

Meeting Date: Tuesday 26 March 2013

Location: Council Chambers, Level 6, Civic Centre, 1 Devlin Street, Ryde

Time: 7.30pm

Councillors Present: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Maggio, Pendleton, Perram, Pickering, Salvestro-Martin, Simon and Yedelian OAM.

Note: Councillor Salvestro-Martin left the meeting at 12.21am on Wednesday, 27 March 2013 and was not present for the voting of the Supreme Court Proceedings.

Note: The Mayor, Councillor Petch left the meeting at 12.34am on Wednesday, 27 March 2013 and was not present for the voting of the Supreme Court Proceedings.

Note: Councillor Perram left the meeting at 12.34am on Wednesday, 27 March 2013 and was not present for the voting of the Supreme Court Proceedings.

Note: Councillor Simon left the meeting at 1.00am on Wednesday, 27 March 2013 and was not present for the voting of the Supreme Court Proceedings.

Note: Councillor Laxale left the meeting at 1.03am on Wednesday, 27 March 2013 and was not present for the voting of the Supreme Court Proceedings.

Apologies: Nil.

Leave of Absence: Councillor Li.

Staff Present: Acting General Manager, Acting Group Manager – Community Life, Group Manager - Corporate Services, Group Manager – Environment & Planning, Acting Group Manager - Public Works, General Counsel, Manager – Communications and Media, Manager – Strategy and Organisation Development, Chief Financial Officer, Manager – Urban Planning, Manager – Risk and Audit, Manager – Ranger & Parking Services, Manager – Infrastructure Integration, Coordinator – Change Management Projects, Team Leader – Business Administration, Section Manager - Governance and Meeting Support Coordinator.

PRAYER

Pastor Robyn Peebles of the Church of the Good Shepherd, West Ryde was present and offered prayer prior to the commencement of the meeting.

DISCLOSURES OF INTEREST

Councillor Etmekdjian disclosed a Significant Non-Pecuniary Interest in Item 12 – Support to the Ryde Hunters Hill Symphony Orchestra for the reason that he has a close community relationship with the president and RHHSO.

Councillor Yedelian OAM disclosed a Significant Non-Pecuniary Interest in Item 12 – Support to the Ryde Hunters Hill Symphony Orchestra for the reason that the President of the Board is a neighbour and a relative is on the Board.

Councillor Perram disclosed a Pecuniary Interest in Item 17 – Deferred Report: Policy on the Payment of Expenses and Provision of Facilities for the Mayor and other Councillors for the reason that he is a defendant in incomplete Court proceedings where costs, potentially covered by this policy, have yet to be determined.

Councillor Simon disclosed a Significant Non-Pecuniary Interest in Item 17 – Deferred Report: Policy on the Payment of Expenses and Provision of Facilities for the Mayor and other Councillors for the reason that the policy may have retrospective implications on cost proceedings against people who he considers to be friends or acquaintances.

Councillor Laxale disclosed a Significant Non-Pecuniary Interest in Item 17 – Deferred Report: Policy on the Payment of Expenses and Provision of Facilities for the Mayor and other Councillors for the reason that he has a relationship with former Councillor Butterworth (retrospective cost implication).

Councillor Salvestro-Martin disclosed a Significant Non-Pecuniary Interest in Item 17 – Deferred Report: Policy on the Payment of Expenses and Provision of Facilities for the Mayor and other Councillors for the reason that he is a listed party in legal proceedings.

The Mayor, Councillor Petch disclosed a Pecuniary Interest in Item 17 – Deferred Report: Policy on the Payment of Expenses and Provision of Facilities for the Mayor and other Councillors for the reason that he is a defendant in a court case relating to this resolution.

Councillor Maggio disclosed a Less than Significant Non-Pecuniary Interest in Item 5 – Cox's Road Master Plan Study - Outcomes of Community Consultation for the reason that he is aware of the landowners – due to charity events where they have been present.

TABLING OF PETITIONS

No Petitions were tabled.

PUBLIC PARTICIPATION ON ITEMS LISTED ON THE AGENDA

The following persons addressed the Council:-

Jennifer Noble	Item 3(2) – Significant Tree Nomination – 135 Marsden Road, West Ryde
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PUBLIC PARTICIPATION ON ITEMS NOT LISTED ON THE AGENDA

No addresses were made to Council.

PRESENTATION OF THE ORIGINAL MUSIC FOR THE SONG “WHERE THE COLOUR’S NEVER FADE”

The Mayor, Councillor Petch presented Council with the original music for the song “Where the Colour’s Never Fade”. This Item was tabled.

ORDER OF BUSINESS

RESOLUTION: (Moved by Councillors Pickering and Maggio)

That Council now consider the following Item, the time being 7.45pm:

- Item 3(2) from the Report of the Works and Community Committee Meeting 3/13 held on 19 March 2013 - Significant Tree Nomination - 135 Marsden Road, West Ryde.

Record of Voting:

For the Motion: Unanimous

3 REPORT OF THE WORKS AND COMMUNITY COMMITTEE MEETING 3/13 held on 19 March 2013

2 SIGNIFICANT TREE NOMINATION - 135 MARSDEN ROAD, WEST RYDE

Note: Jennifer Noble addressed the meeting in relation to this Item.

RESOLUTION: (Moved by Councillors Pickering and Etmekdjian)

That the *Maclura pomifera* (Osage Orange) located at the road frontage of 135 Marsden Road, West Ryde be added to the Significant Tree Register due to its horticultural / botanical significance.

Record of Voting:

For the Motion: Unanimous

MAYORAL MINUTES

1 WELCOME MR JOHN HULL TO HERITAGE ADVISORY COMMITTEE - The Mayor, Councillor Ivan Petch

RESOLUTION: (Moved by the Mayor, Councillor Petch and Councillor Yedelian OAM)

That Council endorse and welcome Mr John Hull to the Ryde Heritage Advisory Committee for its present term.

Record of Voting:

For the Motion: Unanimous

MATTERS OF URGENCY

Councillor Chung requested to raise two Matters of Urgency regarding the Section 96 modifications sought for a development application at 1-9 Monash Road and 407-417 Victoria Road, Gladesville and Traffic Issues related to Eltham Street, Gladesville.

The Mayor, Councillor Petch accepted these as Urgent Items.

RESOLUTION: (Moved by Councillors Chung and The Mayor, Councillor Petch)

That Council consider Matters of Urgency regarding the Section 96 modifications sought for a development application at 1-9 Monash Road and 407-417 Victoria Road, Gladesville and Traffic Issues related to Eltham Street, Gladesville, the time being 7.50pm.

Record of Voting:

For the Motion: Unanimous

OBJECTION TO THE JRPP - LDA2011/0648 (1-9 MONASH ROAD AND 407-417 VICTORIA ROAD, GLADESVILLE)

Note: Photographs of Eltham Street were tabled in relation to this Item and copies are ON FILE.

RESOLUTION: (Moved by Councillors Chung and Maggio)

The Acting General Manager submits an objection to the JRPP and the independent assessor on behalf of Council for the S.96 modifications sought for LDA2011/0648 (1-9 Monash Road and 407-417 Victoria Road, Gladesville) based on the following:

1. **Condition 153** – The proposed modification to the hours of operation are inconsistent with the operating hours of other ALDI stores in NSW and are inconsistent with the good order and amenity of the residential street in which it will operate.
2. **Condition 133 and 146** – The proposed extension of delivery hours will unduly disturb the residential street in which the development is located.
3. **Condition 133** – The proposed increase in deliveries from 2 per day to 6 per day triples the heavy vehicle load on the residential street. This is considered unacceptable to the quiet amenity of the street.
4. **Condition 20** – The increase in the size of delivery vehicles of over 20% from rigid (12.5m) to articulated (15.2m) vehicles presents an unacceptable safety hazard to pedestrians on Monash Road without a heavy safety gate across the Monash Road exit to the Loading dock area locked into position at all times except immediately prior to departure of a heavy vehicle.
5. **Condition 68(g)** – This condition is a safety condition as well as an amenity condition and must not be deleted.
6. **Condition 80** – This clause defines the parameters of noise attenuation and should not be deleted.
7. **Condition 117** – Is a post-construction report and cannot be deleted.

And further submit any objections to the S.96 application that fulfil the intent of this Motion.

And further that Councillor Chung on behalf of Council, present a verbal objection at the public hearing of the JRPP in terms that expand on the written objection and in terms that do not diminish the objection of the Council in any way.

Record of Voting:

For the Motion: Unanimous

TRAFFIC ISSUES RELATED TO ELTHAM STREET, GLADESVILLE

RESOLUTION: (Moved by Councillor Chung and Maggio)

- (a) The Acting General Manager prepare a report detailing appropriate traffic solutions to reduce the flow of vehicular traffic and speeds of vehicles along Eltham Street, Gladesville between Monash Road and Westminster Road and to further improve the flow of traffic at the intersection of Eltham Street, College Street and Monash Road and that this report be brought back to Council by 7 May 2013.
- (b) That traffic monitoring and investigation be extended by two weeks until 19 April 2013.

Record of Voting:

For the Motion: Unanimous

MATTER OF URGENCY

Councillor Perram requested to raise a Matter of Urgency regarding the Chronology of Events in respect of the Supreme Court proceedings that were recently issued by Council's General Counsel, Bruce McCann.

The Mayor, Councillor Petch accepted this as an Urgent Item.

RESOLUTION: (Moved by Councillors Perram and The Mayor, Councillor Petch)

That Council consider a Matter of Urgency regarding amending the Chronology of Events in respect of the Supreme Court proceedings, recently provided by the General Counsel, Bruce McCann, the time being 8.16pm.

Record of Voting:

For the Motion: Unanimous

SUPREME COURT PROCEEDINGS - CHRONOLOGY OF EVENTS

RESOLUTION: (Moved by Councillors Perram and Pendleton)

That Council's General Counsel, Bruce McCann be requested to amend and reissue to all Councillors and attach to these Minutes, the full Chronology of Events in respect of the Supreme Court proceedings, which was recently provided to all Councillors.

Record of Voting:

For the Motion: Unanimous

MATTER OF URGENCY

Councillor Maggio requested to raise Matters of Urgency regarding the Ryde Riverwalk Project and to the San Antonio Nursing Home renovation/extensions development application.

The Mayor, Councillor Petch accepted these as Urgent Items.

RESOLUTION: (Moved by Councillors Maggio and Etmekdjian)

That Council consider Matters of Urgency regarding the Ryde Riverwalk Project and to the San Antonio Nursing Home renovation/extensions development application, the time being 8.30pm.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Maggio, Pickering and Yedelian OAM

Against the Motion: Laxale, Pendleton, Perram, Salvestro-Martin, Simon

RYDE RIVERWALK PROJECT

MOTION: (Moved by Councillors Maggio and Etmekdjian)

That Council undertake a Councillors and community forum regarding the Ryde Riverwalk Project at the completion of the exhibition period on 17 April 2013, inviting any interested community groups to formalise any concerns they may have before the final report is presented to Council.

On being put to the meeting, the voting on the Motion was five (5) votes For and seven (7) votes Against. The Motion was LOST.

Record of Voting:

For the Motion: Councillors Chung, Etmekdjian, Maggio, Pickering and Yedelian OAM

Against the Motion: The Mayor, Councillor Petch and Councillors Laxale, Pendleton, Perram, Salvestro-Martin and Simon

SAN ANTONIO NURSING HOME

Note: Councillor Maggio WITHDREW this Matter of Urgency.

MATTER OF URGENCY

Note: Councillor Pickering left the meeting at 8.48 pm and was not present for voting on this Item.

Councillor Salvestro-Martin requested to raise a Matter of Urgency regarding an Asbestos matter.

The Mayor, Councillor Petch accepted this Item as an Urgent Item.

RESOLUTION: (Councillors Salvestro-Martin and The Mayor, Councillor Petch)

That Council consider a Matter of Urgency regarding an Asbestos Matter, the time being 8.50pm.

Record of Voting:

For the Motion: Unanimous

ASBESTOS FINDS - MACQUARIE UNIVERSITY

Note: Councillor Pickering was not present for voting on this Item.

RESOLUTION: (Moved by Councillors Salvestro-Martin and Maggio)

That as a consequence of the 150 Asbestos finds less than 300mm from the northern border of the construction site at 120-128 Herring Road, and especially noting that the Asbestos was found in an area of pedestrian transit, Council work with the landowner, Macquarie University to ensure that student, worker, resident and community safety is not further put at risk from airborne and contamination matter. That Council work with Macquarie University to ensure that the area is appropriately marked and that Macquarie University take precautionary steps including watering down of the site to impede particulate movement.

Record of Voting:

For the Motion: Unanimous

COUNCIL REPORTS

1 CONFIRMATION OF MINUTES - Council Meeting held on 12 March 2013

Note: Councillor Pickering was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Yedelian OAM and Simon)

That the Minutes of the Council Meeting 4/13, held on 12 March 2013 be confirmed, subject to an adjustment being made to Part 3(a) of the Report of the Works and Community Committee Meeting 2/13 held on March 2013 – Skateboarding Clinics in the City of Ryde (page 29) to now read as follows:

- (a) That Council continue to conduct skateboard clinics in the City of Ryde during school holiday periods.

Record of Voting:

For the Motion: Unanimous

2 REPORT OF THE PLANNING AND ENVIRONMENT COMMITTEE MEETING 4/13 held on 19 March 2013

Note: Councillor Pickering was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Pendleton and Yedelian OAM)

That Council note that all items of the Planning and Environment Committee meeting 4/13 held on 19 March 2013 were dealt with by the Committee within its delegated powers.

Record of Voting:

For the Motion: Unanimous

3 REPORT OF THE WORKS AND COMMUNITY COMMITTEE MEETING 3/13 held on 19 March 2013

Note: Councillor Pickering was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Laxale and Etmekdjian)

That Council determine Items 2, 4 and 5(i), 5(l) and 5(p) of the Works and Community Committee report, noting that Items 1, 3 and 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 5(g), 5(h), 5(j), 5(k), 5(m), 5(n), 5(o), 5(q) and 5(r) were dealt with by the Committee within its delegated powers.

Record of Voting:

For the Motion: Unanimous

2 SIGNIFICANT TREE NOMINATION - 135 MARSDEN ROAD, WEST RYDE

Note: This Item was considered earlier in the Meeting as detailed in these Minutes.

4 DEEBLE STREET - Negotiations on Landscaping

Note: Councillor Pickering was not present for the voting of this item.

RESOLUTION: (Moved by Councillors Laxale and Perram)

- (a) That the proposal by the owners of 70a Champion Road to move their stone letterbox behind their property boundary line and erect a front fence in accordance with Development Control Plan 2010 Part 9.4 Fencing, to delineate the property boundary be accepted with the works to be completed within six (6) months at no cost to Council.

- (b) That no further action be taken on removal of the sandstone landscaping constructed on the Deeble Street road reserve.
- (c) That the owners of 70a Champion Road be required to maintain the vegetation and sandstone walls on Council land and should it not be maintained in a satisfactory manner, Council reserves the right to remove the plantings and sandstone walls.
- (d) That in maintaining the landscaping on the road reserve outside their property, the owners of 70a Champion Road annually provide Council a copy of their policy of insurance covering public liability with Council's interest noted on the policy.
- (e) That a notification be placed on the S149(2) certificate relating to the landscaping noting the obligation to maintain the landscaping. within the road reserve and the fact that such landscaping is unapproved by Council.

Record of Voting:

For the Motion: Unanimous

5 TRAFFIC AND PARKING MATTERS PRESENTED TO RYDE LOCAL TRAFFIC COMMITTEE held on 31 January 2013

Note: Councillor Pickering was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Laxale and Perram)

- (i) That Council adopt the following recommendation in relation to the report titled "FIR TREE, WEST RYDE" – Request for 10 Minute Parking, as follows:

That ten minute parking signs be installed as requested in Fir Tree Ave West Ryde, permitting parking between 6.30am - 8.30am and 4.30pm - 6.30pm.

Record of Voting:

For the Motion: Unanimous

Note: Councillor Pickering was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Laxale and Perram)

- (l) That Council adopt the following recommendation in relation to the report titled "NORMA AVENUE AND WISHART STREET, EASTWOOD" – Request for traffic calming measures, as follows:

- (i) That Council take no action to introduce traffic calming measures in Norma Avenue and Wishart Street.
- (ii) That the NSW Police Service be requested to enforce the 50km/hr speed limit along Norma Avenue and Wishart Street.
- (iii) That this item be reviewed in 6 months time.
- (iv) That Council write to the residents of Norma Avenue, Wishart Street and Oakes Avenue and advise them of the outcome of the Traffic Report.

Record of Voting:

For the Motion: Unanimous

Note: Councillor Pickering returned to the meeting at 9.06pm

RESOLUTION: (Moved by Councillors Laxale and Perram)

- (p) That Council adopt the following recommendation in relation to the report titled "ROWE STREET, EASTWOOD" – Rowe Street Pedestrian Crossing, as follows:
 - (i) That this issue be referred back to the Traffic Committee for further consideration to include
 - (a) requesting the funding body to advise if the funding offered could be used for a signalled crossing.
 - (b) considering whether a more extensive raised and textured area around the full quadrant of the curve would be possible.
 - (c) considering whether a temporary road closure would alleviate the problem at times of highest conflict for example on Saturdays.

Record of Voting:

For the Motion: Unanimous

4 DEVLIN STREET PEDESTRIAN BRIDGES

RESOLUTION: (Moved by Councillors Pendleton and Yedelian OAM)

- (a) That Council, as Lessor, consult the community on the required service levels for the pedestrian bridges as detailed in the report and that negotiations then be entered into with the lessee to confirm these service levels.
- (b) That the summary report format as a minimum include the date, time, lift location, issue reported, if passenger trapped and for how long, stoppage time and action taken including time and date reported to Council.

- (c) That all resident submissions received as a result of the CityView article and website information be forwarded to Top Ryde Shopping Centre management and included in the summary reports to be circulated to Councillors in the Councillor Information Bulletin.
- (d) That Council confirm the Group Manager – Public Works as the main contact for strata committee related issues and for all issues related to the performance of the pedestrian bridges.
- (e) That Council receive a full report on the lift's performance including instance duration when they are out of action and a report that also includes passengers trapped, number and duration.
- (f) That Council reapproach the Roads and Maritime Services (RMS) seeking the reinstatement of the at grade pedestrian crossing across Devlin Street.

Record of Voting:

For the Motion: Unanimous

5 COXS ROAD MASTER PLAN STUDY - OUTCOMES OF COMMUNITY CONSULTATION

Note: Councillor Maggio disclosed a Less than Significant Non-Pecuniary Interest in this Item for the reason that he is aware of the landowners – due to charity events where they have been present.

Note: A letter from Parisi Lawyers dated 26 March 2013 was tabled in relation to this Item and a copy is ON FILE.

RESOLUTION: (Moved by The Mayor, Councillor Petch and Salvestro-Martin)

- (a) That this matter be deferred to provide all Councillors with all the information related to this matter including the Micromex Study.
- (b) That a Councillor Workshop be scheduled as soon as possible to discuss this matter prior to it being reported back to Council.

Record of Voting:

For the Motion: Unanimous

6 INVESTMENT REPORT - February 2013

RESOLUTION: (Moved by Councillors Etmekdjian and Pendleton)

- (a) That Council note the report and a further report to be brought back to Council in April that details a proposal to optimise the number of investments, at the highest rated investment covered by the Federal

Government Guarantee, whilst maximising returns.

- (b) The report should also consider any advantage in consolidating investments in the most highly rated and appropriate financial products and seek reconfirmation of Council's Investment Strategy.

Record of Voting:

For the Motion: Unanimous

7 COMMUNITY STRATEGIC PLAN REVIEW - Ryde 2021

RESOLUTION: (Moved by Councillors Chung and Yedelian OAM)

- (a) That Council endorse the recommended three phased approach to review the City of Ryde's Community Strategic Plan noting that in Item 2 Phase 2, Council will be taking the broadest approach in its consultation.
- (b) That Council support inclusion of this project in the draft Four Year Delivery Plan for 2014-2016 and Operational Plan 2013/14 under the Outcome of Progressive Leadership.

Record of Voting:

For the Motion: Unanimous

8 NSROC CODE OF CONDUCT REVIEWERS PANEL

RESOLUTION: (Moved by Councillors Yedelian OAM and Pendleton)

- (a) That Council adopt the NSROC Regional panel of Code of Conduct reviewers.
- (b) That Council utilise this panel to select Conduct reviewers to undertake reviews and investigations in accordance with the requirements of the Code of Conduct.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Pendleton, Perram, Pickering, Simon and Yedelian OAM

Against the Motion: Councillors Maggio and Salvestro-Martin

9 NATIONAL COMMUNITY SAFETY AND SECURITY CONFERENCE - Melbourne - 4 to 5 June 2013

RESOLUTION: (Moved by Councillors Chung and Pickering)

That Council nominate Councillors Maggio and Yedelian OAM to attend the National Community Safety and Security to be held in Melbourne from Tuesday, 4 June to Wednesday, 5 June 2013.

Record of Voting:

For the Motion: Unanimous

10 AUDIT AND RISK COMMITTEE - APPOINTMENT OF COUNCILLOR REPRESENTATIVES

RESOLUTION: (Moved by Councillors Pendleton and Yedelian OAM)

That Council confirm Councillors Etmekdjian and Pendleton as the Councillor representatives and Councillors Salvestro-Martin and Chung as the alternates for membership of Council's Audit and Risk Committee.

Record of Voting:

For the Motion: Unanimous

11 MACQUARIE PARK FORUM - TERMS OF REFERENCE

RESOLUTION: (Moved by Councillors Pickering and Laxale)

That Council confirms the ATTACHED Terms of Reference for the Macquarie Park Forum Advisory Committee, noting the following minor changes:

- 'Transport Infrastructure Development Corporation' (TIDC) has been renamed Transport Construction Authority (TCA)
- Reference to the Forum comprising about 40 members be deleted

Record of Voting:

For the Motion: Unanimous

12 SUPPORT TO THE RYDE HUNTERS HILL SYMPHONY ORCHESTRA

Note: Councillor Etmekdjian disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he has a close community relationship with the president and RHHSO.

Note: Councillor Yedelian OAM disclosed a Significant Non-Pecuniary Interest in this Item for the reason that the President of the Board is a neighbour and a relative is on the Board.

Note: Councillors Etmekdjian and Yedelian OAM left the meeting at 10.22pm and were not present for consideration or voting on this Item.

MOTION: (Moved by Councillors Maggio and Simon)

- (a) That Council continue to support free venue hire for the remainder of the Calendar year.
- (b) That Council encourage Ryde Hunters Hill Symphony Orchestra to apply for a community Grant through Council's Grant Process.
- (c) That Council write to Hunters Hill Council seeking dollar for dollar contribution to match Council's contribution.
- (d) That Council undertake a review of the Community Grants process to ensure equity is provided to all groups.

AMENDMENT: (Moved by The Mayor, Councillor Petch and Councillor Pendleton)

- (a) That Council, in addition to the existing agreed support, provides the Ryde Hunters Hill Symphony Orchestra with a support as outlined in Option 2A of this report, to the value of \$21,618, effective 1 July 2013, until 30 June 2016 (the term of the Current Delivery Plan).
- (b) That Council request the above allocation be made in the Draft Delivery Plan 2013-2016.
- (c) That Hunters Hill Council be advised of the City of Ryde's contribution to the Ryde Hunters Hill Symphony Orchestra and be requested to match Council's contribution.

On being put to the Meeting, the voting on the Amendment was three (3) votes For and six (6) votes Against. The Amendment was LOST. The Motion was then put and CARRIED.

Record of Voting:

For the Amendment: The Mayor, Councillor Petch and Councillors Pendleton and Perram

Against the Amendment: Councillors Chung, Laxale, Maggio, Pickering, Salvestro-Martin and Simon

RESOLUTION: (Moved by Councillors Maggio and Simon)

- (a) That Council continue to support free venue hire for the remainder of the Calendar year.
- (b) That Council encourage Ryde Hunters Hill Symphony Orchestra to apply

for a community Grant through Council's Grant Process.

- (c) That Council write to Hunters Hill Council seeking dollar for dollar contribution to match Council's contribution.
- (d) That Council undertake a review of the Community Grants process to ensure equity is provided to all groups.

Record of Voting:

For the Motion: Unanimous

COMPLETION OF BUSINESS – EXTENSION OF TIME

Note: Councillors Etmekdjian and Yedelian OAM were not present for the voting of this Item.

RESOLUTION: (Moved by the Mayor, Councillor Petch and Councillor Salvestro-Martin)

That the meeting time be extended to allow Council to complete all Items of business on the Agenda, the time being 10.52pm.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Laxale, Maggio, Pendleton, Perram, Simon

Against the Motion: Councillor Pickering

13 PROCUREMENT PROCESS - SUPPLY OF ELECTRICITY FOR LARGE SITES AND STREET LIGHTING, SMALL SITES AND THE SUPPLY OF GAS TO LARGE SITES

Note: Councillors Etmekdjian and Yedelian OAM returned to the meeting at 10.53 pm.

RESOLUTION: (Moved by Councillors Perram and Chung)

- (a) That Council endorses Council's continued participation in the procurement process for large market electricity sites to be conducted through SSROC with the assistance of the prescribed body Procurement Australia
- (b) That, in accordance with the Tender evaluation report, the Acting General Manager be delegated authority to enter into an agreement with the Origin Energy in relation to the supply of electricity to Councils small market electricity and gas sites.

- (c) That Council endorses the recommended procurement process to be undertaken with respect to the large market gas site and that the Acting General Manager be delegated authority to enter into a supply agreement with a suitable supplier.
- (d) Given the significant and taxation changes since the last energy supply contracts, Council discontinue its purchase of GreenPower and a report be provided to Council in redirecting these funds on cost effective energy efficiency measures to be adopted by Council.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Maggio, Pendleton, Perram, Pickering and Yedelian OAM

Against the Motion: Councillors Laxale, Salvestro-Martin and Simon

14 (COR-RFT-21/12) FOR THE UPGRADE, INSTALLATION AND MAINTENANCE OF MACQUARIE PARK PARKING METERS

Note: Councillor Pickering left the meeting at 11.05pm and was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Perram and Pickering)

- (a) That Council accept the tender from Reino International Pty Ltd for the upgrade and maintenance of seventy-seven (77) Parking Meters in Macquarie Park to the amount of \$420,330 over three years as recommended in the Tender Evaluation Report.
- (b) That Council accept the tender from ECS International Security for the collection of cash from seventy-seven (77) Parking Meters in Macquarie Park for three years to the amount of \$27,048 as recommended in the Tender Evaluation Report.
- (c) That Council delegate to the Acting General Manager the authority to enter into a contract with Reino International Pty Ltd and ECS International Security and Investigations on the terms contained within the tender and for minor amendments to be made to the contract documents that are not of a material nature.
- (d) That Council approve the advisory of all respondents of Council's decision.
- (e) That Council allocate the amount of allocation of \$447,378 from the Macquarie Park Corridor Special Levy for the purposes of the upgrade and maintenance of, and the collection of cash from seventy-seven (77) Parking Meters in Macquarie Park, and that the amount also be consolidated into the next Quarterly Review.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Maggio, Pendleton, Perram

Against the Motion: Councillors Laxale, Simon, Salvestro-Martin and Yedelian OAM

15 PERFORMANCE DEVELOPMENT SYSTEM (PDS)

Note: Councillor Chung left the meeting at 11.11pm and was not present for the voting of this Item.

Note: Councillor Pickering was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Perram and Etmekdjian)

That Council receive and note the findings of the KPMG report – Review of the Performance Development System.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Etmekdjian, Laxale, Maggio, Pendleton, Perram, Simon and Yedelian OAM

Against the Motion: Councillor Salvestro-Martin

16 REPORTS DUE TO COUNCIL

Note: Councillor Chung was not present for the voting of this Item.

Note: Councillor Pickering was not present for the voting of this Item.

RESOLUTION: (Moved by Councillors Pendleton and Yedelian OAM)

That the report on Outstanding Council Reports be endorsed.

Record of Voting:

For the Motion: Unanimous

17 DEFERRED REPORT: POLICY ON THE PAYMENT OF EXPENSES AND PROVISION OF FACILITIES FOR THE MAYOR AND OTHER COUNCILLORS

Note: The Mayor, Councillor Petch disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in a court case relating to this resolution.

Note: Councillor Perram disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in incomplete Court proceedings where costs, potentially covered by this policy, have yet to be determined.

Note: Councillor Simon disclosed a Significant Non-Pecuniary Interest in this Item for the reason that the policy may have retrospective implications on cost proceedings against people who he considers to be friends or acquaintances.

Note: Councillor Laxale disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he has a relationship with former Councillor Butterworth (retrospective cost implication).

Note: Councillor Salvestro-Martin disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he is a listed party in legal proceedings.

Note: This matter was deferred by the Mayor, Councillor Petch for consideration by Council at the end of this Meeting.

PRECIS OF CORRESPONDENCE FOR CONSIDERATION

1 THANK YOU LETTER TO COUNCIL FOR \$1000 DONATION TOWARDS ERIN'S PLACE INC WOMEN'S REFUGE

RESOLUTION: (Moved by Councillors Perram and Yedelian OAM)

That the correspondence be received and noted.

Record of Voting:

For the Motion: Unanimous

2 JOINT REGIONAL PLANNING PANELS OPERATIONAL PROCEDURES - TIMEFRAME FOR COMPLETION OF COUNCIL'S ASSESSMENT REPORT

RESOLUTION: (Moved by Councillors Yedelian OAM and Simon)

That the correspondence be received and noted.

Record of Voting:

For the Motion: Unanimous

3 NORTH RYDE STATION PRECINCT - TENNIS WORLD SITE - INVESTIGATIONS BY THE DEPARTMENT OF PLANNING AND INFRASTRUCTURE

RESOLUTION: (Moved by Councillors Salvestro-Martin and Laxale)

- (a) That the correspondence be received and noted.
- (b) That Ryde Council write to the Minister for Planning and the local member seeking an extension to the public consultation period for the North Ryde Station Precinct Urban Activation Precinct.
- (c) That Ryde Council host an information evening before 30 April on Urban Activation Precincts, inviting the Minister for Planning, the member for Ryde and interested parties.

Record of Voting:

For the Motion: Unanimous

LATE ITEMS

PRECIS OF CORRESPONDENCE

4 CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

Note: Documentation received from Parliament of NSW Legislative Assembly, dated 22 March 2013 was tabled and considered in conjunction with this Item. A copy is ON FILE.

RESOLUTION: (Moved by Councillors Maggio and Yedelian OAM)

That the correspondence be received and noted.

Record of Voting:

For the Motion: Unanimous

5 TRAFFIC SPEED - PITTWATER ROAD

RESOLUTION: (Moved by Councillors Yedelian OAM and Etmekdjian)

That the correspondence be received and noted.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Maggio, Pendleton, Perram, Pickering, Salvestro-Martin, Simon and Yedelian OAM

Against the Motion: Councillor Laxale

6 BUFFALO AND KITTY'S CREEKS FLOODPLAIN RISK STUDY AND PLAN

Note: A letter from the City of Ryde dated 21 March 2013 was tabled in relation to this Item and a copy is ON FILE.

RESOLUTION: (Moved by Councillors Etmekdjian and Yedelian OAM)

That the correspondence be received and noted.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Maggio, Perram, Pickering, Salvestro-Martin, Simon and Yedelian OAM

Against the Motion: Councillors Laxale and Pendleton

NOTICES OF MOTION

1 DEFERRED NOTICE OF MOTION: SUPPORTING LOCAL BUSINESS LEASING COUNCIL PROPERTIES - Councillor Bill Pickering

RESOLUTION: (Moved by Councillors Pickering and Maggio)

- (a) That the Acting General Manager provide a report including recommendations on improving relations and feedback from small business operators who are leasing properties from the City of Ryde.
- (b) That this report include matters pertaining (but not limited) to:
 - Possible consultation frameworks;
 - Improving commercial leasing terms including 'options' to extend a lease after expiry; and
 - Feedback channels for suggestions that include improvements or enhancements to council properties.

Record of Voting:

For the Motion: Unanimous

2 NATIONAL DISABILITY STRATEGY: NSW IMPLEMENTATION PLAN 2012-2014 - Councillor Denise Pendleton

RESOLUTION: (Moved by Councillors Pendleton and Yedelian OAM)

- (a) That Council receive a report that:
 - provides an initial assessment of the areas of action required by Councils, as identified in the plan.
 - identifies the anticipated resourcing issues.

- outlines the proposed management mechanism/s to plan and coordinate the implementation of the required actions.

- (b) That Council consult the Access Committee regarding the outcomes of part (a).

Record of Voting:

For the Motion: Unanimous

3 MONTHLY REPORTING TO COUNCIL - Councillor Denise Pendleton

RESOLUTION: (Moved by Councillors Pendleton and Simon)

That a highlights monthly report be developed in conjunction with the Councillors covering key management items including: human resources (sick leave, recreation leave in excess of 20 and 30 days); OH&S; complaints; organisational risk issues; legal actions.

Record of Voting:

For the Motion: Unanimous

4 ADVERTISING SERVICES - Councillor Jeff Salvestro-Martin

Note: A confidential Memorandum dated 27 February 2013 was tabled in relation to this Item and a copy is ON FILE.

RESOLUTION: (Moved by Councillors Salvestro-Martin and Etmekdjian)

That Council note the Confidential Advice in the Memorandum – Advertising Contract Renewal dated 27 February 2013 and that the Acting General Manager:

- (i) fast track the Communication Strategy review;
- (ii) develop tender documents to allow Council's advertising services to be tendered and contracts issued at the end of the extended contract period, being effective from 1 October 2013;
- (iii) ensure the formulation of the tender is consistent with the memorandum;
- (iv) ensure consideration is also given to the option of producing a publication to replace the need for advertising in local newspapers and information provided in the City View. That this proposal include the option of sponsorship.

Record of Voting:

For the Motion: Unanimous

Note: Councillor Salvestro-Martin left the meeting at 12.21am on Wednesday, 27 March 2013 and did not return.

LEAVE OF ABSENCE

Councillor Perram and the Mayor, Councillor Petch requested a Leave of Absence from Wednesday, 27 March 2013 to Monday, 8 April 2013.

RESOLUTION: (Moved by Councillors Perram and Etmekdjian)

That Councillor Perram and the Mayor, Councillor Petch's Leave of Absence from Wednesday, 27 March 2013 to Monday, 8 April 2013 be approved.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Maggio, Pendleton, Perram, Simon and Yedelian OAM

Against the Motion: Councillor Pickering

EXTRAORDINARY MEETING – WEDNESDAY, 27 MARCH 2013 - LEGAL COSTS SUPREME COURT PROCEEDINGS

The Mayor, Councillor Petch raised the issue of the Extraordinary Meeting on Wednesday, 27 March 2013 and the likelihood that the meeting would not have a quorum at the meeting.

The Mayor, Councillor Petch asked by a show of hands those Councillors that would be able to attend the meeting which confirmed that there would not be a quorum at the Extraordinary Council Meeting.

The Mayor, Councillor Petch and Councillor Perram left the meeting, the time being 12.34am on Wednesday, 27 March 2013.

ELECTION OF CHAIRPERSON

In the absence of the Mayor, Councillor Petch, the Acting General Manager called for nominations for the position of Chairperson. Councillor Etmekdjian was nominated as Chairperson.

RESOLUTION: (Moved by Councillors Pickering and Maggio)

That Councillor Etmekdjian assume the Chair for consideration of this Item.

Record of Voting:

For the Motion: Councillors Chung, Etmekdjian, Laxale, Maggio, Pickering, Simon and Yedelian OAM

Against the Motion: Councillor Pendleton

Councillor Etmekdjian assumed the Chair.

SUPREME COURT PROCEEDINGS

MOTION: (Moved by Councillors Etmekdjian and Pickering)

That the matter be delegated to the Acting General Manager to enact Council's resolution from its meeting on 26 February 2013.

Note: Councillor Simon left the meeting at 1.00am on Wednesday, 27 March 2013 and did not return.

AMENDMENT: (Moved by Councillors Pendleton and Laxale)

That the matter be referred to the Division of Local Government to provide written advice in guiding Council how to proceed in this matter.

On being put to the Meeting, the voting on the Amendment was two (2) votes For and five (5) votes Against. The Amendment was LOST.

Record of Voting:

For the Motion: Councillors Laxale and Pendleton

Against the Motion: Councillors Chung, Etmekdjian, Maggio, Pickering and Yedelian OAM

MOTION: (Moved by Councillors Etmekdjian and Pickering)

That the matter be delegated to the Acting General Manager to enact Council's resolution at its meeting on 26 February 2013.

Note: Councillor Laxale left the meeting at 1.03am on Wednesday, 27 March 2013 prior to voting taking place on the matter.

As a result, the meeting could not proceed due to a lack of quorum.

ADJOURNMENT

In accordance with Clause 4.2.4 of the Code of Meeting Practice, The Chair, Councillor Etmekdjian adjourned the Council Meeting as a quorum was not present, the time being 1.03am on Wednesday, 27 March 2013. The Council Meeting was adjourned to:

Tuesday, 9 April 2013 in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde to commence at 7.30pm prior to the Council Meeting of 9 April 2013.

The following Councillors were present: Councillors Chung, Etmekdjian, Maggio, Pendleton, Pickering and Yedelian OAM

The following Councillors were not present: The Mayor, Councillor Petch and Councillors Laxale, Perram, Salvestro-Martin and Simon.

MEETING RECONVENED

The Meeting reconvened at 7.30pm on Tuesday, 9 April 2013 in the Council Chambers, Level 6 of the Civic Centre, 1 Devlin Street, Ryde.

The following Councillors were present:

The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Li, Maggio, Pendleton, Perram, Pickering, Salvestro-Martin, Simon and Yedelian OAM.

Apologies: Nil.

Leave of Absence: Nil.

Staff Present: Acting General Manager, Acting Group Manager – Community Life, Group Manager - Corporate Services, Group Manager – Environment & Planning, Acting Group Manager - Public Works, General Counsel, Manager – Urban Planning, Manager – Communications and Media, Section Manager – Governance and Councillor Support Coordinator.

DISCLOSURES OF INTEREST

The Mayor, Councillor Petch disclosed a Pecuniary Interest in Mayoral Minute 7/13 – Supreme Court Proceedings for the reason that he is a defendant in the matter before the Supreme Court for which costs have yet to be determined.

Councillor Laxale disclosed a Significant Non-Pecuniary Interest in Mayoral Minute 7/13 – Supreme Court Proceedings for the reason that he has a relationship with former Councillor Butterworth.

Councillor Li disclosed a Pecuniary Interest in Mayoral Minute 7/13 – Supreme Court Proceedings for the reason that he is a defendant in these proceedings.

Councillor Simon disclosed a Significant Non-Pecuniary Interest in Mayoral Minute 7/13 – Supreme Court Proceedings for the reason he has friendships with people who are subject to the proceedings.

Councillor Perram disclosed a Pecuniary Interest in Mayoral Minute 7/13 – Supreme Court Proceedings for the reason that he is a defendant in the matter before the Supreme Court for which costs have yet to be determined.

Councillor Salvestro-Martin disclosed a Significant Non-Pecuniary Interest in Mayoral Minute 7/13 – Supreme Court Proceedings for the reason that he is a listed person.

MAYORAL MINUTES

MM7/13 SUPREME COURT PROCEEDINGS

Note: The General Counsel had provided written advice to Councillors on Tuesday 2 April 2013 in respect of this matter and the ability of all Councillors to participate in considering and voting on this matter, to delegate this matter to the Acting General Manager. The Division of Local Government also provided advice on this matter, dated 28 March 2013. Copies of both advices are attached to the Minutes.

Note: The General Counsel at the meeting, verbally confirmed his advice to Councillors that all Councillors could participate in the discussion and voting on the matter on the basis that Council delegates this matter to the Acting General Manager.

Note: The Mayor, Councillor Petch disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in the matter before the Supreme Court for which costs have yet to be determined. He was present for discussion and voting on this Item on the basis of advice received from Council's General Counsel, Bruce McCann.

Note: Councillor Laxale disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he has a relationship with former Councillor Butterworth. He was present for discussion and voting on this Item on the basis of advice received from Council's General Counsel, Bruce McCann.

Note: Councillor Li disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in these proceedings. He was present for discussion and voting on this Item on the basis of advice received from Council's General Counsel, Bruce McCann.

Note: Councillor Simon disclosed a Significant Non-Pecuniary Interest in this Item for the reason he has friendships with people who are subject to the proceedings. He was present for discussion and voting on this Item on the basis of advice received from Council's General Counsel, Bruce McCann.

Note: Councillor Perram disclosed a Pecuniary Interest in this Item for the reason that he is a defendant in the matter before the Supreme Court for which costs have yet to be determined. He was present for discussion and voting on this Item on the basis of advice received from Council's General Counsel, Bruce McCann.

Note: Councillor Salvestro-Martin disclosed a Significant Non-Pecuniary Interest in this Item for the reason that he is a listed person. He was present for discussion and voting on this Item on the basis of advice received from Council's General Counsel, Bruce McCann.

RESOLUTION: (Moved by The Mayor, Councillor Petch and Councillor Etmekdjian)

- (a) That Council delegate the Supreme Court Proceedings matter to Council's Acting General Manager, Danielle Dickson.
- (b) That the Acting General Manager provide updates at appropriate milestones of the process that only cover progress of the matter.

Record of Voting:

For the Motion: Unanimous

MATTER OF URGENCY

Councillor Perram advised that he wished to raise a Matter of Urgency regarding the budget for 2013/14.

RESOLUTION: (Moved by Councillors Perram and Pendleton)

That Council consider Councillor Perram's Matter of Urgency regarding the Budget for 2013/14, the time being 7.48pm.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Li, Maggio, Pendleton, Perram, Salvestro-Martin and Simon

Against the Motion: Councillors Pickering and Yedelian OAM.

MATTER OF URGENCY - BUDGET FOR 2013/14

RESOLUTION: (Moved by Councillors Perram and Pendleton)

1. That Council determines to phase out the production of the Ryde City View publication in parallel with the resolution of Council dated 26 March 2013 to extend the current advertising tender to October 2013. That Council make all related budget and resourcing changes to affect this resolution.
2. Council note the above in relation to the development of a Communications Strategy resolved by Council on 12 March 2013 and to provide an extension for the report back of the draft strategy to Council no later than December 2013.

Record of Voting:

For the Motion: The Mayor, Councillor Petch and Councillors Chung, Etmekdjian, Laxale, Li, Maggio, Pendleton, Perram, Salvestro-Martin and Simon

Against the Motion: Councillors Pickering and Yedelian OAM

SUPREME COURT PROCEEDINGS

Note: This Item was dealt with under the Mayoral Minute MM7/13.

17 DEFERRED REPORT: POLICY ON THE PAYMENT OF EXPENSES AND PROVISION OF FACILITIES FOR THE MAYOR AND OTHER COUNCILLORS

Note: A copy of the Division of Local Government's advice, dated 28 March 2013 is Attached.

Note: The Mayor, Councillor Petch withdrew his Pecuniary Interest in this Item on the basis of advice received from the Division of Local Government.

Note: Councillor Perram withdrew his Pecuniary Interest in this Item on the basis of advice received from the Division of Local Government.

Note: Councillor Simon withdrew his Significant Non-Pecuniary Interest in this Item on the basis of advice received from the Division of Local Government.

Note: Councillor Laxale withdrew his Significant Non-Pecuniary Interest in this Item on the basis of advice received from the Division of Local Government.

Note: Councillor Salvestro-Martin withdrew his Significant Non-Pecuniary Interest in this Item on the basis of advice received from the Division of Local Government.

RESOLUTION: (Moved by Councillors Pickering and Salvestro-Martin)

- (a) That Council endorse the provision of mobile phones and payment of calls as set out in this report and as **ATTACHED (Under Separate Cover)**.
- (b) That Council endorse the proposed changes to Clause 17 of the Policy, relating to Legal Assistance Provision and Expenses as detailed in the report and as **ATTACHED (Under Separate Cover)**.
- (c) That Council endorse the public exhibition of the revised Payment of Expenses and Provision of Facilities for the Mayor and Other Councillors Policy (**ATTACHED - Under Separate Cover**) for a period of at least 28 days, noting that a copy of the draft will be provided to the Division of Local Government for comment.

- (d) That after the exhibition period of the draft policy, a further report be provided to Council seeking the adoption of the draft Payment of Expenses and Provision of Facilities for the Mayor and Other Councillors Policy and detailing any submissions received.

Record of Voting:

For the Motion: Unanimous

NOTICES OF RESCISSION

There were no Notices of Rescission.

QUESTIONS BY COUNCILLORS AS PER POLICY

There were no Questions by Councillors as per Policy.

The meeting closed at 8.04pm on 9 April 2013.

CONFIRMED THIS 23RD DAY OF APRIL 2012

Chairperson

Note: In accordance with Council's resolution, relating to the Matter of Urgency, relating to the Supreme Court Proceedings on Page 6 in these Minutes, a revised Chronology of Events is attached to these Minutes.

Note: In Council's consideration of the Supreme Court Proceedings Matter, the subject of a Mayoral Minute on Page 26 of these Minutes, the advice to Councillors from Council's General Counsel, Bruce McCann and the Division of Local Government, is attached to these Minutes.

Note: A copy of the Local Government's advice, dated 28 March 2013 attached to these Minutes, also includes advice relating to Council's consideration of Item 17 - Deferred Report: Policy on the Payment of Expenses and Provision of Facilities for the Mayor and other Councillors as detailed on page 28 of these Minutes.

CHRONOLOGY – SUPREME COURT PROCEEDINGS

Council v. Petch and ors. (first proceedings)

ICAC v. Council (second proceedings)

18 April 2012

Mr Neish makes a Public Interest Disclosure to the then Mayor Councillor Artin Etmekdjian pursuant to the Public Interest Disclosures Act 1994 (Act).

9 July 2012

Two Councillors request an extraordinary meeting to consider a resolution that Mr Neish's contract of employment be terminated.

11 July 2012

Mr Neish makes a protected disclosure to ICAC.

23 July 2012

Motion to terminate Mr Neish's employment was passed. A rescission motion was lodged staying the resolution.

NOTE – Council now in caretaker mode in preparation for 8 September 2012 election. General Managers cannot normally have their contracts terminated during this period however removal turned on the fate of the rescission motion.

8 August 2012

Mayor Etmekdjian on legal advice writes to all Councillors through HWL Ebsworths requiring the following undertaking:-

In the circumstances, the Mayor has instructed us to write to you, to seek the following undertaking:

1. I agree and undertake to refrain from voting against the rescission motion on 14 August 2012, pending the report of investigations by the ICAC; and
2. Council requires a written undertaking from you to the above or similar effect, to be received at this office by **10.00am Friday 10 August 2012**.

Six Councillors provide the undertaking; six refuse. **Note: 2 of the 6 Councillors who provided the required undertaking did so on the morning of the hearing.**

13 August 2012

Mayor Etmekdjian lawfully commences proceedings in the Supreme Court seeking protection for Mr Neish against the risk that the rescission motion will be put and not carried.

14 August 2012

Justice McCallum grants an Order restraining three of the six defendants from voting against the rescission motion until 24 September 2012, being the date to which the first proceedings were adjourned. Her Honour forms the view that Mr Neish's public interest disclosure and the motion to terminate his contract are linked and amount to prohibited detrimental action under the Act.

Her Honour was of the view that the Court should visit the matter again following the election to learn who of the injuncted Councillors was re-elected and to extend the injunction against those Councillors who were re-elected. There was no point in continuing the injunction against a Councillor if the Councillor was not re-elected.

NOTE 8 September 2012 Election

20 September 2012

HWL Ebsworths write to the four newly elected Councillors requesting the required undertaking without response.

24 September 2012

First proceedings listed before Justice Schmidt. Under instruction from Mayor Etmekdjian, Council's solicitors seek an extension of the Orders made by Justice McCallum to 3 December 2012 **and** a further Order that the three Councillors be restrained from voting in favour of discharging Her Honour's Orders or from discontinuing the first proceedings. Justice Schmidt reserves her decision and extends Justice McCallum's orders until "further order of the Court".

25 September 2012

By resolution of the new Council on Mayoral Minute 09/12 of Mayor Petch, Council resolves the first proceedings by discharging the Orders of Justice Schmidt, dismissing the amended Notice of Motion and reserving costs.

28 September 2012

The first proceedings come before Justice Schmidt for judgement. Her Honour is presented with the Consent Orders flowing from the Council Resolution of 25 September 2012 before delivering judgement.

By leave of the Court Justice Schmidt allowed the ICAC to commence the second proceedings seeking an order that Council not take any action that would terminate the employment of Mr Neish until ICAC investigations are complete.

Mayor Petch gave that undertaking on behalf of Council.

Her Honour granted the Consent Orders but in doing so said words to the effect;-

“But for the agreement reached I would have refused to make the consent orders that both parties have agreed to”.

The second proceedings were dismissed with no order as to costs.

Her Honour adjourned the question of costs to 1 February 2013. The matter was further adjourned to 4 April 2013.

Current Position

Council is awaiting advice from the ICAC regarding the status of its investigations. The Order of Justice Schmidt in the second proceedings remains in place.

The costs issue and status with regard to the first proceedings remain outstanding pending resolution by Supreme Court determination on 5 April 2013.

From: Carol Mikaelian **On Behalf Of** Desk Help (Councillors Helpdesk)
Sent: Tuesday, 2 April 2013 4:01 PM
To: DL Councillors
Cc: Roy Newsome
Subject: Supreme Court proceedings and Payment of Expenses and Provision of Facilities for the Mayor and Other Councillors Policy
Importance: High

Dear Councillors

On 26 March 2013 I provided Council's Group Manager-Corporate Services, Roy Newsome with written advice on how Council could overcome a potential loss of quorum at meetings where a number of Councillors might declare either a **pecuniary or significant non-pecuniary** interest with respect to the costs issue in the Supreme Court Proceedings. A copy of that advice is attached for the information of Councillors.

Advice was also sought from the Division of Local Government about the operation of the new Model Code of Conduct where Council faced a possible loss of quorum as a result of compliance with the requirements for the management of **significant non-pecuniary** conflicts of interest.

The Division's response also deals with the ability of "conflicted" Councillors to participate in a decision to approve a policy on the Payment of Expenses and Provision of Facilities for the Mayor and Other Councillors. A copy of the Division's letter dated 28 March 2013 is attached for the information of Councillors.

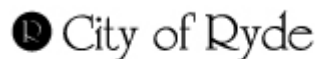
Sincerely

Bruce McCann | General Counsel | Public Officer
P: (02) 9952 8080 | **F:** (02) 9952 8088
E: bmccann@ryde.nsw.gov.au | www.ryde.nsw.gov.au

Sent via,

COUNCILLORS' HELP DESK

P: 9952 8200 | **E:** helpdesk@ryde.nsw.gov.au | www.ryde.nsw.gov.au




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MEMORANDUM

To: Roy Newsome – Group Manager Corporate Services
From: Bruce McCann – General Counsel / Public Officer
Date: 26 March 2013
Subject: Supreme Court Proceedings – Costs Issue and Conflicts of Interest

Roy

I note from the Mayor's email to you of 25 March 2013 that there are now six (6) Councillors who propose to declare a pecuniary interest that would disqualify them from participating in any meeting of Council to discuss the issue of costs in the Supreme Court Proceedings.

The inability of the six (6) Councillors to participate in the scheduled Extra Ordinary Meeting of Council on Wednesday 27 March 2013 would have the effect of rendering that meeting inquorate. I note the Mayor's advice that four (4) Councillors, including himself, have a direct pecuniary interest. These would be the defendant Councillors. The Mayor indicates there are another two (2) Councillors who have declared a pecuniary interest. If in fact those two (2) other Councillors who were not directly involved in the Supreme Court Proceedings have or will declare a pecuniary interest, then it would be in order for the Acting General Manager to write to the Minister of Local Government seeking the Minister's Consent under Section 458 of the Local Government Act for them to participate in and vote on the matter.

If at the Extra Ordinary meeting the two (2) non defendant Councillors declare a non pecuniary interest then Section 458 of the Act cannot be relied upon as the section only relates to "pecuniary" interests.

Councils Code of Conduct specifically caters for this scenario where there is a loss of quorum as a result of compliance with the Conflict of Interest provisions of the Code. The relevant extract of the Code, states:-

Part 4 Conflict of Interests

Loss of Quorum as a result of compliance with this Part

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the Council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of Councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non –pecuniary conflict of Interests.

4.27 The Chief Executive will only exempt a Councillor from complying with a requirement under this Part where:

- a) compliance by Councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
- b) the matter relates to the exercise of a function of the Council that may not be delegated under Section 377 of the Act.

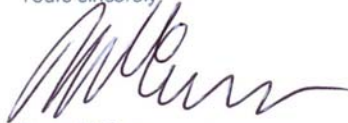
The function of instructing Maddocks can be delegated to the Acting General Manger under Section 377 of the Act and for this reason the Chief Executive would not grant an exemption under Clause 4.26.

My advice therefore in all the circumstances is that the full Council at the Extraordinary Meeting scheduled for 27 March 2013 could and should resolve to delegate the function of instructing Maddocks Lawyers on behalf of Council, to the Acting General Manger. Clause 4.25 of the Code provides for the matter to be delegated.

Further, it is my view that all Councillors could participate in an appropriately worded resolution delegating authority to the Acting General Manager for the reason that the Council would not be resolving how the Acting General Manger should instruct Maddocks lawyers, but rather that she should instruct them.

I trust the foregoing is of assistance and I invite further inquiry if deemed necessary.

Yours sincerely,



Bruce McCann
General Counsel / Public Officer

PART 4 CONFLICT OF INTERESTS

- 4.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 4.4 Private interests can be of two types: pecuniary or non-pecuniary.

What is a pecuniary interest?

- 4.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. (section 442)
- 4.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. (section 443)
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
 - a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (section 449)
 - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (section 451)
 - c) designated persons immediately declare, in writing, any pecuniary interest. (section 459)
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the general manager and other senior staff of the council.
- 4.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

Code of Conduct 2013 – City of Ryde – Standards of Conduct		
Owner: Governance Service Unit	Accountability: Manager, Governance	Policy Number: # <i>Provided by Governance</i>
Trim Reference: D13/7214	Review date: 1 March 2014	Endorsed: Council – 19 February 2013

What are non-pecuniary interests?

4.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.

4.11 The political views of a councillor do not constitute a private interest.

Managing non-pecuniary conflict of interests

4.12 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

4.13 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.

4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.

4.15 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:

- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household
- b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship
- c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

4.16 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official
- b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply

4.17 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.

Code of Conduct 2013 – City of Ryde – Standards of Conduct		
Owner: Governance Service Unit	Accountability: Manager, Governance	Policy Number: # <i>Provided by Governance</i>
Trim Reference: D13/7214	Review date: 1 March 2014	Endorsed: Council – 19 February 2013

4.18 If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.

4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff through the general manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

Reportable political donations

4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.

4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:

- a) made by a major political donor in the previous four years, and
- b) where the major political donor has a matter before council,

then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).

4.22 For the purposes of this Part:

- a) a "reportable political donation" is a "reportable political donation" for the purposes of section 86 of the *Election Funding, Expenditure and Disclosures Act 1981*,
- b) a "major political donor" is a "major political donor" for the purposes of section 84 of the *Election Funding, Expenditure and Disclosures Act 1981*.

4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.

4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

Loss of quorum as a result of compliance with this Part

4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.

Code of Conduct 2013 – City of Ryde – Standards of Conduct		
Owner: Governance Service Unit	Accountability: Manager, Governance	Policy Number: # <i>Provided by Governance</i>
Trim Reference: D13/7214	Review date: 1 March 2014	Endorsed: Council – 19 February 2013

- 4.26 Where a majority of councillors are precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
 - b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.
- 4.28 Where the Chief Executive exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:
- a) the matter is a proposal relating to
 - i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council's area, or
 - ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant part of the council's area, and
 - b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

Other business or employment

- 4.30 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing. (section 353)
- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a) conflict with your official duties
 - b) involve using confidential information or council resources obtained through your work with the council
 - c) require you to work while on council duty
 - d) discredit or disadvantage the council.

Code of Conduct 2013 – City of Ryde – Standards of Conduct		
Owner: Governance Service Unit	Accountability: Manager, Governance	Policy Number: # <i>Provided by Governance</i>
Trim Reference: D13/7214	Review date: 1 March 2014	Endorsed: Council – 19 February 2013



Premier & Cabinet
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Your Reference:
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Ms Danielle Dickson
Acting General Manager
Ryde City Council
Locked Bag 2069
NORTH RYDE NSW 1670

28 MAR 2013

Dear Ms Dickson

I am writing in relation to questions that have been raised about the operation of the new *Model Code of Conduct for Local Councils in NSW* in cases where councils face a possible loss of quorum as a result of compliance with the requirements for the management of significant non-pecuniary conflicts of interests.

Under clause 4.25 of the Model Code, where a majority of councillors are precluded from consideration of a matter because of significant non-pecuniary conflicts of interests, the council must resolve to delegate consideration of the matter to another person where the function in question is a delegable one.

It should be noted that clause 4.19 clearly states that a councillor who has disclosed a significant non-pecuniary conflict of interests in a matter may still participate in a decision to delegate the matter.

Where the function is one that cannot be delegated by the Council under section 377 of the *Local Government Act 1993*, councillors may apply to the Chief Executive of the Division of Local Government for an exemption from compliance with requirements for the management of a significant non-pecuniary conflict of interests. However such an exemption will only be granted where compliance with the requirement will result in the loss of a quorum and the matter relates to a function of the council that cannot be delegated under section 377.

I understand questions have also been raised about whether councillors can participate in a decision to approve a policy on the payment of expenses and provision of facilities for the Mayor and other councillors where they may have a pecuniary interest in the matter.

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2

Section 448(k) and (l) exempts councillors from a requirement to disclose a pecuniary interest in relation to the payment of fees and expenses to councillors (including the Mayor and Deputy Mayor) and the provision of facilities.

I hope that this information will serve to clarify the situation and will address the concerns expressed by councillors in relation to these matters.

Yours sincerely



Steve Orr
Acting Chief Executive, Local Government
A Division of the Department of Premier and Cabinet