of the State budget.
5. A further report be provided to Council in relation to a request from HRCC to increase Council’s financial contribution for the 2012/13 financial year.

ATTACHMENTS/APPENDICES

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| 1. Tables showing Hawkesbury River County Council's revenue versus expenditure in recent years | 1 | Appendix |
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6 Tender Reference 11/12-10, Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park

Compiled by: Michael Jackson, Major Projects Manager

Authorised by: Wayne Mitchell, Group Manager - City Infrastructure

Objective	<i>Our physical infrastructure is adaptable, and responds to changing needs</i>
Community Outcome	<i>A City with an integrated local road and pathways network (16)</i>
Strategic Response	<i>Provide a safe, efficient local road network (16.1)</i>

Previous Items: 13- Tender Reference 11/12-10, Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park.- Ordinary Meeting- 12 December 2011

Executive Summary

At the Ordinary Meeting held on 12 December 2011 Council accepted a tender from NACE Civil Engineering Pty Ltd (NACE) for Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park to the value of \$4,485,275.58 ex GST. However, subsequent information and discussions held with the successful tenderer has revealed that a misunderstanding has occurred and the correct price that should have been provided in their tender was \$4,933,503.14 ex GST.

After consultation with the Group Manager – Legal & Governance it has been determined that under Section 55 Subsection (3)(i) of the Local Government Act 1993, the Council has a discretion where extenuating circumstances exist to exempt any resulting contract from the requirements to recall the tender. It is considered extenuating circumstances exists due to the following:

- the competitive advantage and tender price that NACE will still provide Council
- it is considered a satisfactory result for Council would not be achieved by calling for fresh tenders.

This report recommends that the amended tender from NACE be accepted as the preferred contractor to carry out the scope of works outlined in the RFT 11/12-10 and Council use its discretionary power under the Local Government Act 1993 not to call fresh tenders.

Current Situation

At the Ordinary Meeting held on 12 December 2011 Council accepted a tender from NACE for Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park to the value of \$4,485,275.58 ex GST (copy attached). During discussions to finalise the contract for the project, NACE indicated to Council officers that there was a misunderstanding regarding their tender documents and the submitted price should have been \$4,933,503.14 exclusive of GST, not inclusive of GST. A review of the documents has been undertaken and NACE did provide their price of \$4,933,503.14 in the inclusive of GST section of the tender documents.

Council Officers in their review of the documentation provided by NACE determined when comparing the trade breakdown costs with the total cost that there was an anomaly. At the tender interview stage this anomaly was discussed with NACE and Council officers were of the view that this had been satisfactorily explained and understood by both parties and that the original price as submitted would stand. This was the position and the basis that the original report as attached was submitted to Council.

After Council accepted the tender, Council Officers commenced preparation of the final contract documentation in consultation with NACE. It was at this time that NACE again raised their error in recording their price in the wrong line of the schedule and confirmed that they would not undertake the Contract for the sum of \$4,485,275.58 exclusive of GST, but referred back to their originally submitted prices of \$4,933,503.14.(now exclusive of GST).

Under the Local Government Act 1993 Council has no power to reconsider tenders once a tender has been accepted. However the legislation does allow Council, in extenuating circumstances, not to be required to re-call tenders and to consider acceptance of the revised offer made by NACE to undertake the work in accordance with the tender documentation. The sum of the revised offer is \$4,933,503.14 exclusive of GST. This has been confirmed in writing to Council.

Under Section 55 subsection (3)(i) of the Local Government Act Council does not need to call tenders if:

(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders

If Council were to exercise its discretion in this matter it needs to decide by resolution that extenuating circumstances exist in this matter because of the following reasons:

- NACE have an established worksite on a project in the immediate locality
 - Erskine Park Link Road between Lenore Lane and Old Wallgrove Road for \$30m and due for completion in December 2012
- The NACE price is significantly lower in cost from the prices offered by other tenderers as noted in the previous report
- NACE have a competitive advantage due to their worksite establishment in the locality
- Other tenderers are unlikely to match or better the price if offered the opportunity at a possible further tender process, given the results of the last tender process.

Staff from the Legal and Governance Department discussed the circumstances of this tender with the Manager, Investigations Department of the Division of Local Government and it has been confirmed that the circumstances detailed in this report would fall into the category of extenuating circumstances.

In addition, Council's Legal & Governance Group Manager has discussed the situation with Council's external Solicitor, Chris Drury who also agrees that the use of the extenuating circumstances provisions of the Act are open to Council to rely upon in this situation.

The use of the extenuating circumstances provision within the Act should remain the exception rather than the rule. However, given the circumstances with this tender process, it is considered that the use of the provision in this case is warranted. In future, explicit clarity regarding price will be determined in respect of all tenders and any views or discussions formed by both parties will be confirmed in writing with the relevant parties prior to any future reports being submitted to Council.

If Council agrees that extenuating circumstances have occurred, the amended tender price will be \$4,933,503.14 exclusive of GST and the contract let will be subject to the documentation as previously supplied in the tender process.

The Roads & Maritime Services have provided concurrence to proceeding with the construction as detailed, as such the caveat that existed in the previous recommendation has now been removed.

RECOMMENDATION

That:

1. The information contained in the report on Tender Reference 11/12-10, Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park be received
2. Council exercise its discretion under Section 55 (3)(i) of the Local Government Act 1993 and engage NACE Civil Engineering Pty Ltd as the contractor for the intersection upgrade works of Mamre Road & Erskine Park Road for the revised amount of \$4,933,503.14 ex GST and not recall tenders because of the extenuating circumstances as detailed within this report.
3. The Common Seal of the Council of the City of Penrith be placed on all documentation if necessary.

ATTACHMENTS/APPENDICES

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| 1. Tender Reference 11/12-10, Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park - Ordinary Council Meeting Report - 12 December 2011 | 6 Pages | Appendix |
|--|---------|----------|

13 Tender Reference 11/12-10, Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park.

Compiled by: Ari Fernando, Major Projects & Design Co-ordinator

Authorised by: Craig Ross, Major Projects Manager

Objective	<i>Our physical infrastructure is adaptable, and responds to changing needs</i>
Community Outcome	<i>A City with an integrated local road and pathways network (16)</i>
Strategic Response	<i>Provide a safe, efficient local road network (16.1)</i>

Executive Summary

Council advertised the tender (RFT 11/12-10) for the upgrade and signalisation of the intersection of Mamre Road and Erskine Park Road, Erskine Park together with the widening and drainage upgrade of Erskine Park Road.

This report advises Council of the outcome of the tender process and recommends that the tender from NACE Civil Engineering Pty Ltd be accepted as the preferred contractor to carryout the scope of works outlined in the RFT 11/12-10, subject to the Roads & Maritime Services providing concurrence to proceeding with the construction.

Background

The Erskine Business Park S94 Plan has identified the upgrade and signalisation of the intersection of Mamre Road and Erskine Park Road as necessary infrastructure required by the estate. The plan has also identified the upgrade of the Blinds Kemp Creek culverts in Erskine Park Road, east of the Mamre Road intersection. As Erskine Park Road and Mamre Road are State Roads, concurrence of the works from the Roads & Maritime Services (RMS) (previously the Roads and Traffic Authority) is required.

The widening of Erskine Park Road to four lanes has not been identified as a requirement of the Erskine Business Park S94 Plan. This work is required to meet the demands of the traffic generation from the remainder of the Western Sydney Employment Hub development. There are significant cost efficiencies to be gained if this work is carried out as part of the S94 works. The Department of Planning has agreed to meet the additional costs to complete the road widening and this has been included in the designs and tender.

The scope of the works has been agreed with the RMS and that authority is preparing and approving the Review of Environmental Factors (REF) for the project.

Tenders

Tenders were advertised in the Penrith Western Weekender and the e-Tendering website on 4 November 2011 and the Sydney Morning Herald on the 1 November 2011 seeking Tenders from suitably pre-registered contractors with the RMS to a pre-qualification level of R3

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capability category and F25 financial capability. This is a mandatory requirement of the RSM where works on State Roads are involved.

The tender was advertised originally to close on 24 November 2011 and on the request from the intended tenderers the tender closing date was extended to 10.00 am on 28 November 2011. There were a number of addenda and tender clarifications issued during the tender period.

Tenderers were required to submit their tender on a standard pro-forma sheet, which identified the required response to enable the assessment of tenders against the evaluation criteria.

Tender Evaluation Panel

The Tender Evaluation Panel consisted of Ari Fernando (Major Projects & Design Coordinator), Ben Gibbons (Civil Designer), Gowry Gowrythasan (City Works Coordinator) and Michael Doggett (Supply Coordinator).

Tender Evaluation Criteria

The selection criteria advertised and used in selecting the successful tenderer were:

Compliance with Mandatory requirements

- Form of Tender
- Insurances
- Conflict of Interest
- Compliance Statements
- Completed Schedules

Tenderers Capability

- Demonstrated ability to complete the Projects on time and on budget
- Major Plant and equipment proposed to be used
- Key Personnel, qualifications, experience and availability
- Pre-qualification to the Roads & Maritime Services level of R3 & F25
- Proposed project program
- Technical & resource capability to complete the project
- Financial Assessment & Viability
- Relevant Industry References

Price

- Tender Schedules
- Lump Sum Price

Management & Administration

- Company Resources – Personnel
- Quality of Product / Service
- Commitment to Quality Management systems
- Availability of back-up, advisory and support systems and services
- Demonstrated use of OH&S systems and compliance with OH&S Act
- Relevant Licensing and Permits

- Utilisation of local subcontractors, workers, trainees and indigenous people

Sustainability & Environment Management

- Relevant Industry References
- Demonstrated use of environmental management systems,
- Use of environmentally sustainable work practices and waste management plans

Number of Tenders Received

A total of 3 submissions were received from the following contractors in response to the Tender by the close of the Tender on 28 November 2011 at 10.00 am.

Tenderer	Lump Sum Tendered Price	Duration of Contract
NACE Civil Engineering Pty Ltd	\$4,485,275.58 ex GST	25 weeks
Roads & Maritime Services (Sydney Road Services)	\$6,838,051.00 ex GST	33 weeks
AWJ Civil Contacting Professionals	\$7,211,895.43 ex GST	36 weeks

All three tender prices were considered to be within the budget available for undertaking the construction works and were considered for further assessment.

Evaluation of Tenders

Prior to the assessment of tenders received, the evaluation score card criteria and weightings were agreed by the Tender Evaluation Panel.

The mandatory requirement was for tenderers to be pre-qualified with the Roads & Maritime Services (RMS and former RTA) to capability standard of R3 category and financial capability of F25. All three tenderers satisfied the criteria.

All responses were evaluated against the pre-determined criteria and were ranked according to their overall capability, against each of the evaluation criteria giving a score against the submissions. Subsequently weightings were applied to the final scores.

Being pre-qualified contractors with the RSM, all three contractors exhibited capacity and capability to undertake the proposed construction works and the final ranking therefore was influenced by the tender price.

Financial Risk Assessment

It was considered that the financial risk assessment of Roads & Maritime Services was not required in view of the organisation being a public authority.

It was decided to undertake the independent financial risk assessment including referee checks on AWJ Civil Contacting Professionals and NACE Civil Engineering Pty Ltd, following evaluation of the submissions.

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Preferred Tenderer & Interview

NACE Civil Engineering Pty Ltd scored the highest ranking following evaluation of the submissions. There were a number of qualifying assumptions submitted by this contractor to limit their exposure to unknown ground conditions that may have not been revealed in the geotechnical investigations.

The Tender Evaluation Panel interviewed the representatives of NACE Civil Engineering Pty Ltd and requested clarification of a number of uncertain conditions. It was confirmed by the contractor that the certified fill material will be brought from the recently awarded contract works of Erskine Park Link Road to comply with the specifications and therefore lower earthwork cost for this project.

The contractor also confirmed that two way traffic movements will be maintained on both State roads with reduced traffic speeds following approval from the RMS.

The contractor also confirmed that all excess material from this site will be cleared and considered in the tender price, subject to any material being non-contaminated.

Profile of NACE Civil Engineering Pty Ltd

NACE Civil Engineering Pty Ltd is the Civil Engineering division of the Kypreos Group of Companies – a privately owned Sydney based organisation. This company is operating from Prestons.

NACE is currently constructing the F5 widening from Brooks Road, Ingleburn to Narellan Road for the RMS at a cost of \$80m, nearing completion. They are also constructing the Central Coast Highway (HW30) at a cost of \$36m due for completion in November 2012.

NACE Civil Engineering Pty Ltd was recently awarded the contract for Erskine Park Link Road between Lenore Lane and Old Wallgrove Road for \$30m and is due for completion in December 2012.

As part of the tender submissions, a response was sought regarding any OH&S claims in the last five years. NACE has submitted that there were a number of incidents, mainly involving public vehicles, during the F5 widening project. WorkCover investigated one incident and found the company to be jointly liable for a breach and imposed a fine.

The company has maintained their OHS accreditation and the recent award of contract for the Erskine Park Link Road is evidence that the RMS is satisfied with their performance. Council officers will closely monitor the required OH&S management practices in accordance with the management plan submitted and accepted as part of the contract documentation.

Roads & Maritime Services Concurrence

The proposed works are both on State Roads of Mamre Road and Erskine Park Road. As such, concurrence of the RMS is required before the works can proceed.

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Council has progressively received comments on the detailed design. The final approval of the Review of Environmental Factors from the RMS, and the formal sign-off on the design for issuing for construction have not been received as yet. Council Officers are shortly due to meet with the responsible officers of the RMS to finalise the RMS concurrence.

Financial Services Manager's Comments

This report proposes that NACE Civil Engineering Pty Ltd be awarded the contract for the construction of the intersection upgrade of Mamre Road & Erskine Park Road and associated drainage infrastructure for the Lump Sum contract price of \$4,485,275.58 (excluding GST). The tendered price represents value for money based on the estimated costs for these elements and after consideration of the expenditure to date in preparing the project. Funding for these works is available within the Erskine Business Park S94 Contributions Plan and the tender price can be accommodated within this allocation.

An independent financial risk assessment including referee checks were undertaken on NACE Civil Engineering Pty Ltd, following evaluation of the submissions.

Council's Financial Services reviewed the reports produced by the Corporate Scorecard and were satisfied that NACE Civil Engineering Pty Ltd appeared to be financially sound and well positioned to complete the project.

Tender Advisory Group (TAG) Comments

The Tender Advisory Group (TAG) comprising the Group Manager Legal and Governance, Stephen Britten and the Senior Governance Officer, Glenn Schuil met to consider the report for the tender (RFT 11/12-10) for the upgrade and signalisation of the intersection of Mamre Road and Erskine Park Road and associated drainage infrastructure.

Based on the information contained within the report, the TAG agrees with the methodologies used by the Tender Evaluation Panel and supports the recommended tender submitted by NACE Civil Engineering Pty Ltd.

Conclusion

The Tender Evaluation Panel has assessed the three tender submissions against the evaluation criteria. Consideration was given to the information provided in the tenders, interviews, reference checks, independent financial analysis and the tendered price.

The Panel considered the financial capability of NACE Civil Engineering Pty Ltd and is of the opinion that the company is capable of undertaking the proposed construction works.

RECOMMENDATION

That:

1. The information contained in the report on Tender Reference 11/12-10, Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park, be received
2. NACE Civil Engineering Pty Ltd be engaged as contractor for the

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intersection upgrade works of Mamre Road & Erskine Park Road for the amount of \$4,485,275.58 ex GST subject to the Roads & Maritime Services provide concurrence to proceeding with the construction.

3. The Common Seal of the Council of the City of Penrith be placed on all documentation if necessary.

ATTACHMENTS/APPENDICES

There are no attachments for this report.

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A VIBRANT CITY

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

**COMMITTEE OF THE WHOLE
DELIVERY 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:

A Liveable City

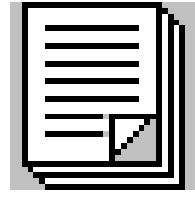
- 2 [Tender Reference 11/12-10 Upgrading Works on Mamre Road and Erskine Park Road, Erskine Park](#)

This item has been referred to Committee of the Whole as the report refers to advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and discussion of the matter in open meeting would be, on balance, contrary to the public interest.



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ATTACHMENT



Date of Meeting:

Delivery Program: A Leading City

Program: Corporate Finance

Report Title: 2011-2012 Voted Works