



Office of
Local Government

SECTION 433 OF THE LOCAL GOVERNMENT ACT 1993

INVESTIGATION REPORT

**REPORT OF THE
SECTION 430
INVESTIGATION INTO
STRATHFIELD MUNICIPAL COUNCIL**



OCTOBER 2015

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ERRATA

1. Pages 3 to 141: These pages are incorrectly sequentially numbered as pages 1 to 139.
2. Paragraph 90: The reference to paragraph 201 should refer to paragraph 63.
3. Paragraph 151: The reference to paragraph 223 should refer to paragraph 85.
4. Paragraph 255: The reference to paragraph 393 in the report should refer to paragraph 253.
5. Paragraph 260: The reference to paragraph 671 in the report should refer to paragraph 531.
6. Paragraph 466: The reference to paragraph 599 in the report should refer to paragraph 459.

REPORT OF THE SECTION 430 INVESTIGATION INTO STRATHFIELD MUNICIPAL COUNCIL

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1 EXECUTIVE SUMMARY

The Office of Local Government has conducted an investigation into Strathfield Municipal Council. The investigation has concluded that there have been failures in the Council's administrative processes and the report makes a number of recommendations.

Council has already taken action to address some of the systemic deficiencies that potentially contributed to the issues the subject of the investigation of its own volition and in response to a Performance Improvement Order made separately to this investigation.

Looking to the future, Councillors should demonstrate that they have proper understanding of importance and the seriousness of the matters that been reported. Council should be diligent in ensuring that the improvements that have been made are maintained in order to avoid similar circumstances arising in the future.

2 INTRODUCTION

1. This is a report on the results of an investigation under section 430 of the *Local Government Act 1993* ('the Act') into Strathfield Municipal Council. It is presented to the Minister for Local Government and copied to the Council, pursuant to section 433(1) of the Act.

Determination to conduct an investigation

2. On 4 March 2014, the Chief Executive¹ of the Office of Local Government (the Office) determined that an investigation pursuant to section 430 of the Act be undertaken into Strathfield Municipal Council. The Chief Executive appointed Mr Richard Murphy and Mr Angus Broad, Senior Investigators employed by the Office, to conduct the investigation.
3. The Chief Executive authorised Mr Chris Duff, a Senior Performance Analyst employed by the Office, to assist in the conduct of the investigation.

Appendix 1 - Notice of Decision to Conduct an Investigation

Terms of Reference

4. The Notice of Decision to Conduct an Investigation set out the Terms of Reference for the investigation as follows:

To investigate and report on:

- 1) *Whether there has been maladministration and/or serious and substantial waste of local government money in relation to Strathfield Municipal Council's:*
 - a) *procurement and expenditure on services from the International Property Group Pty Ltd (ACN 117 214 829);*
 - b) *procurement and expenditure on legal services and associated professional advice since 1 July 2011; or*
 - c) *decisions of 7 May 2013 and 2 July 2013 pertaining to the appointment of an external auditor and the related tender processes.*
- 2) *Strathfield Municipal Council's conduct and performance as the Trust Manager of the Hudson Park (R62163) Reserve Trust since 1 July 2009.*
- 3) *Any other matter that arises directly from the principal investigation of the Council's work and activities set out in the terms of reference.*

¹ Being the Director General as defined in the Local Government Act 1993 as stipulated in Administrative Arrangements Order 2014 under the Constitution Act 1902.

5. The Act does not provide a definition of "maladministration". The investigation proceeded on the basis of the ordinary meaning of the word, as defined in the Macquarie Dictionary and the Oxford Concise Dictionary. It was also informed by the position adopted by the NSW Ombudsman, as detailed in its fact sheet on the topic of maladministration. It also had regard to the definition in section 11 of the *Public Interest Disclosures Act 1994* (PID Act), particularly in regard to focusing the investigation on actions or inactions that were "serious" in nature.

Appendix 2 - NSW Ombudsman Fact Sheet

6. The investigation also considered what could constitute "*serious and substantial waste of local government money*".
7. The investigation was guided by the definition of "*local government money*" in section 12B of the PID Act. Notwithstanding the assistance provided by that definition, it remained necessary to consider the meaning and application of the terms "*serious*", "*substantial*" and "*waste*".
8. Guidance can be found in the NSW Ombudsman's publication *Investigating complaints: A manual for investigators*² which states at page 97 that:

"Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised and unauthorised, which results in a loss or wastage of public funds or resources.

In addressing any complaint of serious and substantial waste, the Auditor-General has advised that regard will be had to the nature and materiality of the waste."

9. The Ombudsman's Manual outlines different types of waste as follows:
 - *absolute – the value of the waste is regarded as significant*
 - *systemic – the waste indicates a pattern which results from a system weakness within an authority*
 - *material – the waste is material in terms of:*
 - *the authority's overall expenditure*
 - *a particular type of expenditure*
 - *affects an authority's capacity to perform its primary functions.*
 - *material by nature, not amount:*
 - *the waste may not be material in financial terms but may be significant by nature i.e. it may be improper or inappropriate.*

² Investigating complaints. A manual for investigators. NSW Ombudsman, 2004

Statutory requirements relating to this investigation report

10. Section 433 of the Act provides that:

- “(1) The Director-General must report to the Minister on the results of an investigation under this Division and must send a copy of the report to the council concerned.*
- “(2) The report may comment on any matter that, in the Director-General's opinion, warrants special mention and may contain such recommendations as the Director-General considers appropriate.*
- “(3) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.*
- “(4) Section 14B of the Royal Commissions Act 1923 applies in relation to any report that the Minister wishes to lay before both Houses of Parliament in the same way as it applies to a report made by a commission under that Act.”*

11. Regulation 244 of the *Local Government (General) Regulation 2005* (Regulations) provides that:

“When a report of the Director-General or a person to whom the Director-General's functions under section 430 of the Act have been delegated or sub-delegated under section 745 of the Act has been presented to a meeting of a council in accordance with section 433 of the Act, the council must ensure that the report:

- (a) is laid on the table at that meeting, and*
- (b) is subsequently available for the information of councillors and members of the public at all reasonable times.”*

The investigative process

12. The investigators prepared a “*Notice of Direction for Production of Documents*” (the Notice), which was served on the Council's General Manager, Mr David Backhouse on 14 March 2014. A copy of the Notice has been provided as an appendix.

Appendix 3 - Notice of Direction for Production of Documents

13. The investigators visited Council on 21 March 2014.

14. The investigators reviewed the documents supplied by the Council in response to the Notice. Subsequently, Council was asked to provide further documents and information on a number of occasions. Council responded to these requests in a timely manner.

15. The investigators interviewed and obtained statements from a number of current and former staff. A list of the persons who provided statements has been provided as an appendix.

Appendix 4 - List of Persons from whom Statements were obtained

16. Further information was obtained from Council's former external auditor and the Australian Securities and Investment Commission (ASIC).
17. The investigators interviewed the General Manager, three current Directors and four former employees.

Procedural fairness

18. All persons interviewed were informed of the terms of reference. All persons had the opportunity to have an independent person or legal advisor present when interviewed.
19. All current Council staff, with the exception of Council's Solicitor, were interviewed in the presence of an external legal advisor retained by Council.
20. The interviews with the General Manager, the current Directors and one of the former Directors were recorded. Each was provided with a copy of the audio recording of the interview at its conclusion. A transcript of the interview was prepared and provided to them.
21. Persons who were the subject of adverse commentary or findings in the draft report were provided with the opportunity to make a submission on the draft report.
22. All persons who were invited to make a submission did so, and in many instances they provided further supporting material.
23. The Council (as the body politic) was also provided with the opportunity to make a submission on the report prior to it being finalised. Its submission has been included as the final appendix.
24. All submissions on the draft report have been carefully considered and reviewed. Where it has been considered relevant to do so, this report has been amended to reflect the responses and the additional material that was provided.

3 FINDINGS

Term of Reference 1(a) “to investigate and report on whether there has been maladministration and/or serious and substantial waste of local government money in relation to Strathfield Municipal Council’s procurement and expenditure on services from the International Property Group Pty Ltd (ACN 117 214 829)”

25. The investigation found that the Council failed to comply with section 55 of the *Local Government Act 1993* by failing to call for tenders prior to entering into contracts with IPG on 17 May 2010 and 3 May 2011.
26. Council paid \$899,937.50 to International Property Group Pty Ltd (ACN 117 214 829) (IPG) from May 2009 to July 2013.
27. The bulk of the payments to IPG were made pursuant to contracts that obligated the Council to pay IPG a monthly “retainer” of \$22,000 per month regardless of the actual services provided. Ultimately, \$866,937.50 was paid pursuant to the retainer agreement.
28. While it is evident that IPG provided services over the course of its period of engagement, the investigation was not able to identify probative evidence that the level of services was commensurate with the level of expenditure paid pursuant to the retainer agreements.

Term of Reference 1(b) “to investigate and report on whether there has been maladministration and/or serious and substantial waste of local government money in relation to procurement and expenditure on legal services and associated professional advice since 1 July 2011”

29. The investigation found that there had been:
 - A practice of accepting fee estimates from legal firms which could contravene the tendering provisions of section 55 of the *Local Government Act 1993*; and
 - Inaccurate and incomplete reporting of legal expenditure to the Council and the community.

-
30. The investigation is unable to express a view whether there was serious and substantial waste of local government money in relation to expenditure on legal services and associated professional advice.

Term of Reference 1(c) “to investigate and report on whether there has been maladministration and/or serious and substantial waste of local government money in relation to Council’s decisions of 7 May 2013 and 2 July 2013 pertaining to the appointment of an external auditor and the related tender processes”

31. The investigation found that there had been a failure to adopt and comply with appropriate processes in relation to the appointment of Council’s external auditor, but these failures did not affect the result of that tender process.
32. The Council and the Council’s Director, Corporate Services, failed to comply with the Council’s Procurement Policy and failed to adopt and implement an adequate probity plan for the tender process.
33. There was an excessive delay in the appointment of the auditor. The term of Council’s previous auditor finished on 1 July 2012. The process to commence filling the vacancy did not start until 16 January 2013 and tenders were not called until 5 March 2013. A new appointment was made on 2 July 2013, over 12 months after the previous auditor’s term had completed.
34. Section 424(4) of the Act provides that *“If the office of auditor becomes vacant, the council must appoint a qualified person to fill the vacancy”*. While the Act does not stipulate a time frame for this to occur, a delay of over 12 months is excessive.
35. In relation to the decision of 7 May 2013, the Council resolved in accordance with the recommendation provided to it. While this decision appears to have been made without full consideration of the circumstances giving rise to the recommendation of a second tender process, or the resources required for this process, this decision was not such as to warrant a finding of serious and substantial waste
36. In relation to the decision of 2 July 2013, the Council carefully and diligently considered the matter prior to making a decision, and no adverse finding is made.

Term of Reference 2 – “Strathfield Municipal Council’s conduct and performance as the Trust Manager of the Hudson Park (R62163) Reserve Trust since 1 July 2009”

37. An analysis of the Council’s conduct and performance as Trust Manager of the Hudson Park (R62163) Reserve Trust since 1 July 2009 can be found at Schedule 3 Section 3.4 of this report.
38. The investigation identified deficiencies in the procurement and selection of a licensee to operate the Hudson Park golf course, delays in the issuing of a licence, a failure to secure performance guarantees from the licensee, poor administration of the licence, a failure to ensure compliance with licence conditions and a failure to maintain proper records.

Term of Reference 3 - Any other matter that arises directly from the principal investigation of the Council’s work and activities set out in the terms of reference.

39. Nil.

4 RECOMMENDATIONS

40. As noted earlier, section 433(2) of the Act provides that a report on the results of an investigation undertaken pursuant to section 430 "may contain such recommendations as the Director-General considers appropriate".
41. In considering what recommendations may be warranted it is to be noted that the Minister for Local Government served the Council with a Performance Improvement Order (PIO) on 27 July 2014. A copy of the PIO has been provided as an appendix.

Appendix 5 - Performance Improvement Order

42. This PIO addressed the need for the Council to improve its internal controls regarding the procurement and expenditure on goods and services and for it to ensure relevant staff are accountable for their performance in regard to ensuring the establishment and maintenance of such controls. It also requires the Council to establish and implement an effective internal audit function.
43. In the circumstances, there is limited utility in making recommendations that go to matters that have already been addressed in the PIO.
44. Further the Council itself has taken action, of its own volition, to respond to matters that might otherwise have warranted the making of recommendations. The Council has employed a Procurement Specialist and amended Council's Procurement and Tendering policies and guidelines to ensure that additional internal controls are in place. These amendments have been approved and endorsed by Council's temporary advisor, who was appointed by the Minister under the PIO.
45. This Report recommends as follows:
- 1. Review the conduct, performance and capabilities of its General Manager having regard to the findings in this report.**

This recommendation has been made having particular regard to:

- the General Manager's knowledge of, and involvement in, the engagement of IPG;
- the adverse findings primarily relate to operational matters within the province of the General Manager's functions;
- the General Manager's accountability for the efficient and effective operation of Council's organisation and the day to day management of the Council, including but not limited to the performance of the staff who report to him.

Council should, having regard to due process, take any action that may be warranted.

2. Closely monitor and review the actions taken by the General Manager to review the conduct, performance, capabilities and responsibilities of its Director, Corporate Services having regard to the findings in this report.

The Council and the General Manager are responsible for taking any action that may be warranted to address aspects of the Director, Corporate Services' conduct that may be unsatisfactory.

Council needs to satisfy itself that appropriate action has been taken by the General Manager. It should, by resolution, require the General Manager to provide a report detailing what action has been taken by him in response to the Director, Corporate Services' conduct, particularly in relation to the appointment of Council's external auditor and the related tender processes.

The Director, Corporate Services has had a significant role in the development and implementation of Council's governance framework. Going forward, it is important that responsibilities of this position are clearly defined and that the incumbent is capable of fulfilling the role. Again, this is a matter for the General Manager to address and for the Council to monitor.

3. Regularly monitor and review Council's performance as Trust Manager of the Hudson Park (R62163) Reserve Trust and other Crown land for which it is responsible

It is a matter for the Council to determine how best to implement this recommendation, and in doing so should consider the establishment of a

standing committee or task force, and requiring regular reports from the responsible officer/s.

4. Review and clearly define the responsibilities of its Directors and Managers in fulfilling its responsibilities as Trust Manager of the Hudson Park (R62163) Reserve Trust and other Crown Land for which it is responsible.

Council should define the responsibilities of its Directors, Managers and other relevant staff in fulfilling the Council's responsibilities as Trust Manager and should ensure appropriate management of the physical asset and compliance with the terms of any legal obligations and future licence.

The Council should ensure staff engaged in this function are capable of and are fulfilling their functions in a proper, efficient and effective manner.

This report recommends that a Director or Manager be given overall responsibility for ensuring that Council fulfils its responsibilities as Trust Manager, and is requested to regularly report to Council.

In relation to the foregoing paragraph, it is noted that Council has taken steps to assign responsibility for the administration of its role as Trust Manager to the Director, Technical Services.

5. Review and closely monitor expenditure on legal and associated professional advice.

The report details Council's expenditure on legal and associated professional advice. The level of expenditure is significant, particularly having regard to Council's past expenditure.

It is important that the elected Council review and monitor its legal expenditure.

6. Require that the General Manager provide a detailed report in relation to legal costs and expenses since 1 July 2011 in relation to the Australian Catholic University site.

Significant legal expense has been incurred in relation to planning matters related to the Australian Catholic University's Strathfield campus. Council

should investigate these costs and satisfy itself as to need for and quantum of these costs.

7. Implement a program to ensure ongoing compliance with the State Records Act 1988.

The *State Records Act 1988* requires that the Council create and maintain proper records of its activities. The investigation has revealed numerous instances where it did not do so, particularly in relation to records of meetings with third parties, the deliberations of its senior management group, emails and legal documents.

Council has advised that certain records have been deleted or removed from its electronic records management system. It was also apparent that not all of the documents provided by the Council, particularly emails, had been held on the relevant Council file.

The investigation noted that the Council has taken steps to respond to this issue, however, the elected Council needs to oversee this process.

5 SUBMISSION OF THE REPORT TO THE MINISTER

I hereby make this report to the Minister for Local Government, the Hon Paul Toole, pursuant to my obligation to report on the results of the investigation.



**Tim Hurst
Acting Chief Executive
Office of Local Government**

Dated this 6th of October 2015

SCHEDULE 1 - RELEVANT LEGISLATIVE REQUIREMENTS

1. This section of the report details some of the statutory requirements which were considered pertinent to the terms of reference.
2. It should be noted that the report does not purport to provide a compendium of all of the applicable statutory requirements.
3. Further commentary on these and other statutory requirements can be found in section 6 of the report, which provides further commentary and analysis on the results of the investigation.

Council's charter and functions

4. Councils are guided by a charter containing a number of principles, as provided by section 8 of the Act. These principles include:
 - *to provide directly or on behalf of other levels of government, after due consultation adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively*
 - *to exercise community leadership*
 - *to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development*
 - *to have regard to the long term and cumulative effects of its decisions*
 - *to bear in mind that it is the custodian and trustee of public assets and effectively account for and manage the assets for which it is responsible*
 - *to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and coordination of local government*
 - *to keep the local community and the State government (and through it the wider community) informed about its activities*

- *to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly when an activity of the council is affected*
 - *to be a responsible employer.*
5. Sections 21 and 22 of the Act provide that a council has the functions conferred or imposed on it by or under this Act or under any other Act or law.

Role of councillors

6. Section 232 of the Act requires that councillors as a group direct and control the council's affairs, allocate resources, determine policy, and monitor the council's performance.
7. As individuals, councillors communicate council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to council.
8. The Act requires councillors, as the governing body, to appoint a person to be general manager (section 334). Having done so, the role of the governing body is to oversee the general manager's performance.
9. The governing body must review the performance of the general manager at least annually against the agreed performance criteria for the position.

Functions of the General Manager

10. Section 335 of the Act provides that a council's general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council. It further stipulates that the general manager has the following particular functions:
- *to assist the council in connection with the development and implementation of the community strategic plan and the council's resourcing strategy, delivery program and operational plan and the preparation of its annual report and state of the environment report*
 - *the day-to-day management of the council*
 - *to exercise such of the functions of the council as are delegated by the council to the general manager*

- *to appoint staff in accordance with an organisation structure and resources approved by the council*
- *to direct and dismiss staff*
- *to implement the council's equal employment opportunity management plan; and*
- *such other functions as may be conferred or imposed on the general manager by or under this or any other Act.*

Role and responsibilities of Council's Responsible Accounting Officer

11. The Regulation stipulates that a council's *Responsible Accounting Officer*³ (RAO) has a number of responsibilities including:

- maintaining a system for budgetary control (cl. 202);
- provision of budget review statements and revision of estimates (cl. 203);
- keeping of the council's accounting records (cl. 207).

Conduct of councillors and staff

12. Section 439 of the Act provides that councillors, members of staff and delegates of councils must act honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act or any other Act.

13. The conduct of all council officials (councillors and staff) is subject to the provision of the Council's adopted Code of Conduct, which in turn is required to be consistent with the Model Code of Conduct for Local Councils in NSW.

14. The conduct of council staff is also subject to any applicable contract of employment and/or industrial instrument and their common law duties as an employee.

³ Clause 196 of the Regulation defines "*responsible accounting officer*" of a council as:
(a) a member of the staff of the council designated by the general manager, or
(b) if no such member has been designated, the general manager.

Provisions pertaining to the appointment of an auditor

15. The Act⁴ provides for the appointment a council's auditor. Relevantly, it provides at section 422(5) that *"An auditor may not be appointed or reappointed unless tenders for the appointment or reappointment have been called."*
16. Section 424(1) of the Act further provides that *"A council's auditor holds office for 6 years and, if otherwise qualified, is eligible for re-appointment"*.

Provisions pertaining to procurement

17. Councils' procurement and disposal activities are governed by strict considerations of probity, transparency and accountability, as they involve expenditure of public funds for public purposes.⁵
18. Section 55 of the Act stipulates that councils must invite tenders before entering into certain types of contracts including *"a contract for the provision of services to the council (other than a contract for the provision of banking, borrowing or investment services)"*.⁶
19. The tender process is further prescribed by the provisions of Part 7 of the Regulation which sets out the procedures to be adopted.
20. Councils are also required, pursuant to section 23A of the Act, to have regard to the OLG's Tendering Guidelines prior to undertaking tendering.

Authorisation of Expenditure

21. The Regulation (clause 211) provides that a council, or a person purporting to act on behalf of a council, must not incur a liability for the expenditure of money unless the elected council has approved the expenditure, and has voted the money necessary to meet the expenditure.
22. Clause 211 also stipulates (with some exceptions) that all such approvals and votes lapse at the end of a council's financial year.

⁴ Chapter 13, Part 3, Division 3

⁵ Department of Local Government Circular No. 09-39, 26 October 2009

⁶ Section 55(1)(f). Note that Section 55(3) details some exemption for certain types of contracts that would otherwise be subject to tendering.

Crown Lands Act 1996

23. Council, as the Trust Manager of the Hudson Park Reserve Trust exercises functions under Part 5 of the *Crown Lands Act 1996*.
24. Section 10 of the Act emphasises that Crown land is to be managed for the benefit of the people of New South Wales.
25. In turn, section 11 provides that Crown land is to be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State.
26. In measuring the standard of care to be applied to reviewing Council's performance and conduct as Trust Manager, it is noted that Courts have held that, in the management of the trust business, a trustee should exercise the same diligence and prudence as an ordinary prudent man of business would exercise in conducting that business if it were his own (*The Charitable Corporation v Sutton* 26 ER 642).
27. Section 102 of the Act requires that a reserve trust not grant a licence (other than a *temporary licence*), unless the trust has decided that it is desirable to do so (on the terms and conditions specified in the decision) and the Minister has consented to the proposal in writing.
28. The Act also includes other relevant provisions including requirements for the provision of reports and information required by regulation.

SCHEDULE 2 - COUNCIL POLICIES AND PROCEDURES

1. This section of the report details the policies and procedures which were considered pertinent to the terms of reference. Section 6 of the report which follows, provides analysis and commentary on whether Council and/or Council officers complied with these policies and procedures.

Code of Conduct

2. Council's code of conduct is the key instrument that regulates the conduct of staff and councillors. All councils are required to adopt a code of conduct that meets at least the minimum standards set out in the *Model Code of Conduct for Local Councils in NSW* prescribed by the *Local Government Act 1993*. All council officials (councillors, staff and delegates) must comply with the code of conduct. It guides them on a range of matters including the need to act with care and diligence.

Purchasing and Tendering Guidelines

3. In March 2007, the Council replaced its existing purchasing procedures with a new document titled *Strathfield Council Purchasing and Tendering Guidelines*. A revised version of this document was adopted on 25 August 2012.
4. Both the 2007 and 2012 versions of the document detail "guiding principles", administrative processes and requirements going to the breadth of the procurement activities undertaken by Council.
5. Both the 2007 and 2012 documents are referred to in this report as the investigation considered actions that preceded the adoption of the 2012 version. The 2012 version indicates that it is to be read in conjunction with Council's Procurement Policy, which was adopted at the same time.

Procurement Policy

6. Council's *Procurement Policy* is an operational policy approved by the General Manager and adopted on 25 August 2012. It does not appear to have been preceded by or to have replaced an existing policy. Rather it was an added element to the framework governing the procurement of goods and services.
7. The stated objectives of the Procurement Policy are to:

- provide policy and guidance on procurement activities to ensure consistency
 - to set out Council's procurement framework, responsibilities and procedures.
8. This policy applies to all procurement, tendering and contracting activities undertaken by the Council.
9. A copy of the policy has been provided as an appendix.

Appendix 6 - Procurement Policy

Legal Practice Policy & Legal Practice Procedure

10. Council's *Legal Practice Policy* is an operational policy of the Council originally approved by the Council's General Manager on 30 May 2008. It was revised with effect from 24 March 2011.
11. It is this revised version that is relevant to the investigation. Its stated purpose is to "*provide policy for the administration and coordination of legal practice that is provided both internally and from external sources to Council.*" Council also adopted a *Legal Practice Procedure* to be implemented alongside the *Legal Practice Policy*.
12. Copies of the policy and the procedure have been provided as appendices.

Appendix 7 - Legal Practice Policy

Appendix 8 - Legal Practice Procedures

SCHEDULE 3 - ANALYSIS

1. This section of the report details the results of the investigation and where considered appropriate, provides further commentary and analysis:
 - Section 3.1 deals with the Council's procurement of services from the International Property Group and its expenditure on these services;
 - Section 3.2 deals with the procurement of legal and associated professional advice, and expenditure on these services;
 - Section 3.3 deals with the appointment of Council's external auditor;
 - Section 3.4 deals with the Council's conduct and performance as the Trust Manager of the Hudson Park Reserve Trust; and
 - Section 3.5 deals with a number of the other matters that arose directly from the principal investigation.
2. The analysis should be read in conjunction with the appendices. These include a number of chronologies. It is important to note that the appendices only include the evidence that was considered to be particularly relevant to understanding this analysis, the findings and recommendations. Similarly, the chronologies only refer to events and documents that were considered similarly relevant.
3. In providing details of the results of the investigation and further commentary and analysis, it should be noted that the ambit of the investigation was confined to the Council, its work and activities and implicitly the conduct of Council officials.
4. It has been necessary to refer to entities and persons other than the Council and Council officials. However, no findings have been made as to the conduct of these entities and persons in relation to the matters investigated. Given this, due caution should be exercised before drawing any adverse inference from this report as to the capability, performance or conduct of these other entities and persons.

3.1 Procurement of services from IPG & expenditure on these services

5. The terms of reference required the investigation to consider whether there has been maladministration and/or serious and substantial waste of local government money in relation to Council's procurement and expenditure on services from the International Property Group Pty Ltd (IPG).
6. A chronology of events and documents considered relevant to the examination of the Council's procurement of and/or expenditure on services from IPG has been provided as Appendix 9.⁷

Appendix 9 - Chronology – International Property Group

Expenditure on services from IPG

7. Council records indicate that it paid \$899,937.50 to IPG from May 2009 to July 2013. The expenditure involved:
 - i. An agreed fee of \$33,000 for the provision of advice and assistance in preparing a submission seeking funding from the State government for work on a proposed transport interchange at Strathfield.
 - ii. 38 monthly "retainer" payments of \$22,000 (totalling \$836,000) from May 2009 to July 2013, payable in advance.
 - iii. A payment of \$30,937.50 for "*Strategic Advice & Coordination on the sale of Matthews Park*" (51 Matthews Road Greenacre), representing a 0.5% of the sale price of that property.

The lines of enquiry

8. The terms of reference required the investigation to consider how IPG's services were procured by the Council. As Council had previously disclosed how much it had paid IPG, the investigation sought to ascertain:
 - whether the expenditure was, or should have been, incurred pursuant to one or more written contracts between the Council and IPG;
 - whether there should have been one or more tender processes prior to Council entering into any such contracts; or in the alternative,

⁷ Note that the Chronology does not record the receipt of all the monthly invoices from IPG for the retainer payments claimed by them and nor does it record the dates those payments were authorised and made.

- whether the requisite contracts were exempt from tendering by way of the operation of section 55(3) of the Act or otherwise, and if so, whether there are records to substantiate this;
 - whether the procurements were undertaken in a manner that was consistent with the Council's *Purchasing and Tendering Guidelines*.
9. Relevantly, the Council's Guidelines required that Council officers obtain three written quotes when procuring goods and services involving expenditure greater than \$10,000 and tendering for services where expenditure was estimated to be likely to exceed \$150,000, unless a prescribed circumstance indicated that these processes were not required. The latter requirement generally reflects the tendering provisions of the Act.

The initial procurement

10. The Council's initial procurement of services from IPG was to obtain assistance with the preparation and making of a grant submission for funding to undertake a feasibility study for an underground transport interchange at Strathfield.
11. The decision to procure this service from IPG was made shortly after a meeting on 24 March 2009 between representatives of IPG and Council's General Manager, Mr David Backhouse. Subsequently, IPG wrote to Council on 27 March 2009, referring to the meeting and suggesting the terms upon which it could assist Council. A copy of the letter has been included as an appendix.

Appendix 10 - IPG letter to Council of 27 March 2009

12. IPG's letter contained a proposal to provide services in relation to the "Strathfield Square project". It provided a quote of \$30,000 (excluding GST) to assist Council in the preparation of the grant submission for funding of the underground infrastructure component of this project.
13. The letter also indicated that IPG would, subject to the success of Stage 1 of the program (as outlined in the letter), seek appointment as "Council's project co-ordinator" for stage 2 of the program of work outlined in the letter.
14. It is not clear what transpired after the letter was received by Council.
15. Mr Backhouse, in his response to the draft report, provided an undated letter from Mr Wong to him. Mr Wong states in the letter that he had discussions with a representative of IPG on 30 March 2009 "in relation to the engagement of IPG

and scope of works being proposed." No record of the meeting has been provided.

16. Council provided a copy of an email exchange between Mr Wong and Mr Scott Campbell of IPG dated 15 April 2009 which indicates that IPG had commenced work on the project, presumably on the basis that Council had or would ultimately accept its proposal. The email exchange also indicates Mr Wong provided IPG with confidential information. Council had not, at that time, provided any written advice to IPG as to its acceptance of IPG's proposal.

Appendix 11 - Email exchange Mr Wong and Mr Scott Campbell of IPG

17. Either Mr Backhouse and/or Mr Wong sought advice from Council's then Legal Officer, Mr James Ng, regarding the procedural requirements for engaging IPG. Mr Ng provided advice in an email addressed to Mr Backhouse dated 22 April 2009 (copied to Mr Wong).

Appendix 12 - Email dated 22 April 2009 from James Ng to David Backhouse

18. Mr Ng's advice was:

I note that the proposed fees for Stage 1 of the project is less than \$100,000 and that Council will only consider engaging International Property Group to do Stage 2 of the project at a later date and once Stage 1 is finished. In the circumstances, tendering is not required and Council may engage IPG to carry out the Stage 1 works.

Attached is a draft letter to IPG. I have also attached a copy of Council's Business Ethics Policy which should be attached to the letter.

19. The draft letter attached to Mr Ng's email was dated 21 April 2009.

Appendix 13 - Draft acceptance letter to IPG dated 21 April 2009

20. The date of the advice and the draft letter is significant given that it is apparent that IPG had, as at that date, already commenced work on the project and been provided with confidential information by Mr Wong.
21. It is apparent that the General Manager considered Mr Ng's advice and that he signed a letter dated 30 March 2009 accepting IPG's proposal for stage 1. The letter advised that "*Upon successful completion of Stage 1, a determination will be made in relation to IPG's proposal to carry out Stage 2*".

Appendix 14 - Council's letter to IPG of 30 March 2009

22. It is clear that Council's written acceptance of the offer from IPG was backdated. The substantive content of the 30 March 2009 letter is identical in every respect to the draft that was provided to Mr Backhouse on 22 April 2009 by Mr Ng.
23. Mr Backhouse was invited to comment on the "backdating" of the letter. A copy of his response of 30 April 2015 has been provided as an appendix. For ease of reference, the relevant content of his response has been reproduced hereunder:

It is apparent I signed and caused to be forwarded, the backdated letter. I did so unaware of the date that it carried and the fact that it had been backdated. I have no present recollection of having signed that particular letter. More particularly I did not ask for nor approve the letter being backdated and had I realised at the time of signing the letter, that it had been backdated I would have corrected it. In the ordinary course of a day I am called upon to sign correspondence prepared by others and I have evidently overlooked that the subject letter had been backdated.

Further, and on reflection, I am puzzled as to why whoever caused the letter to be backdated did so as there appears to be no purpose (appropriate or inappropriate) served by reference to the letter having been backdated.

Appendix 15 - Invitation to Provide Further Comment on Council's letter of 30 March 2009 and Response

24. Mr Ng provided a statement detailing his recollection of the circumstances of providing the advice and draft letter. In it, he indicated that he had no knowledge as to the circumstances by which the letter came to be backdated.

Appendix 16 - Statement - Mr James Ng

25. Council's acceptance letter indicated that payment of the initial \$20,000 fee to IPG was conditional on receipt of IPG's commitment to Council's *Business Ethics Policy*. Council was not able to produce any record that indicated IPG's commitment was ever received. Notwithstanding this, the evidence indicates that Council proceeded with the procurement. Mr Backhouse, in his submission on the content of this report, disputed the relevance of this:

I dispute the relevance of stating that "Council was not able to produce any record that indicated IPG's commitment to the Business Ethics Policy...". The Policy, at that time, was based on the Model Code of Conduct for Local Government which in 2010 was binding on contractors and consultants. There was no obligation on Council to obtain any such written undertaking from IPG at the time that that [sic] this version of the Code was in force. The

Business Ethics Policy was designed to inform contractors of Council's ethical standards and the consequences of not adhering to Council's ethical standards set out in the Code of Conduct. In any event, the contractor was bound by the Code of Conduct.

26. Mr Backhouse's view does not recognise the fact that it was he who acknowledged and reinforced the importance of the commitment being secured, when he issued the letter to IPG which stipulated this as a condition. Having recognised the value of informing contractors of Council's ethical standards and the consequences of not adhering to Council's ethical standards, and having stipulated that a formal commitment to those standards was required, it was contingent on the Council to ensure that the commitment was obtained and recorded.
27. IPG emailed Council's General Manager an invoice for \$22,000 on 6 May 2009, which the General Manager forwarded on that same day to the Director, Technical Services, with the instruction "Pl. respond and action."
28. A Council purchase order directed to IPG was prepared. It bears the date 18 May 2009. The order form indicates that the service was requisitioned by Mr Hazeldine and approved by Mr Wong, on behalf of the General Manager.⁸
29. On the face of the documentary evidence, the initial decision to procure the services from IPG was approved by the General Manager. Mr Backhouse's signature is on the letter accepting the proposal. Mr Backhouse written submissions acknowledge that he received a recommendation to engage IPG. There is evidence that he sought and received advice from Council's Legal Officer in relation to the procurement.
30. There is no probative evidence that the Council considered alternative providers of strategic property advice prior to deciding to engage IPG.⁹ Specifically, there was no evidence of three quotes having been sought or obtained (written or otherwise), as required by Council's *Purchasing and Tendering Guidelines*.
31. The *Purchasing and Tendering Guidelines* and Council's *Code of Conduct* required that Council officials make a record of their decision and, where

⁸ It should be noted that all Council order forms contain the printed words that indicate the Order is signed/approved on behalf of the General Manager.

⁹ While Mr Wong has stated that there was consideration of other providers. There is no evidence that this occurred.

appropriate, the reason for their decision. Council did not provide any document recording why IPG was selected to undertake the work and/or why additional quotes for the work were not obtained.

32. The results of the investigation indicate that in undertaking the initial (2009) procurement of services from IPG, Council did not:

- comply with the provisions of its *Purchasing and Tendering Guidelines*
- make and/or retain a full record of the procurement process and the related decisions.

33. Mr Backhouse made the following submissions in regard to the consideration of alternative providers and the making and keeping of records pertaining to the decision to engage IPG:

I am not aware of the considerations for alternative providers as it was [sic: the] Director Technical Services that put forward IPG. Mr Ng's advice in relation to the initial procurement provided a letter to sign which implied it complied with Council's Purchasing and Tendering Guidelines and I followed that advice.

Director Technical Services made the recommendation and would have carried out the necessary procedures.

AND:

Council relied on the advice in relation to the initial procurement provided by Council's former Legal Officer. The provision of a draft letter for execution implied it complied with Council's Purchasing and Tendering Guidelines and I followed that advice. The recording of the decision was a matter for the Director Technical Services who made the recommendation and was responsible for documenting of the decision.

AND:

I signed the engagement letter but the other parts of the process, including the recording of the decision, were the responsibility [sic: of] the recommending officers and I acted in good faith on the advice of these officers.

34. While Mr Backhouse's view is that the responsibility lay with others, it is evident that he was directly involved in the consideration of IPG's proposal and that it was his decision to engage IPG.
35. Mr Backhouse has submitted that the initial engagement of IPG was considered and supported by councillors. He supplied statements from three former councillors in support of this submission.
36. While Mr Backhouse's submission and the statements of the former councillors have been considered, there is no record of a resolution of the elected Council that indicates that it specifically supported or endorsed the initial engagement of IPG. Nor are there any Council records that indicate that the specificity of engaging IPG to assist in the preparation of the funding submission was considered or supported by the Council on the occasions cited by Mr Backhouse in his submission.

The 2010 procurement

37. This part deals with Council's processes in entering into a contract with IPG on a monthly retainer of \$22,000 (including GST) and payment of an additional fee for coordinating the sale of a Council property (0.5% of the sale price).

IPG's Proposal

38. On 24 December 2009, Mr Chris Demertze of IPG sent Mr Backhouse an email attaching the final invoice for the work they had done on the funding proposal for the train/bus interchange. Attached to the email was a document which Mr Demertze described as IPG's "*Government Advisory Services*" profile. The profile is an 8 page document detailing the services IPG could provide to government clients.
39. On 3 March 2010, Mr John Elvy, a Director of IPG, sent an email to Mr Backhouse with the subject heading of "*Assistance*". It made reference to a conversation between Mr Elvy and Mr Backhouse on the previous day. Mr Elvy indicated that he understood that "*Council is keen to pursue an affordable housing agenda on specific sites owned or controlled by Council*" and indicates that IPG could provide a "*design concept and feasibility analysis*" for Mr Backhouse to consider.
40. Mr Elvy's email noted that the Council was "*considering a consolidation of some sites in the municipality, which may require the acquisition of some privately*

held land" and suggested that *"this process should be done VERY quietly and at armslength to Council."* The email advised that IPG had the experience to do this for Council and asked for a confidential discussion with the General Manager and the then Mayor about how they could approach this issue.

41. It appears that there was a meeting on 30 March 2010 attended by Mr Elvy, Mr Backhouse and the then Mayor of the Council. On 31 March 2010 Mr Elvy sent an email to Mr Backhouse seeking confirmation of what Mr Elvy understood to be Mr Backhouse's and the Mayor's instructions in relation to a presentation for Councillors on the highest and best use of a number of properties, including Matthews Park. It concluded with the following statement *"Once I have your response, I can prepare a proposal for this work to be carried [sic] and the fees associated with that brief. I would need 2 weeks to collate, research, analyse and prepare feasibility for these properties."*
42. No record of any written response from Mr Backhouse to the two emails has been provided. On 15 April 2010, Mr Elvy sent Mr Backhouse a copy of his email of 31 March 2010 seeking a response. There is evidence of Council providing information to IPG about Council properties on 30 April 2010 and of a meeting between Mr Backhouse and Mr Elvy on 4 May 2010.
43. Mr Backhouse indicated that he had no specific recollection of a meeting with Mr Elvy on 4 May 2010, observing that there were many meetings and that he couldn't recall the date. He remembered a meeting between IPG representatives and Council staff (including himself) where the affordable housing strategy was discussed and a meeting between Mr Elvy, the Mayor, Mr Wong and himself in relation to the development potential of a number of council properties and properties in the Parramatta Road/Loftus Crescent area.
44. On 6 May 2010, Mr Elvy sent an email to Mr Backhouse, attaching a letter from him. The letter provided Council with an IPG proposal for the provision of *"Strategic Property Advice"*. The email was sent directly to Mr Backhouse. A copy of the email and letter has been included as an appendix.

Appendix 17 - IPG Email and Letter to Council of 6 May 2010

45. IPG's letter of 6 May 2010 refers to the meeting held with Mr Backhouse on 4 May 2010. In the letter, IPG proposed an engagement for a 12 month term, monthly retainer payments of \$20,000 (excluding GST) and the payment of an

additional coordination fee where the sale of a property was involved, this fee being 0.5% plus GST of the sale price.

46. While the letter canvassed a number of specific projects and related tasks, it ultimately suggested that IPG's engagement *"be for 12 months then reviewed, or cease upon completion of tasks assigned to us, which ever (sic) is sooner. This will mean you will have access to all of our services on call and we would provide monthly reports in a format that you require."*
47. The letter continued: *"I am sure that there will be other property related issues that need to be addressed in the future and I believe this would be a very cost effective way of Strathfield Municipal Council having their own "property department" without the on-costs."*
48. Ultimately, IPG was offering to provide strategic property advice and to perform related tasks, as assigned by Council. Importantly, their work for Council was not limited to the specific projects and tasks canvassed earlier in the letter. In return they were to receive payments of \$264,000.00 over the annual period.
49. When interviewed, Mr Backhouse recollected having received the email and letter. He indicated that he would have passed it on to Patrick Wong (who was then the Council's Director, Technical Services).
50. Mr Backhouse was asked about his view on the proposal. His responses indicated that:
 - Council was very satisfied with the IPG. They thought they were getting good value from the results.
 - The retainer would have been a very good price reduction from the daily fee.
 - That the Council did not have a specialised resource to provide the services proposed to be provided by IPG.
 - That the Council needed the services proposed.
51. Mr Backhouse explained that *"it was the view of the whole team involved with it, particularly with Patrick, that we needed a firm with that sort of commercial experience, and we certainly didn't have that in house."*

-
52. In responding to the draft Report, Mr Backhouse provided a statement from Mr Tony Maroun, a former Councillor who was the Mayor from September 2009 until September 2011. Mr Maroun stated that he had "directed" Mr Backhouse to proceed with the engagement of IPG.
 53. More generally, Mr Backhouse submitted that the "*elected council*" approved and directed the engagement of IPG.
 54. The Act requires that decisions of Council be by a resolution of the councillors at a duly convened meeting. There is no evidence that councillors passed any resolution authorising the retainer arrangement with IPG.
 55. Further, as is reinforced by the Code of Conduct, councillors cannot direct staff in the performance of their functions. Any direction by the Mayor could not operate to excuse compliance with the requirements of the Act.
 56. Council did not provide any minutes or file notes pertaining to the meetings between Council officials (including the General Manager) and IPG representatives prior to Council receiving the offer from IPG.

Acceptance of the Proposal

57. Council provided a copy of a Council letter to IPG, dated 17 May 2010 that communicated its acceptance of IPG's proposal.

Appendix 18 - Council letter to IPG of 17 May 2010

58. The letter bears the signature block of the General Manager and a signature. "*David Backhouse*" is also noted as the contact person in the letter. The letter included the following statement:

"Council accepts your offer to engage International Property Group (IPG) on a monthly retainer of \$20,000 in lieu of a daily fee or a project by project arrangement, for a period of 12 months then reviewed, or cease upon completion of the tasks assigned to IPG, whichever is sooner."

59. The Council's letter to IPG concluded:

"I look forward to meeting with you soon and please don't hesitate to contact me on 9748 9924 if necessary." The phone number provided is the contact number for the General Manager's office.

60. In responding to the draft report, Mr Backhouse emphasised that the Executive Group (the General Manager and the three Directors) had agreed to engage

IPG. In doing so he raised doubts about the authenticity of the letter. It might be noted that, despite an earlier suggestion that a forensic investigation be convened, Council has not provided any evidence to dispute the provenance of the letter.

61. While Mr Backhouse provided statements by a number of directors and senior staff that support his assertion that a collective decision was made to engage IPG, no contemporaneous records evidencing such a decision by the Executive Group have been provided.
62. Mr Backhouse provided, in his response to the draft report, a table of information described as "*Key Issues – Technical Services – Strategic Planning Section – Report to Executive*". Mr Backhouse suggested that the information contained in the document evidenced consideration by Council's Executive Group and its apparent agreement to the engagement of IPG. While the document does contain some references to the Strathfield Town Centre Project and work IPG was doing for Council, there is nothing that indicates a collective decision by the Executive Group to engage IPG.
63. As noted earlier, the Office of Local Government (then the Division) made preliminary enquiries of Council about IPG. HWL Ebsworth (HWL) and O'Connor Marsden & Associates (OCM) provided a response on behalf of Council, in the form of a report. The report contained the following statement in regard to the engagement of IPG on the retainer:

We are instructed that the General Manager, Mr David Backhouse, has no knowledge or recollection of signing, or otherwise authorising the letter dated 17 May 2010 to IPG. The General Manager also stated that the signature evidenced on this letter is not his signature and has initiated a forensic investigation of the letter's provenance. Mr Backhouse does have a limited recollection of the letter from IPG dated 6 May 2010 and recalls passing the letter to one of his Directors to formulate a response and/or recommendation.

The General Manager has instructed us that he firstly, did not authorise the IPG retainer; and secondly, was unaware of the monthly payments and the quantum of funds expended to IPG.

64. It is difficult to accept this version given the weight of the evidence that suggests that Mr Backhouse made the decision to accept IPG's proposal for the retainer. In this regard it is noted that:

- Mr Backhouse was present at meetings with IPG in the lead up to the decision to engage them on a retainer.
- Council's letter of 17 May 2010 bears his name as the contact person, his signature block, invites the IPG to call him directly and provides the contact number for the General Manager's office.
- When interviewed, Mr Backhouse was asked about who made the decision on how to respond to IPG's letter of 6 May 2010. His response indicated that he made the operative decision that IPG be engaged on the retainer. The relevant section of the transcript has been reproduced hereunder:

Q178 *Okay. Are you saying in respect of the matters in this letter, that's 6 May 2010, that the decisions relating to that were not made by you?*

A *I'm saying on the advice that I've received that I was fine to proceed with the use of IPG on Matthews Park and other properties.*

Q179 *Did you make the operative decision to retain IPG on that retainer?*

A *Made the?*

Q180 *Decision to retain IPG*

A *I was fine for it to proceed on that basis.*

Q181 *No, no, no*

A *So yes.*

Q182 *you made the decision?*

A *Well, yes.*

Q183 *It wasn't Mr Wong's decision, it was your decision?*

A *Patrick Wong approached me with the position, strongly advocating for their continued use, gave a proposition in regards to the value of the retainer for council, which we agreed. And prepared letters in accordance with that.*

65. Any assertion that Mr Wong was ultimately responsible for the engagement needs to be considered having regard to the value of the contract that was being entered into and Mr Wong's delegation. The contract had a value of \$264,000 inclusive of GST plus the coordination fee that was likely to flow from the sale of Matthews Park. Mr Wong's purchase authorisation limit was \$50,000 whereas Mr Backhouse's was unlimited.
66. Council did not provide any document that recorded:
- its decision to procure strategic property advice;
 - why IPG was selected to undertake the work;
 - why no tenders or other quotes for the work were obtained prior to entering into the contract with IPG; and
 - why it had not complied with the tendering provisions of the Act.
67. There is no explicit evidence that shows the Council considered alternative providers of strategic property advice prior to deciding to engage IPG either initially or in the lead up to the retainer based contracts.

Failure to call for tenders

68. Section 55 of the Act requires that councils undertake a tendering process before entering into a contract for an amount exceeding \$150,000.00.
69. Section 55(3) provides limited exceptions to this general requirement.
70. Mr Backhouse, Mr Redman, Mr Wong and Mr Hazeldine have all indicated that they believed that IPG was on a "government contract" and thereby exempt from tendering.
71. Mr Redman indicated that the contract was exempt under section 55(3)(a) of the Act.
72. Section 55(3)(a) and (g) imposes limitations on such contracts, requiring that the contract only operate during the *specified* period, at a rate not exceeding the

specified rate and that the contract be made with a supplier who has been *specified* to supply the service.¹⁰

73. Council's own enquiries, undertaken on its behalf by HWL/O'Connor Marsden considered whether Council was entitled to rely on an exemption under section 55(3)(a) or (g) of the Act.
74. HWL/O'Connor Marsden reported that HWL had conducted an extensive search of various government contract registries and could find no evidence to support this understanding. The report attached emails from Local Government Procurement, NSW Procurement and the Commonwealth Department of Finance and Deregulation evidencing this conclusion.
75. Mr Backhouse provided statements from Mr Redman and Mr Wong. They state, in effect, that they informed Mr Backhouse that no tendering was required because of the existence of an applicable state government contract exemption. Mr Backhouse has submitted that his understanding, that tendering was not required, was based on what he was told by the two Directors. Mr Backhouse has indicated that he would otherwise have been of the view that tenders should have been called prior to entering into the retainer based contracts.
76. Mr Backhouse has submitted that he was content to rely on the verbal advice provided by Mr Wong and Mr Redman, that it was proper for him to do so, and that he acted in good faith in doing so.
77. While Mr Backhouse's submission has been noted, it was clearly incumbent on him to do more to enquire as to the nature of the "government" contract that was being relied upon as the basis of the exemption.
78. No probative evidence has been provided that IPG was party to a pre-existing arrangement that would exempt the proposed retainer contract from tendering. Nor has any evidence been provided indicating IPG represented itself as being party to such arrangement or that their services were being supplied to Council in accordance with the terms of such a contract.

¹⁰ Section 55(3)(g) of the Act provides that a contract for the purchase of goods, materials or services may be exempt from tendering where it is "*specified by the NSW Procurement Board or the Department of Administrative Services of the Commonwealth, made with a person so specified, during a period so specified and at a rate not exceeding the rate so specified*". Section 55(3)(a) is couched in similar terms.

79. It was incumbent on Mr Backhouse to satisfy himself that all of the relevant criteria for the contract to be exempt, as stipulated in section 55(3) of the Act, had been met. These were:
- that IPG was party to pre-existing arrangement specified by a procurement body i.e. that IPG was a “specified” supplier of the service being procured.
 - that the rates set out in IPG’s proposal did not exceed the rates that had been specified by the relevant procurement body for that service.
80. There is no evidence that indicates that the second criterion was considered.
81. While it is apparent that Mr Backhouse was familiar with the tendering requirements and that he made some enquiry as to the availability of an exemption, his enquiries were manifestly inadequate given the value of the proposed contract and the terms of the contract. In particular, there is no evidence that he required any evidence of the existence of the government contract that was being relied upon or that he made any enquiry as to the rates that were specified in the contract that was purported to exist by Mr Redman and Mr Wong.
82. The evidence indicates that the Council did not comply with section 55 of the Act when entering into the retainer based contract with IPG on behalf of the Council.
83. The evidence indicates that neither Mr Backhouse or the staff that reported to him:
- made proper enquiries as to whether IPG was a party to a pre-existing arrangement with a procurement body that could give rise to an exemption from tendering
 - complied with the provisions of its *Purchasing and Tendering Guidelines*
 - made and/or retained proper records of the procurement process and related decisions
 - formally advised councillors of the intent or subsequent decision to enter into the retainer agreement with IPG.

84. Despite what was submitted by Mr Backhouse in his response, no evidence has been provided indicating that the elected Council was informed of the intention to enter into the retainer contract to obtain strategic property advice from IPG and/or the terms of the proposed contract.

The 2011 procurement

85. On 3 May 2011 Mr Elvy of IPG sent an email to Mr Backhouse seeking to renew their arrangement with the Council. The substantive content of the email is reproduced below:

David

As you know our engagement as council's property and infrastructure advisors will expire at the end of this month. We would encourage you to continue our arrangement for another 12 months, as we believe with the new government there will be a great deal of work required by us and your team in the promotion of the Interchange project. Also, the acquisition of Redmyre Road and development of a financially and socially beneficial "key worker" housing project. I would appreciate if you would confirm the continuation of our engagement at your convenience.

With Kind Regards,

John Elvy

Director

86. The General Manager responded to Mr Elvy that day. The subject line was "Re: Contract renewal". The substantive content of the email is reproduced below:

John on a same as basis!

Ok

David

87. Mr Elvy responded by email later that day, thanking the General Manager for the renewal. A copy of the emails has been provided in the appendices.

Appendix 19 - IPG 2011 Contract renewal emails – 3 May 2011

88. Mr Elvy sent his request at 11:23 am, Mr Backhouse sent his acceptance at 12:34 pm and Mr Elvy responded at 5:44 pm.

89. In responding to the draft report, Mr Backhouse indicated that the Director Technical Services, Mr Wong, had discussed IPG's performance and renewal with him and the Executive Group prior to Mr Elvy's request. Council has not provided any record evidencing any discussion as to the merit or otherwise of renewing the contract with IPG for a further twelve months. Nor is there any record of Mr Backhouse having sought or received any written advice in relation to the renewal.

90. As noted at paragraph 201, HWL/OCM provided the following information:

The General Manager has instructed us that he firstly, did not authorise the IPG retainer; and secondly, was unaware of the monthly payments and the quantum of funds expended to IPG.

91. This response is at odds with the evidence of Mr Backhouse's acceptance, on behalf of Council, of both the initial retainer proposal and the proposal of 3 May 2011 for a further 12 months.

92. Council, in a letter dated 3 October 2014 signed by the Group Manager, Organisational Performance, provided some further information about the renewal of 3 May 2011. The relevant extract of the letter has been reproduced hereunder:

Again, in relation to an email from the General Manager to IPG dated 3 May 2011, the former Director Technical Services, Patrick Wong, was responsible for the engagement and coordination of IPG. IPG were engaged on an annual basis. IPG had simply contacted the General Manager in May 2011, again as an escalation point, because IPG had not received any confirmation from the Director concerning their engagement. The General Manager followed up with the Director who informed the General Manager that the contract was to be renewed on the same basis. As a courtesy since an email had been sent to the General Manager, he merely responded to IPG forwarding on that message and the Director was expected to contact IPG to confirm their engagement.

93. As pointed out earlier, the assertion that Mr Wong was ultimately responsible for the engagement of IPG needs to be considered having regard to the value of the contract that was being entered into and Mr Wong's delegation. The contract had a value of \$264,000 inclusive of GST. Mr Wong's purchase authorisation limit was \$50,000.

94. Mr Backhouse has submitted that it is *"impractical, misleading and incorrect"* to report that he assumed responsibility for the engagement by, in his words, the *"mere signing of a contract"*. As the Council official who signed the contract, Mr Backhouse bore the ultimate responsibility for ensuring the contract was being

entered into in accordance with the relevant statutory requirements and Council's own policies and procedures.

95. On 5 July 2011, Mr Demertze of IPG sent an email to Mr Wong attaching the emails of 3 May 2011 together with a letter confirming the further retention of IPG. The content of the email is set out below:

Dear Patrick,

As per our conversation yesterday, please find attached for your internal records the following:

- *Email from John Elvy to David Backhouse dated Tuesday, 3 May 2011 11:24 AM.*
- *Email from David Backhouse to John Elvy dated Tuesday, 3 May 2011 12:34 PM.*
- *Letter to Strathfield Council confirm our role from 1 June 2011 unto 31 May 2012.*
- *If you require any further information, please do not hesitate to contact me.*

Regards,

Chris.

96. A copy of the letter confirming IPG's role has been provided as an appendix.

Appendix 20 - IPG Letter of 5 July 2011

97. The letter of 5 July 2011 states, in part, *"I write to you outlining the various tasks International Property Group are currently working on, in conjunction with and for Strathfield Council."*
98. IPG's letter, as well as outlining the tasks that IPG was working on at that time, also reiterated the terms of their engagement, including the monthly retainer. The letter did not refer to an additional fee being payable for work related to the coordination of the sale of a Council property. The letter also indicated that IPG *"would provide monthly reports in a format that you require"*.
99. Again, the evidence indicates that Council staff did not:
- comply with section 55 of the Act
 - comply with the provisions of Council's Purchasing and Tendering Guidelines

- record the reasons for determining to re-appoint IPG
- advise councillors of the decision to enter into the retainer agreement with IPG.

100. There is no probative evidence that anyone other than Mr Backhouse authorised the engagement and agreed to the terms with IPG. While Mr Backhouse has submitted that the decision was a collegiate decision, the evidence remains that it was Mr Backhouse who provided Council's acceptance of IPG's offer.

Ongoing retention of IPG

101. IPG's letter to Council of 5 July 2011 indicated their arrangement with Council was to continue for a further 12 months from 1 June 2011 to 31 May 2012, when it was to be *"then reviewed, or cease upon completion of tasks to us, which ever is sooner."*

102. The Council did not produce any records that indicate IPG sought a renewal or extension of the arrangement beyond 31 May 2012. Notwithstanding this, Council records indicate that the monthly payments to IPG continued until June 2013.

103. Council appears not to have had an internal control in place to alert it that the arrangement with IPG was due to be reviewed on or before 31 May 2012.

104. In responding to the draft report, Mr Redman referred to a report to Council's meeting on 2 May 2012 and suggested that it provides the basis for continuing to retain IPG from June 2012.

105. The report sought a budget allocation of \$150,000 in relation to the Strathfield Town Centre project. The report did not provide any indication that there was an existing retainer agreement with IPG, nor did it indicate an ongoing retainer agreement.

Council's payment procedures

106. The first two retainer payments were authorised by the Director, Corporate Services. Subsequent monthly payments were then generally authorised by the then Director, Technical Services and, subsequently, by the then Acting Director Technical Services.

107. Council adopted the following process:

- After receiving an invoice from IPG, a hand written purchase order was completed (but not issued to IPG)
- Payment would be authorised
- The order and the invoice would be given to the Finance section for payment.

108. In responding to the draft report, Mr Backhouse wrote

... after receiving an invoice from a contractor, payment is only authorised if in the opinion of the authorising officer the works have been undertaken to the satisfaction of the authorising officer and within their financial delegation. If the works have been satisfactorily completed, the invoice and order [sic: are] submitted to Finance for payment.

109. In a separate statement provided by Mr Wong and attached to Mr Backhouse's response, Mr Wong wrote:

Both David Hazeldine and I managed all consultants and contractors engaged by our department including IPG. I would only sign a purchase order and pay an invoice when I was satisfied the contractor had done the required work and this was the case for IPG.

110. These statements do not recognise the fact that IPG was paid in advance.

111. Mr Wong, the former Director Technical Services, was asked why the Council did not raise a purchase order for the total amount to be paid to IPG pursuant to the contract. His response initially was that he had *"no explanation. That was the process that we followed at the time."* He was then asked whether there was anything to stop him raising an order for the \$240,000. His response was that no one would know what to do with it, that it would confuse people, and the finance people would just respond with *"what did you do that for?"*

112. In his response to the draft report, Mr Redman provided the following extract from Council's letter of acceptance:

"Council accepts your offer to engage International Property Group on a monthly retainer of \$20,000 in lieu of a daily fee or a project by project arrangement, for a period of 12 months then reviewed or cease upon completion of the tasks assigned to IPG, whichever is the sooner".

113. He then submitted:

As the engagement may cease upon completion of the tasks assigned it would have been inappropriate to raise a purchase order for the total potential annual expenditure.

114. Mr Hazeldine's response generally mirrored this view.

115. Despite Mr Redman's and Mr Hazeldine's suggestion, it is clear that the agreement contemplated a period of 12 months with review or cessation thereafter.

Authorisation of expenditure

116. The investigation has considered whether the elected Council authorised the expenditure on the IPG retainer payments.¹¹ That is, whether the money required to pay IPG was included in the relevant annual budgets adopted and/or amended by the elected Council, and if so, whether the funds had been voted prior to Council entering into the retainer contracts with IPG.

117. In relation to the 2010/2011 financial year expenditure, Council accepted IPG's proposal (to be engaged on retainer for 12 months) on 17 May 2010, by way of a letter from the General Manager to IPG. This acceptance gave rise to a liability for expenditure for the following financial year (2010/2011) of \$220,000. At this time, the elected Council had not adopted its management plan or budget for the 2010/2011 financial year and it had not voted to provide the necessary funds for that financial year. It did not adopt its budget until June 2010.

118. Council accepted IPG's further proposal on 3 May 2011, by way of an email from the General Manager to IPG. This gave rise to a liability for expenditure for the 2011/2012 financial year of \$220,000. At this time, the elected Council had not adopted its management plan or budget for the 2011/2012 financial year and it had not voted to provide the necessary funds for that financial year. It did not adopt its budget until June 2011.

119. Mr Backhouse's repeated contention in regard to this is set out hereunder:

¹¹ The *Regulation* stipulates that a council, or a person purporting to act on behalf of a council, must not incur a liability for the expenditure of money unless the elected Council, at a council meeting, has approved the expenditure, and has voted the money necessary to meet the expenditure. [Clause 211 of the Regulation]

*I again contend that both the elected Council and Executive team approved and directed the engagement of IPG. Council has budget workshops in March and May each year. **The expenditure was discussed and approved within these workshops.** [emphasis added]*

120. The claim that the elected Council could approve or direct the expenditure (or make any decision for that matter) at a “workshop” fails to recognise that the elected Council can only make decisions at a duly convened meeting of the Council.
121. There is some evidence that indicates there was no provision for the IPG expenditure when the Council adopted its budget for 2011/2012, notwithstanding that a contract had been entered into with IPG. Ms Jodie Bourke, Council’s then Finance Manager and *responsible accounting officer* provided the following statement regarding the 2011/2012 financial year expenditure:

The expenditure on the IPG retainer was certainly not in the budget for 2011/2012. The Executive was aware of this. I think the expenditure would have been listed as a significant variation in Note 16.

I think the expenditure was included in the budget for 2012/2013. The amount of \$240,000 was something I was mindful of as having to be included. I recollect having discussed with Neale as to whether we going to continue paying them and if we were, that we needed to put it in the budget.

122. A full copy of Ms Bourke’s statement has been provided as an appendix. Both Mr Backhouse and Mr Redman submitted that Ms Bourke’s statement in relation to this matter is incorrect.

Appendix 21 - Statement - Ms Jodie Bourke

123. Ms Bourke’s statement is consistent with Note 16 of the Council’s 2011/2012 financial statements, which indicates that the Council spent \$240,000 more on “Strategic Planning” than it had originally budgeted for in that financial year, and that is spent \$254,000 more on “Legal - Planning costs” than it had originally budgeted for. These variations were considered to be material.
124. While Note 16 of the Council’s 2011/2012 financial statements lends credence to a conclusion that the totality of the funds required to pay IPG were not

included in the original budget, there is no probative evidence beyond Ms Bourke's statement as to the Executive Group's awareness of this.

125. Council was invited to respond to the allegation, that Council, or a person purporting to act on behalf of Council, had incurred a liability for the expenditure on IPG services in the 2011/2012 financial year, without having the authorisation required pursuant to clause 211 of the Regulation.
126. Council responded on 3 October 2014, advising that "*Council considers that the expenditure incurred in relation to services provided by IPG had at all times been approved by Council*" and on that basis, denied that there had been a breach. A copy of Council's response is provided as an appendix.

Appendix 22 - Council response of 3 October 2014

127. It might be noted that the Council response indicates that the Council ultimately allocated \$495,100 for paying property consultants in the 2011/2012 financial year.
128. Council's response confirms that the purported budget for the IPG retainer was not adopted until 23 June 2011. This is seven weeks after Mr Backhouse entered into the second retainer contract.
129. The evidence leads to the inevitable conclusion that at the time Mr Backhouse entered into each of the two retainer contracts with IPG, the Council had neither approved the expenditure nor voted the money necessary to meet the expenditure. The evidence indicates that Mr Backhouse incurred the liabilities to pay IPG in breach of clause 211 of the *Local Government (General) Regulation 2005*.
130. In the case of Mr Backhouse, while it may be that he was not aware the totality of the funds required to pay IPG funds were not included in the original budget for 2011/2012 and/or that he was of the belief that the funds were included, it remains the case that he entered into the contract prior to the budget being adopted by the Council.

Further commentary in regard to the apparent breach of section 55 of the Act

131. While Mr Backhouse has, in effect, denied responsibility for IPG's initial retainer, the evidence clearly points to his direct involvement. Further, there is no doubt that Mr Backhouse agreed to the extension of IPG's retainer.

132. While Mr Backhouse has submitted in his response to the draft report that he was directed to retain IPG, for the reasons outlined previously, such a direction was of no force or effect.

Audit queries in relation to IPG

133. Ms Bourke indicated in her statement that, in 2011, Council's auditor queried IPG's engagement, but had subsequently advised her that they had located a September 2010 report to Council which referred to the sale of Matthews Park and which indicated that associated costs would be incurred.¹² It was her understanding that the report satisfied their query in relation to the matter at that time. The relevant section of her statement has been reproduced hereunder:

75 IPG were used in relation to the sale of Matthews Park. Council's auditor raised a query 19 October 2011 in regard to whether there was any Council minute showing IPG engagement. I was subsequently advised by the auditors that they had located a September 2010 report to Council which referred to the sale of Matthews Park that indicated that associated costs would be incurred. I understood that this satisfied their query in relation to the matter at that time.

134. Ms Bourke also indicated in her statement that, in 2012, Council's auditor queried IPG's engagement. The relevant section of her statement has been reproduced hereunder:

79 In May 2012 Council's auditors were undertaking an interim audit and again queried whether there was a Council resolution pertaining to IPG's engagement; they observed that the voucher for payments to them just says "property services". On 15 May 2012 I sent an email to Neale Redman asking the question. I can't recall receiving a specific response from him.

135. The investigators asked the Council to supply a copy of the email referred to in Ms Bourke's statement as it had not been produced by the Council in response to the *Notice of Direction for Production of Documents*.¹³ Council subsequently provided a copy which had the subject line "Auditor Queries". The content of the email that pertains to IPG follows:¹⁴

Neale,

As discussed, the auditors have a couple of outstanding queries:

¹² As noted earlier, Ms Bourke was Council's former *responsible accounting officer*; a full copy of her statement is available in the appendices.

¹³ Mr Redman subsequently explained that the reason the email had not been supplied in response to the Notice was that email had not been registered in Council's records system.

¹⁴ The email also dealt with another query which is not relevant to the terms of reference for this investigation.

1. *IPG – the invoices say “Property Services for the month”. Is there any report on the current work that is being done? Is there a resolution of Council (tender or other) for their engagement?*
136. Council has not provided any contemporaneous record indicating there was a response to this email. However, Council did provide the investigation with a copy of a file note made by Neale Redman on 26 August 2014 in which he recorded that he verbally responded to Ms Bourke.
137. The relevant content of Mr Redman’s file note is reproduced hereunder:

1. *IPG*

- *The engagement of IPG is in accordance with a State Government Contract*
- *IPG have been requested to itemize the matters they are currently dealing with in their invoice to Council. (IPG invoices from July 2012 included itemization of matters with which they were dealing).*

138. Mr Backhouse has submitted that he was unaware of the auditor’s queries. There is no evidence that the queries were brought to his attention or that any Council officer raised with him concerns as to the Council’s arrangements with IPG.

Accounting for the IPG expenditure

139. Council records indicate that the IPG related expenditure was allocated to six different account numbers as shown in the following table provided by Council:

Appropriation of IPG Expenditure

Account #	Description	Amount
20257-007	Corporate -Property expenses (Incl. Valuations)	24,000.00
20403-007	Mainstreet Master Planning	33,000.00
20566-008	Sale of Matthews Park - Legal Expenses	20,000.00
20566-123	Sale of Matthews Park - Contractors	272,937.50
20624-007	Strathfield Town Centre Project - Consultant	66,000.00
40699-007	Strategic Planning - Property Consultants	484,000.00
Total		899,937.50

140. According to a file note that was supplied with the table, the job number for the sale of Matthews Park was also used to allocate the expenditure attributed to work IPG did on the acquisition of 69 Redmyre Road, Strathfield.

What services did IPG provide?

141. The terms of reference for the investigation required consideration of whether there had been serious and substantial waste of local government money in relation to the procurement and expenditure on services from IPG.

Overview on the Services Provided

142. When Council responded to the Notice of Direction for Production of Documents, it provided a draft working document headed "IPG Projects and Tasks". A copy the document has been provided as an appendix.

Appendix 23 - Council listing of IPG Projects and Tasks

143. The projects and tasks detailed in the document are generally consistent with those projects and tasks identified by the investigation, excepting there is no reference in the document to IPG's work on the acquisition of 69 Redmyre Road, Strathfield or its work on the development of an Asset/Property Register.

144. In responding to the draft report, Mr Hazeldine provided more comprehensive details of the work undertaken by IPG. Extracts from Mr Hazeldine's submission has been provided as an appendix.

*Appendix 24 - David Hazeldine – Submission (Extracts)*Development and lodgement of a grant application/funding request

145. The initial IPG engagement in 2009 was for the development and lodgement of a funding proposal related to the development of a bus/train interchange.

146. The decision to seek the funding and to seek external assistance to prepare funding proposals was not unreasonable.
147. The investigation's review of Council records indicates that a submission was prepared and lodged with input and assistance from IPG and another consultant engaged and paid for by Council. IPG clearly had a key role in coordinating the development of the proposal and undertook substantial work in its preparation and lodgement.
148. While the application for the grant was not successful, Council was clearly satisfied with IPG's work on the proposal. Mr Backhouse authored a reference dated 1 March 2010 recommending IPG for similar types of work.

Updating the Funding Submission for Town Centre Bus/Rail Interchange

149. After being appointed on the retainer, IPG was involved in coordinating and assisting with updating the initial funding submission so that it could be lodged with Infrastructure Australia. A revised submission seeking funding from Infrastructure Australia was lodged but no funding was received.
150. It is also noted that in May 2011 IPG coordinated the lodgement a third funding submission, being a second submission to the NSW Government. No funding was received.

Ongoing promotion of the interchange project

151. When Mr Elvy of IPG sought renewal of the retainer arrangement on 3 May 2011 (see paragraph 223), he referred to IPG's role in promoting the interchange project. There is evidence that IPG continued to promote the interchange proposal to Government over the course of their engagement.

Advice on the development of the "Parramatta Road Corridor"

152. Council's documents refer to IPG's work on what was described as the "Parramatta Road Corridor", where Council owned a number of properties.
153. IPG had proposed assisting Council with a "key worker" affordable housing development.
154. On 31 March 2010, Mr Elvy of IPG sent an email to Mr Backhouse with the subject line "Strathfield properties" and which referred to a number of properties owned by Council. The email stated in part, that "*Confidentially, you and the Mayor would like my company, to prepare a presentation for the Councillors, outlining the highest and best use of those properties*".

155. The properties referred to in the email included those nominated by Council for possible development of affordable housing as well as Matthews Park, which was subsequently sold by Council.
156. In his email, Mr Elvy indicated that he could prepare "*a proposal for this work to be carried [sic.] and the fees associated with this brief*" and that he "*would need 2 weeks to collate, research, analyse and prepare a feasibility for these properties*".
157. The investigation identified evidence of two presentations being provided by IPG in relation to the development of affordable housing. IPG also organised a Councillor visit to Brisbane (which ultimately did not occur due to inclement weather).
158. Council appears not to have taken further action in relation to this matter.

Work on the acquisition of 69 Redmyre Road, Strathfield

159. The investigation identified evidence that IPG acted as a buyer's agent for Council in relation to the acquisition of a property at 69 Redmyre Road, Strathfield.
160. Council does not appear to have been aware of the requirement¹⁵ for there to be an agency agreement with IPG. No evidence was provided indicating that such an agreement was entered into.
161. IPG's work on the Redmyre Road acquisition appears to have involved:
- communication between IPG and a representative of the then owners of the property, to ascertain their willingness to sell and, if so, their expectations as to terms;
 - a discussion with a local real estate agent to form a view about what Council might have to pay to acquire the property and conveying this view to the Council;
 - provision of some limited advice to Council about the matter.
162. IPG undertook tasks in regard to the Redmyre Road acquisition that would otherwise have fallen to Council to perform. The investigation has concluded

¹⁵

Property Stock and Business Agents Act 2002 - Division 1 of Part 4.

that the quantum and nature of these tasks was not so significant or specialised that the Council needed to use an intermediary in the way that it used IPG.

163. It is not apparent that the work performed by IPG in relation to 69 Redmyre Road, Strathfield resulted in the Council being able to acquire the property.¹⁶

164. The investigation has concluded that the expenditure (as part of the overall retainer) on IPG to undertake this task was unnecessary and was a waste of local government money.

Role in the Sale of Matthews Park

165. IPG provided services in relation to the disposal of a Council property known as Matthews Park. The services appear to have encompassed:

- providing advice on the appointment of real estate agents (obtaining expressions of interest);
- providing a summary of the expressions of interest received and providing a recommendation on the appointment of two agents;
- reporting on the marketing of the property on Council's behalf;
- procuring site surveys;
- contact with NSW Fire Brigades and Roads and Maritime Services in relation to their views on future development of the site;
- advice to Council on the assessment of the offers that were made and acceptance of one of the offers;
- providing further advice to Council during the contractual phase of the transaction;
- monitoring the transaction until completion.

166. Council employed a Procurement Coordinator and had policies and procedures in place which would have allowed it to call for and assess expressions of interest from commercial real estate agents. Given this, it is not apparent why it was necessary for the Council to engage IPG to undertake this process. It is considered that Council's staff could have retained the experts providing the site surveys.

¹⁶ After commencing compulsory acquisition procedures, Council ultimately did acquire the property in 2014 (without the assistance of IPG).

167. Council also appointed commercial real estate agents to assist with the disposal of the property and instructed one of the members of its legal panel in relation to the sale. Given that these parties had both the remit and presumably the capacity to act in Council's best interest; it is not apparent to us why it was necessary for the Council to incur additional fees for IPG's services in regard to the sale.
168. Notwithstanding observations that go to whether the Council needed to engage IPG in regard to the sale of Matthews Park, the investigation's review of the documents provided by Council indicates that IPG was actively engaged in directing the marketing and in the subsequent sale of the property. It appears to have worked diligently to assist Council achieve its objective of disposing of the land.
169. If IPG had not been engaged in relation to Matthews Park, the process may have required more time, effort and attention on the part of one or more Council officers.

Development of an Asset Register

170. IPG indicated to Council that it had expertise in the development of asset registers and there is evidence that it encouraged the Council to avail itself of this service as part of work undertaken in return for the retainer payments.
171. There is some evidence that IPG sought and received some information from Council about Council's property assets and that it suggested work that could be undertaken to develop a new Asset Register.
172. Council already had an Asset Register. Mr Redman submitted that IPG's task was essentially directed towards a review of Council's assets to determine if there were any opportunities which could be realised through the rationalisation of Council assets.
173. The investigation did not find any evidence of the Council having received a new or updated asset register. It appears that, while IPG was willing to assist Council in preparation of the register, Council failed to provide the requisite information and instructions to enable the project to proceed.
174. Council's failure to effectively pursue this project, while continuing to pay IPG's retainer, represents a serious and substantial waste of Council resources.

Provision of advice and services in relation to the furtherance of the Strathfield Town Centre Project

175. The Council has had plans for the redevelopment of the Strathfield Town Centre which dated back to at least 2006.
176. The project appears to have gained some new impetus following a "Strategy Review Meeting" on 22 March 2012. No minutes were provided of this meeting but it appears from related records to have involved the Council, IPG representatives and a legal firm engaged by the Council to assist with the project.
177. Council records indicate that, subsequent to that meeting, IPG provided the Council with advice and services in relation to the furtherance of the Strathfield Town Centre, including attendance at meetings, contact with owners, and contact with other service providers, and the provision of advice to Council.
178. Notwithstanding the evidence that IPG provided Council with these services, at the time that Council had ceased using IPG, the project remained largely unfunded, there was no agreement with the other property owners and there was no application for the project to proceed as a *public private partnership*.
179. While Council utilised services provided by IPG in relation to the Strathfield Town Centre project, the investigation did not separately examine the merit of the project.

Was there serious and substantial waste in relation to expenditure on IPG?

180. Council was responsible for ensuring that it received value for money and tangible outcomes in return for its expenditure on services from IPG.
181. While it is clear that IPG was willing to, and did, in some circumstances, provide Council with services pursuant to the terms of its engagements, the Council now has little to show for the \$899,937.50 it spent on procuring services from IPG.
182. The initial expenditure of \$33,000 associated with the preparation of the funding submission was relatively small and finite and it is apparent the submission was prepared and lodged. As such, no finding of serious and substantial waste in relation to this expenditure is warranted.
183. On one view, the initial expenditure was wasted given the Council did not receive the funding that was being sought. However, this view must be qualified

by observing that it is a view formed in hindsight. It also fails to acknowledge that the funding submission may have contributed to raising awareness of the Strathfield Town Centre project and this in turn may ultimately bear fruit.

184. Council has little to show in tangible and lasting outcomes for the \$760,000 paid to IPG pursuant to the monthly retainer arrangement, other than a heightened profile for the Town Centre project and the completed sale of Matthews Park. Council also paid IPG an additional fee of \$30,937.50 for the completed sale of Matthews Park.
185. Council failed to properly scope and specify the services to be obtained from IPG pursuant to the retainer arrangements and, as a consequence, it was ill-equipped to ensure that the money paid to IPG represented real value to Council.
186. These are the matters that are fundamental to the finding that it was likely that there was serious and substantial waste in relation to the expenditure on IPG.
187. This can be largely attributed to inadequate controls during entry into the retainer arrangements, lack of proper procurement processes, lack of diligence and a failure to review whether Council was obtaining value for money.
188. The use of a tender process to procure the services would have gone a long way to ensuring Council minimised the risk of waste. Council would have had to specify its intended outcomes and tested the market. Its processes would have been open and transparent and, ultimately, reviewed by the elected body.
189. The investigation carefully considered the comments and submissions made by Mr Backhouse and other Council staff, to the effect that Council received excellent value for money from its arrangements with IPG. Having considered all of the evidence available to it the investigation's conclusion remains that it is likely that there was serious and substantial waste in relation to Council's expenditure on IPG.
190. As indicated earlier, no adverse inference should be drawn from the content of this report as to the quality of the work undertaken by IPG, the capability or performance of its representatives/employees and/or its willingness to provide Council with services in return for the payments it received.
191. In this regard, there is evidence that suggests that IPG acted promptly on any instructions it received from Council and further that it endeavoured to

encourage the Council to make effective use of its services. An example of this is provided in the appendices (Appendix 25).

Appendix 25 - Email from IPG to Council – 22 August 2011

Role of the elected Council

192. Mr Backhouse and other senior staff submitted that the elected Council were aware of the terms of IPG's engagement, the services that were being received and the expenditure that was being incurred.
193. In their responses to the draft report, both Mr Backhouse and Mr Redman emphasised that Council was regularly provided with information regarding expenditure in connection with services provided by IPG. Mr Backhouse provided statements from 2 former Mayors and a deputy Mayor to support this view.
194. While this may have been the case, the investigation has not been given any documents that inform councillors that a retainer agreement had been entered into or any documents setting out the terms of such an agreement.
195. It is concerning that such a significant level of expenditure was incurred by Council without attracting the attention of the elected Council as to how the services were procured and/or what was being received. However, in expressing this concern, it must be acknowledged that it remains unclear as to what information was provided to the elected Council.
196. The provision of this investigation report to the elected Council will allow it to consider this matter with the benefit of a comprehensive analysis.

Responses to the Draft Report – Additional comments

197. Mr Backhouse submitted that he did not solicit nor unilaterally engage IPG, that he acted in good faith and that he based his decisions *"on the considered recommendations from my senior officers, in particular the Directors."*
198. The available evidence indicates that while other Council officials were aware of and involved in the engagement of IPG, the operative decisions to engage IPG were made by Mr Backhouse.

3.2 Procurement of legal & associated professional advice & expenditure on these services

199. The terms of reference required the investigation to consider whether there was maladministration and/or serious and substantial waste of local government money in relation to the Council's procurement of and/or expenditure on legal and associated professional advice (legal advice) since 1 July 2011. A chronology of events and documents considered relevant has been provided as Appendix 20.

Appendix 26 - Chronology – Legal & associated professional advice

Council's procurement of legal & associated professional advice

200. The policy and procedural framework governing Council's procurement of legal advice was reviewed. As noted earlier in the report, Council has adopted a *Legal Practice Policy* and a related procedure. These documents, when read together with the Council's *Procurement Policy* and *Purchasing and Tendering Guidelines* provide a reasonably sound basis for procuring legal advice. Given this, it was relevant to consider the degree to which Council officials acted in a way that was consistent with the aforementioned framework, this being a factor in determining if there had been maladministration.

201. Council's *Legal Practice Procedure* refers to the use of a panel of external legal advisors, this panel having been appointed "on the basis of a preferred supplier process". The appointment of a panel of preferred legal services providers is at the core of how the Council procured legal advice.

Appointment of a legal panel

202. Council, at its meeting on 1 March 2011, resolved to appoint a panel of six legal firms. The panel was then used as the main source of external advice in the period that was subject to investigation i.e. from 1 July 2011. The investigation examined the process by which these firms were selected.¹⁷

203. The selection process commenced with a resolution of Council, on 4 May 2010, authorising the General Manager to invite *Expressions of Interest* for the provision of legal services to Council for a period of three (3) years. The report

¹⁷

It is acknowledged the decision to appoint the panel was made before 1 July 2011.

recommending this course of action provided the following advice to the Council:

Council requires the assistance of external legal service providers to carry out its statutory functions and to meet its legal obligations effectively and efficiently. In particular, legal services are required for the following purposes:

- Advice in relation to local government, planning, environmental, property, employment, leases/licences, and other matters
- Representation in courts and tribunals such as the Land and Environment Court

A new EOI invitation should now be made for appropriately qualified and experienced legal advisers, following which a panel of legal advisers will be appointed.

It is recommended that a panel of four to five external legal service providers be appointed. It is proposed that Council retain the discretion to appoint advisers, or to seek expertise outside the panel, as and when required or appropriate.

The proposed appointment period is 3 years.

204. The Council placed an advertisement inviting expressions of interest (EOIs) on 20 July 2010; the closing date for submission of EOIs was 20 August 2010. Council records indicate 18 expressions of interest were received.
205. An information report on the EOI process was provided to the Councillors in December 2010. A copy of that report was obtained. It advised the Council that 6 firms had been shortlisted and that a *"Further detailed evaluation of the shortlisted firms will be undertaken"*. Council records are not available to substantiate that the EOI Panel completed the *"further detailed evaluation"*.
206. A report on the outcome of the EOI process was considered by the Council at its meeting of 1 March 2011. The report was authored by Mr Geoff Baker¹⁸ and recommended that all of the shortlisted firms be placed on the panel.
207. The report advised that *"An EOI Review Panel was established to review all submissions"*. The report does not indicate who was on the panel. Council does not have any record of who was on the panel.
208. The report advised the Council that the EOIs were assessed against 10 selection criteria. Council records are not available to substantiate that such an assessment occurred.
209. The only record of the EOI assessment held by Council is a one page annotated table detailing different hourly rates and a second page of hand written notes. The record manifestly lacks required details, is undated, unsigned and there is no indication as to who made the record. The second page of the record has been reproduced on the following page.

¹⁸ Mr Baker is employed by the Council as a solicitor

Record of evaluation of Expressions of Interest (Legal Panel)

Recently panel of 5. - 2-3 yrs
Marsden, Maddox, Houston Dawn O'Leary
Wilshire Webb, Crown Solicitors

Houston - very happy with
at Burwood - close to Burwood Court

Wilshire Webb very good with planning.

Marsden - haven't used for some time.
large fee

Maddox - quick to respond - Q199A - Code of
conduct. Higher price.

- Crown -
+ HNL Ebsworth.
+ Matthews & Selby

210. Mr Baker provided a statement in relation to his knowledge of the process which has been reproduced hereunder:

10. I authored a report that considered by the Council on 1 March 2011 pertaining to the expression of interest process which recommended the appointment of 6 firms to Council's legal panel.
11. I recollect evaluating the expressions of interest that were received by Council. I recollect that Carol Chapman, Council's Procurement Coordinator and Melanie Graetz, who was the then Group Manager Corporate Services, also evaluated the submissions. We evaluated them separately and then met as an evaluation panel.
12. I acknowledge that the report authored by me on the legal panel expression of interest process for consideration at the meeting on 1 March 2011 indicates that 6 firms were shortlisted for further evaluation, that the Council was advised of this in December 2010 and that ultimately 6 firms were recommended for appointment to the panel. I cannot recall as to whether there was any further evaluation of the firms between December 2010 and 1 March 2011 or recall as to what the rationale for such further evaluation was.
13. Ms Monica Kelly had no involvement in the consideration of the expressions of interest for appointment to the legal panel.
14. I had no prior experience in undertaking a procurement process for a government body prior to my involvement in the expression of interest process for appointment to the legal panel.

211. Mr Baker stated that Ms Carol Chapman was a member of the panel.¹⁹ The relevant section of Ms Chapman's statement has been reproduced hereunder:

36. I have no immediate recollection of the 2010 procurement, expression of interest process for appointment to a panel to provide Council with legal services.

212. The expression of interest process took nearly 10 months to complete. It took over six months from when the EOIs were required to be lodged till the matter was completed. The investigation enquired as to the reason/s why the process took this time. It was suggested by Mr Redman, when he was interviewed, that this in part, may have been a consequence of the Council's then solicitor (who

¹⁹ Mr Baker also provided the name of another employee who was a member of the panel. This person no longer works for Council. A statement was not obtained from this person.

authored the original report to Council) having resigned. While such a resignation might reasonably explain some of the delay, it does not explain why the procurement process took as long as it did.

213. When Mr Redman was interviewed, he was also asked about the apparent lack of records of who assessed the EOIs. His response was:

Look, it certainly would be preferable if we did have some documentation that identified who was - who was involved in the panel. I haven't made inquiries along those lines; I if I did, I would probably be able to ascertain that but the fact that there's no documentation, yes, ideally there - that ought to be documented.

214. While the calling for expressions of interest to establish a panel of preferred suppliers was a reasonable and proper action having regard to the Council's *Purchasing and Tendering Guidelines*, the time taken to complete the process and the failure to either make or retain records of the evaluation process was not.

2014 tender process

215. On 5 August 2014 Council resolved to appoint a new panel of 5 firms for a period of 1 year. The use of this new panel has not been subject to investigation.

Allocation of work to members of the panel

216. The allocation of work to members of the legal panel is governed by Council's *Legal Practice Policy* and the associated procedure, and Council's *Purchasing and Tendering Guidelines*. One of the stated objectives of the policy is to:

Manage Council's legal panel by allocating and managing matters, ensuring accurate and thorough reporting of matters and billing are all in accordance with the panel firms' offers of service and Council's policies.

217. Council's expenditure records indicate that most of Council's external legal advice was obtained from members of the panel of preferred suppliers.

218. The *Legal Practice Procedure* (the Procedure) detailed how panel members were to be engaged.²⁰ Where Council staff considered that an external legal

²⁰

See Clause 2.7 of the Strathfield Council *Legal Practice Procedure*

firm needed to be engaged, they were required to submit a written request to the legal team, who would then “*determine the best course of action*”.

219. The Procedure allocated responsibility for the engagement of external firms to Council's Principal Solicitor, who was required to choose a firm from the panel, seek a cost estimate and details of who would be managing the matter and if satisfied, issue instructions on Council's behalf.²¹ The Procedure detailed criteria that were to form the basis of the decision as to which panel member was to be used. The criteria were:

- legal expertise relevant to the issue,
- previous experience relevant to the issue,
- the legal team's work load,
- value for money, and
- availability.

220. The Council was required to produce all records pertaining to its procurement and expenditure on legal services since 1 July 2011. While these records indicated who the services were obtained from, they contained scant information as to why decisions were made to seek external advice and why a given panel member was instructed in a given matter.

221. In responding to the draft report, Mr Backhouse and Mr Redman referred to a loss of records affecting the legal department in the period up to May 2013. Mr Backhouse's submission indicates that the records that were lost were emails generated or received by the Council's former Principal Lawyer, which had been deleted. It is not known what information was contained in the records that were not able to be provided by the Council.

Requirement to seek multiple quotations and to tender

222. The Council's *Purchasing and Tendering Guidelines* provided that staff were not required to seek quotations from firms who were on a preferred supplier list provided “*that the use of Council preferred supplier is limited to \$10,000 for any one item of service*”. Where this amount was to be exceeded and the estimated

²¹ The Procedure did allow the legal team to authorise a suitably delegated staff member to instruct a panel firm to provide advice; the decision as to whether advice was provided internally or sourced externally was one for the Principal Solicitor, in conjunction with the Director, Corporate Services and/or the General Manager.

expenditure was less than \$150,000, three written quotes were required.²² Tendering was required for matters which were expected to involve expenditure of \$150,000 or more.

223. The investigation found no evidence that Council officers sought multiple written quotations for any legal matters, notwithstanding that Council had been given fee estimates that indicated that the likely expenditure could exceed \$10,000. Nor did the investigation find evidence that any exceptions to the requirement to get multiple quotes in such circumstances was ever formally authorised. The general lack of records to demonstrate this indicates a lack of transparency and poor administrative practice.
224. In responding to the draft report, Mr Backhouse indicated that the Council generally does not obtain multiple quotes unless the initial cost-estimate is considered not to be satisfactory. This approach ignores Council's policy.
225. The investigation identified one instance where the legal firm provided a fee estimate of between \$100,000 and \$250,000, for legal advice in relation to the Town Centre Project. The procurement of legal advice in relation to this matter was neither the subject of tender nor otherwise exempt from such a requirement.
226. On 16 August 2012, the legal firm instructed by Council on the ACU litigation provided an update. Their letter ended:

Given the real and [sic.] likelihood that the ACU will take all steps to challenge each of Council's actions and the Proceedings generally, it is appropriate that Council allow and budget for legal costs including disbursements (experts, Counsel's fees and various filing fees) of up to \$400000. We are extremely cognisant of the large expenditure for legal fees and please rest assured that we shall leave "no stone unturned" in advancing Council's best interests.

227. In responding to the draft report, Mr Redman noted that fee estimate included legal costs and disbursements, including traffic and planning, as well as barrister's fees. In doing so, he expressed the view that it was anticipated that

²² Clause 5.10 of the 2012 version of the guidelines provided a written exception to be granted in certain circumstances by the relevant Director or the General Manager. The exceptions allowed in the 2007 version appear to be confined to "genuine emergencies".

the costs for any individual provider would not exceed the tendering threshold of \$150,000. No basis for this conclusion was given.

228. At the point where Council received advice that the costs could exceed \$150,000 (and in this case, \$400,000), it was incumbent on the Council to consider its tendering obligations. Council has not provided any evidence that it considered this issue. No tender process was undertaken.

229. Section 55(3)(i) of the Act may release a council from the obligation to tender in limited circumstances. In order to do so, there must be extenuating circumstances. If a council is so satisfied then it must pass a resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders. Council has not provided any evidence that it considered this issue.

Expenditure on legal and associated professional advice

230. The Council has spent over \$2,000,000 on legal expenses in the three years since 1 July 2011. Expenditure in 2013/2014 was more than 4 times as much as was incurred in 2010/2011.

231. A table has been prepared to show how much the Council spent on external legal services for the last four financial years according to its annual financial statements.

Table: Annual Legal Expense 1 June 2010 to 30 June 2014

Type of Legal Expense	2010/2011	2011/2012	2012/2013	2013/2014
Planning & development	\$133,000	\$447,000	\$547,000	\$435,000
Debt Recovery	-	\$70,000	\$58,000	\$90,000
"Other"	\$62,000	\$19,000	\$170,000	\$342,000
TOTAL	\$195,000	\$536,000	\$775,000	\$867,000
% change from previous year	51%	175%	45%	12%

232. As shown in the table, the Council's legal expenditure more than doubled in 2011/12, compared to the previous year and further increased in the following two years.

233. While the amounts reported by Council indicate that the year on year increase from 2012/2013 to 2013/2014 was a more moderate 12%, it should be noted that Council inadvertently failed to include \$71,652 of legal expenditure in the total that it reported for 2013/2014. It also included non-legal expenditure of

\$25,526.50.²³ Its actual legal expenditure for 2013/2014 was \$913,532.48, which indicates that the expenditure increased by 18%.²⁴

234. Members of Council's legal panel were paid a total of \$1,650,571.92 from 1 July 2011 until 4 March 2014 (the date the investigation was authorised). Payments to one member of the panel represented 80% of this expenditure (\$1,315,751.22). One panel member was not paid anything. The other four panel members were paid sums that ranged from \$47,531.84 to \$130,258.61.

Expenditure on planning and development matters

235. Records provided by the Council indicate that the increase in legal expenditure on planning and development matters has largely arisen as a consequence of issues related to the Australian Catholic University (ACU) Strathfield Campus.

236. Councillors would have been aware that substantial costs were being incurred on ACU related matters. The elected Council has, over time, received numerous reports on the matter and resolved to continue to pursue proceedings. On a number of occasions it voted to allocate additional funds.

237. The investigation was not able to find any reports which informed the elected Council of the total cost being incurred on the matters involving ACU on an ongoing basis. The reports to the elected Council that were examined during the course of the investigation only reported costs that had been incurred on part of the matter and/or costs that had been incurred in a given financial year.

238. This report recommends that the Council resolve to require the General Manager to provide the Council with a report on the total of the legal expenses incurred on matters related to the Australian Catholic University since 1 July 2011.

239. In responding to the draft report, Mr Backhouse submitted that the increase in legal expenditure was, at least in part, a function of the area undergoing much

²³ Council's Responsible Accounting Officer advised the investigators by way of a letter dated 19 March 2015 that expenditure of \$42,018 in relation to legal services for the Strathfield Town Centre Project and \$29,634 in relation to the "Korean Gardens Taskforce" was not included in the legal expenses. He indicated these expenditures were reported as consultancy and contractor expenses. He also indicated that the amount reported for legal expenses included town planning expenses that should have not been included.

²⁴ Assuming the reported figure for 2012/2013 was accurate. There is evidence (records of payments being treated as a consultancy expense rather than a legal expense) that indicate that the figure reported for 2012/2013 may have also understated the true level of legal expenditure.

greater development in recent years, with the attendant increase in the number of development applications lodged with Council. He submitted that the greater the number of applications gave rise to the greater the likelihood of matters being initiated in the Land & Environment Court by applicants.

240. The following table is drawn from data published by the Department of Planning and sets out the number and value of development applications determined by the Council.

Table: Development Applications (Determinations) 1 June 2010 to 30 June 2014

	2010/2011	2011/2012	2012/2013	2013/2014
Number of development applications determined	218	144	125	208
% change from previous year	-	-34%	-13%	+66%
Combined Value	\$116m	\$129m	\$59.6m	\$167.7m
% change from previous year	-	+11%	-59%	+181%

241. Notwithstanding Mr Backhouse's submission, on the face of it, there is no clear correlation between development activity and the increase in legal expenditure.

Expenditure on the Town Centre Project

242. The Council has made extensive use of advice from a member of its legal panel in relation to the Strathfield Town Centre project and as a consequence, incurred substantial expenses. This expenditure was additional to the expenditure on strategic property advice from the IPG which was commented upon earlier in this report.
243. Notwithstanding the expenditure that has been incurred, the Town Centre project has not yet progressed to the stage where a *Public Private Partnership* proposal has been submitted for consideration by the *Government Project Review Committee*.
244. The initial fee estimate from the legal firm engaged by Council was "\$10,000 to \$20,000". A subsequent estimate was couched as being a range between "\$100,000 and \$250,000".
245. The investigation was not able to find any report which apprised the elected Council of the full extent of the costs of legal and associated professional advice incurred on the Town Centre project to date or which advised the Council of the overall costs which may be incurred.

246. The Town Centre project is a strategic priority for the Council. If Council proposes continuing with this project, it will be necessary for it to ensure that it makes effective use of budget controls.
247. As of 14 August 2014, the Council began asking the legal provider being used for the Town Centre project to provide individual fee estimates for the each task it is instructed to undertake in relation to the Town Centre project; this appears to be a departure from the earlier practice where it was providing a single estimate for its work in relation to the project.

Changes to cost disclosures and fee estimates

248. The initial fee estimates provided to Council by its lawyers in regard to both the Town Centre and the Australian Catholic University matters were substantially lower than the fees subsequently charged. This may well be explained by the uncertainty as to scope of the matters and/or how the matter/project might proceed. However, the increases involved are so substantial as to warrant consideration by the Council as to whether it could have better foreseen the expected expenditure and to have taken it into account when procuring the service.

Reporting on expenditure on legal and associated professional advice

249. As noted earlier, Council reported on legal expenses in its annual financial statements. In addition, the Regulation stipulates that:

- Council's *quarterly budget review statements* (QBRS) must include the year to date expenditure on legal fees.
- Council *annual report* must include a summary of the amounts incurred by the council during the year in relation to legal proceedings taken by or against the council and a summary of the state of progress of each legal proceeding and (if it has been finalised) the result.

250. The three QBRS for 2013/2014 and the 2013/2014 annual report were examined to determine if the elected Council and the community were being given accurate and timely information about Council's expenditure on legal fees.

251. The provision of QBRS affords the elected Council the opportunity to consider the level of expenditure and resolve to take action and/or seek further details if it considers the level of expenditure a matter of concern. It also serves to inform the community of the levels of expenditure, as does the annual report.

252. The following table compares the actual year to date (YTD) legal expenditure to that which was reported in the QBRS for the relevant quarter.

Table: Comparison - reported and actual expenditure on legal fees (2013/2014)

Period:	Actual Year to Date Expenditure	Amount reported in the QBRS	Difference
Quarter ended 30/9/2013	\$164,653.69	\$80,254.00	\$84,399.44
Quarter ended 31/12/2013	\$347,913.01	\$187,801.00	\$160,111.16
Quarter ended 31/3/2014	\$542,312.14	\$235,788.00	\$306,524.06

253. As shown in the table, there was a gross under-reporting of legal expenditure on the three QBRS provided to the Council over the course of 2013/2014. As such, the elected Council was misinformed as to the total expenditure being incurred.

254. The investigation identified, based on transactional data supplied by the Council, that the QBRS reporting failed to include any of the legal expenditure on the Australian Catholic University, as well some other legal expenditure.²⁵

²⁵ In relation to legal services for the Strathfield Town Centre Project and the "Korean Gardens Taskforce".

255. The investigation found that \$197,272.48²⁶ of the costs of legal and associated professional advice incurred by the Council on the Strathfield Town Centre project were incorrectly appropriated as a consultancy expense rather than as a legal expense. This contributed to the underreporting of legal expenditure referred to earlier at paragraph 393.
256. The Council was asked to clarify what expenditure was included in the QBRS reporting. On 16 December 2014 Council provided its response. It acknowledged the failure to include the expenditure on the Australian Catholic University matters but provided no comment on the other expenditure that was omitted. Council's Responsible Accounting Officer subsequently provided additional information as to the other expenditure that was not included in the QBRS reporting.
257. In regard to the ACU expenditure, the letter indicated that *"Legal Expenditure in relation to the ACU was separately reported to Council's Planning Committee on 15 April 2014."* While this might be seen to ameliorate the failure to include the expenditure in the QBRS for the third quarter, there are some important observations to be made:
- The report to the Planning Committee meeting advised the elected Council that the financial year expenditure to date on the ACU Enforcement Proceedings was \$208,630. The actual expenditure as at the date of the report was \$258,356.99.²⁷
 - There is nothing to indicate that the attention of the elected Council was drawn to the fact that the amount reported to it in the March QBRS did not include any ACU related expenditure.
 - Given the March QBRS was considered at a meeting three weeks after the Planning Committee, it would have been reasonable for the elected Council to assume the total report included the ACU expenditure.

²⁶ \$42,018 in the 2013/2014 financial year.

²⁷ This was also the amount recorded in the General Ledger as at 11 March 2014, which was the date of the most recent update of cost code "20719-122" prior to the meeting on 15 April 2014.

- The report to the Council's Planning Committee on 15 April 2014 was dealt with in closed session. Accordingly the community was denied access to this information.
258. The investigation also identified deficiencies in the manner in which the Council reported on legal proceedings to the community in its annual report for 2013/2014.
259. The report indicates that the costs incurred during the year in the ACU Class 1 and Class 4 proceeding was \$355,000. However, the report failed to provide the community with the required summary of the state of progress of these proceedings; in fact the only direct reference to these proceedings is the reporting of the expenditure incurred.
260. The annual report also did not report on the expenditure incurred in relation to Council's proceedings in the District Court, in which a judgment was sought against Titanium Golf Management Pty Ltd. It should have. These proceedings are discussed later in this report (see paragraph 671).
261. Council needs to ensure future reporting of legal expenditure and legal proceedings is accurate, timely and in accordance with the relevant statutory requirements.
262. Council's Responsible Accounting Officer advised the investigators that Council managers, procurement staff and finance staff have been notified that legal expenditure must be allocated to the correct cost code. This should assist him in ensuring that legal expenditure is correctly identified and reported.
263. It is open to the elected Council to resolve to require Council officers provide more frequent and detailed reporting on legal expenditure if it considers such reporting is warranted.

Has there been serious and substantial waste of local government money in relation to the expenditure on legal and associated professional advice?

264. Assessment of whether there had been serious and substantial waste of local government money in relation to the expenditure on legal advice is problematic. This is because of the difficulty in determining and measuring what outcomes were obtained as a consequence of having obtained legal advice.

265. It is also important to note that the investigation did not generally attempt to review the merit of decisions made by the Council and/or individual Council staff to seek legal advice. Doing so in the absence of full records and with the benefit of hindsight would be fraught. It was considered that there would be limited utility in doing so.
266. A large proportion of the Council's legal expenditure was related to a single planning issue, pertaining to the Australian Catholic University site. The Councillors and the local community are best placed to decide whether this money was well spent. As noted earlier, a recommendation has been made to facilitate such an assessment by the reporting of the total costs that have been incurred.
267. Another substantial component of the spending was related to the Strathfield Town Centre Project, which is a "work in progress". Time may well tell if this expenditure has been money well spent. However, the breadth of the recent estimate of expenditure from the legal firm working on this project suggests that there is an urgent need to review the scope of the work they are being instructed to undertake and whether that work falls within the ambit of the provision of legal services.
268. Ultimately, the investigation was not able to gather sufficient evidence to be able to make a finding as to whether the Council's level of expenditure on legal and associated professional advice was reasonable or necessary. It has however made recommendations to assist the elected Council consider this.

Use of Council's in-house legal resources

269. Council employed its own in-house solicitor and other professional staff. Given this, it should have been well placed to make decisions in regard to the procurement of legal and associated professional advice. However, Council's in-house solicitors have not always been involved in decisions to procure external legal advice. The evidence does not indicate that they were routinely asked to review fee estimates and invoices. Council should ensure that the advice of its in-house solicitor is obtained when deciding to procure external legal advice as provided for its *Legal Practice Policy* and procedure.

The providers of legal advice

270. The evidence does not warrant any adverse inference being drawn as to the conduct and/or performance of the firms and individuals who provided the Council with legal and associated professional advice nor the quality of that advice. Their conduct and performance was not investigated. It is for Council to ensure that it obtains value for money in any procurement, whether for legal services or otherwise.

3.3 Appointment of an external auditor

271. The terms of reference required the investigation to consider whether there was maladministration and/or serious and substantial waste of local government money in relation to the Council's decisions of 7 May 2013 and 2 July 2013 pertaining to the appointment of an external auditor (and the related tender processes that preceded these decisions).
272. The investigation examined the circumstances that gave rise to the Council's decisions of 7 May 2013 and 2 July 2013. A chronology of events and documents considered relevant to this matter has been provided as Appendix 21.

Appendix 27 - Chronology – Appointment of external auditor

Overview of the appointment process

273. All councils are required to appoint an auditor. The Act stipulates that an auditor cannot be appointed unless tenders have been called and that the appointment when made is for a six year period.²⁸
274. The term of appointment of Council's previous auditor ended on 30 June 2012. While the Act does not stipulate a set time frame for the Council to appoint an auditor, Council had an obligation to do so as soon as the office of auditor became vacant.
275. Council's then Finance Manager, Ms Jodie Bourke, sought the approval from Mr Backhouse to commence the process on 16 January 2013. Mr Backhouse approved the calling of tenders on 22 January 2013. The process could have commenced much earlier than this, as there was nothing to preclude the Council calling for tenders prior the expiration of the previous auditor's term.
276. Council invited tenders on 5 March 2013. There followed a tender process which culminated in a report being considered by the elected Council on 7 May 2013.
277. Council's Director, Corporate Services, Mr Neale Redman, recommended that fresh tenders be called, notwithstanding that the tender evaluation panel was of the view that there was a complying tender that could be recommended for

²⁸ See Sections 422 & 424(1) of the Act.

appointment. The tender evaluation panel's recommendation was not communicated to the Council. The Council adopted Mr Redman's recommendation.

278. A second tender process occurred pursuant to the decision of 7 May 2013. Mr Backhouse approved a shortened advertising period. Council called for tenders on 14 May 2013 with a closing date of 28 May 2013.
279. The second tender process culminated in two reports being considered by the elected Council, the first one at a meeting held on 4 June 2013 and the second one at a meeting held on 2 July 2013. These reports were authored by Mr Redman. Both reports on the second tender process recommended the reappointment of the incumbent auditor, Warton Thomson and Co (Warton Thomson), notwithstanding that the tender evaluation panel had ranked its tender lower than three other tenders.
280. At the meeting on 2 July 2013, the Council did not adopt the recommendation. It resolved to appoint another tenderer.

The initial tender process

281. A tender evaluation panel for the first round of tenders was comprised of the Council's then Finance Manager, Ms Jodie Bourke and two other staff members. It was to be assisted by Council's in-house solicitor (who was to fulfil the role of Probity Advisor) and the Council's Procurement Coordinator (whose role was to provide administrative support and advice).
282. The panel initially met to discuss and decide upon the weightings to be allocated to the different criteria.
283. Six tenders were received. Copies of the tender submissions were provided to the three members of the panel, who then proceeded to independently review and rate them on the agreed criteria.
284. Ms Bourke provided a statement to the investigation,²⁹ stating that during the time she was evaluating the tender submissions, she had a conversation with Mr Redman where he told her that he had received a call from the Principal of Warton Thompson and that they had not made a submission.

²⁹ See Appendix 16.

285. Ms Bourke states that she advised Mr Redman that she was aware that the incumbent auditor had not made a submission and that she had received advice from Mr Baker (the Probity Advisor) to the effect that there was nothing that could be done about it. Ms Bourke states that Mr Redman then asked her if "we" were sure that nothing could be done, and that when she confirmed this, Mr Redman said that they would have a meeting with Mr Baker. Ms Bourke's statement indicates that there was a meeting with Mr Baker where he reiterated the advice.

286. Ms Bourke's statement indicates that she then proceeded with her evaluation of the tenders and that she had a further conversation with Mr Redman prior to completing her review. The relevant section of her statement has been reproduced hereunder:

23. I recall that I had a further conversation with Mr Redman, in Mr Redman's office, prior to completing my review of the tender submissions, where we discussed the non-submission by Warton Thompson. He said that he believed that we would decline the tenders and readvertise. I then asked him "on what grounds"? He said on "on price". I said words to effect of "I think you will struggle with that because some of the submissions I have read so far are coming in under what Phil had previously charged us". He then suggested "what about maintaining good relations" or something to that effect. I responded that was not really relevant and asked on what grounds he was going to do it. He then referred to legislation not requiring a reason to be given unless you want to enter into direct negotiations with a particular company. I said that I didn't agree with that, meaning I didn't believe that declining the tenders and re-advertising without stipulating a reason would be in accordance with the spirit of the legislation, as I thought that tender legislation was very specific and restrictive.
24. I felt that Mr Redman was seeking to influence me in undertaking the evaluation of the tender submissions. I have no knowledge of him having discussed the matter with Aneet or Joe.

287. In responding to the draft report, Mr Redman provided the following response:

In my discussions with Ms Bourke concerning the audit tender, I did not respond as claimed. I had not viewed any of the submissions and therefore was not able to express an opinion regarding the outcome of the tender. I do recall discussing with Ms Bourke the provisions of the Local Government General Regulation regarding tendering, which permit that tenders may be declined and fresh tenders invited. At no time was I seeking to influence Ms Bourke in the evaluation of the tenders which was subsequently carried out by her and the other panel members independent of any involvement or discussions involving myself.

288. The tender evaluation panel met with the Procurement Coordinator to discuss and moderate their evaluation of the tenders. The Probity Advisor was also present. At this meeting, the panel reached a consensus on how the tenders were to be rated and ranked. The panel formed a view that there was a tender that could be recommended for appointment as Council's auditor.
289. Ms Bourke subsequently undertook some reference checking on the most highly ranked tenderer (she contacted other councils where the recommended firm had undertaken audits).
290. Council's Procurement Coordinator provided a statement that the Manager with operational responsibility for the function/service being tendered would normally draft the report for the consideration of the elected Council. In accordance with this practice, Ms Bourke drafted and submitted her report on 15 April 2013 for inclusion in the business paper. The recommendation is reproduced hereunder:

Report by Jodie Bourke, Manager Finance

RECOMMENDATION

1. *That the tender submitted by Pricewaterhouse Coopers for audit services for a six (6) year period be accepted.*
2. *To charge the General Manager to execute the contract with Pricewaterhouse Coopers on Council's behalf.*

291. The report also included a statement about the merit of the recommended tenderer, as follows:

Pricewaterhouse Coopers submitted the preferred tender for the audit services. This tenderer demonstrated extensive capacity, quality and depth of audit performance, value added services and technical expertise.

292. Mr Redman asked Ms Bourke to also provide written advice to Council's "Executive" on the outcome of the tender evaluation. She did so by way of a memorandum dated 15 April 2013 and in doing so, indicated that the incumbent auditor had not lodged a submission.
293. Ms Bourke states that she had a conversation with Mr Redman on 15 April 2013 regarding the audit tender. The relevant paragraph of her statement has been reproduced hereunder:

34. I had conversation with Neale Redman on 15 April 2013 regarding the audit tender and he told me at that point, that it was an organisational decision that needs endorsement prior to the Council meeting. He explained that if the Executive changes the decision, they are the ones taking the responsibility and it doesn't impact on me. I advised Neale that unless there is a lawful decision to call tenders again it would put me in difficult position ethically, as I know some of the tenderers and I don't want to have to explain why I am calling tenders again. Neale agreed that it was unlikely a legal decision could be justified. I made notes of this meeting with Neale on the day that it occurred and have referred to these notes when providing this statement.

294. Mr Redman acknowledges having discussed the matter with Ms Bourke. He submitted that his comments to her were not specifically referring to the report prepared by Ms Bourke but the process for reports generally. He indicated that he made personal notes at the time, and that based on those notes, he denied that he agreed that it was unlikely a legal decision could be justified.
295. Ms Bourke was asked to review the content of her report with Council's Corporate Strategy Coordinator, Ms Cathy Jones. It is apparent that she did so and that she subsequently prepared two revised versions. Both these revised versions contained the same recommendation as the initial version.
296. When Ms Bourke submitted the second version of the report to Mr Redman on 2 May 2013, she did so by attaching it to an email. The substantive content of this email has been reproduced hereunder:

Please see attached revised report. I have only changed the main report to show that there is a confidential attachment. The attachment shows the full criteria, weighting and ranking of each of the submissions, together with some financial analysis on average price per hour & % of partner time etc. I was advised by Geoff that weightings should not be included in the main report as we may want to use the same weightings in future.

Please let me know ASAP if you require any further changes. As discussed earlier, this report cannot be delayed from the May ordinary meeting as we do not have an auditor to conduct an interim audit.

297. The content of the second version of the report is as indicated in Ms Bourke's email.
298. On 3 May 2013, Ms Bourke received further advice from Council's Corporate Strategy Coordinator, Ms Cathy Jones, on what was required to be included in the report to Council. Ms Bourke then prepared the third version of her report as indicated in the following email:

From: Jodie Bourke
Sent: Friday, 3 May 2013 2:01 PM
To: Cathy Jones; Neale Redman
Cc: Colleen Alderton; David Backhouse
Subject: RE: Audit tender report

Hi Cathy,

I have revised the report based on our discussions this morning. If you need anything else, please let me know

x <http://www.str>

Jodie Bourke | Manager Finance
P 9748 9926 M 0434 182 679 F 9764 1034
65 Homebush Road, Strathfield NSW 2135
www.strathfield.nsw.gov.au

299. Ms Jones sent an email to Ms Bourke, in response, to query whether Ms Bourke was still going to include a table with evaluations of the tender proposals to support the recommendation in the report. Ms Bourke's response to Ms Jones' email has been reproduced hereunder.

From: Jodie Bourke
Sent: Friday, 3 May 2013 2:39 PM
To: Cathy Jones; Neale Redman
Cc: Colleen Alderton; David Backhouse
Subject: RE: Audit tender report

Hi Cathy,

As Neale has decided to rewrite the report himself recommending a different outcome, I have supplied him a copy of the tender evaluation. My understanding from discussions with you this morning however, was that supplying that table would not give the councilors sufficient information to make an informed decision.

I also note that I have discussed with Neale my concerns that the recommendation to call for fresh tenders yet supplying the tender evaluation with a clear outcome is contradictory and that he should be leaving my report in the agenda recommending an appointment. I understand however that it is the Executive's decision to make

Regards,

x <http://www.str>

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300. Ms Bourke's email indicates that at that point, Mr Redman had decided to "rewrite the report himself recommending a different outcome". As shown in the email, it was also sent to Mr Redman and a copy was sent to Mr Backhouse.

301. Ms Bourke states that she was "called into Neale's office after I submitted the revised version of the report". The relevant paragraph of her statement has been reproduced hereunder:

37. I was called into Neale's office after I submitted the revised version of the report to him. He said that he would not be putting forward my report. He advised me that he had received my revised report but he would be writing another report to seek fresh tenders. I asked on what basis. He said "in the best interests of the organisation". I told him that if one of the submitters decided to question, I would not be able to provide a reason. He said that I should put all calls through to him. I said that I was trying to protect him and told him not to put his name on the report. I told him that if one of the submitters were to query it with the DLG or ICAC, he would take the blame for it, not the GM. I said that if the report stated that the recommendation was in the organisation's interest and Phil was appointed again, then that would show bias and other submitters would question this. I told him that I had discussed the issue with my husband and that I was so worried about everything I was considering resigning without a job to go to. He told me it was the organisation's decision and it didn't in any way reflect upon me, personally or professionally.

302. Mr Redman submitted, in response to Ms Bourke statement, that he had concerns regarding the errors/omissions in the tender specification as well as the likelihood that a greater number of proposals could be obtained by Council and that he discussed these concerns with Ms Bourke. He said that he advised Ms Bourke that the Executive had endorsed the recommendation that fresh tenders should be invited and that Ms Bourke told him that she did not agree with the recommendation. He submitted that as a consequence, he advised Ms Bourke that he would submit the report to Council.

303. Mr Redman authored the final version of the report that was considered by the Council on 7 May 2013. His report contained the following recommendation:

RECOMMENDATION

1. That Council decline to accept any of the tenders received for audit services.
2. That fresh tenders be invited for audit services in accordance with Clause 137 of the Local Government (General) Regulation 2005.

304. Mr Redman's report advised that the Tender Evaluation Panel was the Finance Manager, Council's Senior Accountant and the Group Coordinator IT and Communications, "With" the Procurement Coordinator as "Chairperson", and Council's Solicitor acting as "Probity Advisor". The report did not make clear that neither the Procurement Coordinator nor Council's Solicitor actually evaluated the tenders.

305. Mr Redman's report advised that "The panel's evaluation of the tenders has been separately circulated to Councillors". There was nothing else in the report to indicate that the attachment contained anything other than the panel's evaluation.

306. The Attachment that was circulated to Councillors was headed "*Attachment 1 Tender Evaluation*", again suggesting, when read in conjunction with the report, that the document was the panel's evaluation.

307. While the Attachment did provide details of the panel's evaluation, it also included some additional content at the end which was authored by Mr Redman. The relevant content is reproduced hereunder:

Warton Thompson and Co has served as Council's auditor for a period of 12 years.

Warton Thompson and Co contacted Council after the closing date of the tender and advised that they had intended to submit a tender however, due to an oversight on their part they had failed to lodge the tender by the closing date.

Under the Regulation it is not possible to accept tenders after the closing date.

Having regard to the high quality and professional services that have previously been provided by Warton Thompson and Co it is recommended that Council decline to accept **any** of the tenders received and invite fresh tenders in accordance with Clause 167 of the Local Government (General) Regulation 2005.

308. While it was open to Mr Redman to make the recommendation that he put before the Council, he had an obligation to make it clear that the tender evaluation panel had formed a different view. In making amendments to the report, Mr Redman failed to make clear that it was his view alone that the tenders should be declined.

309. This had the consequence of improper interference in the process and the amendments to the report were misleading.

310. Mr Redman was also remiss in not advising the elected Council that:

- Ms Bourke, as Council's *responsible accounting officer*, had significant concerns about the proposed recommendation, and
- that acceptance of his recommendation would, in effect, extend the period of time that Council would not have a duly appointed auditor and that this might preclude the timely completion of the half yearly inspection of Council's accounting records by the auditor.

311. Mr Redman has submitted that he was aware of Ms Bourke's concerns, that he had given due consideration to them, that he had discussed them with her and that he did not agree with the comments made by her. Mr Redman asserted that it was "*ludicrous*" to propose that he should have advised the Council of the concerns that he considered had no basis.

312. Ms Bourke was Council's *responsible accounting officer* and had a key role in the tender process. Mr Redman was not the decision maker in regard to the outcome of the tender process and had an obligation to alert the Council of Ms Bourke's concerns. Had he done so, it would then have been open to him to provide advice to the Council as to why he considered the concerns were unfounded.

313. Mr Redman was aware of his obligations when reporting to the Council. On 3 May 2013 he was sent two emails from Council's Corporate Strategy Coordinator which specifically referred to the OLG's *Tendering Guidelines* and the advice contained in that document that reports to Council on the tender evaluation "*should include all information necessary to allow council to make an informed decision*".

314. Further, given his role at Council, Mr Redman would or should be familiar with *The Model Code of Code of Conduct for Local Councils in NSW*, which the Council adopted as its own Code. It provides:

Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedure.

315. Mr Redman's actions may have contravened section 439 of the Act, which requires that members of staff act honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act.

Subsequent explanation from Mr Redman as to his recommendation to Council

316. Mr Redman has subsequently asserted that there was a different basis for his recommendation not to accept any tenders. In a note authored by him dated 15 April 2014 he recorded that he "*recommended that Council decline to accept any tender as due to errors and omissions in the Tender specification as well as my judgement that a broader range of proposals could be obtained by Council that may result in Council achieving a better outcome.*" The note then went on to record that in response to the readvertising "*an additional three submissions were received*".³⁰

³⁰ In fact, while tenders were received from 3 firms who had not submitted tenders in response to the first tender process, one of the original tenderers did not retender.

317. While Mr Redman's subsequent explanation has been noted, it is at odds with the advice that he provided to the Council in his report.

Other concerns about the initial tender process

318. Council's then Group Manager, Corporate Services, Ms Kim Appleby has provided a statement that indicates that she had concerns about the initial tender process and that she raised these concerns at the time of the initial tender with both Mr Backhouse and Mr Redman. The statement indicates that she raised her concerns with Mr Redman "*firstly by speaking with him and subsequently in writing.*" A copy of an email from Ms Appleby to Mr Redman dated 3 May 2013 was obtained. A copy of this email has been provided as an appendix.

*Appendix 28 - Email – Ms Appleby to Mr Redman – 3 May
2013*

319. In responding to the draft report, Mr Backhouse wrote:

I strongly dispute that Council's former Group Manager Corporate Services, Kim Appleby, raised any issue with the initial tender with me. There is absolutely no evidence that she raised any issues with me.

320. Mr Redman has submitted that he considered the matters raised with him by Ms Appleby and that he responded to her that the tender panel's evaluation was included in the report to the Council without alteration. There is no record of this response.

The second audit tender process

321. A second tender process commenced pursuant to the resolution of 7 May 2013.

322. Mr Redman obtained approval from the General Manager for a two week advertising period.

323. The request for tender (RFT) document used for the second process did contain some significant changes notwithstanding Mr Redman's advice to the General Manager that there was no significant variation to the tender specification.

324. The evidence indicates Ms Jones was involved in reviewing and making changes to the amended RFT, which was then approved by Mr Redman. On 8 May 2013, Ms Jones sent an email to Mr Redman attaching an amended RFT. In the email, she detailed what she characterised as the "*main changes*" to the

RFT. This email in turn was referred to Ms Bourke by Mr Redman with a request for her comments, which Ms Bourke duly supplied in an email to Mr Redman on 9 May 2013. A copy of the email exchange has been provided as an appendix.

Appendix 29 - Emails – Amended Request for Tender – 8 & 9 May 2013

325. Ms Bourke's comments on the proposed changes were considered and disregarded by Mr Redman. The changes outlined by Ms Jones appear in the amended RFT that was approved by Mr Redman.

326. The changes to the RFT included (but were not limited to) a more detailed criterion under the heading of "Key Personnel". The amended criterion has been reproduced hereunder:

(b) Key Personnel

Applicants must set out the qualifications, experience and proposed capacity of all nominated personnel who will be in attendance during the conduct of the audit. These personnel will be required to have extensive experience in Local Government auditing and be able to demonstrate detailed knowledge of Australian Accounting Standards and the Code of Accounting Practice.

The following information must be supplied in respect of managers and may be supplied in respect of other staff:

- names;
- qualifications;
- experience;
- capacity.

In assessing the capacity of applicants to provide a total quality audit service of the nature required by Council, regard will be had to:

- the previous experience obtained at a senior level in the auditing of a medium sized urban council, the nature and diversity of such experience and the range and perceived quality of auditing services provided by the applicant in respect of existing and previous audit appointments;
- the extent to which the applicant is able to guarantee the continuity of involvement by the same principals and staff in the ongoing control and undertaking of the audit;
- the experience and qualifications of Principals in disciplines of a non-accounting nature which will need to be addressed as part of a complete managerial audit approach;
- the level of awareness of applicants of the political, social, economic and demographic factors which impact upon Council's operations;
- the range and nature of professional affiliation and associations held by the Principals and nominated staff.

327. The original criterion was:

(b) Key Personnel

The following information must be supplied in respect of managers and may be supplied in respect of other staff.

- names;
- qualifications;
- experience;
- proposed capacity

328. Some of the inclusions in the amended criterion may be seen as favouring the incumbent auditor and be contrary to Mr Redman's stated objective of attracting a broader range of tenders. It is not apparent why it was considered necessary to specify requirements for experience in auditing a "medium size urban council"

and “awareness of the applicant of the political, social, economic and demographic factors which impact upon Council’s operations”.

329. As shown in Appendix 23, Ms Bourke questioned Mr Redman about the “awareness” requirement, asking him “Does this really impact on their [the tenderer’s] ability to perform a financial services audit?”. Notwithstanding Ms Bourke’s question, Mr Redman retained the suggested change.
330. An auditor’s report is intended to provide a forensic opinion on whether the applicable financial reporting framework has been applied in the preparation of the accounts, whether they are free from material misstatement and whether they show a true and fair view of the operating results, financial position and cash flows of the entity. Awareness of the political, social, economic and demographic factors which impact upon Council’s operations is irrelevant to this process.
331. In addition to the aforementioned changes, the revised RFT also contained internal inconsistencies as to the dates of the proposed appointment. In two places it indicated Council was inviting tenders for the provision of audit services for the six years ended 30 June 2018 yet in two other places, it indicated that the proposed term was to be until 30 June 2019. A diligent review of the RFT prior to approving it would have identified these inconsistencies.
332. Council called for tenders for the second time on 14 May 2013 with a closing date of 28 May 2013.
333. Council records indicate that two prospective tenderers sent emails to Council’s Procurement Coordinator querying the dates of the proposed engagement (given the inconsistencies in the RFT). Council’s Procurement Coordinator responded to the two emails confirming that the period was for six years ending 30 June 2018. There is no evidence that indicates other prospective tenderers were advised of this. They should have been. In the absence of any clarification advice from Council, two of the tenders that were received appear to have been submitted on the basis that the tenderers understood that the proposed terms was to be until 2019.
334. Part 1.2 of the OLG’s *Tendering Guidelines* emphasises that all potential tenderers should be given the same information.

335. Mr Redman advised Ms Bourke that he wanted her to participate as a member of the second Tender Evaluation Panel. Ms Bourke indicated a preference not to do so and in any case, had been granted leave on the date when the panel was to convene.
336. A tender evaluation panel comprised of Mr Redman and two other staff members was convened. It was to be assisted by Council's in-house solicitor (who was to fulfil the role of Probity Advisor) and the Council's Procurement Coordinator (whose role was to provide administrative support and advice).
337. Eight tenders were received. Copies of the tender submissions were provided to the members of the panel, who then proceeded to independently review and rate them on the agreed criteria.
338. The panel then met to discuss and moderate their evaluation of the tenders with the assistance of the Procurement Coordinator. The Probity Advisor was also present. At this meeting, the panel reached a consensus on how the tenders were to be rated and ranked.
339. Mr Redman drafted and submitted a report on the evaluation of the tenders for inclusion in the business paper for Council's meeting of 4 June 2013. In the report, Mr Redman recommended that the Council accept the tender received from Warton Thompson and Co; this tender was not the highest rated tender.
340. It is apparent from the evidence that Mr Redman's recommendation was not based on an objective assessment of the tenders against the criteria stipulated in the request for tender. In this regard, both Mr Redman's and the Tender Evaluation Panel's ratings of the tenders rated 3 other tenders more highly than Warton Thompson and Co.
341. In responding to the draft report, Mr Redman wrote:
- The assessment of the panel, which included myself, was based on the criteria in the tender specification. This was not the sole basis on which the determination of the tenders was based.*
342. Regulation 170(1)(b) requires that the tender documents specify the criteria on which the assessment of tenders will be based. Assessment on any other basis would contravene the Regulation.

343. The evidence suggests that the decision to recommend Warton Thompson and Co. was made by Mr Redman and not the Tender Evaluation Panel.

344. A statement was obtained from Council's Senior Accountant, Mr Aneet Singh, who was a member of both tender evaluation panels. His statement was that he was unaware that the incumbent auditor, the 4th ranked tenderer, was going to be recommended for acceptance. Mr Singh's statement has been provided as an appendix.

Appendix 30 - Statement – Aneet Singh

345. A statement was also obtained from Mr Baker who was present, in his capacity as Probity Advisor, when the panels met. Mr Baker indicated that he could not recall any discussion, when the second panel met, in regard to recommending any tenderer who was not the first ranked tenderer. He asserted that he would recall such a discussion if it pertained to the 4th ranked tenderer i.e. Warton Thompson and Co.

346. Mr Redman's report to the Council advised that the Tender Evaluation Panel was comprised of himself, Council's Senior Accountant and the Group Coordinator IT and Communications "With" the Procurement Coordinator, as Chairperson and Council's Solicitor acting as Probity Advisor. The report did not make it clear that neither the Procurement Coordinator nor Council's Solicitor evaluated the tenders.³¹

347. Mr Redman's report advised that:

The Tender Evaluation Panel assessed the submissions based on the criteria above and ranked the submissions. The Panels evaluation of the tenders has been separately circulated to Councillors.

348. The document circulated to Councillors was headed "*Attachment 1 Audit Services Tender Evaluation*", again suggesting, when read in conjunction with the report, that the document was the panel's evaluation.

349. While the Attachment did provide details of the panel's evaluation, it also included some additional content at the end which was authored by Mr Redman. The relevant content is reproduced hereunder:

³¹

Council records pertaining to the tender evaluation indicate that the Procurement Coordinator and Council's Solicitor were present when the Tender Evaluation Panel met but they did not review and rate the individual tenders.

Conclusion

Warton Thompson & Co have served as Council's auditor for a period of 12 years. During this time the Principal of the firm has been the lead auditor responsible for the conduct of the audit in addition the audit manager having been employed with Warton Thompson & Co for a period of 26 years has also directly managed the conduct of the audit.

The consistent allocation of staff responsible for the conduct of the audit has resulted in highly professional and effective audit services being provided to Council.

Accordingly it is recommended that Council accept the tender received from Warton Thompson & Co for the provision of audit services for a six year period ending 30 June 2018.

350. While it was open to Mr Redman to make the recommendation that he put before the Council, he had an obligation in doing so, to make it clear that the conclusion he put before the Council was his alone. Mr Redman potentially misled the elected Council by failing to do so.
351. Mr Redman's report was considered at a Council meeting held on 4 June 2013 and Council resolved to hold a series of workshops to consider the matter further.
352. Some further reference checking was then undertaken on some of the more highly ranked tenderers. This and other information was collated and provided to the elected Council at a workshop.
353. The matter was further reported to the Council on 2 July 2013, with the same recommendation that was made on 4 June 2013, to appoint the incumbent auditor. On the occasion of this meeting, the Council resolved to accept another tender, notwithstanding that this other tenderer was not the one that had been evaluated as the best tender by the tender evaluation panel. There is no evidence as to why the Council accepted a different tender. While it was in the remit of the elected Council to do so, it may have been prudent for it to record its reasons.

Further comments on the assessment of tenders

Resolution not to accept the recommended tender

354. In a circumstance where a councillor moves the acceptance of a tender that is different to the one recommended, it would be better practice for the councillor to detail the reasons for this in their motion. If the motion is adopted, it will provide a record of why the decision has been made. Providing reasons for decisions is good administrative practice.

Assessment on the tenders on the basis of referees

355. Both tender specifications included "Referees" as a criterion and then indicated that *"The names of at least two referees should be supplied. Such referees should be senior representatives of other New South Wales councils or other audit clients"*.

356. The assessment of tenders by both tender evaluation panels was flawed in regard to the manner in which they assessed and scored tenders for the "referee" criterion. Both panels allocated a weighting for this criterion and then scored the tenders based on who the nominated referees were and possibly the number of referees who were provided. No referees were contacted as part of the panels' evaluation of this criterion.

357. Ms Bourke did undertake some reference checking on the tenderer that had been ranked highest overall by the first tender evaluation panel but this did not occur until after the panel had finished its deliberations.

358. In his response to the draft report, Mr Redman wrote:

The claim that the process was flawed is rejected. The criteria was clearly related to the provision of suitable referees. The criteria did not refer to consideration of reference checks by the panel. Under Council's procedures and practice at the time this was a separate process from the panel's evaluation. Accordingly, the results of the reference checks were not part of the panel's evaluation.

359. The approach suggested by Mr Redman is clearly flawed. It is the role of the evaluation panel to fully and completely evaluate the tender and, on that evaluation to make recommendations to the Council. Quite simply this process had not been completed by the time the panel made its recommendation to Council.

360. It might be noted that Council appears to have recognised this error. In his response Mr Redman advised:

Council has subsequently amended its Purchasing and Tendering Guidelines to clearly indicate that tender evaluation panels are responsible for assessing tenders against the selection criteria, determining referees to be contacted, reviewing reference check results and recommending the preferred tenderer.

361. In regard to the second tender process, no reference checking was undertaken prior to the matter being reported to the Council on 4 June 2013. Some reference checking was then undertaken prior to the matter being further reported to the Council for determination on 2 July 2013. Reference checking should have been undertaken prior to the matter being reported to the June meeting.

Role of the Tender Evaluation Panel

362. Council's Procurement Policy stipulates that "A tender panel will be convened to oversee and assist in the calling, assessment and selection of specific tenders" [emphasis added]. As highlighted, the policy intended that the tender evaluation panel be involved in the entire process, including the selection.

363. Council's *Purchasing and Tendering Guidelines* state that the role of the tender evaluation panel was to include the following:

- Review all tender specifications prior to issue, including seeking the approval of Council to service contract specifications.
- Review selection criteria.
- Conduct pre-tender meeting and interviews as appropriate
- Oversee tender assessment process.
- Review tender evaluation and recommendations.
- Endorse recommendations

364. Council's Senior Accountant, Mr Aneet Singh, was a member of both tender evaluation panels. He provided the following statement as to the panel's role:

19. It is my understanding that the panel's role was to make a recommendation as to who had submitted the most suitable tender, that this recommendation would be reported to Council but also that it was the Council's decision.

365. Mr Singh further stated that he did not see any draft or final report in relation to either of the tender processes and that he was unaware of Mr Redman's recommendations. He indicated that prior to the day of making his statement to the investigators, that being 18 June 2014, he was not aware that "Walter [sic: Warton] Thomson" was the tenderer recommended to Council in regard to the second tender process and that he was similarly unaware of the recommendation not to accept any of the tenders in relation to the first tender process.

366. The evidence indicates that, in regard to the two audit tender processes, the panels' role appears to have been generally limited to the evaluation of the tenders. Any recommendations they made were, in effect, disregarded and they clearly had no role in overseeing or endorsing the recommendations that Mr Redman made to the Council.

Role of the Probity Advisor

367. The role of Probity Advisor in both tender processes was generally limited to being present when the two Tender Evaluation Panels met.

368. There was no "sign off" or certification of the overall process by Council's solicitor acting as Probity Advisor, notwithstanding that Council's Procurement Policy provides that principles of probity will be applied to "*all processes in the preparation, advertisement, assessment and management of tenders*".

369. Council would benefit from having its tender processes subjected to a "probity review" prior to the tender being reported to Council for determination. This is a matter that would have given rise to a recommendation in this report had it not been that the Minister's Performance Improvement Order has, in effect, already required the Council to consider the role of the Probity Advisor in Council's tender processes.

Ethics and Probity considerations

Conflict of Interest Disclosures

370. Council requires staff involved in the preparation, evaluation or approval of tenders to complete a "*Conflict of Interest Disclosure Form*". This is good practice as it can serve to remind staff of their obligations in regard to ethical and proper conduct and provides the opportunity for any disclosed conflicts to be appropriately managed.

371. All members of the two Tender Evaluation Panels, and the Probity Advisor and Procurement Coordinator completed forms.

372. Mr Redman did not complete a disclosure form in relation to the initial tender process; he should have, given his substantial involvement in that process.

373. Ms Jones was involved in reviewing and providing advice on the tender specification for the second tender process and therefore she too should have completed a disclosure form. While it is not suggested that Ms Jones had a

conflict of interests or that she would have not completed a form if she was asked, there is no evidence that she was asked to complete a form as required by Council's procurement protocols.

Mr Redman's disclosure for the second tender process

374. Mr Redman, when completing the form for the second tender process declared, among other things, that "*The specification has not been organised or designed to limit or favour any potential respondee*" and "*My independence and objectivity dealing with the issue has not been and is not likely to be compromised*".
375. The specification for the second tender process was amended from that which was used for the first process, in a manner that could potentially favour the incumbent auditor and limit other responses. Mr Redman was responsible for approving this specification.
376. Further, given Mr Redman's intervention in the initial tender process, his independence and objectivity may have been compromised. He clearly had a view as to the merit of appointing the incumbent auditor compared to a new provider. This view was expressed in his stated reason for recommending that Council call for fresh tenders. It was ultimately reflected in his recommendation to Council to appoint the incumbent auditor.

Policy requirements

377. Council's *Procurement Policy* has a section that deals with ethics and probity. The content has been reproduced hereunder for ease of reference:

Councillors and Council staff shall at all times conduct themselves in accordance with Council's Code of Conduct, Business Ethics Policy and highest standards of ethical behaviour, which will:

- treat potential and existing suppliers with equality and fairness
- not seek or receive personal gain
- maintain confidentiality of 'commercial in confidence' information
- present the highest standards of professionalism and probity
- deal with suppliers in an honest and impartial manner that does not allow conflicts of interest
- provide all suppliers and tenderers with the same information and equal opportunity
- be able to account for all decisions and provide feedback on them
- not be involved in any activity such as performing work with suppliers, consultants or contractors

All business partners of Council including prospective partners must agree to the conditions set out in Council's Business Ethics Policy, which sets out the ethical standards expected of Council's suppliers and business partners.

378. The standards of behaviour and ethical principles in the Tendering Guidelines emphasise that councils must not engage in practices that aim to give a potential tenderer an advantage over others.

-
379. Mr Redman favoured the incumbent auditor (an existing supplier of the Council) when he recommended that they be given a second chance to submit a tender.
380. Mr Redman further favoured the incumbent auditor when he recommended them for appointment given they were rated lower than three other potential suppliers of the service.
381. Mr Redman did not *"present the highest standard of professionalism and probity"* in the manner in which he reported to the elected Council on the two tender processes. His behaviour contravened the standards expected by the Tendering Guidelines.

Mr Redman's response to Ms Bourke's concerns about the process

382. Ms Bourke raised concerns with Mr Redman on a number of occasions about the recommendation and the decision to call for fresh tenders. Notwithstanding this, Mr Redman had indicated to her in an email on 27 May 2013 that he wanted her to effectively take his place on the second tender evaluation panel. Ms Bourke provided a detailed response to this request the following day, in which she reiterated her concerns and preference not to participate in the new tender evaluation panel. A copy of the email exchange between Mr Redman and Ms Bourke has been provided as an appendix.

*Appendix 31 - Email exchange - Neale Redman & Jodie Bourke
27/28 May 2013*

383. Ms Bourke, in her response, indicated that she *"strongly believed"* that Mr Redman or the *"Executive"* had a *"pre-determined outcome"*. She went on to state that *"Given the situation that has occurred I cannot guarantee a fair and impartial evaluation of a submission by [sic: from] Warton Thompson and therefore would have to declare a conflict of interest."*
384. Mr Redman acceded to Ms Bourke's wish, if for no other reason than Ms Bourke was unavailable and there was a time imperative to complete the evaluation of the tenders so they could be reported to the Council at its meeting on 4 June 2013.
385. Mr Redman subsequently authored a memorandum to Ms Bourke dated 29 May 2013. The memorandum details Mr Redman's position on Ms Bourke's concerns. A copy has been provided as an appendix.

29 May 2013

386. Mr Redman's memorandum to Ms Bourke concludes with the following paragraph:

At all times during the Audit Tender process Council has acted appropriately and in accordance with the relative legislative requirements. Your comments asserting otherwise are unfounded and inappropriate.

387. Mr Redman's assertion that Ms Bourke's comments were unfounded needs to be considered in light of the evidence to the contrary. There is no probative evidence that warrants a conclusion that her comments about the process were inappropriate.

388. Ms Bourke's statement indicates that she could not recall receiving Mr Redman's memorandum.

389. Mr Redman was asked about the memorandum when interviewed by the investigators. At that time he recollected writing it and that it was placed on her file but conceded that he may not have provided it to her. He indicated that he wrote it *"Because I became aware that there was a document from her in our records system that she hadn't raised with me that made a number of claims which were, in my view, without foundation and inappropriate"*.

390. He was then asked if the *"document"* he was referring to was Ms Bourke's email to him of 28 May 2023. He responded:

Yes. Yes. I was aware of the email, but I subsequently became aware that it had been registered into our and I had spoken to Jodie at the time of the email being sent and expressed my views in terms of the claims she was making. And then I subsequently documented those conversations, because and then it was it was I understand it was registered into the our records system as well.

391. He was then asked if it was conceivable that Ms Bourke never would have seen the memorandum and he responded:

Yeah, she she may not have because, as I said, it was it was consistent with the discussions I'd had with her that she as far as I'm aware, she was made a copy was made available to her but a copy was placed on her file.

392. He was asked if he received any response from her to the memorandum and he responded:

Not that I can recall, other than I mean, I was aware of her views on it, but as I said, I didn't agree and didn't consider them to be justified and indicated that to her.

393. In the memorandum, Mr Redman characterised Ms Bourke's views about the matter as her "*personal views*". He was asked if that was still his view. He responded:

Well that's a reference to, I think and I'll have to refresh my memory from her email where she makes comments to the effect that she's not comfortable or she, you know, feels uncomfortable about the process. Yeah. "I feel very uncomfortable with the decisions made". Well you know, there are often decisions made in organisations people don't agree with but their personal views aren't relevant to that. And I explained that to her. And indicated that the council, in my view, had dealt with this matter, you know, in an appropriate way.

394. Ms Bourke's statement indicates that on 5 June 2013, Mr Redman asked her to undertake some further tasks related to the tender. The relevant section of her statement has been reproduced hereunder:

53. On 5 June 2013, I had a conversation with Neale where he advised me that the decision on the audit tender had been deferred for a councillor briefing. He asked me to provide some analysis on a number of matters including what "value adding" services were offered by the tenderers, ASIC's requirements for not having auditors for more than 5 years continuously, resourcing of audits and turnover/loss of key personnel. I was also asked to provide reference checks for the top three ranked submissions. I subsequently undertook reference checking and made enquiries notwithstanding that I was not a member of the panel for the second tender process. I then provided Neale with information for the Councillor briefing.

395. Mr Redman's tasking of Ms Bourke to undertake the activities detailed in her statement, particularly the analysis of the "*value adding*" services and the reference checking, was ill-considered given that she had indicated to him the previous week that she considered herself conflicted in regard to the process. Notwithstanding this, there is nothing to suggest that Ms Bourke undertook the tasks allocated to her in an improper or less than diligent manner.

Maladministration in relation to appointment of the external auditor

396. The investigation has found that there was maladministration in relation to the appointment of the external auditor.
397. Mr Redman favoured the then incumbent auditor in both tender processes.
398. Mr Redman misrepresented the evaluations of the tender evaluation panels when he reported to Council. Specifically, Mr Redman appended his own opinion to attachments tendered with reports but failed to clearly differentiate that the view being expressed was his and not that of the two panels. He also tendered reports that implied that the tenders had been evaluated by Council's Procurement Coordinator and Council's Solicitor when in fact neither of these employees evaluated the tenders.
399. Mr Redman failed to have due regard to the concerns expressed by Council's *responsible accounting officer* in relation to the first tender process and failed to alert the elected Council that the *responsible accounting officer* had concerns about the process.
400. Mr Redman failed to exercise due care when approving the *Request for Tender* document for the second tender process.
401. Council failed to notify all prospective tenderers that there was an error in the second *Request for Tender* document in regard to the specified term, notwithstanding that two of the tenderers sought and were provided with the correct term.
402. Mr Redman was remiss in not advising the elected Council that acceptance of his recommendation in relation to the first tender process would, in effect, extend the period of time that Council would not have a duly appointed auditor and that this may preclude the timely completion of the half yearly inspection of Council's accounting records by the auditor.
403. Council's *Procurement Policy* stipulates that:

Council funds are to be used efficiently and effectively to procure goods, services and works and every attempt must be made to contain the costs of the procurement process without compromising any of the procurement principles set out in this Policy.

404. This requirement of Council's policy was not complied with given that Council engaged in a second tender process that was manifestly not necessary to the objective of "*efficiently and effectively*" appointing an auditor.

405. A delay of over 12 months in filling the vacant auditor position is manifestly excessive.

406. There was a failure to implement effective internal controls to identify and prevent this occurring.

Role of the elected Council

407. The evidence does not warrant a finding of maladministration on the part of the elected Council. In regard to the decision of 7 May 2013, the elected Council resolved in accordance with the recommendation provided to it. In regard to the decision of 2 July 2013, it is evident that the elected Council had carefully and diligently considered the matter prior to making a decision to reject the recommendation put forward to it by Mr Redman. For example, the Council's resolution of 4 June 2013, to defer consideration of the matter, so that it could receive further information, is evidence of the exercise of prudence on its part.

Was there any serious and substantial waste of local government money and/or resources in relation to the appointment of Council's auditor?

408. Whether there was any serious and substantial waste of local government money and/or resources in relation to the appointment of Council's auditor turned on:

- whether the tender processes were undertaken efficiently,
- whether a second tender process was warranted, and
- the quantum of any waste that could have otherwise been avoided.

409. The two tender processes, per se, appear to have been undertaken in a reasonably efficient manner.

410. In regard to the decision of 7 May 2013, it is arguable that it was made without proper regard to whether there was a need for a second tender process and without due regard to the resources that would be used. In considering whether a second tender process was warranted, the following is particularly relevant:

- following the initial call for tenders, the Council received 6 complying tenders;
- the tender evaluation panel assessed these tenders and formed the view that there was a tenderer that could capably undertake the role;
- the amount tendered by the highest ranked tenderer was within the budget allocated;
- reference checking was undertaken that supported the conclusion that the highest ranked tenderer could capably undertake the role.

411. The costs of the second tender process, both in monetary terms and staff time and effort, were a waste of Council resources. Ultimately, the Council derived no material benefit from having engaged in a second tender process. The tenderer it resolved to appoint submitted a similar tender in response to the initial tender process, the number of tenders received was similar and the amounts tendered were not materially different.

412. While the quantum of waste, in monetary terms, cannot be reasonably categorised as being substantial, it is none the less a serious matter given the circumstances in which it arose.

3.4 Conduct and performance as the Trust Manager of the Hudson Park Reserve Trust

Introduction

413. Hudson Park is a Crown Reserve. It comprises an 18 hole golf course, a driving range and some associated facilities. Control of Hudson Park is vested in the Hudson Park Reserve Trust. Council is the Trust Manager.
414. The terms of reference required the investigation to examine the Council's conduct and performance as the Trust Manager since 1 July 2009.
415. The investigation had regard to the statutory framework governing the Council's conduct and performance as the Trust Manager.
416. In measuring the standard of care to be applied to reviewing Council's performance and conduct as Trust Manager, it was noted that Courts have held that, in the management of the trust business, a trustee should exercise the same diligence and prudence as an ordinary prudent man of business would exercise in conducting that business if it were his own (*The Charitable Corporation v Sutton* 26 ER 642).³²
417. The then current version of the *Reserve Trust Handbook* issued by NSW Trade & Investment, emphasised the importance of sound management in the following terms:
- Crown land is a valuable public asset. The land must be managed prudently to ensure that the greatest environmental, social and economic benefits to the State and the public are achieved, while minimising safety or risk issues. The efficient management of buildings, assets and infrastructure assists in achieving these benefits.*
418. The investigation found that the Council has failed to undertake its responsibilities as Trust Manager of the Hudson Park (R62163) Reserve with a requisite degree of diligence and prudence. In particular, the investigation revealed:
- deficiencies in the Council's procurement and selection of a licensee

³²

This principle was recently acknowledged in *Westpac Banking Corporation -v- The Bell Group Ltd (in liq)* [No 3] [2012] WASCA 157 (17 August 2012) at para 850.

- Council permitted a company to operate the golf course and driving range without a licence
 - there were delays in issuing a licence
 - poor administration of the licence, including multiple failures to ensure compliance with licence conditions
 - failure to secure timely payment of licence fees and other charges due to the Trust.
419. A chronology of events and documents is provided as an appendix.

Appendix 33 - Chronology – Hudson Park

The statutory regime

420. The *Crown Lands Act 1989* provides that Crown land is not to be occupied, used, leased, licensed, or otherwise dealt with unless the occupation, use, sale, lease, licence, reservation or dedication or other dealing is authorised by that Act.
421. The *Crown Lands Act* makes provision for the formation of reserve trusts and the appointment of councils to manage such trusts.
422. The *Crown Lands Act* provides that a reserve trust may not grant a lease or licence, (except a temporary licence) in respect of land in the reserve except on defined conditions, and then only with the consent of the Minister.
423. The *Crown Lands Act* provides that if a council is the manager of a reserve trust and the reserve is a public reserve, the trust has all the functions of a council under the *Local Government Act 1993* in relation to public reserves.
424. The *Local Government Act* provides that a licence for a term exceeding 5 years may be granted only by tender.

Council's approach to its role and responsibilities as Trust Manager as at 1 July 2009

425. As at 1 July 2009, the Council was exercising its role as Trust Manager by maintaining the golf course. It had issued a licence to a third party for the operation of the golf course and driving range.

426. The Council was seeking to redevelop the course and driving range. It was seeking a licensee that would, over 10 years, contribute to the costs of, or undertake the redevelopment works. Council's Director, Operations, Mr Robert Bourke, when interviewed, indicated that Council had become frustrated that the existing licensee had failed to upgrade the golf course and driving range.
427. Council, as Trust Manager, was obliged to call for tenders prior to granting a licence in regard to Hudson Park and had moved to do so.

Tender for the redevelopment and management of Hudson Park

428. In July 2009, the Council called tenders for the redevelopment and management of the Hudson Park golf course and driving range. Fundamental to the revised tender was the provision of a works program to be undertaken by the licensee.

The request for tender (RFT)

429. In calling tenders, Council was seeking to re-develop Hudson Park. In this regard, clause C1 of the RFT provided:

It is intended for Council to enter into an Agreement with the Preferred tenderer, selected in accordance with the provisions of Part B Conditions of Tendering, to deliver the Project Works listed in Clause C4 within parameters acceptable to Council and within constraints applicable to the Site.

430. The RFT outlined and detailed a number of re-development works that tenderers could consider addressing in their submission. The works included re-construction of the pro shop and amenities, upgrading the driving range, upgrading the golf course, improvements to the screen fence and improved marketing. The list was neither exhaustive in detailing what work could be undertaken, nor did it mandate any works.
431. The RFT anticipated that project works would commence within 21 days of the successful tenderer being given possession. Each tenderer was required to indicate what works they would carry out. The RFT anticipated payment of a monthly licence fee and a profit sharing arrangement. The RFT specified that the successful tenderer would be required to provide an unconditional bank guarantee of \$50,000.

432. While it was apparent the Council had intended that it would continue to maintain the course, this was not made clear in the RFT.

Acceptance of a late tender

433. Council considered a tender that was submitted after the closing date for receipt of tenders. It should not have done so. Clause 177(2) of the Regulation provides:

A council must not consider a tender that is not submitted to the council by the deadline for the closing of tenders.

434. The tender closed at 4 pm on 17 August 2009. At the time the tender closed, Council had received a tender from Stacey Holdings Pty Ltd. No other tender had been received.

435. On 11 August 2009, solicitors for Titanium Golf Management Pty Ltd (Titanium) wrote to the Council advising that it acted for "Titanium Golf" and that it would not be able to meet the tender date. The letter sought an extension of the tender period to accommodate the needs of Titanium. The letter sought a number of concessions on behalf of Titanium. There is no evidence that Council replied to this letter.

436. On 18 August 2009, Titanium lodged a tender with the Council. There is a hand-written notation on the tender reading:

"Received over counter on 18/8/09"

Appendix 34 - Titanium tender

437. Having received Titanium's late tender, Mr Bourke wrote to Titanium, care of its solicitor, noting that the tender had been delivered out of time. The letter continued:

Late tenders may be considered by Council subject to the provisions of the Local Government Regulation 2005. The regulation requires the tenderer to satisfy Council that the tender was posted or lodged at a Post Office or other recognised delivery agency in sufficient time to enable the documents to have been received by the Council in the ordinary course of business before that deadline.

438. The letter sought reasons or evidence to satisfy the Regulation.

439. On 7 September 2009, Titanium's solicitor replied. The letter attributed blame to the Council for failing to respond to the earlier correspondence. The letter acknowledged that:

... the tender while being late was delivered to the Council at the very first opportunity after the close of tenders that is, on the morning of 18 August, 2009.

440. The letter submitted that the late tender was capable of being accepted pursuant to clause B8 of Council's RFT on the basis that it was a late tender, submitted by hand. Clause B8 provided:

Late Tenders delivered by hand may be considered if the Contact Officer is satisfied that under normal circumstances they would have been received by the date and time for closing of tenders and that the delay was beyond the control of the Tenderer.

441. Council apparently accepted this submission and proceeded to evaluate Titanium's submission, along with the tender that had been received prior to the closing date. Regulation 177(5) did not permit this course of action, providing:

A council must also consider a tender received within such period after the deadline for the closing of tenders as it decides to be reasonable in the circumstances if the tenderer satisfies the council that the tender documents and all other requisite essential information were posted or lodged at a Post Office or other recognised delivery agency in sufficient time to enable the documents to have been received by the council in the ordinary course of business before that deadline.

442. The response provided by Titanium's solicitor was not directed to sub-clause (5). There is no evidence to indicate that Titanium had posted or lodged its submission at a Post Office or other recognised delivery agency in sufficient time for it to be received by the council prior to the closing date for receipt of tenders. Given this, Council was not able to rely on clause 177(5) as a basis for considering Titanium's submission.

443. Clause B8 of the RFT, which purported to give a general discretion to Council to consider late tenders, contravened the Regulation. It was ultra-vires and, accordingly, should not have been included in the request for tender document.

Requirement to submit a conforming tender

444. Clause B2 of the RFT required tenderers to submit a conforming tender that “*completely complies with the Invitation to Tender*”.
445. Stacey Holdings Pty Ltd lodged a conforming tender that addressed the criteria and provided detailed information. Titanium’s response was non-conforming. It was substantially incomplete:
- it contained the notation “TBA” in relation to items 3, 4 & 5 of schedule 1
 - it contained the notation “TBA” in relation to schedule 4
 - it contained the notation “To Be Provided” in relation to schedules 5 & 6
 - it failed to provide audited or certified financial statements
 - it provided brief particulars of its purported experience and performance
 - it also failed to provide details of the re-development program. (schedule 8)
446. Council ignored this and proceeded to evaluate Titanium’s response.

The evaluation of the tenders

447. A tender evaluation panel was convened. It comprised the Director Operations, Robert Bourke; Director Technical Services, Patrick Wong; Legal Officer, James Ng and an independent Consultant, Phil Hodgson, who acted as secretary and chair. The evaluation panel met and reviewed the responses on 9 September 2009. The minutes of this meeting record:

The evaluation stages, agreed unanimously were completed as follows:

Stage		Stacey Holdings Pty Ltd	Titanium Golf Management Pty Ltd
1	Initial Evaluation	PASSED	PASSED
2	Key Requirements	PASSED	FAILED
3	Technical	PASSED	N/A
4	Support	PASSED	N/A
5	Commercial	PASSED	N/A
6	Pricing	PASSED	N/A
	Evaluation Sheet	N/A	N/A

The hand written evaluations for each member of the TEC were filed at the end of the meeting

The TEC resolved to meet again to agree their formal decision in accordance with Part 11 of the Tender Evaluation Methodology.

448. In his reply to the draft report, Mr Bourke advised that the Tender Evaluation Committee met again to “*agree their formal decision*”. Council has not provided a record of this meeting.

449. On 3 November 2009, the elected Council considered a report on the tender process authored by Mr Bourke. The report incorrectly stated that *“At the closing of the tender, Council received a total of two (2) submissions.”* As noted earlier only one such submission had been received.

450. The report’s summary stated:

The most advantageous tender for Hudson Park Golf Course is the submission from Stacey Holdings, however it does not make provisions for certain capital improvements sought by Council under an agreement term of 10 years (5+5 option). It is believed that there is scope for negotiating improved terms in relation to the tenders received by Council which would allow Council to proceed with the redevelopment of Hudson Park Golf Course and secure its management for a set term sooner than if it were to embark on the process of inviting fresh tenders or applications.

451. The report recommended:

1. *That Council note that the tenders received for the redevelopment and management of Hudson Park Golf Course do not make provisions for certain capital improvements sought by Council.*
2. *That Council decline to accept any of the tenders.*
3. *That Council authorise the General Manager to enter into negotiations with any of the tenderers (or any other person) with a view to entering into a contract for the redevelopment and management of Hudson Park Golf Course.*
4. *That Council authorise the General Manager to enter into a contract with the person with the most advantageous proposal after negotiations provided that the proposal is no worse than the best submission that Council has received from the tender process.*

Appendix 35 - Report to Meeting 3 November 2009

452. There is nothing in the report to indicate the basis for Mr Bourke’s belief that there was scope for negotiating improved terms. However, a separate briefing document authored by Mr Bourke advised Councillors that declining to accept any tenders would allow *“Council to further maximise revenue and add value by offering two licence opportunities within the Golf Course precinct”,* one for the redevelopment and management of the golf course and driving range and another to *“build and manage a “Kiosk and Café”;* he suggested this would *“allow Council to realise revenue not previously captured and encourage usage and patronage within the whole precinct.”*

Appendix 36 - Councillor Briefing - 3 November 2009

453. Council adopted the recommendations and resolved:

That Council authorise the General Manager to enter into a contract with the person with the most advantageous proposal after negotiations provided that the proposal is no worse than the best submission that Council has received from the tender process.

454. Thereafter, Council commenced to negotiate directly with Titanium and Stacey Holdings Pty Ltd.

Negotiations with Stacey Holdings Pty Ltd

455. Stacey Holdings Pty Ltd was the incumbent licensee as at 1 July 2009. On 10 November 2009 Mr Bourke and Mr Ng met with representatives of Stacey Holdings. Further meetings took place, however negotiations subsequently broke down. On 14 December 2009 Mr Bourke provided a written briefing to Mr Backhouse on the negotiations with Stacey Holdings. In it, he expressed concern that Mr Scott of Stacey Holdings had indicated an intention to retire and that Council could face the risk of not knowing whether the replacement operator could fulfil the terms of any agreement. He further advised that Council would have no control of who the licence would be assigned to. The report recommended that Council attempt to negotiate a better outcome with Titanium.

456. The negotiations with Stacey Holdings did not progress further. On 3 March 2010 Stacey Holdings wrote to Council terminating its licence.

Negotiations with Titanium Golf Management Pty Ltd

457. On 3 December 2009 Titanium wrote to Mr Bourke putting a proposal for payment of a monthly fee of \$37,000, construction of a kiosk and for 50% of net profit to be re-invested into capital works.

Appendix 37 - Letter from Titanium Golf Management 3 December 2009

458. On 14 January 2010 Council's Legal Officer, Mr Ng and Community Space Technical Officer, Mr Swinney met with Titanium's representatives. The minutes of this meeting indicate that Titanium was to provide further information. Collaterally, the Council was to explore the grant of a liquor licence within a café or restaurant at Hudson Park.

459. On 3 February 2010, Mr Redman, Mr Wong, Mr Ng, Mr Swinney and Council's Group Manager Corporate Services, Ms Graetz met to discuss the Hudson Park negotiations. The minutes record that no probity checks of Titanium had been carried out at that stage, although "Google" searches had been undertaken. The meeting resolved that a risk assessment should be undertaken on Titanium's business plan and its projections and that reference checks on Titanium should be obtained.
460. On 8 March 2010 Mr Bourke, Mr Ng and Mr Swinney met with Mr Salvato of Titanium. The minutes of the meeting record that Council wanted to proceed with Titanium's proposal, with a takeover on 31 March 2010. On 17 March 2010 Mr Bourke provided a memorandum to Mr Backhouse and the Mayor. He reported that Titanium had offered substantial improvements including:
- construction of a new outdoor licensed kiosk/cafe facility
 - upgrade to signage and driving range equipment
 - significant capital investment based on reinvestment of 50% of net profit
 - improved management and marketing with an allocated annual budget of 5% of turnover
 - a fixed licence fee of \$440,000 per annum.

Appendix 38 - Memorandum (17 March 2010)

461. Council provided a draft licence agreement to Titanium on 19 March 2010. The licence was for 6 months expiring on 30 September 2010. There were a significant number of errors in the draft licence, not the least of which was the inclusion of clauses that assumed the licence would be for a number of years.

Council allowed Titanium to commence operations without a licence

462. Council allowed Titanium to commence operations at Hudson Park on 1 April 2010 without the requisite licence. At that point in time Council was yet to conclude its negotiations with Titanium and the matter was yet to be the subject of a further report to the Council.
463. Neither the *Crown Lands Act*, nor the *Crown Lands Regulation* allowed Council to permit Titanium to commence and/or continue operations without the requisite licence in place.

464. Mr Redman submitted that if Council had not allowed Titanium to manage the facility there would have been significant impacts on the community due to the facility not being available for use. While this may have been so, it was contingent on the Council to ensure that its arrangement with Titanium was properly documented by way of a duly executed licence prior to Titanium being allowed to commence operations.

Council's assessment of Titanium and its proposal

465. Given Council's decision to allow Titanium to commence operations, it is relevant to consider Council's processes in determining to grant a licence to Titanium.
466. As noted at paragraph 599, Council officers had identified the need for a risk assessment on Titanium's business plan and its projections, and the need to carry out reference checks on Titanium. Council arranged for its auditor to undertake a "due diligence" assessment of Titanium.
467. Mr Backhouse provided his understanding of the importance of due diligence processes in the following terms:

Q718: *In your view what is involved in due diligence?*

A: *Well, it's to check the whole capacity of the other party, verification as to what they're saying is correct and to provide back to the council some assurance that, you know, tick, tick, tick, tick, everything is in order.*

Q719: *The dominoes are lined up?*

A: *Yes.*

Q720: *Now in respect...*

MR MURPHY

Q721: *Including reference checks and financial checks?*

A: *Yes. Yes.*

468. On Wednesday 3 February 2010, Council provided its external auditor with a copy of various documents submitted by Titanium, including an unaudited financial report for the 2008/2009 financial year, budgeted profit and loss

statements and the business plan it had submitted. Council requested that the response be provided within 2 days.

469. In responding to the draft report, Council's then external auditor wrote:

I received an email from a Council officer late Wednesday afternoon, 3 February 2010, requesting me to forward my report by Friday 5 February 2010. I considered that this two day period was not sufficient time to satisfactorily undertake an examination of all documents provided as well as seek information that I currently did not possess especially all matters concerning due diligence. I conveyed this opinion to the officer and I was advised that I should formulate my report based on the documents and information provided by Council.

470. By letter dated 5 February 2010, the auditors reported that Titanium had the business and golf experience and expertise as well as the necessary financial capacity to successfully undertake the management and improvement of Hudson Park Golf Course. Council's auditor provided the following assessment of Titanium's capacity:

In view of the fact that Titanium will pay an annual fee of \$444,000 to Strathfield Council and will apply 50% of the net profit into golf course capital works, it has been necessary to examine these Profit and Loss Statements closely to determine Titanium's financial capacity to meet the terms of the agreement. Indications are that Titanium will (on the basis of projected number of golf rounds) produce an accumulated net profit for five years of approximately of [sic.] \$1.92m. Titanium proposes that one-half of this profit is to be applied to funding the above-mentioned capital works of \$550,000. Therefore \$0.96m will be available to fund anticipated capital works of \$0.55m. The profit of \$1.92m is after the payment of \$444,000 per annum to Strathfield Council.

471. As part of their due diligence report, Council's auditors also reported:

Titanium Golf Management Pty Ltd is a privately owned company with an issued capital of \$10. The company was incorporated on 8 August 2008 with the sole director and shareholder being Mr Carlo Salvato. Prior to the incorporation of the company Mr Salvato operated his business under the business name of Titanium Enterprises.

Appendix 39 - Letter from Warton Thompson & Co 5 February 2010

472. The documents produced by the Council and by Warton Thompson do not indicate that it, or its auditors, contacted Mr Salvato's former employers and/or persons that may have had dealings with Titanium in order to verify

Titanium's claims. The supporting documents supplied to Council by Titanium refer to Titanium Enterprises. Neither Council nor its auditors appear to have tested the veracity of Mr Salvato's/Titanium's claimed association with Titanium Enterprises.

473. In light of the matters raised by Warton Thompson, a statement was obtained from Mr Ng, who had had written to Warton Thompson seeking the due diligence and risk assessment on Titanium.

474. Mr Ng stated that he did not recall any person indicating to him that the time frame for providing the assessment was insufficient, nor did he recall responding that the assessment should only be based on the documents he had provided.

475. Both Mr Bourke and Mr Redman relied on the views of others in relation to Titanium. Mr Bourke provided the following evidence:

Q142: *Now, in terms of forming a view that they, Mr Salvato and Titanium Golf, were a credible applicant, did you make inquiries yourself as to their background?*

A: *No, that wasn't my job to do that. That was the solicitor, I think, at the time that did the due diligence, review of Titanium and which the solicitor looks at all aspect of their business, their company, and I recall seeing a very credible report, I think, that came in from an independent due diligence solicitor.*

Q143: *You certainly didn't do any reference checks yourself?*

A: *No, I didn't. No, the solicitors had done the checks.*

Q144: *The review that you're talking about, is it this review that was provided by Warton & Thompson?*

A: *Yeah, that's it, yeah.*

Q145: *And you regarded that as credible?*

A: *At the time, yes.*

476. Mr Redman provided the following evidence of his understanding of the due diligence process:

Q637 *Rather than have you speculating, can I show you a letter from Warton Thompson which is a report to council which talks about financial assessment and due diligence. Given the benefit of that document, is that your understanding of what you were seeking at the time of the meeting?*

A *Yeah, look I to be honest with you, I'm not sure. It there's two two possibilities; one is it's a reference to this exercise, which is the due diligence. I I suspect it's that, you know, when a when there's the comment about council auditors or someone else, so yeah, it appears on the basis of this, that that's what it's a reference to, about a due diligence exercise in terms of their capacity and their to, you know, perform the the terms of the proposed agreement that we were looking at.*

Q638: *So do you have a good understanding of what's meant by due diligence exercise? Due diligence process?*

A: *Well in general terms, yeah, it's a an exercise where in this case council needed to satisfy itself that well first of all the information that we'd been given by this particular proponent was accurate and complete; that they had the capacity to perform what was required of them under the proposed arrangement, you know, in terms of experience and you know, resourcing, both, you know, staffing and equipment, whatever necessary equipment may be required et cetera et cetera as well as financial wherewithal given the you know, the expenditures associated with the and the overheads associated with operating the facility. So that would be that's my sort of impression of what would have been*

Q639 *Would you agree that that would be a prudent exercise to undertake prior to entering into the licence agreement?*

A *Yes. Yeah, of course*

Titanium – a brief analysis

477. It is relevant at this point to consider the information that the Council could have readily obtained about Titanium and its sole director. The investigation reviewed material publicly available on Titanium Enterprises' website, conducted "Google" searches and searches of ASIC records.
478. Titanium was registered on 8 August 2008. Mr Salvato was its sole director and secretary. Titanium had an issued capital of \$10.
479. Mr Salvato had been, but was no longer, a director of Benbrush Pty Ltd, Keenfit Pty Ltd, Northern Investors Pty Ltd, Pearlbreeze Pty Ltd and Port Biggs Pty Ltd. He had held small shareholdings in Pearlbreeze Pty Ltd, Northern Investors Pty Ltd and Pinmark Australia Pty Ltd.
480. As noted earlier, Council's auditors reported that Mr Salvato operated his business under the business name of Titanium Enterprises. This appears to be incorrect.
481. The website of Titanium Enterprises indicates that its Chief Executive is (currently) Kieran O'Connor. It describes itself as a privately owned and operated group of companies and operates under 15 Titanium Group Companies and 4 Titanium Group Trusts.
482. A search of the directorships held by Carlo Salvato revealed that he was never an officeholder in Titanium Enterprises. Rather, it appears that Mr Salvato was an employee of Titanium Enterprises and held a managerial role with a company within that group.
483. Titanium's letter of 3 December 2009 had given its address as Level 29 Chifley Tower, 2 Chifley Square Sydney. These are serviced offices, leased on a monthly basis.
484. Titanium's annual report for the year ended 30 June 2009 was not audited, despite the requirement in the tender. It showed sales of \$936,475 in the year and a profit before tax of \$203,588. It showed current assets of \$62,718, and \$150,000 goodwill.
485. It is interesting to note that Titanium's annual report for the following year (not available at the time of the tender) does not record any business activities in

the previous year, nor any assets or goodwill. Again, the annual report (which was only sought by the Council in May 2013) is unaudited.

486. The documents supporting Titanium's tender imply that it was part of or associated with Titanium Enterprises. The documents appear to be cut and pasted from various sources (including the website of Titanium Enterprises) in order to provide legitimacy for Titanium's claims of experience and expertise.
487. The documents produced by the Council and by Warton Thompson do not indicate that contact was made with Mr Salvato's former employers or with those that may have had dealings with Titanium.
488. Titanium's tender indicated that its bank was "*Balmain Commercial*"; there is no evidence that Council or Warton Thompson confirmed this or otherwise sought to clarify who the bankers were.
489. All of the evidence indicates that Council failed to adequately scrutinise and review Titanium's proposal, its history and its suggested alliances/association with Titanium Enterprises.
490. There is no cogent independent evidence that Titanium had either the requisite experience or capacity to secure Council's goals.

Report to Council of 6 April 2010

491. The granting of a licence for the operation of Hudson Park was considered as "urgent business" at the Council meeting held on 6 April 2010. As of this date, Titanium had already been allowed to commence operations at the Golf Course. The relevant extract of the minutes of the meeting has been reproduced hereunder:

Urgent Business - Hudson Park Golf Course Licence for Management

101/10

RESOLVED: (Carney/Barron)

1. That Council note the results of the negotiations for a licence to manage Hudson Park Golf Course and that the offer by Titanium Golf Management Pty Ltd (Titanium Golf) is the most advantageous proposal and is better than the best submission that Council received from the tender process.
2. That Council note that the existing licensee Stacey Holdings Pty Ltd provided 1 month notice that they are terminating the current licence agreement effective 31 March 2010.
3. That Council give public notice of the intention to enter into a licence agreement with Titanium Golf as per the requirements of section 102 of the Crown Lands Act 1989.

4. That should no submissions be received Council enter into a licence agreement with Titanium Golf for management of Hudson Park Golf Course for a period of five (5) years plus a further five (5) year option.
5. That the Mayor and General Manager be authorised to sign and affix the seal to the deed document and forward the deed for the Ministers Consent.

Voting on this item was unanimous.

492. The resolution indicates that Council officers had advised the Council that the negotiations with Titanium had been concluded. This was not the case.

The "interim" licence

493. On 19 March 2010 Council had provided a draft licence agreement to Titanium. The licence was for 6 months, expiring on 30 September 2010.
494. Council, having allowed Titanium to commence operations without the requisite licence, was then in a position of still having to negotiate the terms of the licence. Council records indicated that it provided a revised version of the interim licence to Titanium on 19 May 2010.
495. On 31 May 2010, Mr Salvato advised that he would be dropping off the signed copies of the licence that week, which would seem to indicate that the terms of the licence had been settled. However, it appears from subsequent records that they were not.
496. On 4 June 2010, Mr Bourke wrote a memorandum to the Mayor and Mr Backhouse asking that the interim licence be signed. The memorandum provided:

The interim licence agreement allows management of the course in the period of 6 months from the cessation of the previous licence agreement on the 31st March 2010 until Council obtains ministerial consent for the substantive licence agreement on the Crown Reserve. The agreement has been prepared by Councils Solicitors based on the standard licence agreement format for Crown Land and will be similar to the final substantive licence agreement.

497. On 25 June 2010, Mr Bourke provided a further briefing to the Mayor and Mr Backhouse advising that the terms of the interim licence had now been agreed and asking that the interim licence be signed by the Mayor and Mr Backhouse. On 1 July 2010, Mr Bourke provided a further memorandum to

the Mayor and Mr Backhouse providing more detail of the outcomes of the negotiations with Titanium. The report echoed the report of 17 March 2010. It described Titanium's offer in the following terms:

The most advantageous offer for management of Hudson Park Golf Course was the submission from Titanium Golf that provides both a vision and new direction to increase patronage, significant capital investment and better financially that [sic] the best offer in the tender.

498. The report advised:

Titanium Golf offered Council significant improvements/redevelopment that include:-

- *construction of a new outdoor licensed kiosk / café facility,*
- *upgrade to signage and driving range equipment,*
- *significant capital investment based on reinvestment of 50% of net profit*

The report set out forecast capital expenditure of \$550,000 over 5 years, the improvements to management and marketing and an increased revenue stream. As he had done previously, Mr Bourke asked that the interim licence be signed by the Mayor and Mr Backhouse.

499. Despite requests, Council has not provided a signed copy of the interim licence to the investigation.

500. There are significant errors in the unsigned version of the interim licence provided by the Council, not the least of which was the inclusion of clauses that assume the licence would be for a number of years.

501. In responding to the draft report, Mr Bourke advised that Council had engaged external lawyers to review the draft interim licence. The Council has not provided any documents recording the request, nor any advice provided to the Council.

The granting of a licence to Titanium

502. In November 2010, the Council took action to secure the requisite Ministerial consent for the granting of a licence to Titanium. At this time, Titanium had been operating the golf course for seven months. The investigation has not been able to establish the reason for the delay in seeking the Minister's consent. On 30 November 2010, Mr Bourke provided a briefing to the Mayor and Mr Backhouse advising:

The licence agreement for Hudson Park Golf Course expired in April 2010. Titanium Golf Management Pty Ltd has been the interim licensee since that date.

A 5 year with 5 year option licence has been prepared and has been:

- *Prepared by Solicitors Maddecks. [sic]*
- *Updated by Peter Fahey.*
- *Overviewed by Strathfield Council's Solicitor Geoff Baker.*
- *Forwarded to the Minister for Lands, The Hon. Tony Kelly MLC for approval.*

The licence agreement was forward [sic] to the Minister on Friday 26 November 2010 seeking approval as the licence agreement is for a period greater than 5 years.

When the licence agreement is returned from the Minister it will be prepared for signature by the Mayor and General Manager,

It will be then forward [sic] to Titanium Golf Management Pty Ltd for their signature(s).

503. On 1 December 2010 Mr Bourke provided a further briefing to Mr Backhouse, generally in the same terms as the 30 November 2010 briefing.
504. The licence records it was signed on 11 March 2011 but the Minister's consent was not obtained until 8 June 2011. A copy of the Licence has been provided as an appendix.

Appendix 40 - Licence

505. The delay in the signing of the licence and in the obtaining of the Ministerial consent can partly be explained by the apparent loss of correspondence sent to the Department of Lands. More relevantly, it took from mid-December 2010 until 24 March 2011 for the Council to respond to alterations to the licence that were required by the Land & Property Management Authority.
506. Part 14 of the then current version of the *Reserve Trust Handbook* provided clear advice on the processes to be adopted when granting licences. This advice was not followed by the Council. Council's processes represented a significant departure from these processes. The relevant extract from the Handbook has been provided as an appendix.

Appendix 41 - Extract from Reserve Trust Handbook

Commencement date of the licence

507. The licence expressed itself to have commenced on 1 April 2010. However, in the absence of the Minister's consent, the licence did not take effect until 8 June 2011. At that time Titanium had been in possession and operating the business for over a year.
508. The commencement date of the licence appears to have simply ignored that the Council had purportedly entered into an interim licence that was to operate for a period of six months from 1 April 2010 to 30 September 2010.
509. In the absence of some express or implied surrender of the interim licence, the 5 year licence could, on the face of it, only commence after the interim licence had expired. Alternatively, the commencement date may be indicative that an interim licence was not ultimately granted.
510. Given the paucity of Council records pertaining to the granting of the licence, it is now not possible to make a finding as to the reason why the licence indicated a commencement date of 1 April 2010.

The licence

511. Titanium's obligations under the licence included:
- payment of the licence fee by monthly instalments
 - construction of a new kiosk within 6 months of the commencement date (i.e. 1 October 2010) and detailed its general size
 - investing at least 50% of its net profit into capital works
 - providing information to the Council, including monthly reports regarding the conduct of the business and provision of its audited financial statements
 - indemnifying the Council from all claims arising from its occupation and use of Hudson Park
 - not to grant a sub-licence.
512. The licence did not require Titanium to provide a bank guarantee or security deposit.

513. The licence permitted the Council to audit Titanium's records and required quarterly meetings between Council and Titanium to discuss compliance and other issues.
514. The licence attached the business plan. Under part 1.3, it detailed the forecasted capital needs, costs and timeframes. However, it failed to impose an obligation to undertake any work to give effect to the plan.
515. Council's responsibilities included:
- Collecting the licence fee (initially \$488,400 per annum (including GST))
 - Calculating and imposing the annual CPI adjustment
 - Adjusting the licence fee to the current market rental (if thought fit)
 - Rendering and collecting other charges
 - Collecting interest payable on overdue money
 - Ensuring Titanium's compliance with the terms of the licence
 - Ensuring the business plan was updated annually
 - Participating in the meetings required by the licence
 - Providing particulars of any claim that it received arising from Titanium's occupation and use of Hudson Park
 - Otherwise ensuring that Titanium complied with the terms of the licence.
516. It is important to note that the terms of reference for the investigation did not require consideration of Titanium's conduct and performance. However, to the extent that Titanium breached or failed to comply with the terms of the licence, the terms of reference required consideration of how Council responded to and/or managed those breaches or failures.

Council's administration of the licence

517. The then current version of the *Reserve Trust Handbook* provided:

The rents received under leases and licences often represent a significant part of a reserve's income. It is therefore important that the trust makes sure the lessee or licensee is:

- *obeying the terms of its lease/licence*

- *paying rent and other money on time*
- *not doing anything that is inconsistent with the lease/licence or the permitted purposes of the reserve.*

518. It further provided:

The trust's treasurer must monitor payments of rent or any other money payable under the lease/licence, and report any arrears or irregularities to the board as soon as they become apparent.

Collecting the licence fee

519. An initial licence fee of \$40,700 per month was payable. It was to be paid in advance on the 1st day of each month.
520. In November 2010 (prior to Council's execution of the licence) Titanium failed to pay the licence fee. Council appears not to have responded to this breach. In each of the months of July 2011, December 2011 and January 2012 Titanium also failed to pay the licence fee. As at January 2012, Titanium owed \$162,800 in unpaid licence fees.
521. In responding to the draft report, Mr Redman disputed the correctness of the foregoing statement. However it might be noted that on 31 May 2013 Mr Redman wrote to Titanium setting out the details of its default. The above figures are drawn from this letter.

Appendix 42 - Council's letter to Titanium dated 31 May 2013

522. In early December 2011, Council's then solicitor, Ms Monica Kelly, had been made aware of recovery action being brought against Mr Salvato. On 7 December 2011, she wrote a memo to Mr Backhouse and Mr Bourke emphasising the need to "*swiftly recoup the arrears and prevent further losses.*" She advised and expressed concern that Titanium's financial viability was questionable. The memo indicated that Council could terminate the licence and could charge interest. The email attaching the memo warned that Mr Salvato could be facing bankruptcy.
523. Council took neither of these courses. In January 2012, following negotiations, Council agreed to accept an additional \$10,000 per month to make up the arrears. Titanium failed to make the additional payments.

524. In April 2012, Council's then Manager Finance, issued a letter of demand and instructed Council's debt collectors to institute recovery proceedings. In April 2012, Titanium's solicitors alleged that Council had failed to maintain the golf course. Titanium's claim that it had suffered a loss of income arising from works undertaken by the Council was to serve as an effective barrier to any action for recovery.

525. Ms Kelly subsequently interviewed the grounds keepers responsible for the maintenance of Hudson Park. She communicated their evidence to Maddocks, who were providing advice to Council on the matter. Ms Kelly gave the following statement in relation to the events:

- 35 The grounds keepers had their diaries with them and they were able to give me clear answers, supported by their diary entries. The grounds keepers were credible and appeared honest in their answers.
- 36 After our meeting I drafted an email to Maddocks lawyers, who were assisting with the matter. Maddocks drafted an advice premised on the evidence I had provided and forwarded it to me in draft form to verify whether the facts were correct as laid out. I forwarded this advice to Mr Bourke seeking same. Mr Bourke's asked me to come to his office to discuss.
- 37 I walked to Mr Bourke's office and we had a conversation similar to the following
- RB "the facts are all wrong. Carlo is a business man and he's trying to run a business out there but he can't because those guys have stuffed up the grass. You can't play on the grass there they've really stuffed it up"
- MK "Well, that's not what your grounds keepers told me. They had their diaries with them and had it all written down"
- RB "Well, they're wrong and they're covering themselves."
- MK "Well, if Titanium are claiming loss Carlo needs to verify it. Have you received any audited reports from Titanium?"
- RB "Yeh, of course. They're on record"
- MK "I've seen a couple of reports with some financials in them but they're not audited"
- Mr Bourke looked confused
- RB "They were done by his accountant"
- MK "Yes, but an accountant is not an auditor. We need independently audited reports"
- RB "Yeh, yeh, they're alright"
- MK "No, it's not, we need audited reports. If Carlo is claiming loss then he needs to verify it"
- 38 I found no audited reports from Titanium. At some stage Mr Bourke forwarded me a document meant to explain Titanium's loss, however it had the same information in it from Titanium's financial report. It looked like the information had been cut and pasted from Titanium's document. Mr Bourke instructed me to forward this to Maddocks to assist with the final advice.
- 39 The final advice came back to me advising that Council owed Titanium money.

526. Mr Bourke disagreed with the advice of his staff. And, in part supported Titanium's claim that Council had failed in its maintenance obligations. On 20 June 2012, Mr Bourke authored a memorandum alleging failures on Council's part. A copy of this memorandum is provided as an appendix.

Appendix 43 - Robert Bourke's Memorandum of 20 June 2012

527. Council's solicitors noted, in their letter of 27 June 2012, that they were instructed to prefer the facts set out in Mr Bourke's memo of 20 June 2012, where an inconsistency arose.

528. On the recommendation of its solicitors, Council's efforts were directed to seeking particulars from Titanium about its claim with a view to resolving the matter by agreement.
529. While the letter advised that the licence contained a specific dispute resolution procedure, Council does not appear to have implemented the dispute resolution procedure. In this regard, it might be noted that Council's subsequent solicitors reminded it of the need to deal with this issue in an email dated 22 October 2013.
530. In the absence of any court proceedings, Titanium was under no pressure to particularise its claim for its losses. While it provided some information, it never fully particularised or quantified its claim. In a memorandum dated 15 February 2013 Mr Bourke recommended that Council waive 4 months of the licence fee. Further action for the recovery of the debt remained in abeyance until 31 May 2013 when Council wrote to Titanium demanding payment of the arrears. In doing so, it also required that Titanium provide a detailed report regarding the operation of the business, its audited financial statements and evidence of the capital works required by the licence.
531. While some of the information was provided by Titanium in response, it was not until March 2014 that Council commenced proceedings to recover the debt. By that time Titanium had failed to pay the licence fee for September, October, November and December 2013, as well as January 2014. The debt had risen to \$400,175.04. It might be noted that the amount does not appear to include the amount due under the interim licence. When asked about the likelihood of recovering the outstanding money owed to Council, Mr Redman said:

Q685: Have you given consideration at whether or not council's likely to recover the amount of the judgment debt against Titanium?

A: I haven't. My my own view is that I think that's probably unlikely. I look, I that's a personal view because there's a couple of factors. I don't know the financial position of the company; I mean, we haven't haven't yet sort of looked at that stage of the process and in terms of what assets may be available but I'm aware, through information that we've received

when we took the action to take over the facility, that there are a range of creditors and I think, you know, the likelihood of us receiving some or all of it is fairly low. But we're, as I said, pursuing the matter, you know, and attempting to enforce our our rights.

532. Had Council obtained the financial statements as at 30 June 2012 in a timely manner, it would have ascertained that Titanium's current assets substantially comprised a loan of \$40,644 to Mr Salvato. Given this and the concerns raised by Ms Kelly in her email of 7 December 2011, Council should have been alerted to the need to take timely action to mitigate any potential loss of income.

533. Pursuant to clause 11 of the licence, Council was entitled to terminate the licence if the licence fee was in arrears for 1 month. In November 2010, prior to Council's execution of the licence, Titanium had failed to pay the licence fee. In July 2011, December 2011 and January 2012, it again failed to pay the licence fee. On each occasion Council was entitled to terminate the licence, but did not exercise this power. The documents provided by the Council do not indicate that Council gave serious consideration to terminating the licence.

534. While clause 23 of the licence required that Titanium pay interest on overdue monies, Council did not implement this clause.

535. On 9 September 2014 an order was made to wind up Titanium. Titanium's statement of affairs lodged with ASIC reports that its sole asset is a motor vehicle said to be worth \$25,000. Its disclosed debts total almost \$585,000. Its major creditors are the Council (\$460,000) and the Australian Taxation Office (\$70,000).

536. Council failed to respond to Titanium's initial and subsequent defaults by taking decisive action. Its failure to do so has contributed to its current position, facing the impossibility of collecting a debt exceeding \$400,000.

Licence fee adjustment

537. The licence fee was to be adjusted annually in accordance with the variation in consumer price index (CPI). The licence contained a formula for doing so. Additionally, the licence fee could be adjusted (at the Council's discretion) in

accordance with the market licence fee payable for such premises on the third anniversary of the licence.

538. The Council failed to adjust the licence fee on either the first, second or third anniversaries of the licence.

539. When the Council eventually raised an invoice for CPI adjustments, on 17 June 2013, the invoice understated the amount of the adjustment. Council did not claim the full amount that was due to it until 28 August 2013, being an additional CPI adjustment amount of \$31,471. When asked about the delay in making the CPI adjustments, Mr Bourke said:

Q220: *Do you recall that the CPI adjustment was not done for a couple of years?*

A: *That was brought to my attention. Once again, financial the chief financial officer and their staff should have been monitoring at the time, they should have been monitoring CPI in terms of licence agreements and other fees and charges. So, it was their role to*

Q221: *To monitor that?*

A: *Yes.*

540. There was also a delay in the Council adjusting the fee to the current market rent this could have occurred on the third anniversary (1 April 2013) but Council did not write to Titanium to give notice that it had reviewed the rent in accordance with the market licence fee until 26 September 2013.

Titanium's obligation to provide information

541. Titanium was required by the licence conditions to provide Council with a copy of its audited financial accounts within 60 days of the end of the financial year. There is no evidence that Council requested that the accounts be provided when they were due.

542. The 2009/2010 financial statements should have been provided shortly after the commencement of Titanium's operations at Hudson Park i.e. no later than 1 September 2010 and as such should have been available to Council prior to it signing the licence in March 2011.

543. On 31 May 2013 Council wrote to Titanium requesting copies of its audited financial accounts for 2009/2010, 2010/2011 and 2011/2012. On 2 July 2013, Titanium provided unaudited accounts for 2009/2010, 2010/2011 and 2011/2012.
544. Council does not appear to have made a subsequent request for provision of the 2012/2013 audited financial accounts.
545. A review of the 2009/2010 financial accounts provided by Titanium indicates:
- The 2009/2010 financial statements do not include the previous year's figures that had been supplied to Council when Titanium submitted its proposal.
 - The 2009/2010 financial statements show a substantial decline in Titanium's financial position from that previously provided, as follows:
 - a decline in pre-tax profit from \$203,588 to \$17,187
 - a decline in capital and reserves from \$142,522 to \$12,041
 - the disappearance of unappropriated profits of \$142,512
 - no current assets.
546. The 2009/2010 statements suggest that Titanium Golf Management Pty Ltd had not traded prior to being allowed to commence operations at Hudson Park. Titanium's 2009/2010 financial statements bring into question its credibility and its suitability as a licensee. By 30 June 2012, Titanium's accounts were showing that it was trading at a loss. A loan of \$40,644 to Mr Salvato made up its substantial asset.
547. By the time that Council obtained Titanium's financial accounts its position had weakened to such an extent that any profits that might have been shared were gone. Further, it owed substantial licence fees.
548. Council failures to enforce Titanium's obligation to provide audited financial statements and its failure to request and/or obtain Titanium's 2012/2013 financial accounts indicate a lack of diligence in the exercise of its function as Trust Manager.

549. The relevance and importance of the failure to obtain any audited financial statements is further indicated in the following information from the Australian Securities and Investment Commission's website:³³

An auditor's report is a key tool when reporting financial information to users.

It is an independent opinion provided by an independent external auditor as a result of an audit, review or agreed procedures conducted on an entity.

The auditor's report is intended to provide an opinion to report users as to whether the applicable financial reporting framework has been applied in the preparation of the report, whether they are free from material misstatement and whether they show a true and fair view of the operating results, financial position and cash flows of the entity.

The business plan and required capital works

550. The licence attached a business plan. Perhaps most relevantly the executive summary of the business plan provided:

Titanium Golf has proposed to take over the Management of Hudson Park Golf Course for an annual fee of \$444,000 pa plus 50% of the net profit to be put back into the golf course for capital [sic. capital] works

551. Clause 1.2 provided:

Hudson Park will require extensive landscape work and improvements. This work will be continuous over a three year period. Work will be determined by both Strathfield Council and Titanium Golf on a priority basis and confirmed within the annual budget. Titanium Golf's ergonomic module will be utilized to improve playing surfaces by 15-20% under current budget allowances and will increase budget to reflect round growth.

552. Clause 1.3 of the business plan listed the forecast capital expenditure to ensure long term integrity of the golf course as being:

<i>Survey base of existing golf course</i>	<i>\$15,000</i>
<i>Tees Reconstruction/ Additional Teeing Area</i>	<i>\$130,000 (over 5 yrs)</i>
<i>Fairway Topdressing and Amendment Program</i>	<i>\$60,000 (over 2 yrs)</i>
<i>Requirements for additional subsurface drainage</i>	<i>\$25,000 (over 5 yrs)</i>
<i>Bunker reconstruction</i>	<i>\$150,000 (over 5 yrs)</i>
<i>Weed eradication program</i>	<i>\$20,000 (over 2 yrs)</i>
<i>Screen Fencing Improvements</i>	<i>\$150,000 (over 5 yrs)</i>
<i>Total</i>	<i>\$550,000</i>

³³

www.asic.gov.au

553. The licence required the licensee to conduct its business in accordance with the business plan agreed by the Council and Titanium. The licence provided for annual updating of the plan.

554. On 25 November 2011 Council wrote to Titanium in relation to re-turfing works. The letter stated:

The Council notes that Titanium Golf has certain obligations under Schedule 2 of the Agreement to invest at least 50% of net profit from the operation of the Hudson Park Golf Course back into capital works on the premises, in accordance with the business plan that is incorporated into the agreement. Council's payment for the works outlined above is without limitation to Titanium Golf's obligations under the Agreement. It is suggested that Council and Titanium Golf convene a meeting in the near future to discuss, and agree an updated business plan. In particular, the purpose of this meeting would be to examine and reprioritise the items listed in the "Capital Needs" Section of the business plan, taking into account the re-turfing work described in this.

555. Nothing appears to have come of this letter.

556. Subsequently, on 2 August 2012 Ms Kelly sent an email to Titanium's solicitors seeking a report identifying how Titanium's Business Plan was being adhered to and what improvements it had made. Titanium was invited to provide an updated business plan. Titanium responded, advising that it had undertaken certain refurbishment work, provided floodlighting, and had purchased driving range equipment. It declined the offer to put forward an updated business plan.

557. When interviewed, Mr Bourke acknowledged that the business plan was not updated.

Q354: *So, was there an arrangement to release him from responsibility in respect of the business plan?*

A: *No, I just think from because of the due course and the nature of what was happening, there was no way some of these works could be done because we were like, he was in arrears, we had problems with his expectations, our expectations in terms of what our standard was. So, because we had that conflict, which I stated very much upfront, a lot of these things weren't realised. He wasn't going to invest in that and nor by him being in arrears and so forth, we had issues then. So we had to go back to,*

firstly, reconciling the problems that we had and the issues with arrears before a lot of this would occur.

558. The evidence provided by the Council indicates the business plan was never updated, let alone annually, as the licence required.
559. Council failed to undertake the necessary steps to ensure that Titanium undertook a program of capital works:
- it failed to adequately define and mandate the provision of capital works within the licence or through updated versions of the business plan
 - no schedule of capital works was agreed with Titanium during the term of the licence.

Failure to take action to require construction of a new kiosk and other capital works

560. The one capital improvement that the licence did provide for was the construction of a new kiosk. The licence provided:

Subject to obtaining the Licensor's and the Council's (in its role as the statutory planning authority) prior written consent before undertaking any capital works, the Licensee must complete construction of a new kiosk at the Premises within six (6) months of the Commencement Date. The new kiosk must [sic] the following minimum specifications: the construction of an outdoor pavilion with BBQ facilities and a snack bar that would seat up to 50 people.

561. The licence expressed itself to have commenced on 1 April 2010. Accordingly, construction should have been completed by 1 November 2010.
562. The kiosk was not constructed within 6 months of the commencement date of the licence, nor was it constructed within 6 months after the Minister had given his consent to the licence. Ultimately, a new kiosk was never constructed. It goes without saying that this was a breach of the terms of the licence.
563. On 7 February 2011, Titanium provided a sketch of a new kiosk to Mr Bourke for discussion. Mr Bourke provided the following evidence:

Q264: *One of the requirements for the business plan was for the licensee to complete construction of a new kiosk at the premises within six months of the commencement date. I'm sorry, not of the business plan, of the special conditions of the licence.*

A: *Yeah, that's correct.*

Q265: *Can I show you an email from yourself to Melanie Sallis asking for some printouts. It also contains an email from Carlo Salvato to yourself of 7 February 2011 and what appear to be plans.*

A: *Be nice to do that.*

Q266: *I was about to ask you the obvious question: can you tell us what happened in relation to it.*

A: *That was just a concept he put up, he put forward.*

Q267: *So that was roughly ten months after the licence had commenced?*

A: *We'd been pursuing him earlier to give us something and, like I said, the relationship wasn't going as well as what we would have liked. If you read that, he has documentation regarding to the greens and the condition of the course, and so forth. So, had a bit of, I guess, a conflict with our relationship, council and the licensee which did cause over quite a few issues.*

Q268: *So, apart from receiving the concept plans, did anything else occur in relation to that proposal?*

A: *That, where he put it up, that was just a concept he put up.*

Q269: *You'd agree that one of the major factors of the licence for the licence agreement was to get these capital improvements and get the licensee to contribute to capital improvements?*

A: *Of course. That's always council's aim is to maintain and upgrade the asset in the best possible way. The issue as I said, and I'll say it again is that there was a falling out, and we had some ongoing issues with that and which caused a consistent approach, I guess, with the bit of conflict between the parties, what caused a few of the issues, and you'll notice how later on with the greens, that also extended to the problem down in terms of pursuing company improvements and profit sharing, and so forth.*

Q270: *You'll see in terms of the licence agreement, council put in that milestone, didn't it, that he had to be more consistent?*

A: *Yeah, well, I think that was part of his submissions.*

Q271: *And so can I suggest it was only six months into the licence agreement when that kiosk hadn't been built?*

A: *Well, the kiosk was already there. He'd done some minor works on the kiosk. It was existing use. He'd started to upgrade and do some works in the kiosk, and you'll see that by some of the financial statements he's made, that he injected some money into the pro shop and the kiosk. So, he believed at that time that that was sufficient.*

Q272: *Was it not council's expectation that there was going to be a new kiosk built?*

A: *No, there was already existing kiosk; it would be upgraded. A new kiosk would have meant upgrading the current one or coming up with the plan he put on the table there which never went anywhere. So, we sort of it was more based on the current building, upgrading the current kiosk that was there.*

Q273: *Well, certainly, at that six month point, nothing had occurred?*

A: *He'd done some minor works. He'd already updated minor work there, but it wasn't sufficient for council, council's expectation.*

564. Mr Bourke's evidence stands in stark contrast with the terms of the licence.

565. Titanium did seek approval to undertake some work on the existing kiosk. In an email dated 28 September 2012, Mr Bourke described the works as

... minor upgrading to his kiosk in order to sell food ,coffee etc

566. The limited nature of these works was subsequently confirmed in the *Statement of Environmental Effects* dated 2 November 2012, which emphasised that:

There will be no building works proposed to the existing structure, it will remain as it is.

567. In later correspondence between Council and Titanium, Titanium asserted that it had spent \$49,000 on upgrading the kiosk but this claim does not appear to have been verified.

568. There is no evidence that Council took any steps to require Titanium to comply with this condition of the licence. Council appears to have simply ignored the requirement for Titanium to construct the kiosk.

The indemnity

569. Clause 35 of the licence required Titanium to indemnify the Council against claims arising from its occupation, operation and use of Hudson Park.
570. In the period from 1 July 2010 to 27 March 2014 (shortly after the licence was terminated), Council had paid golf ball damage claims totalling \$44,112. On 9 August 2011 Council's then solicitor, Ms Kelly, advised Mr Redman that:

... all golf ball damage claims, and other claims stemming from the golf course, should be forwarded directly onto the licensee. Council should also instruct the claimant to deal directly with the licensee.

571. On the same day, Council's Risk Management Coordinator, Ms Marnie van Dyk, provided a memo to Mr Redman advising:

A review of the agreement signed with the Licensee of the golf course revealed that it was agreed that the Licensee indemnify Council from all liability. It is therefore recommended that any such claims reported from 1 October 2011 be handled by the Licensee.

A letter informing the Licensee of Council's intention to enforce paragraph 35 (Indemnities and Insurance) was compiled. It is strongly recommended that the letter be forwarded to the Licensee and confirmation of agreement be obtained.

572. Council failed to implement the recommendation. In a memo dated 3 May 2012, Ms Van Dyk advised:

Also this is a concern from a financial point as Council settles these claims without forwarding them to the insurance company because claims are generally below excess.

573. On 3 May 2013 Ms Marnie Van Dyk wrote to Titanium in the following terms:

Council has reviewed the "Claim form for golf ball damage" and a Privacy Statement was included. Please destroy any unused copies of the previous claim form and ensure this new form is implemented from 6 May 2013.

Please note that the new form also require [sic] that a photo of the damage be attached in order to validate the claim.

Do not hesitate to contact me on the above number if you have any further queries in this matter.

-
574. Council ignored advice from its solicitor that Titanium was responsible for golf ball damage claims. Council failed to ensure that Titanium met the costs of the claims.

Insurances

575. Titanium was required to effect and maintain public risk and property insurance for \$10,000,000 and \$875,000 respectively.
576. The then current version of the *Reserve Trust Handbook* emphasises the need to divest liability to licensees in the following terms:

In many cases, the major activities that occur on reserves are not carried out by the reserve trust itself. Reserves are used by a wide range of bodies, including sporting clubs, show and agricultural societies, commercial organisations and individuals providing services for the community.

In these cases, as the trust is not conducting the activity, it should not take responsibility for the risks involved and should enter into a suitable agreement that passes the responsibilities to the lessee or licensee.

577. Council's records were reviewed and copies of Titanium's certificates of currency for the periods commencing on 31 March 2011 and 31 March 2013 were obtained. Neither Council nor the investigation team was able to locate certificates of currency for 2010 or 2012.

578.A review of the certificates of currency provided by the Council indicates that property insurance to the required value was not provided. Further, the certificate of currency for the annual period commencing on 31 March 2013 indicates that Hudson Park was no longer covered by the policy.

579. Council failed to enforce Titanium's obligation to insure and failed to adequately scrutinise the evidence of insurance provided by Titanium.

The failure to secure a guarantee

580. The Council's failure to require or otherwise secure a performance guarantee warrants examination given Titanium's subsequent non-compliances with the terms of its licence.
581. Council was clearly aware of the need to seek some surety that a licensee would fulfil its obligations. It had previously issued a licence for Hudson Park

(to Stacey Holdings) that required a bank guarantee of \$75,000. The RFT indicated a bank guarantee would be required.

582. At the time Council determined to issue a licence to Titanium, it had been provided with Titanium's 2009/2010 financial statements. These showed current assets of \$62,718, made up of \$34,050 cash at bank and trade debtors of \$28,688. The total combined assets represented less than 2 month's licence fees that it would be required to pay the Council. It was also known that Titanium was a newly incorporated company with limited trading history and limited share capital.

583. Mr Backhouse gave the following evidence regarding the failure to require a guarantee:

Q734: Can I show you Titanium Golf Management's annual report for year ended 30 June 2009 and of course that expired basically within six months prior to the tender being conducted. If I can go forward a bit to the current assets. Now I assume that you've got some level of knowledge of reading financial statements?

A: Yes.

Q735: The financial statements I think indicate that the current assets are in the order of approximately \$62,000?

A: Correct.

Q736: Were you aware that council was negotiating a licence fee of about \$40,000 per month?

A: I think that did come back to us, yes.

Q737: Would you agree that the current assets then disclosed would properly represent about one and a half month's rent?

A: It would.

Q738: Would it be your view that council would be wise to seek a bank guarantee to support the payment?

A: We would normally have sought a bank guarantee for a some form of deposit and I'm aware now that didn't occur with them.

Q739: *Were you aware that the previous licensee, Stacy Holdings, had provided a guarantee for \$75,000?*

A: *Yes I am, yes.*

584. If Council had sought a bank guarantee, Titanium either would or would not have been able to provide it. This, in turn, would have provided the Council with an indication as to whether to issue it with a licence. The inclusion of a guarantee would have provided a litmus test of the financial capacity of Titanium to fulfil the terms of the licence.
585. Council failed to recognise Titanium's financial frailty and to take reasonable steps to ensure that independent resources were available should Titanium default.
586. It is not known why Council did not require a guarantee from Titanium but in not securing one, it exposed the Trust to a greater risk of financial loss.

Council's ongoing management of Hudson Park

587. Council has pursued a 2 pronged approach to the management of Hudson Park, while divesting the commercial aspects; it continued to remain responsible for the maintenance of the golf course. It was a somewhat unusual arrangement, emphasised by Chaloner Valuations in its review of market rent:

We note the circumstance of Hudson Park whereby the license fee covers both a golf course and a driving range is atypical. The majority of agreements examined and discussed with licensors or licensees are either one or the other rather than a combined facility.

We note the licence fees for golf courses are generally on the basis that the licensee will carry out the maintenance of the golf course. In regard to the subject, we note the trading figures of Hudson Park are such that income generation does not cover indicated annual maintenance fees. As such the Licence Agreement contained a provision for the Licensor being Strathfield Council to maintain responsibility for ongoing maintenance of the golf course. The Licensee in respect of Hudson Park assumes the role of collection of fees for both the golf course and the driving range and provides professional advice via a golf professional and operates the kiosk and the pro-shop including any retailing therein in return for payment of the licence fee.

588. Council's continuing responsibility for maintaining the course generated particular issues. While Council had attempted to define Titanium's responsibilities in the licence, it made no attempt to define its own

responsibilities in maintaining Hudson Park. This lack of definition served as a barrier to effective administration of the licence.

589. In a letter dated 29 April 2010 Titanium's solicitors drew Council's attention to the maintenance issue in the following terms:

A more difficult question arises in respect of the licensors (Sic. Council) obligation to maintain. We are instructed that the agreement between our respective parties is that in consideration for our client entering into the licence agreement and paying the licence fee that the licensor will maintain the golf course to a suitable standard. The question that of course arises is; what is the standard and what are the consequences in the event that the licensor fails to maintain the course.

Would you please advise the manner in which the licensor proposes to honour its obligations to maintain the golf course throughout the course of the license agreement.

590. On 3 May 2010 Council's Director Operations, Robert Bourke wrote:

Council intends to meet its obligations through the preparation of a service agreement that outlines the service levels undertaken. This agreement would be prepared during the interim period and may be appended to the final licence agreement.

591. No such agreement is appended to the licence and there is no evidence that Council developed a service agreement as anticipated. Similarly, there is no evidence that an operations manual for the golf course, that Council had developed, was ever incorporated into the arrangements between Council and Titanium.

592. In September and November 2011 Council wrote to Titanium advising that it would be undertaking re-turfing work. The letter outlined the nature of the work. While Council sought and obtained an indemnity against compensation from Titanium; the works were to form the basis of a claim against Council.

593. On 15 December 2011 Titanium wrote to Council asserting:

Titanium is aware that in its contractual arrangement that it is entitled to receive compensation has [as] a result of the greens been [sic] unplayable to a reasonable standard. I stress at this stage this is not Titanium's intentions.

594. As Council pressed its claim for the then outstanding amount of \$168,259.35, Titanium asserted its claim for compensation. As noted earlier, Mr Bourke

authored a memorandum dated 20 June 2012 that lent weight to Titanium's claim that it had suffered player loss over the period. This claim served to operate as a bar against resolute action by the Council in the face of substantial and continuing default by Titanium.

595. Council's lack of response to the claim highlights the underlying weaknesses of the arrangement, where its responsibilities in maintaining Hudson Park remained undefined.

596. Mr Bourke was the Director responsible for the oversight of Hudson Park. When interviewed, he described his role in the following terms:

My job is to ensure that the licensee, he's managed the land in accordance with the Crown's requirements and council's guidelines.

597. Notwithstanding this, Mr Bourke also sought to distance himself from Council's failure to adequately monitor and to respond to the various defaults. An extract of the evidence he provided that goes to his abrogation of his responsibilities has been provided as an appendix.

Appendix 44 - Extract from Record of Interview – Robert Bourke

598. Council has now taken over responsibility for Hudson Park. It operates the golf course and driving range. In order to move forward, Council convened a committee (task force) comprised of all councillors and relevant staff.

599. The Council engaged a consultant to provide it with advice as to how it might proceed. It has subsequently invited expression of interests from parties who may wish to seek a licence to operate a business at Hudson Park. The outcome of this process is not known. However, Council must ensure that it does not repeat the maladministration detailed in this report if it decides to call for new tenders or otherwise issue a licence.

600. As at 4 November 2014, the task force convened to give consideration to the future of Hudson Park was no longer in place.

Conclusions Regarding Council's Management of Hudson Park

601. Council has demonstrated systemic failures in its management of Hudson Park in the 5 years since the request for tender was advertised.

602. At the outset, Council failed to adequately consider, develop and scope the tender for the redevelopment and management of Hudson Park. Council's management of the tender process was significantly flawed and involved breaches of the *Local Government (General) Regulation*.
603. Council failed to adequately scrutinise and review Titanium's proposal, its history and its claimed alliances. Council failed to recognise Titanium's financial frailty. It failed to take reasonable steps to ensure that independent resources were available should Titanium default.
604. The licence required Ministerial consent before it became operable. Ministerial consent was not obtained for a significant period. The processes outlined in the *Reserve Trust Handbook* were not followed.
605. Titanium was allowed to take over the operation of the golf course and driving range without a licence having been granted.
606. Both the interim licence and the licence were poorly drafted. Despite being warned that it needed to do so, Council failed to define its maintenance responsibilities and this in turn, served as a barrier to effective administration of the licence.
607. Council failed to implement the terms of the licence. Council failed to enforce Titanium's obligation to provide audited financial statements and did not adjust the licence fee annually.
608. Council failed to take reasonable steps to agree to and to ensure that all of the anticipated capital works were both enshrined in the licence and provided by Titanium. Council failed to enforce the licence requirement that Titanium construct the kiosk and further, failed to undertake the necessary steps to ensure that Titanium undertook a program of capital works anticipated in the business plan.
609. Council failed to respond to Titanium's initial and subsequent defaults by taking decisive action. Council's failure to take decisive action has contributed to its current position where it is seeking to recover a debt exceeding \$400,000.
610. Council failed to enforce Titanium's obligation to insure.

Other matters

i. Compliance with the Notice of Direction for Production of Documents

611. The investigation relied on Council records that were supplied pursuant to a *Notice of Direction for Production of Documents*. During the course of the investigation, it became apparent that some of the requisite Council records were not provided when the Council responded to the Direction.

612. The existence of additional records that had not been supplied became apparent upon review of the documents that were provided, which indicated that other relevant records existed. The existence of further documents was also adduced from further enquiries, on attendance at the Council and from the review of submissions received on the content of the draft report.

ii. Audit of 2011/2012 annual financial statements

613. Council's 2011/2012 annual financial statements were audited by Council's previous auditor, notwithstanding that their term as Council's auditor had expired.

iii. Half yearly inspection of accounting records for 2012/2013 financial year

614. Council is required to have its accounting records subject to a half-yearly inspection i.e. in between the annual audit of its accounts.³⁴ Council's accounting records do not appear to have been subjected to the required half-yearly inspection during the 2012/2013 financial year.

615. The requirement for the inspection was foreseeable. However, as noted earlier, the process for appointing the auditor was not commenced until January 2013 and wasn't completed until July 2013. Given this, the Council did not have an auditor to conduct the required inspection during the course of the 2012/2013 financial year.

616. The regulatory requirement for such inspections reflects the importance of the regular and timely external review of the Council's accounting records. Council's auditor would normally provide a council with valuable written feedback and advice following such inspections.

³⁴ Pursuant to the section 426(b) of the Act and the stipulated by clause 228 of the Regulation.

617. The failure on the part of the Council to appoint its auditor in a timely manner meant it did not have the benefit of this advice and feedback between the 2012 and 2013 annual audits. The maladministration which gave rise to the circumstance where this important assurance activity was not undertaken is therefore serious.
618. The need to complete the audit tender process in a timely manner, in order to enable the interim audit to be undertaken, was brought to Mr Redman's attention by Ms Bourke. Given this, and as the responsible Director, Mr Redman must bear a substantial degree of responsibility for the non-compliance with the Act.

iv. Conduct of the General Manager

619. The investigation identified matters pertaining to the conduct and performance of Mr Backhouse which warrant consideration by the elected Council. A recommendation has been made to this effect.
620. The evidence in this regard indicates that on 17 May 2010 a letter was signed by the General Manager, Mr Backhouse, accepting IPG's offer of 6 May 2010 for a period of 12 months.
621. When interviewed, Mr Backhouse expressed doubt as to whether the signature on the letter was his but did not deny it. He acknowledged that:
- he was aware of the proposed retainer arrangement,
 - that he would have been happy to sign the letter,
 - that he agreed with the proposition put to him, that Council had entered into a contract with the International Property Group, when it issued the letter to them on 17 May 2010, and
 - that on the advice he had received, he had no concern with Council entering into such a contract.
622. It is significant to note that none of Mr Backhouse's subordinates had the requisite delegation to enter into the contract.
623. While Mr Backhouse advised that he had received advice from both Mr Redman and Mr Wong that IPG or a related entity was under a "government contract", he did not check that himself, or require proof that it was the case.

624. Again, as has been indicated earlier in this report, the investigation has formed the view, on the entirety of the evidence available to it, that Mr Backhouse did accept IPG's offer of 6 May 2010. In coming to this conclusion the investigation expresses itself to be satisfied on the "Briginshaw" standard.
625. On 3 May 2011, Council's General Manager, Mr Backhouse, sent an email to Mr Elvy of IPG advising Council's agreement to extend the contract for a further 12 months. The authorship of this email has not been disputed. Given this, the investigation has similarly formed the view, on the entirety of the evidence available to it, that Mr Backhouse did accept IPG's further offer of 3 May 2011. In coming to this conclusion the investigation expresses itself to be satisfied on the "Briginshaw" standard.

v. **Council's response to the draft report**

626. Council, as a body politic, was provided with the opportunity to make a submission on the content of this report prior to it being finalised. Its response³⁵ has been included as the final appendix to this report.

Appendix 45 - Councillors' response dated 14 August 2015

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Appendix 1

Notice of Decision to Conduct an Investigation

NSW OFFICE OF LOCAL GOVERNMENT**NOTICE OF DECISION TO CONDUCT AN INVESTIGATION
AND INSTRUMENT OF AUTHORISATION AND DELEGATION
LOCAL GOVERNMENT ACT 1993**

I, **Ross Woodward**, Chief Executive of the Office of Local Government, have determined that there should be an investigation pursuant to section 430 of the *Local Government Act 1993* into those aspects of Strathfield Municipal Council and its work and activities set out in the Terms of Reference below:

Terms of reference

To investigate and report on:

- 1) Whether there has been maladministration and/or serious and substantial waste of local government money in relation to Strathfield Municipal Council's:
 - a) procurement and expenditure on services from the International Property Group Pty Ltd (ACN 117 214 829);
 - b) procurement and expenditure on legal services and associated professional advice since 1 July 2011;
 - c) decisions of 7 May 2013 and 2 July 2013 pertaining to the appointment of an external auditor and the related tender processes.
- 2) Strathfield Municipal Council's conduct and performance as the Trust Manager of the Hudson Park (R62163) Reserve Trust since 1 July 2009.
- 3) Any other matter that arises directly from the principal investigation of the Council's work and activities set out in the terms of reference.

AND

Pursuant to section 745(1) of the *Local Government Act 1993* and any other power or delegation enabling me to do so, I hereby DELEGATE to Richard Murphy and Angus Broad, Senior Investigators, Office of Local Government all the powers and functions of the Director General under sections 430, 431 and 432 of the Act, for the purpose of conducting the investigation.

I also direct and authorise Christopher Duff, Senior Performance Analyst, Office of Local Government to assist in the conduct of the investigation.

This instrument takes effect from the date of signature.

Signed this *4th* day of *March* 2014



Ross Woodward
Chief Executive
Office of Local Government

Appendix 2

NSW Ombudsman Fact Sheet



Maladministration

While the word '*maladministration*' is not used in the Ombudsman Act, it is a convenient word to describe the nature and scope of the general administrative review jurisdiction of the Ombudsman in relation to the NSW public sector.

In the Ombudsman's general administrative review role, the Office is able to investigate conduct of a public authority that appears to be:

- (a) *contrary to law,*
- (b) *unreasonable, unjust, oppressive or improperly discriminatory,*
- (c) *in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory,*
- (d) *based wholly or partly on improper motives, irrelevant grounds or irrelevant consideration,*
- (e) *based wholly or partly on a mistake of law or fact,*
- (f) *conduct for which reasons should be given but are not given,*
- (g) *otherwise wrong...'* (s.26(1))

The word '*maladministration*' is used and defined in the *Protected Disclosures Act 1994*, which provides that for the purposes of that Act,

'...conduct is of a kind that amounts to maladministration if it involves an action or inaction of a serious nature that is:

- (a) *contrary to law, or*
- (b) *unreasonable, unjust, oppressive or improperly discriminatory, or*
- (c) *based wholly or partly on improper motives.'* (s.11)

The conduct covered by the above terms in the Ombudsman Act and the *Protected Disclosures Act* includes:

• **Contrary to law:**

- › decisions or actions contrary to law or to lawful and reasonable orders from people or agencies with authority to give such orders
- › decisions or actions ultra vires (eg. the decision-maker had no power to make the decision or to do the act)
- › breaches of natural justice/procedural fairness
- › unauthorised disclosures of confidential information.

• **Unreasonable:**

- › decisions or actions so unreasonable that no reasonable person would so decide or act (eg. irrational)
- › arbitrary, partial, unfair or inequitable decisions or actions
- › applying a policy inflexibly without regard to the merits of an individual case
- › decisions or actions that do not take into account all relevant considerations, or that take into account irrelevant considerations
- › serious delays in making a decision or taking action
- › provision of wrong, inaccurate or misleading advice
- › failures to rectify identified mistakes, errors, oversights or improprieties
- › failures to properly investigate.

• **Unjust:**

- › decisions or actions not justified by any evidence or that are unreasonable
- › partial, unfair, inequitable or unconscionable decisions or actions.

• **Oppressive:**

- › unconscionable decisions or actions
- › means used to achieve ends are not reasonably proportional to these ends
- › abuses of power, intimidation or harassment.

• **Improperly discriminatory:**

- › inconsistent application of a law, policy or practices when there is no reasonable, justifiable or appropriate reason to do so
- › application of distinctions not authorised by law, or failing to make distinctions which are authorised or required by law.

• **Based wholly or partly on improper motives:**

- › decisions or actions for a purpose other than that for which a power was conferred
- › conflicts of interests
- › bad faith or dishonesty
- › decisions or actions induced or affected by fraud
- › misuse of public property, official services or facilities.

• **Irrelevant grounds/considerations:**

- › relevant considerations not adequately taken into account or irrelevant considerations taken into account
- › policies applied inflexibly without regard to the merits of each case
- › exercise of discretionary powers at the direction or at the behest of another (eg. acting under '*dictation*').

Maladministration

- **Mistake of law:**
 - › incorrect interpretation or application of the law
 - › ignorance of the law.
- **Mistake of fact:**
 - › decisions or actions based on information that is factually in error or misinterpreted
 - › important facts omitted from reports or deliberations, or ignored.
- **Failure to give reasons:**
 - › statements of reasons are not given when required by law or it is otherwise reasonable to do so
 - › statements of reasons are inadequate because all relevant issues are not addressed or the relevant criteria on which the decision is based are not stated
 - › reasons given are not comprehensible to the likely recipient.
- **Otherwise wrong:**
 - › negligent conduct
 - › results of decisions or actions are uncertain
 - › failures to give effect to lawful government or agency policy
 - › failures to give accurate, frank, impartial, complete or timely advice
 - › failures to honour commitments
 - › failures to meet acceptable or industry standards for public administration, good judgement, integrity and the like.

Maladministration and corrupt conduct

Maladministration can include conduct considered corrupt under the ICAC Act. Dishonest or partial exercise of official functions by a public official falls into this category. This is obviously conduct at the more serious end of the maladministration spectrum, as it must also involve criminal or disciplinary offences to constitute corrupt conduct under that Act.

Further information

For further information see also:

- *The Complaint Handlers Tool Kit* (2nd edition), NSW Ombudsman, June 2004
- *Good Conduct and Administrative Practice – Guidelines for state and local government*, NSW Ombudsman, August 2003
- *Protected Disclosures Guidelines* (6th edition), NSW Ombudsman, April 2009.

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street
Sydney NSW 2000

Email nswombos@ombo.nsw.gov.au

Web www.ombo.nsw.gov.au

General inquiries 02 9286 1000

Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524

Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450

We can arrange an interpreter through


TIS or you can contact TIS yourself before

speaking to us.

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 This fact sheet is one of a series produced by the NSW Ombudsman. Feedback is welcome.

Appendix 3

Notice of Direction for Production of Documents

Notice of Direction for Production of Documents**INVESTIGATION INTO STRATHFIELD MUNICIPAL COUNCIL
PURSUANT TO SECTION 430 OF THE LOCAL GOVERNMENT ACT 1993****DIRECTION TO PRODUCING PARTY**

Name	Mr David Backhouse
Address	Strathfield Municipal Council 65 Homebush Road STRATHFIELD NSW 2135

Pursuant to section 431 in Part 5, Chapter 13 of the *Local Government Act 1993*, you are hereby directed to produce the documents and things specified in the SCHEDULE to Mr Richard Murphy and Mr Angus Broad, being a duly appointed delegates of the Chief Executive of the Office of Local Government, on or before the date specified in this notice for production.

You must deliver or send the documents and things specified in the SCHEDULE to the address below so that they are received on or before the date specified for production.

DATE AND PLACE AT WHICH YOU MUST PRODUCE THE DOCUMENTS OR THINGS

Date: 4 April 2014
Place: Office of Local Government, 5 O'Keefe Ave, Nowra

ADDRESS TO WHICH DOCUMENTS OR THINGS MAY BE DELIVERED OR POSTED

<i>By Post:</i>	<i>By Hand:</i>
Office of Local Government Locked Bag 3015 NOWRA NSW 2541	Office of Local Government Level 2, 5 O'Keefe Ave NOWRA NSW 2541

SIGNATURE

Signature



Capacity: Delegate of the Chief Executive of the Office of Local Government

Date 14 MAR 2014

SCHEDULE

The documents or things you must produce are as follows:

Part A Council's dealings with International Property Group Pty Ltd (ACN 117 214 829) (IPG)

1. All files, correspondence, memoranda, presentations, diary entries, advices, reports, file notes and other records, letters of engagement, agenda, business papers, meeting minutes and other records of meetings, correspondence, invoices and records of payment, whether in written or electronic form held by or under the control of the Council, relating to Council's dealings with International Property Group Pty Ltd (ACN 117 214 829) (IPG) during the period commencing on 1 January 2008 to 4 March 2014, such documents including but not limited to the following:
 - a. Any tender and or call for expressions of interest called by the Council (pursuant to Part 7 Division 2 of the *Local Government (General) Regulation 2005* (the Regulation) or otherwise) for the provision of strategic property advice.
 - b. All reports to and resolutions of the Council pursuant to section 55 of the Local Government Act 1993 in relation to the procurement and/or provision of strategic property advice.
 - c. All records (including reports to and minutes of Council meetings) showing or tending to show Council's authorisation of the expenditure (pursuant to clause 211 of the Regulation), by which it provided/voted the funds necessary to pay IPG.
 - d. Council's decisions to procure services from IPG.
 - e. Instructions given to IPG.
 - f. Advice, assessments, reports and correspondence from IPG.
 - g. Invoices provided by IPG.
 - h. Council's records showing or tending to show Council's determinations to make payments to IPG including, but not limited to, approvals to pay, any related procurement requisitions and purchase orders.
 - i. Council's records showing or tending to show the budget allocations/cost centres/job codes that were used to allocate, apportion and/or otherwise account for the amounts of payments to IPG in relation to the Strathfield Town Centre project; the Strathfield Town Centre bus/rail interchange; Matthews Park and 51 Roberts Road Greenacre; an urban renewal project at Homebush; Council's operational asset register; 69 Redmyre Road Strathfield; Loftus Crescent Homebush; the Parramatta Road corridor; governance advice provided to the Council and general advice provided to the Council; or to any other project or activity.
 - j. All contracts between Council and IPG, together with any amendments or variations thereto.

3

- k. Any diary entries, meeting notes, file notes or any other records pertaining to meetings between councillors, Council staff or representatives and IPG in relation to meetings held on 24 March 2009, 7 July 2009 and 4 May 2010.
 - l. Any emails and email attachments sent by Council employees or its representatives to IPG and/or its representatives including but not limited to an email from Mr David Backhouse to Mr John Elvy of IPG, dated 3 May 2011 and all records of any such emails having been sent.
 - m. Any emails and email attachments received by Council or its employees from IPG and/or its representatives including but not limited to an email from Mr John Elvy of IPG to Mr David Backhouse, dated 3 May 2011 and all records of any such emails having been received.
2. All records pertaining to the marketing and sale of land known as Matthews Park being Lot 1 DP 588394, 51–55 Roberts Road Greenacre, including but not limited to :
- a. Correspondence and advice from IPG;
 - b. Records pertaining to selection of the selling agents;
 - c. Copies of the agency agreement pertaining to the appointment of the selling agents
 - d. Records pertaining to the receipt of the proceeds of the sale and any related disbursements.

Part B Council's procurement and expenditure on legal services since 1 July 2011

3. All files, correspondence, memoranda, presentations, diary entries, advices, reports, file notes and other records, letters of engagement, meeting notes, agenda, business papers, meeting minutes and other records of meetings, correspondence, invoices and records of payment (whether in written or electronic form), held by or under the control of the Council, relating to Council's procurement of and/or expenditure on the legal services provided to the Council since 1 July 2011 until 4 March 2014, such documents including but not limited to the following:
- a. A copy of the report to Council's meeting on 4 May 2010 in relation to the provision of legal services.
 - b. All records pertaining to any tender and/or call for expressions of interest (hereafter collectively referred to as the "tender") called by the Council (pursuant to Part 7 Division 2 of the Regulation, or otherwise) for the provision of legal services, which was used or otherwise relied upon by the Council in the procuring of and/or paying for legal services received by the Council since 1 July 2011 until 4 March 2014, such documents including but not limited to the following:
 - i. the request for tender
 - ii. the conditions of tender
 - iii. the tender evaluation plan
 - iv. any probity plan
 - v. records pertaining to the appointment of the tender evaluation panel
 - vi. records pertaining to the appointment of the probity advisor

- vii. all declarations of conflicts of interest by members of the tender evaluation panel or probity advisor
 - viii. the tenders/expressions of interests (including any associated fee schedules) of the law practices appointed as providers of legal services to Council pursuant to its resolution of 1 March 2011 and copies of any contracts entered into with those providers pursuant to that resolution
 - ix. all records pertaining to the evaluation of the tenders, including any evaluation templates and working papers
 - x. the tender evaluation report and all draft versions of the report
 - xi. the report to Council's meeting and all draft versions of the report (including any confidential report) recommending acceptance or otherwise of tenders
 - xii. the report of the probity advisor and all draft versions of the report
 - xiii. contracts entered into pursuant to the acceptance of the tender
 - xiv. any policy or procedure adopted by the Council in relation to the apportionment of work between the successful tenderers in the period from 1 July 2011 to 4 March 2014.
- c. All disclosures provided to Council pursuant to Division 3, Part 3.2 of the *Legal Profession Act 2004* by an Australian Legal Practitioner, other than from a barrister, in the period from 1 July 2011 to 4 March 2014.
- d. Council's records showing or tending to show Council's determinations to make payments to providers of legal services from 1 July 2011 to 4 March 2014 including, but not limited to, approvals to pay, the invoices received for legal services (other than from a barrister) from 1 July 2011 to 4 March 2014, any related procurement requisitions and purchase orders.
- e. Council's records showing or tending to show the budget allocations/cost centres/job codes that were used to allocate, apportion and/or otherwise account for the amounts of payments for legal services (other than from a barrister) from 1 July 2011 to 4 March 2014.
- f. All records (including reports to and minutes of Council meetings) showing or tending to show Council's budget allocations in relation to Council's expenditure on legal services from 1 July 2011 to 4 March 2014 by which it authorised the expenditure (pursuant to clause 211 of the Regulation) and/or provided the funds necessary to meet the expenditure.

Part C The appointment of the external auditor

4. All records pertaining to all tenders and or calls for expressions of interest (hereafter collectively referred to as the "tenders") called by the Council pursuant to Part 7 Division 2 of the Regulation for appointment of Council's external auditor as considered by the Council at its meetings on 7 May 2013 and 2 July 2013, including but not limited to:
- a. All files, correspondence, memoranda, presentations, diary entries, file notes and other records, meeting notes, meeting minutes and other records of meetings, whether in written or electronic form.
 - b. All recommendations to commence each tender process, approvals to commence each tender process, each request for tender, the conditions of each tender, the tender evaluation plans, all probity plans, the appointment of the tender evaluation panels, the

appointment of the probity advisors, all declarations of conflicts of interest by members of the tender evaluation panel or by the probity advisor, evaluation templates and working papers, the tender evaluation report and all draft versions of the report, the reports to Council's meetings and all draft versions of such reports (including any confidential reports), the reports of the probity advisor and all draft versions of the report.

- c. All contracts entered into pursuant to the acceptance of a tender.
- d. All records relating to Warton Thompson & Co's non-submission of a tender pursuant to Council's call for tenders dated 5 March 2013, including but not limited any records of communications between Council and Warton Thompson & Co and its representatives, including diary notes, telephone calls, memoranda and correspondence.

Part D Council's conduct and performance as Trust Manager of the Hudson Park (R62163) Reserve Trust

- 5. All records pertaining to Council's conduct and performance as the Trust Manager of the Hudson Park (R62163) Reserve Trust (the Trust) in the period from 1 July 2009 to 4 March 2014 including but not limited to all files, correspondence, memoranda, diary entries, advices, reports, file notes, agenda, business papers, meeting minutes and other records of meetings, correspondence, invoices and records of payment; whether in written or electronic form, held by or under the control of the Council, including but not limited to:
 - a. All correspondence from 1 July 2009 to 4 March 2014 between Council (in its own right or in its capacity as the Trust Manager) and the relevant Department administering the Crown Lands Act (the Department).
 - b. All resolutions of the Council (in its own right or in its capacity as the Trust Manager) from 1 July 2009 to 4 March 2014 pertaining to the Trust and any related reports, attachments, notices of motion and/or recommendations that gave rise to the said resolutions.
 - c. All records relating to tenders and/or calls for expressions of interest (hereafter collectively referred to as the "tender") called by the Council in its own right or as Trust Manager of the Hudson Park Reserve Trust for the management and/or operation of Hudson Park Golf Course and/or for the grant of a licence or lease for the use or operation of the Hudson Park Golf Course since 1 July 2009; such documents including but not limited to:
 - i. the request for tender
 - ii. the conditions of tender
 - iii. the tender evaluation plan
 - iv. any probity plan,
 - v. records pertaining to the appointment of the tender evaluation panel
 - vi. records pertaining to the appointment of the probity advisor
 - vii. all declarations of conflicts of interest by members of the tender evaluation panel or probity advisor
 - viii. all tenders/expressions of interests
 - ix. All records pertaining to the evaluation of the tenders including any evaluation templates and working papers
 - x. the tender evaluation report and all draft versions of the report

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- xi. the report to Council's/the Trust Manager's meeting and all draft versions of the report (including any confidential report) recommending acceptance or otherwise of tenders
 - xii. the report of the probity advisor and all draft versions of the report.
- d. All records pertaining to negotiations between the Council, the Department, Titanium Golf Management Pty Ltd and any other proponent culminating in the grant of a licence/s to Titanium Golf Management Pty Ltd.
- e. Copies of all licences and leases for the use or operation of the Hudson Park (R62163) Reserve that were effect at any time since 1 July 2009 and any related Ministerial consents.
- f. All records pertaining to Council's administration of any licences issued by the Trust that were effect at any time since 1 July 2009, including but not limited to:
- i. All communications from 1 July 2009 to date between Council, Council staff and and/or the representatives or agents of licensees from 1 July 2009 to 4 March 2014
 - ii. Records of payments of the licence fees and any other amounts payable under the licence
 - iii. All business plans lodged by to Titanium Golf Management Pty Ltd (Titanium) in accordance with schedule 2 to the Licence dated 8 June 2011 in the period from 8 June 2011 to 4 March 2014 and all records of meetings between the Council and Titanium in relation to the updating and/or variation to the business plan
 - iv. All reports provided by Titanium to the Council in accordance with schedule 2 to the Licence dated 8 June 2011 regarding the operation of its business
 - v. Copies of the audited financial accounts of Titanium for the operation of its business, provided by Titanium in accordance with schedule 2 to the Licence dated 8 June 2011
 - vi. Calculations of annual adjustments pursuant to clauses 14.3 and 14.4 of the Licence dated 8 June 2011
 - vii. All records of meetings between the Council and Titanium in relation to Titanium's business in accordance with schedule 2 to the Licence dated 8 June 2011
 - viii. All records of the investment of Titanium in capital works in accordance with schedule 2 to the Licence dated 8 June 2011
 - ix. All records relating to the construction of the kiosk by Titanium in accordance with schedule 2 to the Licence dated 8 June 2011
 - x. Records pertaining to unpaid licence fees and/or other amounts that may be owed to the Trust by Titanium including, the current status of the payment of those fees and any related legal advice or recovery action
 - xi. All letters, demands, court process, notices of termination and other correspondence pertaining to action taken by the Council pursuant to clause 11 of the Licence dated 8 June 2011 or arising from any failure by Titanium Golf Management Pty Ltd to comply with the terms of the Licence
 - xii. All communications from 1 July 2009 to date between Council, Council staff and Titanium (and/or the representatives or agents of such licensee) from 1 July 2009 to 4 March 2014 for indemnity pursuant to clause 35 of the Licence or for repayment of money paid in relation to golf ball damage and other claims
 - xiii. All records of a Certificate of Insurance and/or Certificate of Currency in respect of the insurance policies required to be effected by the licensees pursuant to any licence that was in effect since 1 July 2009.

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- g. All records pertaining to any audit of the Trust from 1 July 2009 to date.
- h. Copies of all annual reports for the Trust prepared and/or submitted pursuant to section 122 of the Crown Lands Act from 1 July 2009 to 4 March 2014.

Part E Council's policies and guidelines

- 6. The current and any previous version of Council's Procurement/Purchasing/Tendering Policies and guidelines operating from 1 January 2009.
- 7. The current and any previous version of Council's policies and guidelines pertaining to the making of payments to external suppliers operating from 1 January 2009.
- 8. The current and any previous version of Council's Business Ethics Policy operating from 1 January 2009.
- 9. Council's *Register of Government Contracts*.
- 10. Management letters issued by external auditors since 2009 and Council's responses.
- 11. Strathfield Town Centre Project Delivery Report authored by John Harston dated March 2009.
- 12. Any reports to meetings and Council resolutions pertaining to the Strathfield Town Centre project in the period from 24 May 2012 to 4 March 2014.
- 13. All reports and any related documents pertaining to any internal or external review of Council's procurement, records management and internal control systems, in particular, but not limited to those taken in response to the findings of investigations conducted by the Independent Commission Against Corruption in 2010 (Operation Centurion) and 2011 (Operation Danby).

INFORMATION FOR PRODUCING PARTY

You must, no later than the date specified in the notice:

- produce such of the documents or things referred to in this notice (other than privileged documents) as are in your possession.
- provide to the delegate, in respect of any document that is not produced, a statement:
 - that the document is a privileged document and the basis for this assertion, or
 - that the document is, to the best of your knowledge, information and belief, in the possession of a person who is identified in the notice, or
 - that you have no knowledge, information or belief as to the existence or whereabouts of the document.

You may produce copies of any documents you are ordered to produce, unless the SCHEDULE specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in PDF format on a CD-ROM; or
- (c) in any other electronic form that the party who prepared this order for production has indicated will be acceptable.

Your attention is drawn to the provisions of section 661 of the Local Government Act, which provides that a person who fails, without lawful excuse, to comply with a direction given to the person under Part 5 of Chapter 13 of the Act by a person authorised to give the direction is guilty of an offence. Maximum penalty: 20 penalty units.

Appendix 4

List of persons from whom statements were obtained

List of Persons from whom Statements were obtained

Date	Person Providing Statement
12 June 2014	Kim Appleby <ul style="list-style-type: none"> Formerly employed by Council as the Group Manager, Corporate Services
13 June 2014	Jocelyn Palmer <ul style="list-style-type: none"> employed by Council as a Community Lands and Services Manager
13 June 2014	Geoff Baker <ul style="list-style-type: none"> employed by Council as a Solicitor acted as a Probity Advisor to Tender Evaluation Panels authored report to Council on evaluation of expression of interests for provision of legal services.
16 June 2014	Aneet Singh <ul style="list-style-type: none"> Member of the panels that evaluated the tenders for the provision of audit services.
18 June 2014	Carol Chapman <ul style="list-style-type: none"> Employed by Council as a Procurement Coordinator
25 June 2014	Cathy Jones <ul style="list-style-type: none"> Employed by Council as Corporate Strategy Advisor
2 July 2014	Ms Monica Kelly <ul style="list-style-type: none"> Formerly employed by Council as senior solicitor
4 September 2014	Ms Jodie Bourke <ul style="list-style-type: none"> previously Council's Manager, Finance
15 April 2015	Mr James Ng <ul style="list-style-type: none"> Formerly employed by Council as a Legal Officer

Note:

Copies of the statements obtained from Ms Jodie Bourke, Mr Aneet Singh and Mr James Ng have been included as separate appendices.

Appendix 5

Office of Local Government Response

21 May 2015



Office of Local Government

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

Our Reference: A419294
Your Reference: bellinb
Contact: Richard Murphy
Phone: 02 4428 4191

Mr Bryan Belling
Partner
K & L Gates
Locked Bag 1
ROYAL EXCHANGE NSW 1225

21 MAY 2015

Dear Mr Belling

I refer to your letters of 14 April 2015 and 7 May 2015 indicating that you have received instructions from Strathfield Municipal Council (Council) concerning the pending *Report of the Section 430 investigation into Strathfield Municipal Council* (the Report).

I note your comments regarding the issue of a *Performance Improvement Order* (the Order) during the course of the section 430 investigation. Council has previously made submissions on this matter to the Minister for Local Government and the Minister has provided his response.

The advice provided by the Minister to the General Manager, Mr Backhouse on 4 June 2014 and to Council's then Mayor, Cllr Daniel Bott on 9 September 2014, emphasised that the purpose of the Order differs from the purpose of the section 430 investigation (the Investigation).

The Order focusses on the internal control systems that the Council should have in place. The Terms of Reference of the investigation are confined to three specific procurement processes and the administration of the Hudson Park Reserve Trust.

The decision to authorise an investigation under section 430 of the *Local Government Act 1993* (the Act) rests with the Chief Executive of the Office of Local Government. The issue of a Performance Improvement Order falls within the prerogative of the Minister. The two decisions and the processes that followed are independent of each other. To suggest otherwise misconstrues the processes and the events.

As you are aware, a draft report on the results of the investigation was prepared. In accordance with usual practice and in order to meet procedural fairness requirements, a number of individuals were invited to respond to relevant parts of the draft report.

Your letter indicates that you are aware that the Council's General Manager and Council's Director, Corporate Services were two of the persons invited to respond in this way.

T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
E olg@olg.nsw.gov.au W www.olg.nsw.gov.au ABN 44 913 630 046



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All persons who were invited to respond to relevant parts of the draft report took the opportunity to do so. Those responses are receiving due consideration. Where considered necessary, further enquiries may be undertaken and/or revisions may be made to the content of the report.

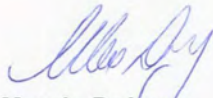
At this stage it is my intention to provide the Council as a *body politic* with the opportunity to make submissions on the report prior to it being finalised.

While the Office considers the process followed in conducting the investigation has been sound, I remain open to considering submissions regarding any perceived defect in that process. Should you wish to make such a submission then it should be provided no later than 4 June 2015. In this regard, it is otherwise my intention to endeavour to complete the process without undue delay.

Your initial letter suggested that you be provided the opportunity to make submissions on behalf of Council officers. I do not see this as an appropriate course of action. In this regard, Mr Backhouse and senior staff named adversely in the draft report have already been given an extended opportunity to respond. Further, I believe that Council's interests may differ from and conflict with the personal interests of Mr Backhouse and the other senior staff who have been adversely named in the report.

At the conclusion of the investigation, the results of the investigation will be reported to the Minister for Local Government pursuant to my obligation under section 433 of the Act.

Yours sincerely



Marcia Doherty
Chief Executive

Appendix 6

Performance Improvement Order

Local Government Act 1993**Order under section 438A**

I, the Minister for Local Government, issue this performance improvement order to the council specified in Schedule 1 to undertake the actions described in Schedule 2 within the period specified in Schedule 2.

I hereby appoint the person specified in Schedule 3 as *temporary adviser* to the council for the term specified in the Schedule.

This Order takes effect upon service on the council.

Dated: 24.7.14



The Hon Paul Toole MP
Minister for Local Government

SCHEDULE 1**STRATHFIELD MUNICIPAL COUNCIL****SCHEDULE 2**

The issue	Evidence of serious deficiencies with Council's internal control systems in the undertaking of procurement and purchasing.
Reasons for order – criteria – clause 413D Local Government (General) Regulation 2005	<p>Cl 413D(a) - Council has failed to comply with its legislative responsibilities, standards or guidelines.</p> <p>Cl 413D(b) - there are significant risks facing the Council that are not being addressed.</p> <p>Cl 413D(e) - appointment of a temporary adviser is necessary to restore the proper or effective functioning of the Council</p> <p>Cl 413D(g) – related matters have been previously raised by the ICAC, three reports commissioned by the Council, and Council's auditor</p>
Evidence supporting need for order	<p>ICAC Operation Torrens identified weaknesses in Council's record keeping in 2008.</p> <p>ICAC Operation Centurion identified weaknesses in Council's record keeping, tendering and procurement practices in 2010.</p> <p>Council's Internal Review of Purchasing in March 2012 identified significant control weaknesses in relation to procurement and the management of contracts.</p> <p>Council's Internal Review of Purchasing in September 2012 identified significant control weaknesses in relation to procurement and record keeping.</p> <p>Council's review of procurement in August 2013 reported specific</p>

	<p>concerns (as previously raised in the above reports) in relation to procurement practices.</p> <p>The Audit Management Letter of 29 October 2013 from Council's Auditors identifies procurements in breach of section 55 of the <i>Local Government Act 1993</i>.</p> <p>Despite the benefit of all the above reports, a review of Council's procurement practices by Sinc Solutions, as outlined in its report of 17 March 2014 and 4 June 2014, found prima facie evidence of:</p> <ul style="list-style-type: none"> • Breaches of section 55 of the <i>Local Government Act 1993</i> and the related tendering provisions of the Local Government (General) Regulation 2005; • A failure to enter into written contracts for the provision of goods and services in circumstances where such contracts would otherwise have been warranted; • A failure to keep and maintain proper and adequate records pertaining to procurement of goods and services; and • The making of payments for the provision of goods and services significantly in excess of amounts agreed to in the corresponding contract (contract variations). <p>The independent members of Council's Audit Committee have not been appointed by the governing body and there does not appear to be a delegation for the General Manager to have appointed those members. The appointments are inconsistent with the Office of Local Government's <i>Internal Audit Guidelines</i> and the Council's Audit Committee Charter.</p>
<p>Action required to improve performance</p>	<p>The Council is required the implement the following actions to improve its internal controls that have a direct impact on the procurement and purchasing of services and goods:</p> <ol style="list-style-type: none"> 1. Take immediate steps to implement internal controls to ensure that all procurement and expenditure on goods and services complies with all relevant statutory requirements and Council's policies, delegations and guidelines. <p>In doing so:</p> <ol style="list-style-type: none"> a. Utilise the services of the temporary adviser to assist Council in assessing the adequacy or otherwise of the existing system of internal control. b. Have due regard to the advice of the temporary adviser as to changes that are required to ensure Council has an effective system of internal control. c. Prepare an improvement plan (including milestones) with advice and direction provided by the temporary adviser requiring all required changes to be implemented within 12 months, or earlier if so advised by the temporary adviser. d. Require, for the next twelve months, the General Manager to report in writing to the monthly meeting of Council and

	<p>each meeting of the Internal Audit Committee, on progress against the improvement plan.</p> <ol style="list-style-type: none"> 2. Establish and implement an effective internal audit function having due regard to the <i>Internal Audit Guidelines</i> issued by the Office of Local Government under section 23A of the <i>Local Government Act 1993</i>. In doing so, adopt an audit plan for the next two years. 3. Without delay, review the appointment of Council's Audit Committee to ensure that the appointment process gave consideration to the <i>Internal Audit Guidelines</i> issued by the Office of Local Government under section 23A of the <i>Local Government Act 1993</i> and is in accordance with Council's Audit Committee Charter. 4. Engage a suitably qualified person approved by the temporary adviser to undertake a compliance review within 12 months to assess the implementation and effectiveness of Council's internal controls in ensuring that procurement and expenditure on goods and services complies with relevant statutory requirements and Council's policies, delegations and guidelines. 5. Report the findings of the compliance review to a public Council meeting and the Office of Local Government. 6. Ensure that the performance management process governing the employment of the General Manager, Directors and Council's <i>responsible accounting officer</i> is effective in ensuring that: <ol style="list-style-type: none"> a. appropriate performance criteria pertaining to the establishment and maintenance of effective internal controls over procurement and expenditure are stipulated in contracts of employment and performance agreements; b. the persons holding these positions are capable of fulfilling their responsibilities in regard to Council's internal control system; c. their performance in fulfilling these responsibilities is regularly and effectively assessed; and d. timely and appropriate action is taken to address poor performance. <p>In doing so, Council is required to:</p> <ol style="list-style-type: none"> a. have due regard to clauses 207 and 209 of the <i>Local Government (General) Regulation 2005</i>; b. assess the adequacy of its current performance management process; c. have due regard to the advice of the temporary adviser and/or other suitably qualified person; and d. prepare an improvement plan (including milestones) with advice and direction provided by the temporary adviser requiring all required changes to be implemented within 12 months or earlier if so advised by the temporary adviser.
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Who is required to take action	The governing body of the Council is responsible for ensuring the Council's compliance with the performance improvement order.
Reporting requirements and timeframes	Council is to provide the Office of Local Government with a monthly progress report detailing achievements measured against actions taken to improve performance, using any template provided by the Office. In doing so Council is to give the temporary adviser an opportunity to review the proposed progress report at least 7 days before it is given to the Office and is to give the Office a copy of the temporary adviser's comments (if any) on the progress report. A <i>compliance report</i> pursuant to section 438F of the Act is to be submitted to the Minister within 12 months from the service of this order on the Council. The report is to detail actions taken to comply with this order and the findings of the compliance review detailed in the order.
Evidence to be provided with reports	Documentary evidence to substantiate the actions taken and any improvements to Council's performance.
Period for compliance with order	12 months from the service of this order on the Council.
Options for further intervention	Expand terms of reference for current section 430 investigation, authorise a further investigation and/or suspension of the Council.

SCHEDULE 3

Appointment of temporary adviser	<p>Pursuant to section 438G of the <i>Local Government Act 1993</i>, that IAB Services be appointed as a temporary adviser to Strathfield Municipal Council for the period of 12 months from the service of this order on the Council.</p> <p>The temporary adviser shall have the following functions:</p> <ul style="list-style-type: none"> • to monitor the Council's compliance with the performance improvement order, and • assist the General Manager to ensure compliance with this order. <p>Pursuant to section 438G(7) of the <i>Local Government Act 1993</i>, the temporary adviser shall be paid from the Council's funds for the period of the appointment as agreed to under the terms of the contract.</p> <p>IAB Services has indicated that the estimated cost over the period will be \$54,000 (including GST).</p>
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Appendix 7

Procurement Policy

Procurement Policy

As at 25 August 2012



For more information contact Council on 9748 9999
or visit www.strathfield.nsw.gov.au / 65 Homebush Road, Strathfield NSW 2135



 STRATHFIELD COUNCIL	POLICY		
TITLE	PROCUREMENT POLICY		
DATE ADOPTED	25 August 2012	APPROVAL	General Manager
REVISED	n/a	REVIEW	2014
ASSOCIATED LEGISLATION	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Local Government (General) Regulation 2005 – Part 7 Tendering</i> • <i>Government Information (Public Access) Act 2009</i> 		
ASSOCIATED POLICIES	<ul style="list-style-type: none"> • Tendering Guidelines for NSW Local Government (Division of Local Government Circular 09-39) • Code of Conduct • Business Ethics Policy • Sustainable Procurement Policy 		

1.0 Introduction**1.1 Title and Commencement**

This policy is titled *Procurement Policy* and was adopted on 25 August 2012 by approval of the General Manager.

1.2 Background and Purpose of Policy

The objective of this policy is to set out the principles and framework for Council's procurement activities and to ensure that Council is at all times compliant with the *Local Government Act 1993*, *Local Government (General) Regulations 2005*, *Tendering Guidelines for NSW Local Government*, Council's Code of Conduct and Business Ethics Policy in relation to the procurement of goods and services.

1.3 Objectives of the policy

The objectives of the policy are to:

- provide policy and guidance on procurement activities to ensure consistency
- to set out Council's procurement framework, responsibilities and procedures

1.4 Coverage of the Policy

The policy applies to all procurement, tendering and contracting activities undertaken by Strathfield Council, other than statutory payments or payments for membership of Regional or State organisations and is binding on all Councillors, Council staff, suppliers, contractors and consultants.

2.0 Purchasing and Tendering Guidelines

Council's Purchasing and Tendering Guidelines provide guidance for Council staff in their day to day activities in managing purchasing, quotations, tendering and expressions of interest and contract management. The Guidelines are a set of documents that may be amended from time to time to incorporate changes to legislation and keep pace with best practice.

2.1 Financial Delegations for Procurement

Financial delegations define the financial limitations within which specified staff may approve a purchase, quotation and contractual processes. All procurement must be undertaken within these delegations.

2.2 Categories and Thresholds for Procurement

The minimum levels of procurement thresholds are shown below. It is not acceptable for procurement to be divided in smaller amounts eg order splitting to circumvent the requirements of this policy.

In the interest of maintaining efficiency in the purchasing process, subject to financial delegations, the following can be paid on presentation of an invoice or bill:

- Services such as utilities such as phone, power, water and gas bills that do not have purchase orders raised in the normal course of business.
- Refunds of deposits, bonds, overcharges or rates.
- Memberships of regional, state or national business-related associations or services.
- Emergency Works Orders for the supply of goods or materials/services which are required in an emergency or unplanned event.

Goods and services up to \$500 in value

Direct procurement may occur where expenditure on goods or services that will not exceed value of up to \$500 (inclusive of GST) in a twelve month period, provided pricing is competitive and approved within financial delegations.

Procurement may also be made using:

- a) supply contracts such as State Government, Local Government Procurement or Regional Organisations of Councils; or
- b) from an authorised Council preferred supplier.

Goods and services up to \$2000 in value

Providing the pricing is competitive, a supplier may be selected and direct procurement may occur where expenditure on goods or services that will not exceed value of \$2000 (inclusive of GST) in a twelve month period by:

- c) obtaining one (1) written quotation; or
- d) supply contracts such as State Government, Local Government Procurement or Regional Organisations of Councils; or
- e) from an authorised Council preferred supplier.

Goods and services \$2,000 to \$10,000 in value

Providing the pricing is competitive, a supplier may be selected and direct procurement may occur where expenditure on goods or services that will not exceed value of \$10,000 (inclusive of GST) in a twelve month period by:

- a) obtaining two (2) written quotations; or
- b) supply contracts such as State Government, Local Government Procurement or Regional Organisations of Councils; or
- c) from an authorised Council preferred supplier.

Goods and services over \$10,000 and up to \$75,000 in value

Providing the pricing is competitive, a supplier may be selected and direct procurement may occur where expenditure on goods or services that will not exceed value of \$75,000 (inclusive of GST) in a twelve month period by:

- a) obtaining three (3) written quotations responding to a written specification. An instruction to quote must be in the form of a written specification and the response from the supplier must be in writing and include all details requested in the instruction/specification. The selected offer for goods, equipment, works and services is to be documented in writing and records kept of all instructions and quotes; or
- b) supply contracts such as State Government, Local Government Procurement or Regional Organisations of Councils.

Goods and services over \$75,000 and up to \$150,000 in value

At least three (3) written quotes are required to be invited for goods and services being procured when the value exceeds \$75,000 (inclusive of GST), but does not exceed \$150,000 (including GST), subject to value for money being demonstrated.

The instruction to quote must be in the form of a written specification and the response from the supplier must be in writing and include all details requested in the instruction/specification. The selected offer for goods, equipment, works and services is to be documented in writing and records kept of all instructions and quotes.

The General Manager may determine that it is in the public interest to invite either public quotations/expressions of interest (EOI) or tenders if the nature of the work or service is such that the quotation system does not adequately cover Council's risks. Public quotations/EOIs and tenders will be advertised via Council's electronic tender portal "Tenderlink", a major metropolitan Sydney daily newspaper and a newspaper circulating in the local area.

Providing the pricing is competitive, a supplier may be selected and direct procurement may occur where expenditure on a good, service or material will not exceed \$150,000 (inclusive of GST) in a twelve month period or where such goods, services or materials may be obtained via supply contracts such as State Government or Local Government Procurement.

Exceptions for Goods and Services over \$2,000 but less than \$150,000

There may be exceptions where there is (a) a genuine urgent circumstance, (b) where there is only one firm or person capable or available to undertake the task, or (c) where it is a continuance of a previous specialised task. In such circumstances, the arrangement is to be commercially negotiated to achieve the best value for money. This exception can only be followed after written agreement by the relevant Director and/or the General Manager in accordance with established delegations of authority.

Goods and services over \$150,000 in value

An open tender process, or a selective tendering process preceded by a public advertisement asking for expressions of interest or by which recognised contractors listed by council are invited to tender for particular kinds of proposed contracts, in accordance with the *Local Government Act 1993* and the *Local Government (General) Regulation 2005* is required for contracts for goods and services where the value is \$150,000 or greater (inclusive of GST).

A full tender documentation and assessment process must be followed strictly in accordance with the above mentioned legislation (unless one or more of the exemptions contained in section 55(3) of the *Local Government Act 1993* are relevantly applicable.

Public quotations/EOIs and tenders will be advertised via Council's electronic tender portal "Tenderlink", a major metropolitan Sydney daily newspaper and a newspaper circulating in the local area.

2.3 Purchase Orders

A purchase order is Council's official document used to purchase goods or services from an external supplier. A purchase order confirms the contractual arrangement between Council and the supplier and is to be used for procurement of all goods and services up to \$150,000. Most purchases should have a purchase order issued. Please refer to the *Purchasing and Tendering Guidelines* for a list where a purchase order is not required.

3.0 Tendering

3.1 Methods of Tendering

Council will use one of the following methods when calling for Tenders:

- a) Open tendering - by which tenders for the proposed contract are invited by public advertisement
- b) Selective tendering - by which invitations to tender for a particular proposed contract are made following a public advertisement asking for expressions of interest
- c) Selective tendering - by which recognised contractors selected from a list prepared or adopted by the council are invited to tender for proposed contracts of a particular kind.

3.2 Shortening or Extension of Tender Period

Council may in certain circumstances shorten or extend the minimum 21 day tender advertising period in accordance with Clause 171 and 172 of the *Local Government (General) Regulations 2005*.

Reasons for shortening a tender advertising period must be provided in the tender documentation.

3.3 Advertising of Tenders

Tenders, Requests for Quotations and Expressions of Interest are to be advertised both in a major metropolitan daily newspaper as well as a newspaper circulating in the local area.

In addition to newspaper advertising, Tenders, Request for Quotation (RFQ) and Expressions of Interest (EOI) are to be invited through Council's electronic tender portal "Tenderlink" at www.strathfield.gov.au/tenderlink. Tenderlink allows prospective tenderers to download tender documents, as well as submitting tenders via an electronic tender box.

4.0 Procurement Protocols

4.1 Ethics and Probity

Councillors and Council staff shall at all times conduct themselves in accordance with Council's Code of Conduct, Business Ethics Policy and highest standards of ethical behaviour, which will:

- treat potential and existing suppliers with equality and fairness
- not seek or receive personal gain
- maintain confidentiality of 'commercial in confidence' information
- present the highest standards of professionalism and probity
- deal with suppliers in an honest and impartial manner that does not allow conflicts of interest
- provide all suppliers and tenderers with the same information and equal opportunity
- be able to account for all decisions and provide feedback on them
- not be involved in any activity such as performing work with suppliers, consultants or contractors

All business partners of Council including prospective partners must agree to the conditions set out in Council's Business Ethics Policy, which sets out the ethical standards expected of Council's suppliers and business partners.

4.2 Value for Money

Council funds are to be used efficiently and effectively to procure goods, services and works and every attempt must be made to contain the costs of the procurement process without compromising any of the procurement principles set out in this Policy.

4.3 Record Keeping

All substantive communications with potential suppliers in respect of purchasing and should be in writing and/or in formal minuted meetings. Records for all procurement activities must be kept and recorded in Council's records management system.

4.4 Lobbying

Lobbying of Councillors and staff by tenderers or their agents is not permitted and shall result in their disqualification from the tender process on that occasion. For the purposes of this clause "lobbying" shall include seeking to influence, seeking to obtain support or assistance, urging or persuading.

4.5 Gifts and Benefits

Anyone wanting to do business with Council must understand that business practices common in the private sector such as offering of gifts, benefits and incentives is not permitted at Strathfield Council. Under no circumstances should a gift of money or cash-type gift (eg gift cards) be made to a member of Council staff or councillor.

As offering of gifts and benefits may be perceived as an attempt to unfairly influence decisions and services, Council expects Councillors and Council staff to decline gifts or benefits. Council employees and councillors who are offered any gift or benefit must immediately inform the General Manager in writing.

Gifts and benefits are recorded in Council's Gift Register and Benefits Register.

5.0 Tender Specifications and Assessment Criteria

5.1 Specifications

Specifications used in tenders and quotations should be clearly written in a manner that encourages open and effective competition, ensures impartiality and objectivity, encourages sustainability and eliminates unnecessary requirements.

Specifications will not include any feature which discriminates, either directly or indirectly, against any supplier or group of suppliers. Specifications should encourage suppliers, wherever possible, to offer alternative options which can reasonably be adapted to meet requirements.

5.2 Assessment Criteria for Tenders

Tenders called by Council will be assessed using the following standard assessment criteria as a minimum. Whilst other criteria may be used which are more specific to each tender, the following criteria must be applied to all assessments:

Financial Assessment must include identification of all relevant costs, individual analysis of costings contained in each submission, and cost comparisons between all competing submissions. Initial and ongoing costs, must be identified and calculated in the process of assessment of tender submissions.

Capability Assessment shall include the experience of the tenderer and the experience and qualifications of the key personnel who will be operating the contract, including management and supervision, and the capability of the contractor to work within the relevant policies of Council.

Technical and Methodological Assessment shall evaluate how the tenderer proposes to fulfil the obligations of the tender, and whether the tender submission meets the requirements set out in the specification.

Work Health and Safety Assessment must be performed where the tender involves the completion of works of any description. When purchasing goods, materials or services for Council, the provisions of the *Work Health and Safety Act 2011* must be adhered to.

Environmental Assessment is required where environmental issues may be involved. All persons or organisations are requested to address environmental criteria if requested in tenders, quotations or expressions of interest.

6.0 Key Considerations in Assessing Tenders

6.1 Impartiality

Impartiality must be observed throughout the entire tendering process so as not to exclude or favour any tenderer

6.2 Insurance

The type and level of insurances required, particularly public liability insurance, will be investigated when arranging a specification for the particular contract.

6.3 Achieving Value for Money

Purchasing decisions should be made on the basis of value for money over the life cycle of products, rather than just the cheaper up-front purchase price.

This means minimising the total cost of ownership over the lifetime of the requirement consistent with acceptable quality, reliability, safety, risk and delivery considerations. Price is not the sole determinant of value for money.

6.4 Environmental Performance

Council's Sustainability Procurement Policy commits Council to procuring sustainable products and services that are cost competitive and where applicable:

- Minimise unnecessary purchasing – only purchase when a product or service is necessary.
- Minimise waste – purchase in accordance with reduce, reuse and recycle strategies.
- Save water and energy – purchase products that save energy and/or water.
- Minimise pollution – avoid purchasing products that pollute soils, air or waterways.
- Eliminate toxic products – avoid where possible purchasing hazardous chemicals that may be harmful to human health or ecosystems.
- Reduce greenhouse emission – purchase products that reduce greenhouse gas emissions.
- Achieve biodiversity and habitat protection – purchase in accordance with biodiversity and conservation objectives.
- Value for money – purchase the best value for money in the long term.

6.5 Transparency of Process

Principles of transparency, consistency and probity will be applied to all processes in the preparation, advertisement, assessment and management of tenders and quotations by Council.

6.6 Conflict of Interest

Any conflict of interest must be reported to the General Manager and dealt with immediately. This will apply to Councillors, Council staff and tenderers.

6.7 Accountability

Accountability is important as funds must be used in the most cost effective and efficient manner.

6.8 Risk Management

Risk Management is to be appropriately applied at all stages of the procurement process which must be properly planned and carried out in a manner that will protect and enhance the Council's capacity.

6.9 Monitor and Evaluate Performance

To ensure probity, on completion of each tender a formal performance review must be completed and documented by the Manager overseeing the tender.

6.10 Non Conforming Tender

A tender is nonconforming when there is an absence of any requirement clearly detailed in the Conditions of Tendering. If a tender received is non-conforming, the report to Council must state the reason why the tender was classed as non-conforming and not considered.

6.11 Tender Panels

A tender panel will be convened to oversee and assist in the calling, assessment and selection of specific tenders and quotations. The composition of the tender panel will involve Council staff expertise relevant to the area associated with the tender.

From time to time it may be necessary to utilise external expertise to assist the panel in development of specifications, assessment and selection. In these instances, the same standards of declaration of interests apply as those that apply to consultants and professional services. Any appointment of a consultant or professional services in a tender process must be approved by the General Manager.

All staff involved in preparing and/or assessing tenders are required to complete a Conflict of Interest Declaration.

7.0 Non-Compliance

Non-compliance with this policy may result in disciplinary action and/or dismissal.

7.1 Variation

Council reserves the right to vary the terms and conditions of this policy, subject to a report to Council.

This Policy is automatically amended as a result of any changes to the *Local Government Act 1993*, the *Local Government (General) Regulation 2005*, or other amending legislation, it being noted that the Act and Regulations take precedent over the Council's Policy.

Appendix 8

Legal Practice Policy


049

Legal Practice Policy

As at 24 March 2011



For more information contact Council on 9748 9999
or visit www.strathfield.nsw.gov.au/ 45 Hornsby Road, Strathfield NSW 2135

 STRATHFIELD COUNCIL	POLICY		
TITLE	LEGAL PRACTICE POLICY		
DATE OPERATIONAL	30 May 2008		
REVISED	24 March 2011	REVIEW	2014
RECORD	D/W no: 349488		
ASSOCIATED LEGISLATION	<ul style="list-style-type: none"> • Local Government Act 1993 • State Records Act 1998 		
ASSOCIATED POLICIES	<ul style="list-style-type: none"> • Strathfield Council Purchasing and Tendering Guidelines 		
ASSOCIATED PROCEDURE	<ul style="list-style-type: none"> • Strathfield Council Legal Practice Procedure 		

1. INTRODUCTION

1.1 Title and Commencement

This policy is titled *Strathfield Council Legal Practice Policy* as an operational policy and was originally approved by the General Manager on 30 May 2008. This policy has an associated procedure titled *Strathfield Council Legal Practice Procedure*. The following amendments have been made:

Date	Type	Authorisation
24 March 2011	Review – changes made to reflect new administrative structure of legal team comprising Principal Solicitor with an unrestricted Practising Certificate and a Solicitor or Legal Officer, review of processes, authority to commence legal proceedings and instructions to external firms or solicitor.	General Manager

1.2 Objectives and Coverage of the Policy

The objectives of the policy are to:

- Ensure that legal matters are handled in a consistent, effective and efficient manner;
- Clarify the roles and responsibilities of staff in managing legal matters;
- Ensure accurate record keeping and registration of legal documents;

- Uphold accepted standards of probity and ensure that due process is followed when dealing with legal matters;
- Provide financial accountability and value for money when approving legal expenditure;
- Ensure external legal services are engaged in accordance with the firms' offers of service to Council and Council's purchasing policy; and
- Manage Council's legal panel by allocating and managing matters, ensuring accurate and thorough reporting of matters, and billing are all in accordance with the panel firms' offers of service and Council's policies.

The policy applies to all Council staff, including contractors and consultants, and all departments and sections of Council.

1.3 Purpose

Council's Legal Practice Policy provides policy for the administration and co-ordination of the legal practice that is provided both internally and from external sources to Council.

2. POLICY

2.1 Preamble

Council regularly requires legal advice and legal representation on a wide range of Council activities to assist in achieving Council's corporate objectives.

2.2 Role of Council's Legal Team

Council's internal legal team comprises a Principal Solicitor and a Solicitor or Legal Officer. The legal team is under the direction of the Director Corporate Services and the General Manager.

Council's legal team is responsible for:

- Administration and co-ordination of all legal processes involving Council;
- Management and reporting of Council's legal budget;
- Providing instructions and monitoring the performance of the firms on Council's legal panel;
- Acting in an advisory manner on any legal matter, which includes, but is not limited to, the drafting and use of any legal document, including leases, licences, memorandums of understanding, contracts, disclaimers, legal statements and other agreements.
- Maintaining Council's Legal Register, which contains all executed documents to which Council is a party;
- Providing professional advice to Council, Executive and Council staff during investigations and on legal matters, including tenders and expressions of interests; and
- Managing litigation instituted by or commenced against Council.

Council is required by law to account for legal expenses in its Annual Report. Reporting of legal expenditure is also included as an indicator to Council's performance in the Division of Local Government's Comparative Reporting of Local Government. Council must carefully and prudently manage its legal expenditure.

2.3 Legal Register

The centralised registration and storage of executed documents to which Council is a party, is critical for the whole of the Council. Council's legal team is responsible for the management of such key legal documents.

2.4 Advisory Services

Council's legal team provides professional legal advice to Council staff across the broad range of Council's functions including complex or highly-sensitive matters. The legal team's role is to assist the elected Council and Council staff in decision making by ensuring that all good governance and legal requirements are adequately addressed. The legal team will not provide advice pertaining to any personal matter of any staff member.

2.5 Litigation

Court proceedings may be instituted against Council for numerous reasons. Council may also choose to commence proceedings for a variety of reasons, as approved by the General Manager.

It is the responsibility of the legal team to handle ongoing litigation in accordance with this policy by:

- Obtaining all necessary documentation;
- Implementing compliance of court orders, including subpoenas;
- Reviewing the file regularly;
- Reporting to the Director Corporate Services and the General Manager, where necessary, on the progress of the litigation;
- Monitoring and managing the litigation through a firm on Council's legal panel; and
- Assisting in the defence of the claim and achieving best possible outcome for Council.

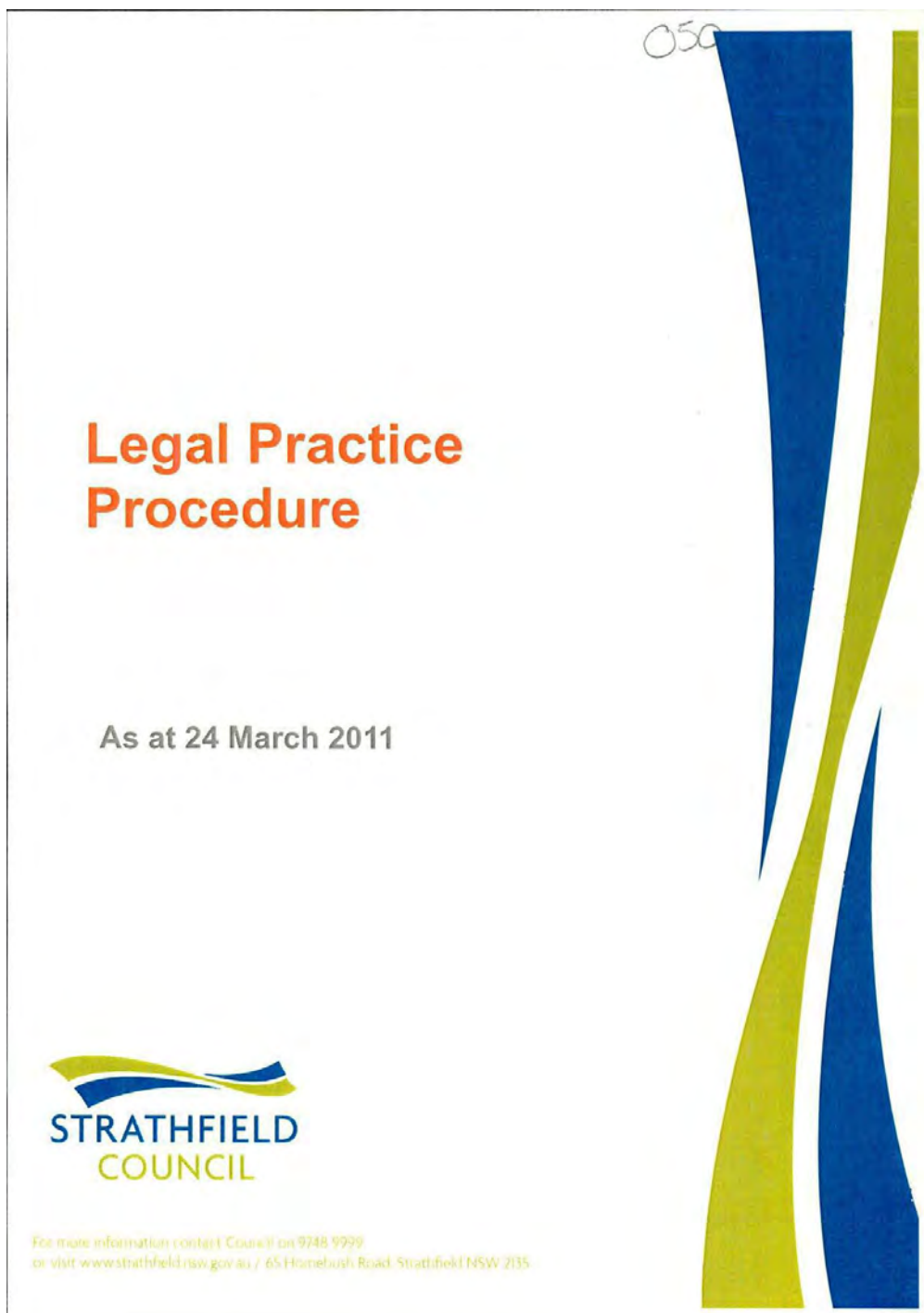
2.6 Record Keeping

Council is required under the State Records Act to keep a full and accurate record of business activities at Council. Records of significant legal activities affecting Council may also be required as State Archives.

All records relating to legal proceedings must be documented and stored in accordance with the State Records Act and Council's record keeping systems and procedures.

Appendix 9

Legal Practice Procedures



1. INTRODUCTION

1.1 Title and Commencement

This procedure is titled the Strathfield Council Legal Practice Procedure and is to be implemented alongside the Legal Practice Policy as approved by the General Manager on 24 March 2011

1.2 Purpose

The purpose of this procedure is to provide guidance to all staff members in relation to engaging with Council's legal practice, both internally and externally.

2. PROCEDURE

2.1 Role of Council's Legal Team

Council's legal team is comprised of the Principal Solicitor and a Solicitor or Legal Officer. The legal team has two primary roles:

1. To provide Council with legal and strategic advice on any matter the team is experienced in; and
2. To manage Council's legal panel.

In order to provide Council with legal and strategic advice on pertinent matters, the legal team will be accessible for discussion and verbal advice to Council staff. The legal team will prioritise requests for meetings, advices or preparation of advices etc based on the urgency and importance of the request or issue.

The legal team will prepare and draft advices, disclaimers, agreements, communications and other documents in consideration of the legal team's work load, knowledge of the matter and value for money.

The legal team will also consider when the best course of action is to engage a panel firm. In this event a member of the legal team may instruct and manage the firm for advice or representation in a court or tribunal or may advise another staff member to instruct a firm to provide advice.

Aside from any specific matter the legal team will also monitor and manage Council's legal panel by:

- Requiring all firms to report matters on a quarterly basis, including forecasting the longevity, expense and likelihood of success of the matters;
- Reporting on all matters to the Director Corporate Services as frequently as necessary;
- Monitor the performance of the firms and provide a detailed report at the time of engagement for legal practitioners;
- Instructing firms to act on Council's behalf; and
- Ensure payment of legal invoices.

2.2 Advisory Services

Council staff should seek advice from the legal team when initiating or responding to external communications (i.e. letters, phone calls, emails) in the following instances:

- Communications with law enforcement agencies, including but not limited to the ICAC, Ombudsman, Law Courts, Tribunals, and the NSW Crime Commission;

- Where interpretation of legislation is required and no corporate instruction, guideline or policy is available;
- A request from a third party for information, when legally privileged information may be involved;
- Where interpretation of complex advice is required; or/and
- Where legal proceedings have been commenced or likely to be commenced.

Requests for advice or review should be made in writing, with a Manager's sign-off and include the recommended dates of response. Generally allow 2-4 weeks for response. To ensure that all requests are carefully considered, it is important that such request is accompanied by sufficient instructions as to the relevant background information and actual services requested.

If requests require urgent response, please outline the reasons for the urgency.

It is at the discretion of the Principal Solicitor, in conjunction with the Director Corporate Services and/or the General Manager where necessary, whether advice is provided by the legal team or sourced externally from a firm on Council's legal panel. Once this decision is made, the legal team may instruct a suitably delegated staff member to instruct a panel firm to provide advice.

2.3 Litigation

In the event that Council is a party to a matter before a court or tribunal the legal team will coordinate the matter. The legal team will also support, assist and prepare any Council staff member who is required to appear or provide statements or other information before a court or tribunal.

In the case of appeals, cost recovery or costs hearings the legal team will only make decisions in consultation with the Director Corporate Services.

Either member of the legal team ordinarily accepts service of such documents on behalf of the Public Officer.

Other than the General Manager and the Director Corporate Services, only members of the legal team may engage a firm to commence proceedings. The Principal Solicitor may authorise a suitably delegated staff member to also instruct a panel firm to commence proceedings.

The staff member who is instructing the panel firm is responsible for instructing and managing the firm. The instructing staff member must ensure that all relevant Council files are obtained from the Records or other department and that those records are current at all times.

2.4 Legal Register

The legal team will assist Governance establish and maintain the Register of all documents executed by Council. The legal team will ensure the filing of the executed documents in Dataworks, also. The benefits of such a Register include:

- Quick and easy access to original documents (particularly where a dispute suddenly occurs);
- Fulfillment of audit function;
- Provision of a precedent/reference tool for all Council staff;
- Effective risk management tool; and
- Best practice legal practice management.

In the event that staff members other than the legal team have custody of executed documents, it is responsibility of the individual staff member and his/her manager to ensure that such documents are registered in Dataworks and forwarded to Governance for storage.

No staff member is to seek legal advice external of Council without the express consent of the Principal Solicitor, the Director Corporate Services or the General Manager. Consent to instruct a panel firm will only be granted to those staff members with the delegation to do so.

When requested by any member of the legal team for information all staff members must freely divulge all and any known information and provide any requested documents.

All agreements into which Council proposes to enter must be referred to the legal team for review and approval prior to being executed. The legal team will be responsible for arranging for execution of the agreements and their registration in the Register.

The Register will consist of:

- Computer database which contains information and agreements to which Council is a party; and
- All original signed agreements that are filed in number order in a secure location designated for that purpose.

2.5 Communications

Efficient, accurate and timely communication between Council officers and the legal team is critical, particularly where legal matters and court proceedings are involved due to time deadlines and cost implications.

The legal team must be copied into all emails with external legal providers. It is the responsibility of staff members to appropriately record all communications and avoid conceding liability or agreeing in principle on any point.

In the event that a staff member has been provided consent to instruct a panel firm for the provision of an advice, that staff member must:

- Ensure that all correspondence is filed and recorded appropriately and in accordance with Council's policies;
- Copy a member of the legal team into all correspondence between Council and the firm;
- Document, file and record all conversations relevant to the matter;
- Immediately notify the Principal Solicitor of any issue that arises that may effect the outcome, cost or running of the matter;
- Forward all invoices to the legal team;
- Avoid making any concessions to third parties other than Council's appointed solicitor.

Council deals with many legal documents, which must be vetted by the legal team prior to being forwarded to any third party. Briefly, any document with an execution clause should be treated as a legal document. Some examples of such documents are:

- Contracts;
- Memorandums of Understanding (MoU);
- Expressions of Interest (EOI);

- Agreements;
- Leases and licences;
- Deeds.

2.6 Subpoenas and Other Court Orders

When a subpoena for production or any other court order is served, the legal team will check the requirements of the order and request assistance with its compliance from Records and other areas of Council, in accordance with the procedure.

A member of the legal team will accept service of any court order and send the original order to Records for registration. Records staff will identify any files or information that needs to be retrieved in accordance with the schedule and order.

Once registered, Records will send the legal team an email stating that registration is complete and whether any files have been identified as necessary, the location of those files (on-site records, in electronic form, off-site storage, allocated to a Council officer, etc) and the expected time frame for delivery of copies of the relevant documents.

The legal team will identify officers who are likely to have possession of the relevant file/s and request for copies of all relevant documents from them, using the attached form.

The legal team will inspect the documents, remove any privileged documents and send the information to the court or tribunal.

The legal team will assist any Council officer who is unsure about what files should be retrieved or which documents should be copied.

2.7 Engagement of External Firms

The Principal Solicitor may engage a law firm from Council's legal panel by:

- Selecting a firm from the panel;
- Contacting the firm for a costs estimate and the contact details of the individual solicitor and partner who will manage the matter;
- In the event that the Principal Solicitor is satisfied with the initial contact information, s/he may instruct the firm to act on Council's behalf.

The Principal Solicitor, with the assistance of the Solicitor, will manage the firm's conduct and require reporting on the matter.

Council appoints a panel of law firms on the basis of a preferred supplier process.

Council's legal team is to act as the contact between Council and all external legal firms. In situations where a staff member considers that a firm should be engaged either for legal advice or commencing prosecution proceedings, a written request should be made to the legal team outlining the relevant issues. The legal team will assess the issues and determine best course of action which may include the appointment of external legal representation.

Decision to appoint a panel firm is based on the following criteria:

- Assessment of legal expertise relevant to the outstanding issues;
- Previous experience relevant to the outstanding issue;
- The legal team's work load;
- Value for money; and

- Availability.

2.8 Dealing with External Clients

The Principal Solicitor, with the consent of the General Manager, will enter into negotiation and debate over legal matters with third parties when necessary.

2.9 Dealing with Third Parties

Meetings involving discussion or negotiation of outstanding legal issues should ordinarily involve Council's Principal Solicitor and/or external legal firms where relevant.

Prior to meeting with third parties, a pre-meeting will be held involving all participants representing Council. Participants will discuss any issues and agree on Council's position and strategy for the meeting. Outstanding issues should be deferred until after the meeting and subject to exchange of letters of parties after Council has fully considered the issues and determined the appropriate course of action

No admissions of liability or concessions are to be made to external persons or bodies by any person other than the General Manager, the Director Corporate Services or the Principal Solicitor. No agreements of "consent orders" are to be made without a formal recommendation and approval from the General Manager or Council.

2.10 Procurement

The legal team will assist the Procurement Coordinator with legal and probity advice in relation to procurement.

No contracts are to be advertised as part of a tender or expression of interest without the prior consent of the legal team. All such contracts and agreements are to be forwarded to the legal team for sign off no later than 2 weeks prior to the advertisement date.

COURT ORDER PROCESSING FORM

Matter number:

Matter name:

Date of issue of order:

[OFFICER'S NAME & POSITION]

Please read the schedule of the order attached and locate the sought after documents. Please arrange for clean copies of all documents to be made.

Please sign this form below and forward it with the required copies to the legal team by [DATE].

If you have difficulty locating or identifying which information is required by the order, please feel free to call either Monica Kelly on x617 or Geoff Baker on x663.

Thank you for your assistance.

I, [OFFICER'S NAME & POSITION], identified the following files/documents that are sought by the order:

I forwarded copies of these documents to the legal team on _____.

Signed:

Dated:

Appendix 10

Chronology – International Property Group

Chronology – International Property Group

Date	Description of Event/Document
13/11/2006	Council’s General Manager, Mr David Backhouse, wrote to John Elvy of John Elvy Pty Ltd. Letter expresses interest in meeting with Mr Elvy regarding a <i>“a property advisory role for Strathfield Council”</i> .
24/3/2009	Meeting between Council and IPG representatives; note that the only record of this meeting is a reference to it in IPG’s letter to Council of 27/3/2009. The record indicates that the Council’s General Manager was present. Mr Backhouse has since indicated that its his recollection that either Council’s Director, Technical Services and/or the Manager, Strategic Planning were also present.
27/3/2009	Letter from IPG to Council. Refers to meeting held with General Manager on 24/3/2009. Letter provided Council with an outline of a program to facilitate the redevelopment of Strathfield Square. Proposed program had 3 stages. Provided fee estimate for stage 1. See Appendix 11
30/3/2009	Meeting between Council and IPG representatives in relation to the engagement of IPG and scope of works being proposed. Note that there is no Council record that indicates this meeting occurred. Council’s then Director, Technical Services, Mr Patrick Wong has recently stated that this meeting occurred and that he represented the Council and that it was likely that Council’s then Manager, Strategic Planning was also present.
14/4/2009	Email exchange between Council’s then Director, Technical Services, Mr Patrick Wong and Mr Scott Campbell of IPG (copied to Council then Manager, Strategic Planning, Mr David Hazeldine) Mr Wong in the initial email, states <i>“I wont get a chance to speak to GM in regards to your letter, but I am providing confidential info as discussed so that rough QS can be estimated. The meetings that you have had with your contacts sound positive!”</i> Mr Campbell responded, thanking Mr Wong and indicating that he was looking forward to hearing from <i>“David”</i> and catching up as soon as possible. He then goes on to state <i>“As discussed we are meeting with the Director or (sic: of) Major Projects Coordination from the Premiers Department on Thursday and that will be a significant meeting. The meetings to date have been very positive, and we are progressing well.”</i> See Appendix 12
22/4/2009	Email advice provided to General Manager regarding the need to invite tenders for contracts. Indicates tendering not required for Stage 1 and provides general advice than tendering would usually be required in a circumstance where the contract value was \$100,000 or greater. Attached a draft letter addressed to IPG indicating acceptance of the offer. Draft letter was dated 21/4/2009 and its contents is the identical a signed version bearing the date 30/3/2009. See Appendix 13 and Appendix 14

Date	Description of Event/Document
On or after 22/4/2009	Letter from Council to IPG. Letter advised IPG of General Manager's decision to engage IPG to commence stage 1 of the project, as proposed in IPG's letter. States "Upon successful completion of Stage 1, a determination will be made in relation to IPG's proposal to carry out the Stage 2 works." Note that this letter is dated 30 March 2009 but it is apparent that it was not signed until sometime on or after 22 April 2009. <i>See Appendix 15</i>
6/5/2009	IPG invoice for initial payment for stage 1 of work on the Strathfield Square Precinct Development. Note that balance of the fee was payable on presentation of the funding submission to the state/federal government.
6/5/2009	General Manager forwards initial IPG invoice to Director, Technical Services (Mr Patrick Wong) for response and action.
11/5/2009	Mr Wong forwards the General Manager's email of 6/5/2009 (and the attached IPG invoice) to the Manager, Strategic Planning (David Hazeldine)
18/5/2009	Manager, Strategic Planning completes a Council order form addressed to the IPG for preparation and submission of a proposal for funding of the Infrastructure component of the Strathfield Town Centre project. Order was signed by Director, Technical Services.
8/7/2009	Internal Council Memorandum regarding a meeting between Council, IPG representatives and two other consultants regarding the grant proposal. Memorandum was authored by the Manager Strategic Planning and addressed to the Director Technical Services and provided a summary of the meeting which occurred the previous day. It provides a record of who was present at the meeting, a summary of the issues raised and a list of outcomes. It is noteworthy because similar records of other meetings between Council and IPG were apparently either not made or at the very least retained by the Council.
7/12/2009	Email exchange between David Hazeldine of Council and Chris Demertze of IPG, in regard to the interchange submission. Email from Council referred to the " <i>major contribution</i> " made by another consultant (i.e. not IPG) to the submission. Response from IPG indicates submission was a combined effort of the Council, IPG and the other consultant.
23/12/2009	Meeting between General Manager and John Elvy of IPG; note that the only record of this meeting is a reference to it in IPG's email to Council of 24/12/2009.
24/12/2009	Chris Demertze of IPG sends an email to Council's General Manager referring to the previous day's meeting. Attached was a memorandum containing information about what IPG referred to as its " <i>Government Advisory Services</i> ". Also attached was some information about a " <i>hypothetical development of the affordable housing concept</i> " and the final invoice for the preparation and submission of the proposal for the Strathfield Town Centre Bus/Rail Interchange.
1/3/2010	General Manager provides a written reference for John Elvy and IPG.

Date	Description of Event/Document
2/3/2010	Council meeting considers report on the Gazettal of the Matthews Park rezoning. Council resolved to commence disposal of Matthews Park, with a further report to be provided upon completion of the process.
3/3/2010	John Elvy of IPG sends email to David Backhouse; refers to conversation between them the previous day. Mr Elvy indicates in the email that he understood that “ <i>Council is keen to pursue an affordable housing agenda</i> ” and that “ <i>Council is considering a consolidation of some sites</i> ”. Indicated that he “ <i>would be pleased to have a confidential discussion</i> ” with Mr Backhouse and the Mayor.
30/3/2010	Meeting between John Elvy and David Backhouse and Cllr Tony Maroun (the Mayor at that time). No Council generated record of what was discussed; only record of meeting is a reference to it in an email from IPG to Council.
31/3/2010	Email from John Elvy to David Backhouse; refers to meeting on the previous day. Mr Elvy indicates a willingness/intention to provide a quote and written proposal to undertake certain work for Council. Indicates 2 weeks needed to collate research, analyse and prepare feasibility for the properties referred to in the email. Note that one of the properties referred to was Matthews Park.
7/4/2010	Email from John Elvy to David Backhouse et al, advising submission seeking grant for the design/cost analysis for the bus/rail interchange was not successful.
15/4/2010	Email from John Elvy to David Backhouse, sending him a copy of the email he sent on 31 March 2010; seeking response.
30/4/2010	David Hazeldine (who was Council’s Manager, Strategic Planning at the time) sends an email to Chris Demertze of IPG. Provided information on planning controls pertaining to various Council land holdings.
4/5/2010	Meeting between John Elvy and David Backhouse (referred to in letter from IPG dated 6/5/2010). No Council generated record of what was discussed.
6/5/2010	Proposal/offer from IPG to Council for the provision of strategic property advice in return for receiving a monthly retainer. Letter from IPG refers to meeting held with General Manager on 4/5/2010 and proposed engagement for 12 month period. Letter was emailed directly to David Backhouse. See Appendix 18
17/5/2010	Council letter accepting IPG offer of 6 May 2010. Council’s letter to IPG indicates acceptance of IPG proposal and provided specific instructions in relation to disposal of Matthews Park and a revised funding submission for the Town Centre Bus/Rail interchange. See Appendix 19
21/5/2010	Council sends email to John Elvy of IPG. On the face of it the email was sent by a Council employee on behalf of the General Manager’s Executive Assistant; email carried the subject line of “ <i>Strategic Property Advisory</i> ”; body of email refers to attached correspondence, without further detail as to what the correspondence was.

Date	Description of Event/Document
24/5/2010	Email from John Elvy of IPG to Council, sent to Council’s General Manager’s Executive Assistant; addressed to "David". Response to Council’s email of 21 May 2010. Email carried the subject line <i>“Re: Strategic Property Advisory”</i> . The body of the email thanks the General Manager for his confirmation to engage IPG <i>“at \$20,000 per month, to provide property advisory services to council”</i> . It advises in relation to Matthews Park, that IPG was <i>“sending a “request for proposals” (RFP) to 5 agents who are active in industrial sales in the inner west”</i> . It went on to state that <i>“As soon as they are received, we will present our recommendation to you and proceed with marketing the site”</i> . It expressed a desire to meet to <i>“discuss the strategy regarding the Homebush properties and any other property issues you may wish to canvass”</i> . It attached IPG first retainer invoice and advised that it <i>“will be due for payment on the 1st of each month”</i> and asked that these be paid within 14 days.
24/5/2010	First Invoice from IPG for monthly retainer payment; hand written instruction from General Manager to Director Corporate Services (Neale Redman) to arrange payment.
25/5/2010	Council order form 62811 dated 25/5/11 for first month of retainer, Signed by Neale Redman. Note that order was raised after invoice was received. Orders were subsequently raised on a monthly basis after monthly invoice was received.
25/5/2010	Council considered report on acquisition of 69 Redmyre Road, Strathfield. Report refers to there being no funding in current budget for acquisition. Council resolved that <i>“the General Manager be delegated to initiate without prejudice negotiations with the owner...”</i> No mention of the intended use of IPG. Report authored by Patrick Wong.
2/6/2010	Email from John Elvy to David Backhouse; attached proposed agenda for Council’s <i>“Strategic Investment Committee”</i> . Note that there was no such committee and the proposed meeting did not occur.
8/6/2010	John Elvy provides David Backhouse with table of submissions from local real estate agents seeking appointment as Council’s agent for the Matthews Park sale.
8/6/2010	Email from John Elvy to David Backhouse; seeking advice re agenda sent on 2/6/2010 for <i>“Strategic Investment Committee”</i> ; asked him to review and respond to email of the same date regarding appointment of agents for Matthews Park sale.
30/6/2010	David Backhouse signs agency agreement for the appointment of two agents (not IPG) for Matthews Park sale.
12/7/2010	IPG writes to Council to provide a report on the tasks it was undertaking in relation to the disposal of Matthews Park.
29/7/2010	IPG writes to Council to providing an update and information on the marketing Matthews Park.
29/7/2010	IPG presentation to Councillors on Loftus Cres/Affordable Worker Housing

Date	Description of Event/Document
3/8/2010	Council considered report on proposed sale of Matthews Park; report includes details of the work undertaken by IPG on that matter to date and the further work they would be undertaking in regard to the sale.
12/8/2010	IPG provides an emailed update on the expression of interests for Matthews Park; email also advised of action taken “Redmyre Road property”. In relation to the Redmyre Road advice, the email stated that <i>“We have sent a letter to the owner of Redmyre Road in Chris’s name as an intending buyer to ascertain if he will sell. I will keep you informed.”</i>
9/9/2010	Council considered report on sale of Matthews Park, resolved to accept offer as recommended. The report outlines IPG’s role in matter and refers to them as "Council's agent". Note that the resolution authorised the issue of a contract and the General Manager to finalise the process.
1/11/2010	IPG lodges submission with Infrastructure Australia on behalf of Council.
23/11/2010	Council considered further report on sale of Matthews Park; provided Council with update on sale; report again referred to IPG as Council’s agent and detailed their involvement in the negotiation of the sale.
1/12/2010	John Elvy sends an email to David Backhouse – advises that he has sent a copy of the infrastructure funding proposal to NSW Shadow Treasurer
1/3/2011	IPG invoice for “Strategic Advice & Co-ordination for sale of 51 Roberts Road, Greenacre-Matthews Park”; note that invoice was in addition to the monthly retainer invoice, a number of which had also been costed against Matthews Park by Council.
2/3/2011	Email from IPG (Chris Demertze) to Council (Patrick Wong) providing him with copies for IPG’s proposal of 6 May 2010 and Council’s acceptance letter.
3/3/2011	Council order form 65211 to IPG for “Strategic Advice & Co-ordination for sale of 51 Roberts Road, Greenacre-Matthews Park” Signed by Patrick Wong. Note that the Order was raised after invoice was received/work undertaken.
7/3/2011 8/3/2011	Email exchange between John Elvy and David Backhouse regarding attempt to acquire 69 Redmyre Street, Strathfield. Details dealings with owner’s representative. Mr Elvy provides advice re value of the property and the unwillingness of the owners to sell and indicates that he will “await” the General Manager’s instructions.
5/4/2011 6/4/2011	Email exchange between John Elvy and David Backhouse. Mr Elvy seeks instructions on 69 Redmyre Street, Strathfield and provides update on two other matters (the Interchange submission and the financial assessment of the <i>“key worker housing”</i> proposal). Mr Backhouse responds with an instruction to proceed on 69 Redmyre Street and sought meeting with Mr Elvy to discuss the other two matters. Mr Elvy responded with details of his availability.

Date	Description of Event/Document
3/5/2011	Email exchange between John Elvy and David Backhouse. Mr Elvy sent an email to Mr Backhouse seeking renewal of their arrangement with Council for a further 12 months; indicates proposed scope of work to be "promotion of the interchange project"; "acquisition of Redmyre Road" and development of a "key worker" housing project. Mr Backhouse responded less than two hours later "John on a same as basis! Ok David" See Appendix 20
7/6/2011	Council considered report on 69 Redmyre Road. Report advised that "Council engaged property consultants to acquire the property at price of \$1.1-1.2 million"; report states that there are no financial implications; report authored by Neale Redman.
15/6/2011	Email from John Elvy to David Backhouse; refers to an earlier email regarding Asset Registers. Indicates that IPG will develop a register for Council.
5/7/2011	Letter from IPG to Council re arrangements for second year on retainer. Communicated an offer to provide Council with monthly reports in whatever format Council required. Letter provides details of services to be provided. See Appendix 21
5/7/2011	Email from IPG (Chris Demertze) to Council (Patrick Wong) regarding extension of retainer arrangement for a further 12 months providing copies of the following correspondence between IPG and the General Manager: <ul style="list-style-type: none"> • Email from John Elvy to David Backhouse dated 3 May 2011 11:24 am • Email from David Backhouse to John Elvy dated 3 May 2011 12:34 am • Letter from IPG to Council confirming IPG's role from 1 June 2011 to 31 May 2012.
2/8/2011	Council considered report on compulsory acquisition of 69 Redmyre Road, Strathfield. Council resolved to authorise the General Manager to do all things necessary to compulsorily acquire 69 Redmyre Road.
22/8/2011	Email from John Elvy to David Backhouse. Refers to planned meeting between John Elvy and David Backhouse and others re Parramatta Road precinct and compilation of a detailed asset register. See Appendix 26
21/10/2011	Email from Chris Demertze to Patrick Wong regarding "Strategic Property Advice Proposal & Matthews Park"; Attached copy of IPG's proposal "sent to David Backhouse on 6 th May 2010" as well as a copy of the letter from Council confirming their engagement.
9/11/2011	Email exchange between John Elvy of IPG and the Member for Strathfield regarding the funding proposal for Strathfield interchange; cc to David Backhouse.
5/12/2011	Email from John Elvy to Member for Strathfield seeking a meeting to discuss alternative proposal for funding for Strathfield interchange feasibility study; cc to David Backhouse.

Date	Description of Event/Document
23/1/2012	Email exchange between John Elvy and David Backhouse. Mr Elvy advised of scheduled meeting with Minister for Transport. Mr Backhouse asks to be included in any meeting regarding Town Centre.
23/1/2012	John Elvy sends email to David Backhouse; enquires as to when he could see Mr Backhouse <i>“about the various property related tasks still outstanding for Strathfield?”</i> Subsequent exchange of emails regarding date for meeting.
20/2/2012	Email from John Elvy to David Backhouse enquiring whether he had “any further instructions” regarding: <ol style="list-style-type: none"> 1. Asset register 2. Highest and best use study of Community and Operational land 3. Redmyre Road acquisition 4. Meeting with councillors for Homebush LEP and <i>“key worker housing”</i>
22/2/2012	Email from Chris Demertze of IPG to Jodie Bourke - refers to conversation between them; Chris Demertze asserts as per that conversation <i>“IPG are Strathfield Council's strategic property advisors on a full time basis”</i> ; advises that one of IPG main tasks for 2012 is consolidating the Council's data in regard to its operational freehold assets; refers to the creation of an asset register and undertaking title searches.
29/2/2012	Email Jodie Bourke to Chris Demertze of IPG; attached copies of Council's existing asset registers.
28/3/2012	Email from Chris Demertze of the IPG to Jodie Bourke regarding the Operational Asset Register; seeks meeting to discuss progress; enquires as to whether Council could do title searches.
29/3/2012	Email Jodie Bourke to David Backhouse re Asset Register
3/5/2012	Email from IPG to David Backhouse regarding IPG work on the Operational Property Asset Register; suggested HWL be engaged to <i>“undertake relevant title and historical searches”</i> ; <i>“IPG to undertake a Request for Proposals (RFP) for valuation services”</i> and <i>“IPG to undertake a ‘Highest and best Use Study’ for each property”</i> . Indicated that IPG were prepared to commence process at Council's earliest convenience and that they would await further instructions.
3/5/2012	Email exchange between David Backhouse and Neale Redman re IPG proposal to progress their work on the Operational Property Asset Register. Mr Backhouse forwarded IPG email of same date to Mr Redman for comment; Mr Redman responded to Mr Backhouse.
24/5/2012	Council considered report on Strathfield Town Centre Project; resolved to allocate \$150000 funds for work including work to be undertaken by IPG and others

Date	Description of Event/Document
25/6/2012	<p>IPG invoice for July retainer payment. For the first time, the monthly invoice included details of specific tasks i.e. more than the generic description of “Strategic Property Advisory Services” detailed previously.</p> <p><i>Current Tasks for Month:</i></p> <ul style="list-style-type: none"> • <i>Strathfield Town Centre Project</i> • <i>Operational Asset Register</i> • <i>Homebush Precinct Renewal</i> • <i>General Advice</i>
25/6/2012	<p>David Hazeldine commences approving IPG invoices as Acting Director, Technical Services</p>
25/7/2012	<p>IPG invoice for August 2012 - Change in format of IPG invoice. Invoice included a <i>Description of the Services For Previous Month</i> and the % of time spent on each service listed (as follows):</p> <p><i>Strathfield Town Centre Project</i> 80%</p> <p><i>Operational Asset Register</i> 20%.</p>
1/8/2012	<p>Email from Chris Demertze of IPG to Council advising that “We have reviewed all the public and private land holdings in Strathfield Town Centre, relevant to Stages 1 and 2, and tabled each with the associated planning controls permissible under the current draft Strathfield Local Environmental Plan (LEP) 2011” Attached was a 1 page document with the information as indicated in the covering email.</p>
3/8/2012	<p>Email from Chris Demertze to Patrick Wong. Attached a schedule listing 22 properties described as “<i>Council’s ‘Operational Property Asset Register’.</i>” Also attached a fee estimate obtained by IPG for undertaking searches. Sought direction as to which properties were not be valued.</p>
16/8/2012	<p>Follow up email from Chris Demertze to Patrick Wong re Operational Land Register; enquiring as to status of actions detailed in earlier email of 3/8/2012.</p>
28/8/2012	<p>IPG invoice for September 2012. Description of services for previous month was “<i>Strathfield Town Centre Project 90% Operational Asset Register 10%.</i>”</p>
28/8/2012	<p>Council order for the IPG September 2012 retainer; shows the work as having been requisitioned by David Hazeldine.</p>
25/9/2012	<p>IPG invoice for October 2012. Mix of work shown on the invoice changes again: “<i>Strathfield Town Centre Project 95% Operational Asset Register 5%.</i>”</p>
25/9/2012	<p>Council Order for October 2012 shows the IPG’s services work as having been requisitioned by David Backhouse. Order form signed by David Hazeldine.</p>

Date	Description of Event/Document
29/10/2012	IPG invoice for November 2012. Mix of work shown changes again to “ <i>Strathfield Town Centre Project 100%</i> ”; corresponding order form shows work has having been requisitioned by David Hazeldine.
6/11/2012	Email from John Elvy to David Backhouse. - confirms attendance at Council on 15/11/2012 to brief Councillors on key worker housing and urban renewal concept for the Parramatta Road precinct.
6/11/2012	IPG paper on Key Worker Housing Scheme
15/11/2012	IPG Presentation to Councillors on Key Worker Housing Scheme
13/12/2012	Email and attached letter from IPG to Council and HWL. The email referred to the attached letter as being a “development overview” The 5 page letter provided IPG’s commentary on the Strathfield residential, commercial and retail property markets, IPG’s view on the “Highest and Best Use” of the sites and “the likely outcomes of the redevelopment of the Strathfield Town Centre Project” and a proposal of how the development could be financially structured in regard to the involvement of the various property owners.
17/12/2012	IPG provides Council and HWL with amended version of letter of 6/12/2012 detailing their proposal for Town Centre - refers to meeting held on 13/12/12. The letter appears to represent the culmination of IPG research and analysis on the project.
31/1/2013	<p>Email from John Elvy to David Backhouse and regarding provision of details on monthly account, substantive content has been reproduced hereunder:</p> <p><i>David</i></p> <p><i>We have been advised by David Hazeldine that the auditors need us to provide council with an hourly breakdown of our monthly account. As you know, our contract with council is a fixed monthly fee for services rendered, which can vary significantly, depending on the task required of us every month. Our contact expires in April this year and should council wish to change the basis upon which we account, we would be very pleased to accommodate them</i></p> <p><i>In the meantime, it is not possible for us to provide an hourly breakdown as we have not kept those records due to the fixed fee contract. I would be please to discuss this further if required.</i></p>
1/2/2013	Email from David Hazeldine to David Backhouse about Council wanting more details from IPG on its invoices; refers to David Backhouse responding to John Elvy of IPG. Clarified that what Council was seeking from IPG was “ <i>greater itemisation – such as time spent, hourly rates etc</i> ” and that they “ <i>weren’t necessarily stipulating detailed ‘hourly breakdowns’ of all work.</i> ”
28/3/2013	Email from David Hazeldine to Neale Redman about provision of details on IPG invoices; refers to agreement being up for renewal; asks Neale Redman to try to ensure the agreement includes requirement to provide details on invoices.

Date	Description of Event/Document
3/4/2013	Email from Peter Robinson to David Backhouse expressing concern about lack of control of Strathfield Town Centre project
10/5/2013	HWL and O'Connor Marsden (OCM) engaged by Council to investigate the contractual arrangements between Council and IPG
13/5/2013	John Elvy seeks advice from David Backhouse regarding the timing of the next town centre meeting; David Backhouse forwarded the email to David Hazeldine the following day stating "I've lost touch with this with everything else going on could pls advise"
30/5/2013	Email from David Hazeldine to Chris Demertze. Asks Chris Demertze when their agreement with Council was due to be reviewed. Refers to auditor's request for more details on invoices and previous request that this be provided.
2/6/2013	Email from John Elvy to David Hazeldine and David Backhouse; refers to an email from David Hazeldine to Chris Demertze regarding the auditors request for more details on invoices. Email refers to making of an original agreement with David Backhouse, a discussion with about hourly and daily rates and a fixed retainer and the services that would be provided. Refers to IPG personnel acting as "quasi" employees of the council. Refers there being some months where very little activity has occurred.
2/6/2013	Email from David Hazeldine to David Backhouse; seeks discussion with David Backhouse on IPG. Substantive content of email reproduced hereunder: <i>Refer my email below to Chris for the context to John Elvys [sic] response from today.</i> <i>Neale and Jodie have relayed to me a few times over the last 6 months of the auditors and their concern that I am signing off on IPG invoices that provide limited detail of the services rendered.</i> <i>I appreciate and see the value of the services IPG are providing Council and I don't have any problem with this, but understand the auditors point in regard to the limited detail in the invoicing.</i> <i>Not urgent but I would like to discuss when you have time.</i>
5/6/2013	David Hazeldine forwarded a copy of John Elvy's email of 2 June 2013 to Neale Redman for information and comment.
19/6/2013	OCM provides Council with a draft probity advice on the engagement of IPG for review for "any required corrections or errors of fact".
16/7/2013	Council document listing IPG's Projects and Tasks
25/7/2013	Finalised probity advice from OCM regarding IPG engagement
31/7/2013	Email from John Elvy to Peter Robinson (Council) cc'd to David Backhouse. He refers to the cancellation of two meetings, expresses concern that the process is stagnating and enquires as to current status.

Date	Description of Event/Document
2/8/2013	<p>Email from John Elvy to Neale Redman cc to David Backhouse - refers to an email sent to Chris Demertze. Refers to John Elvy having had a discussion with David Backhouse regarding review process being undertaken by Council's auditor. In the email, Mr Elvy asserts "<i>I have never been advised that our current arrangement has, or will be ceased</i>" - goes on to state "<i>I expect the status quo will remain</i>".</p>
2/8/2013	<p>Email response from Neale Redman to John Elvy, cc to David Backhouse: Advised that IPG engagement has ceased. Substantive content of email reproduced hereunder:</p> <p><i>"The basis of Council's engagement of IPG had been for a period of 12 months then reviewed or cease upon completion of tasks assigned whichever is the sooner.</i></p> <p><i>The most recent engagement has now ceased and Council is currently carrying out a review following which Council will contact you to discuss any future engagement.</i></p>
19/9/2013	<p>Email from John Elvy to David Backhouse seeking advice as to current status of the project: Mr Elvy enquires "<i>should we meet to discuss or haven't you has any feedback from Dept. Local Govt.</i>"</p>
31/3/2014	<p>Council document listing IPG's Projects and Tasks See Appendix 24 Note that a submission provided by Council's current Director, Technical Services provides more complete information about IPG's projects task. See Appendix 25</p>

Appendix 11

IPG letter to Council of 27 March 2009

TAB 7 446

STRATHFIELD MUNICIPAL COUNCIL
 REGISTERED BY RECORDS
 4 MAY 2009
 DOCUMENT NUMBER _____
 RESPONSIBLE OFFICER _____ 1 Secto



INTERNATIONAL PROPERTY GROUP

27th March 2009

Mr David Backhouse
 General Manager
 Strathfield Municipal Council
 P/o Box 120,
 Strathfield NSW 2135

Dear David,

Re: Strathfield Square project

Following our meeting on Tuesday, Scott and I have prepared an outline of the program we believe should be implemented to achieve the desired outcome for the redevelopment of Strathfield Square. Obviously, viability is the primary focus, and to make the project work from a practical & well planned urban perspective, we need to apply for a grant to fund the underground infrastructure component of the project.

Stage 1:

- Analyse the concept plan for bus/ent/train/commuters at sub ground level. Liaise with Railcorp, the State Transit Authority and the Roads and Traffic Authority to ensure that these transport elements can effectively interact with each other and subsequent support from these agencies secured.
- Estimate a likely cost for this stage and obtain qualified QS sign off. Prepare a detailed submission to the State Government Infrastructure assessment group for 100% or part thereof, grant. This should include details of the concept design to redevelop the Strathfield Square precinct.
- Meet with high level bureaucrats to discuss the submission

Stage 2

Subject to the success of Stage 1, International Property Group (IPG) would seek an appointment as Council's project co-ordinator, at an agreed fee to do the following:

- Identify an appropriate developer as either a joint venture partner with Council, or a stand alone to take responsibility for the design and construct program. Finalise design for sub ground facility
- Meet with all interested parties, property owners, and authorities etc to ascertain their level of participation in the project going forward.
- Work with design group, consultants & developer to prepare a final design for the precinct.
- Confirm project feasibility, funding arrangements and critical path. Submit design to Council for approval
- Attend all project meetings and deliver the completed project



Knight Frank Newmark Pty Ltd (ABN 81 117 714 829) trading as International Property Group
 a member of the Knight Frank Australia group
 Suite 607, Level 6, 109 Pitt St, Sydney NSW 2000 PO Box H62 Australia Square NSW 2000
 Tel 61 2 9232 6834 Fax 61 2 9232 6836 www.internationalproperty.com.au
OPERATING THROUGHOUT AUSTRALIA AND ASIA



INTERNATIONAL PROPERTY GROUP

NOTE: We would recommend that Stage 1 could commence whilst stage 2 issues are being resolved if this proves practical.

Stage 3-

- Commence discussions with the authorities to develop a proposal for the railway land, west of Strathfield Station where the lines separate to the west and north, for a major commuter car park/tourist bus/rail interchange supported by residential/serviced apartments complex.
- Meet with the relevant authorities to form a working group for the development of this land
- Liaise with Sydney Olympic Park Authority regarding the bus transit link between Strathfield and Olympic Park

NOTE: Although IPG would not seek to be engaged by Council for Stage 3 given it would be a State Government owner property, we would raise the prospect of this opportunity during our discussions with the Infrastructure Grants group to ensure they were aware of the potential wider picture that could see this area converted into a major transport interchange

Fee Structure:

Stage 1-

- An initial \$A20,000 upon appointment to prepare submission,
- a further \$A10,000 upon presentation of submission to relevant state/federal grant providers

Stage 2-

- A monthly retainer to be agreed.

David, we thank you for the opportunity to contribute to the redevelopment of the Strathfield Town Centre and, if you are satisfied with our proposal, we will look forward to a formal appointment so we can proceed immediately.

Yours Sincerely

Consultant/Director
International Property Group



Knight Frank Newmark Pty Ltd (ABN 01 117 214 829) trading as International Property Group
a member of the Knight Frank Australia group
Suite 607, Level 6, 109 Pitt St, Sydney NSW 2000 PO Box H62 Australia Square NSW 2000
T: 61 2 9232 6884 F: 61 2 9232 6886 www.internationalproperty.com.au
OPERATING THROUGHOUT AUSTRALIA AND ASIA

Appendix 12

Email exchange

Mr Wong (Council) &
Mr Scott Campbell (IPG)

David Hazeldine

From: Scott Campbell [scampbell@internationalproperty.com.au]
Sent: Tuesday, 14 April 2009 4:22 PM
To: Patrick Wong
Cc: David Hazeldine
Subject: RE: Message from S 215800911

Great,

Thanks Patrick, will use this to refine the QS. Look forward to hearing from David and catching up as soon as possible. As discussed we are meeting with the Director or Major Projects Coordination from the Premiers Department on Thursday and that will be a significant meeting. The meetings to date have been very positive, and we are progressing well. Catch up soon.

Many Thanks



Scott Campbell Place Management & Government Liaison
International Property Group
 Phone +61 (0)2 9232 6884 | Fax +61 (0)2 9232 6886 | Mobile +61 (0)402 330 233
scampbell@internationalproperty.com.au | www.internationalproperty.com.au
 Suite 607, 109 Pitt Street, Sydney, NSW, 2000 Australia
 PO Box H62, Australia Square, NSW, 2000 Australia



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From: Patrick Wong [<mailto:patrick.wong@strathfield.nsw.gov.au>]
Sent: Tuesday, 14 April 2009 3:55 PM
To: Scott Campbell
Cc: David Hazeldine
Subject: FW: Message from S 215800911

Scott

I wont get a chance to speak to GM in regards to your letter, but I am providing confidential info as discussed so that rough QS can be estimated. The meetings that you have had with your contacts sound positive!

Give us a call or reply email if you have any questions in regards to above info.

Thanks

Patrick

Patrick Wong | Director Technical Services | **Strathfield Council**
 PO Box 120, Strathfield, NSW, 2135 p: 9748 9933 f: 9764 1034
www.strathfield.nsw.gov.au

Appendix 13

Email from James Ng to David Backhouse

22 April 2009

10

From: James Ng
Sent: Wednesday, 22 April 2009 3:58 PM
To: David Backhouse
Cc: Patrick Wong
Subject: International Property Group - Proposal for Strathfield Square Redevelopment
Attachments: 090421a(Letter to IPG - Draft 1).doc; Business Ethics Policy.pdf

David,

As discussed, Council is usually required to invite tenders for contracts. This is required under s55 of the *Local Government Act 1993*.

However, s55 lists a number of situations where tendering is not required.

One of these situations is where the estimated expenditure for a contract is less than \$100,000.

I note that the proposed fees for Stage 1 of the project is less than \$100,000 and that Council will only consider engaging International Property Group to do Stage 2 of the project at a later date and once Stage 1 is finished. In the circumstances, tendering is not required and Council may engage IPG to carry out the Stage 1 works.

Attached is a draft letter to IPG. I have also attached a copy of Council's Business Ethics Policy which should be attached to the letter.

If you have any other questions, just let me know.

James Ng | Legal Officer | Strathfield Municipal Council
T: 02 9748 9617 | F: 02 9748 9900 | E: james.ng@strathfield.nsw.gov.au
65 Homebush Road Strathfield NSW 2135 | Post: PO Box 120 Strathfield NSW 2135
www.strathfield.nsw.gov.au



Green & Golden Bell Frog
our local treasure



Please consider the environment before printing this email.

Appendix 14

Draft acceptance letter to IPG

21 April 2009

21 April 2009

David Backhouse

Mr
Consultant/Director
International Property Group
PO Box H62
Australia Square NSW 2000

Dear

RE: STRATHFIELD SQUARE PROJECT

Reference is made to your letter of 27 March 2009.

I am pleased to inform you of my decision to engage International Property Group (IPG) to commence Stage 1 of the project as proposed in your letter.

Upon successful completion of Stage 1, a determination will be made in relation to IPG's proposal to carry out the Stage 2 works.

All tenderers, suppliers, contractors and consultants to Council are required to adhere to its Business Ethics Policy – copy **enclosed**. Kindly confirm that IPG will commit to the Policy. As soon as confirmation has been received, the initial \$20,000 fee will be forwarded to IPG as payment for preparation of the Stage 1 submissions.

I look forward to your reply.

In the meantime, if you have queries, please do not hesitate to contact me on 9748 9999.

Yours faithfully,

DAVID BACKHOUSE
GENERAL MANAGER

Appendix 15

Council's letter to IPG of 30 March 2009



65 Homebush Road, Strathfield NSW 2135
PO Box 120, Strathfield NSW 2135
Telephone 02 9748 9999 | Facsimile 02 9764 1034

Email council@strathfield.nsw.gov.au
Web www.strathfield.nsw.gov.au
ABN 52 719 940 263

David Backhouse

30 March 2009

Mr John Elvy
Consultant/Director
International Property Group
PO Box H62
AUSTRALIA SQUARE NSW 2000

Dear Mr Elvy,

RE: **STRATHFIELD SQUARE PROJECT**

Reference is made to your letter of 27 March 2009.

I am pleased to inform you of my decision to engage International Property Group (IPG) to commence Stage 1 of the project as proposed in your letter.

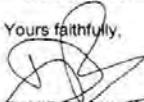
Upon successful completion of Stage 1, a determination will be made in relation to IPG's proposal to carry out the Stage 2 works.

All tenderers, suppliers, contractors and consultants to Council are required to adhere to its Business Ethics Policy – copy **enclosed**. Kindly confirm that IPG will commit to the Policy. As soon as confirmation has been received, the initial \$20,000 fee will be forwarded to IPG as payment for preparation of the Stage 1 submissions.

I look forward to your reply.

In the meantime, if you have queries, please do not hesitate to contact me on 9748 9999.

Yours faithfully,


DAVID BACKHOUSE
GENERAL MANAGER

Appendix 16

Invitation to David Backhouse to Provide Further Comment & Response



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

Our Reference: A419087
 Your Reference:
 Contact: Richard Murphy
 Phone: 02 4428 4191

Mr David Backhouse
 General Manager
 Strathfield Municipal Council
 PO Box 120
 STRATHFIELD NSW 2135

PRIVATE AND CONFIDENTIAL

Dear Mr Backhouse

I refer to your letter of 17 March 2015, to the Acting Chief Executive, Office of Local Government, responding to his invitation to comment on the draft report of the investigation into Strathfield Municipal Council (the Council), pursuant to section 430 of the *Local Government Act 1993* (the Act).

The comments, submissions and the documents that you have provided are being considered.

The purpose of this letter is to invite you to provide further comments and evidence in regard to some matters that have been identified in the course of our consideration of the material you have provided.

In responding to paragraph 124 of the draft report, you state:

"I signed the letter to procure services from IPG ... based on the advice of Council's former Legal Officer and the recommendation from Mr Wong and therefore did not believe there was any breach of guidelines or policy. I acted on [sic] good faith."

A copy of the letter you signed was included as Appendix 11 to the draft report.

In support of your statement, you provided, as Annexure 10 to your submissions, a copy of an email from Mr James Ng (Council's then Legal Officer) to you. You also provided a copy of a draft letter addressed to the International Property Group (IPG), which was evidently attached to Mr Ng's email. The email is dated 22 April 2009 and the attached letter is dated 21 April 2009.

The letter to IPG signed by you is dated 30 March 2009. This letter is in identical terms to the draft letter attached to Mr Ng's email of 22 April 2009. This evidence indicates, on the face of it, that you signed a letter that had been backdated. I invite you to provide any comments you wish to make in regard to this.

T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
 E olg@olg.nsw.gov.au W www.olg.nsw.gov.au ABN 44 613 630 046



2

Your submissions in relation to the subsequent procurement of services from IPG are grounded on the basis that you received advice from two Directors of the Council that IPG was on a state government contract and the procurement was thereby exempt from tendering under section 55(3) of the Act. I note that there does not appear to be any contemporaneous record, made at the relevant times, that indicates such advice was provided to you. Nor does there appear to be any evidence that IPG *“was on a state government contract”*.

Paragraph 162 of the draft report indicates that no evidence had been provided supporting the contention that IPG was an “approved supplier” of strategic property advice. Your submission does not appear to deal with this issue. If such evidence does exist, I invite you to bring it to the Office's attention.

I note that the advice provided to you, in the email from Council's Legal Officer dated 22 April 2009, appears to be directed to answering a question as to whether the proposed procurement for services from the IPG required tendering pursuant to section 55 of the Act. The advice indicates that tendering was not required in regard to the initial procurement and infers that tendering would be required for Stage 2 of the proposed services, if the value of the contract would be more than the tendering threshold prescribed in section 55.

I also invite you to provide any comment you wish to make on the proposition that Mr Ng's advice to you should have drawn your attention to the possibility that the subsequent procurement of services from IPG would need to be subject to a tender process. In particular, I would welcome your comment on whether Mr Ng's advice could be seen as indicating there was a need for you to do more than rely on the verbal advice of your Directors that a tender process was not required.

Please provide any responses you wish to make by no later than 30 April 2015.

Yours sincerely



Richard Murphy
Principal Investigator

16 APR 2015



69 Homebush Road, Strathfield NSW 2135
PO Box 170, Strathfield NSW 2135 | P 02 9748 9999 | F 02 9764 1034
E council@strathfield.nsw.gov.au | www.strathfield.nsw.gov.au | ABN 52 719 940 261

30 April 2015

Private and Confidential
Office of Local Government
Attn: Richard Murphy, Principal Investigator
Locked Bag 3015
NOWRA NSW 2541

By post and email: Richard.Murphy@olg.nsw.gov.au

Dear Mr Murphy

I refer to your letter of 16 April 2015 and I provide my response.

Letter to IPG dated 30 March 2009

My enquiries since receipt of your letter reveals, from word document metadata, that the letter to IPG attached in the email from James Ng to myself and Mr Patrick Wong, former Director Technical Services dated 22 April 2009 (Annexure 10 to my submissions) was created on 22 April 2009 at 2.53 pm and last saved on that date at 3.43 pm.

To the best of my knowledge and belief the letter to IPG dated 30 March 2009 was created by either or both of Mr Ng, Council's former Legal Officer and by Mr Patrick Wong, former Director Technical Services.

It is apparent I signed and caused to be forwarded, the backdated letter. I did so unaware of the date that it carried and the fact that it had been backdated. I have no present recollection of having signed that particular letter. More particularly I did not ask for nor approve the letter being backdated and had I realised at the time of signing the letter, that it had been backdated I would have corrected it. In the ordinary course of a day I am called upon to sign correspondence prepared by others and I have evidently overlooked that the subject letter had been backdated.

Further, and on reflection, I am puzzled as to why whoever caused the letter to be backdated did so as there appears to be no purpose (appropriate or inappropriate) served by reference to the letter having been backdated.

IPG: Stage 2 works

There was no question that the Stage 2 works would exceed the amount prescribed by the *Local Government Act 1993* (Act) and the Regulations to the Act, namely \$150,000 since that fact was known and understood by me at all material times.

The proposed contract with IPG therefore was not a contract falling within the monetary threshold exception being sub-section 55(3)(n). Consequently the question I faced, and at all

material times I knew I faced, in proceeding to engage IPG was whether Council was obliged to proceed with a competitive tender or whether retention of IPG fell within the exemptions otherwise contained in section 55(3) of the Act.

As you note the email from Mr Ng to me dated 22 April 2009 (Annexure 10 to my submissions) restates the legal position as I had understood it, noting the estimated expenditure would exceed the section 55(3)(n) monetary threshold exemption. I was consequently on notice that unless another exemption applied under section 55(3) of the Act then the Stage 2 works would be required to be put to public tender.

In consequence I enquired of the Directors and executive staff with the carriage of the matter on just that question.

In my submission I provided you with written statements from current and former Directors and senior staff in confirmation that I received advice that IPG was on a *state government contract* and that the Council was therefore exempt from tendering under section 55(3) of the Act. For convenience I have extracted relevant content from those statements:

Director Corporate Services: Neale Redman stated:

"It was my advice to you as General Manager, along with the then Director Technical Services Patrick Wong, that IPG were a supplier under state government contract and therefore in accordance with section 55(3) (a) of the Local Government Act, 1993, a tender was not required.

I had advised you that no contract was required in accordance with our Purchasing and Tendering Guidelines as a supplier was appointed under a State Government Contract quotations were not required to be obtained.

There was never any intention to breach any provision of the Act."

Former Director Technical Services, Patrick Wong, stated:

"IPG is a reputable firm and had been engaged by other local councils to undertake similar if not the same works. I understood they were on government contract so Council did not have to tender and I advised you of that fact."

Former Director Operations, Rob Bourke stated:

"As a member of the Executive Team for Strathfield Council I was fully aware of the engagement and arrangements with International Property Group... I was advised, as were you, by the other members of the Executive Team, that International Property Group were on a government contract and therefore Council did not go to tender."

Group Manager Organisational Performance, Jason Andrew, stated:

"I can confirm that Council's Executive were of the belief that International Property Group was on a government contract and the engagement was exempt from the requirement of tendering, and compliant with Council's Purchasing and Tendering

Guidelines based on the advice provided by Director Corporate Services and Director Technical Services."

As stated, Mr Ng's advice referred to drew my attention to what I already knew; namely that unless IPG was exempt under another provision of section 55(3) of the Act other than the monetary threshold, the Stage 2 works would need to be put to public tender. Mr Ng's advice specifically stated that "s55 lists a number of situations where tendering is not required"

I did not consider that I needed to go behind the explicit advice of the two senior Directors with the conduct of the matter. That advice was tendered to other members of the executive team as indicated.

Knight Frank Newmark trading as International Property Group was an organisation of renowned skills and experience of the kind required by Council for the works then under contemplation both with respect to the Stage 1 works and the Stage 2 works.

Importantly, I received no advice to the contrary nor were any issues raised, at any stage throughout the engagement of IPG, including from Council's Manager Finance (and responsible accounting officer), Jodie Bourke nor from Council's Principal Solicitor, Monica Kelly each of whom knew of the engagement and had unfettered access to the myself and the executive team.

In conclusion I do not agree, in fact I refute, the contention that in the ordinary discharge of my duties that I need to go behind the advice of the responsible officers who have the direct executive responsibility for the matters at hand and who report to me, and in whom I have trust. I do agree that I have that duty and responsibility if I am in fact on notice that the advice I am receiving is erroneous. I had no such notice and, with respect, the email from Mr Ng to me dated 22 April 2009 does not constitute such notice.

Yours sincerely



DAVID BACKHOUSE
GENERAL MANAGER

CC: Bryan Belling
Partner, K&L Gates
Level 31
1 O'Connell Street
Sydney NSW 2000

Appendix 17

Statement - Mr James Ng

STATEMENT

In the matter of:	Investigation into Stratified Municipal Council pursuant to section 430 of the <i>Local Government Act 1993</i> .
Place:	Office of Local Government, Level 9, 6 O'Connell Street, SYDNEY NSW 2000.
Date:	14 April 2015

Name:	James Kwok Thai Ng
--------------	--------------------

STATES:

1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give under oath if required to do so. The statement is true to the best of my knowledge and belief and I make it knowing that, it may be tendered in evidence.
2. I am aware of the terms of reference for the investigation as detailed in an information sheet provided to me by the investigators.
3. My name is James Kwok Thai Ng.
4. I am a lawyer. I was admitted as a solicitor on 5 October 2001. I hold an unrestricted practicing certificate.
5. I am currently employed by Manly Council in the role of General Counsel. I have held this position since June 2010.
6. I was previously employed by Strathfield Municipal Council as a Legal Officer from September 2008 to June 2010.
7. My role at Strathfield Municipal Council involved providing internal legal advice and managing Council's litigation. In regard to procurement matters, I was involved in matters that were subject to tendering. This involved reviewing tendering documents and from time to time, participating in the assessment of tenders.
8. In providing this statement I have been given the opportunity to review a copy of an email dated 22 April 2009 which has been attached to this statement. (Document 1). I have a recollection of authoring the email and the draft of the letter to the International Property Group (IPG) that was attached.
9. I cannot recall the discussions referred to in Document 1 between myself and Mr Backhouse in relation to the matter.

Signature: James Ng

Page 1 of 3

STATEMENT

10. I have no recollection of what action was taken in response to the advice I provided in Document 1.
11. I have been shown a copy of a letter addressed to IPG dated 30 March 2009, the content of which appears to be consistent with the draft letter attached to my email of 22 April 2009. A copy of this letter has been attached to this statement and annotated as Document 2. I have no knowledge as to the circumstances by which the letter came to bear the date 30 March 2009.
12. I cannot recall providing any advice in regard to the need or otherwise to obtain multiple quotations prior to procuring services from IPG.
13. I cannot recall any Council officer indicating to me that services from IPG was being procured pursuant to a government contract.
14. I recall being involved in the assessment of tenders in 2009 for the appointment of a licensee for the Hudson Park Golf Course.
15. I recall drafting a letter dated 24 August 2009 addressed to Titanium Golf pertaining to a late tender submitted by that entity. A copy of this letter has been attached to this statement and annotated as Document 3.
16. I believe I would have been involved in reviewing Titanium's response to Council's letter of 24 August 2009 but cannot recall the circumstances or the reason why Titanium's tender was accepted and considered by the Council.
17. I would have had a role in either drafting or reviewing the report to Council dated 3 November 2009 pertaining to the tender process which recommended that Council decline to accept any of the tenders as well as the authorisation of the General Manager to enter into negotiations.
18. In providing this statement I have reviewed the minutes of meeting that was held on 3 February 2010 regarding the negotiations with potential licensees. A copy of the minutes have been attached to this statement and annotated as Document 4. I recall attending the meeting.
19. I recall sending emails dated 3 February 2010 to philweb@optusnet.com.au asking for a due diligence and risk assessment on Titanium Golf. A copy of the emails have been attached to this statement and annotated as Document 5.

Signature: 

Page 2 of 3

STATEMENT

20. I do not recall giving instructions in relation to the due diligence and risk assessment other than those contained in aforementioned email. Specially, I do not recall any person indicating to me that the time frame for providing the assessment was insufficient and nor do I recall responding that the assessment should only be based on the documents provided. I would not have issued any such instruction without first seeking the direction of the General Manager.
21. I cannot recall in any detail the circumstances by which Titanium commenced operations at the golf course on 1 April 2009.
22. I recall some involvement in providing an interim licence for Titanium's use of the golf course. In providing this statement, I have been shown a document that appears to be a draft version of an interim licence. A copy of this licence has been attached to this statement and annotated as Document 6. I cannot recall having seen this document which appears to have been based on a previous licence or a generic template. I recall a shorter document.
23. I have no recollection of being involved in the signing or execution of any interim licence for the golf course. This is something that I believe I would recall had I been present or otherwise involved.
24. I have no knowledge as to why a bank or personal guarantee was not obtained from Titanium.

Signature: 

Page 3 of 3

10

From: James Ng
Sent: Wednesday, 22 April 2009 3:58 PM
To: David Backhouse
Cc: Patrick Wong
Subject: International Property Group - Proposal for Strathfield Square Redevelopment
Attachments: 090421a(Letter to IPG - Draft 1).doc; Business Ethics Policy.pdf

James Ng - Statement - A/1415
Document 1

David,

As discussed, Council is usually required to invite tenders for contracts. This is required under s55 of the *Local Government Act 1993*.

However, s55 lists a number of situations where tendering is not required.

One of these situations is where the estimated expenditure for a contract is less than \$100,000.

I note that the proposed fees for Stage 1 of the project is less than \$100,000 and that Council will only consider engaging International Property Group to do Stage 2 of the project at a later date and once Stage 1 is finished. In the circumstances, tendering is not required and Council may engage IPG to carry out the Stage 1 works.

Attached is a draft letter to IPG. I have also attached a copy of Council's Business Ethics Policy which should be attached to the letter.

If you have any other questions, just let me know.

James Ng | Legal Officer | Strathfield Municipal Council
 T: 02 9748 9617 | F: 02 9748 9900 | E: james.ng@strathfield.nsw.gov.au
 65 Homebush Road Strathfield NSW 2135 | Post: PO Box 120 Strathfield NSW 2135
www.strathfield.nsw.gov.au



Green & Golden Bell Frog
our local treasure



Please consider the environment before printing this email.

JAMES NG

21 April 2009

David Backhouse

Mr
Consultant/Director
International Property Group
PO Box H62
Australia Square NSW 2000

Dear

RE: STRATHFIELD SQUARE PROJECT

Reference is made to your letter of 27 March 2009.

I am pleased to inform you of my decision to engage International Property Group (IPG) to commence Stage 1 of the project as proposed in your letter.

Upon successful completion of Stage 1, a determination will be made in relation to IPG's proposal to carry out the Stage 2 works.

All tenderers, suppliers, contractors and consultants to Council are required to adhere to its Business Ethics Policy – copy **enclosed**. Kindly confirm that IPG will commit to the Policy. As soon as confirmation has been received, the initial \$20,000 fee will be forwarded to IPG as payment for preparation of the Stage 1 submissions.

I look forward to your reply.

In the meantime, if you have queries, please do not hesitate to contact me on 9748 9999.

Yours faithfully,

DAVID BACKHOUSE
GENERAL MANAGER

JAMES NEY

James Ng - Statement - 19/4/15
Document 2



65 Homebush Road, Strathfield NSW 2135
PO Box 120, Strathfield NSW 2135
Telephone 02 9748 9999 | Facsimile 02 9764 1034
Email council@strathfield.nsw.gov.au
Web www.strathfield.nsw.gov.au
ABN 52 719 940 263

David Backhouse

30 March 2009

Mr John Elvy
Consultant/Director
International Property Group
PO Box H62
AUSTRALIA SQUARE NSW 2000

Dear Mr Elvy,

RE: **STRATHFIELD SQUARE PROJECT**

Reference is made to your letter of 27 March 2009.

I am pleased to inform you of my decision to engage International Property Group (IPG) to commence Stage 1 of the project as proposed in your letter.

Upon successful completion of Stage 1, a determination will be made in relation to IPG's proposal to carry out the Stage 2 works.

All tenderers, suppliers, contractors and consultants to Council are required to adhere to its Business Ethics Policy – copy enclosed. Kindly confirm that IPG will commit to the Policy. As soon as confirmation has been received, the initial \$20,000 fee will be forwarded to IPG as payment for preparation of the Stage 1 submissions.

I look forward to your reply.

In the meantime, if you have queries, please do not hesitate to contact me on 9748 9999.

Yours faithfully,

DAVID BACKHOUSE
GENERAL MANAGER

JAMES NG

James Ng - Statement - 19/4/15
Document 3



65 Homebush Road, Strathfield NSW 2135
PO Box 120, Strathfield NSW 2135
Telephone 02 9748 9999 | Facsimile 02 9764 1034

Email council@strathfield.nsw.gov.au
Web www.strathfield.nsw.gov.au
ABN 52 719 940 263

Contact: Bourke, Robert

24 August 2009

Titanium Golf
Cl- O'Hara & Company Solicitors
PO Box 98
Strathfield NSW 2135

SENDER TO KEEP
DL1185554

Dear Mr Carlo Salvato,

RE: - TENDER 04/09 – REDEVELOPMENT AND MANAGEMENT OF HUDSON PARK GOLF COURSE AND DRIVING RANGE

In regard to your tender submitted on the 18 August 2009 for the redevelopment and management of Hudson Park Golf Course, I write to advise that the tender was delivered after the closing date of 4pm on Monday 17th August 2009.

Late tenders may be considered by Council subject to the provisions of the Local Government Regulation 2005. The regulation requires the tenderer to satisfy Council that the tender was posted or lodged at a Post Office or other recognised delivery agency in sufficient time to enable the documents to have been received by the council in the ordinary course of business before that deadline.

Could you please provide reason or evidence to satisfy the requirements of the local government regulation. In the event that Council decides to consider your tender in spite of the late lodgement, Council will do so on the basis of the information provided in the tender form. No other information will be considered. Should you need further information please contact Mr Robert Bourke by telephone on 9748 9969.

Yours faithfully,

ROBERT BOURKE
DIRECTOR OPERATIONS

JAMES NG

James Ng - statement - 19/4/15
Document 4



Minutes of Meeting

DATE: 3 FEBRUARY 2010

RE: HUDSON PARK GOLF COURSE LICENCE NEGOTIATIONS
TITANIUM GOLF

Attendees:

Neale Redman (NR) – Director Corporate Services
Patrick Wong (PW) – Director Technical Services
Melanie Graetz (MG) – Group Manager Corporate Services
James Ng (JN) – Solicitor
Geoff Swinney (GS) – Community Space Technical Officer
Leanne Woods – Minute Taker

Summary and Introduction

- GS introduced Tender
- GS outlined the purpose of the committee.
 1. Is the proposal better than the original?
 2. Which one is more advantageous?
- GS left the room shortly after introduction.

Issues Raised:

NR Any reason the tender is for 10 years – can it be a five year term instead?

Original proposal was for 10 years. Stacey Holdings would not be interested in committing for only 5 years, Titanium could be a maybe.

NR Has any investigations been made about who Titanium are and what experience they have?

*In short no. (no references have been carried out, however GS confirmed references were to be carried out post the meeting).
A package has been provided which is an outline of their resume. GS has conducted google searches.*

PW The major risk which accepting Titanium's proposal is 'change of operator'.

NR Stacey Holdings are not prepared to invest in the golf course (only \$30,000 per year), whereas Titanium plan to invest \$4.4 million over time.

JAMES NG

- PW What does Titanium want to do with the kiosk?
Snack Bar with liquor license. A major method their business plans to bring in corporate customers. The catering will need to meet this need.
- NR This is a small project for Stacey Holdings, believe will get a subcontractor in and take out the management fee.
- JN Stacey Holdings Director – Geoff Scott is planning on retiring during the contract period. Therefore Stacey Holdings will not be running the course for the entire time of the contract.
- JN Stacey Holdings accountant has listed all spending plans. Most spending is deferred to the second half of the contract, when potentially Stacey Holdings will no longer own the Contract
- PW Stacey Holdings has been in the position on not having to pay for waste /gas/ electricity – is this usual for Council to pay?
Yes. Hudson Park is not separately metered, Council staff occupy some of the space. There has been no itemization of who is paying for what.
- NR issued raised with Capital Works being included/funded by Licencees. What mechanism do Council have to measure spending?
Too open ended. Council should take responsibility to ensure maximum return.
- NR Profit and Loss Statements do not have budgeted figures, only estimates.
- PW How far in negotiations did Council undergo with Titanium?
- *late submission*
- *Titanium were rejected as not enough information was provided.*
- *No one was selected in the tender process.*
- *Council has met with them twice and they have provided additional information.*
- JN Can be exclude Stacey Holdings at this stage?
No.
- PW Is there a closing period?
No. Emphasis from Geoff Scott for quick outcome.
- NR Who should be used to carry out audit process – Council Accountants or bigger firm?
Walter Thompson have been used before. JN to investigate possible specialist firms and pending prices to decide.

Decision:

1. Undergo a risk assessment on the business plan, projections and carry out reference checks on Titanium.
2. Review the costings
3. Arrange meeting to provide final decision.

	Auburn GC	Massey Park **	Barnwell Park ** & ***	Hudson Park (08/09)
Weekday				
9 Hole	12	20*	17	15 (15.40)
18 Hole	20	28	23	18 (18.70)
Pen 9 Hole	6	16.50	10	N/A
Pen 18 Hole	8	13.00	15	10 (10)
Weekend				
9 Hole	16*	20*	17	15 (15.40)
18 Hole	25	28	23	22 (23.10)
Pen 9 Hole	N/A	N/A	10	N/A
Pen 18 Hole	N/A	N/A	15	15 (13.20)
Other		Childrens, students	Childrens, students, Twilight Golf \$10	

* 9 Holes time limited to afternoons (various)

** - Members Prices also apply

*** Bonus Tuesday Special Rates Apply

Page 1 of 1

James Ng- statement - 11/4/15
Document 5**Phillip Webster**

From: "James Ng" <james.ng@strathfield.nsw.gov.au>
To: <philweb@optusnet.com.au>
Sent: Wednesday, 3 February 2010 17:15
Attach: Scorporates10020316390.pdf, Scorporates10020316400.pdf
Subject: RE: Titanium Golf Management Pty Ltd
 Attached are:

- Information on Titanium
- Information on Club Pelican

James Ng | Solicitor | Strathfield Municipal Council
 T: 02 9748 9617 | F: 02 9748 9900 | E: james.ng@strathfield.nsw.gov.au
 65 Homebush Road Strathfield NSW 2135 | Post: PO Box 120 Strathfield NSW 2135
www.strathfield.nsw.gov.au

From: James Ng
Sent: Wednesday, 3 February 2010 5:14 PM
To: 'philweb@optusnet.com.au'
Subject: Titanium Golf Management Pty Ltd

Phil,

Further to our discussion today, I advise that Council is presently negotiating with Titanium Golf Management Pty Ltd (Titanium) to manage and improve Hudson Park Golf Course for a 10 year term. Would you please undertake a due diligence and risk assessment of Titanium to determine its suitability and financial capability to carry out the work that it has proposed. I confirm that we would like this report by this Friday.

I will email you all the information we currently have in separate emails given the large size of some of the documents.

If you require any other information, please do not hesitate to contact me.

Attached to this email are:

- A letter from Titanium dated 3 December 2009 setting out its offer
- Proposed development acquisition of The Vintage by Titanium

Regards,

James Ng | Solicitor | Strathfield Municipal Council
 T: 02 9748 9617 | F: 02 9748 9900 | E: james.ng@strathfield.nsw.gov.au
 65 Homebush Road Strathfield NSW 2135 | Post: PO Box 120 Strathfield NSW 2135
www.strathfield.nsw.gov.au

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JAMES NG

4/02/2010

Appendix 18

IPG Email and Letter to Council of 6 May 2010

Gabriella Watt

From: John Elvy [jelvy@internationalproperty.com.au]
Sent: Thursday, 6 May 2010 2:52 PM
To: David Backhouse
Cc: Chris Demertze
Subject: International Property Group - Strategic Property Advice Proposal - 060510
Attachments: Ltr. to David Backhouse - 060510.pdf

David,

Please find attached our proposal for Strategic Property Advice to Strathfield Municipal Council.

We looking forward to discussing this with you.

With Kind Regards,

John Elvy
Director

jelvy@internationalproperty.com.au
Tr phone +61 2 9232 6884
Home +61 2 9232 6886
Mobile 0414 255 770



International
Property
Group

Suite 607, 109 Pitt St, Sydney
PO Box H62, Australia Square
NSW 2000 Australia

www.internationalproperty.com.au

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International
Property
Group

Thursday, 6 May 2010

Mr David Backhouse
General Manager
Strathfield Municipal Council
65 Homebush Road
Strathfield NSW 2135
E: david.backhouse@strathfield.nsw.gov.au

Dear David,

RE: STRATEGIC PROPERTY ADVISORY

Further to our meeting on Tuesday, 4 May 2010 I am outlining the various tasks discussed and our proposal to act on behalf of Strathfield Municipal Council.

Strathfield Town Centre Bus/Rail Interchange

As you know we completed our initial brief to submit a proposal to the NSW State Government for a small grant to fund the design and cost for the interchange, prior to submitting to Infrastructure Australia (IA) for a grant to fund the project.

Our request, was not supported due to "lack of funds", however, the NSW State Government agrees that it is an important Infrastructure project and we believe they would support our request for funding to the Federal Government.

We have since corresponded with Infrastructure Australia and I am in Canberra today to ensure I have a complete understanding of Infrastructure Australia's requirements before lodging our submission. We forwarded a copy of our submission to the NSW State Government to Mr Michael Deegan – Infrastructure Coordinator, and he has outlined what we need to do to finalise our submission to Infrastructure Australia.

This will require us to review and restructure the submission. We recommend that we engage Kathy Jones, as previously, to assist in the appropriate wording and layout of the submission. We will confirm her fee for your approval, but we don't expect it to exceed \$2,500 plus GST.

Matthews Park, Greenacre

We have carried out initial research as to highest and best use and likely sale prices for this property. We recommend a sale via an Expression of Interest campaign, coordinated by our company.

International Property Group ABN 61 117 214 614 Telephone +61 2 9292 6886 Facsimile +61 2 9252 6886
Suite 607, 109 Pitt Street, Sydney NSW 2000 Australia PO Box 982, Australia Square, NSW 2000 Australia
www.internationalproperty.com.au

Independent Property Advisors

1



International
Property
Group

This process will allow Strathfield Municipal Council to understand the depth of the market and the price range, without committing Strathfield Municipal Council to accept any offer. A detailed overview of this process will be provided to you once our proposal has been accepted.

Loftus Crescent, Homebush

We understand Strathfield Municipal Council wants to identify opportunities for the development of affordable housing. We have inspected the above location and identified those properties owned by Strathfield Municipal Council.

The area is currently zoned Residential Z(b) and the location is ideal for this type of housing. We have discussed an affordable housing concept with you and believe a strategy can be devised to facilitate an excellent outcome.

This area could be developed in stages, depending upon demand. There is an opportunity for a "mixed-use" environment to be created, subject to Strathfield Municipal Council's longer term vision for this area.

Our Proposal

International Property Group (IPG) is a multi-disciplined company completely independent of the agency system. We are strategic property advisors and our role is to work with our clients to facilitate outcomes that are financially viable and environmentally sustainable.

We would provide the following inputs regarding Matthews Park and Loftus Crescent properties:

1. Undertake a study to determine demand and housing type (Loftus Crescent, Homebush).
2. Ascertain current market prices for the properties and provide a confidential acquisition strategy.
3. Coordinate preliminary architectural concept for quality and sustainable affordable housing and associated uses, in accordance with Strathfield Municipal Council's planning policies.
4. Provide a detailed financial analysis of all costs and potential income.
5. Discuss the options available to Strathfield Municipal Council to carry out such a project, i.e. joint venture.
6. Secure a funding package for the development.
7. Coordinate all functions relating to the construction of the project.

Items 1-5 would need to be done prior to making any decisions to commence an acquisition program.

International Property Group
Suite 667, 109 Pitt Street, Sydney, NSW 2000 Australia
www.internationalproperty.com.au

Independent Property Advisors

2



International
Property
Group

Absolute confidentiality will need to be maintained, given the likelihood of price ramping by greedy vendors and also unscrupulous people who may try to acquire properties, knowing that Strathfield Municipal Council may be acquiring the sites.

Fees

Our company is paid \$4,000 per day plus GST, for our services.

This fee includes input from all disciplines within the company, such as, property advisory, development management, financial structuring, government liaison, marketing coordination, negotiation, qualification & appointment of agents, consultants and construction contractors. It would also include the completion and submission of the Strathfield Town Centre Bus/Rail Interchange proposal to Infrastructure Australia.

David, given my relationship with Strathfield Municipal Council and the opportunity to continue as Strathfield Municipal Council's strategic property advisors into the future, I would recommend that Strathfield Municipal Council engage us on a monthly retainer of \$20,000 in lieu of a daily fee or a project by project arrangement.

Where the sale of a property is involved, we will appoint the best agent for that job and monitor their performance to ensure they maximize the result for Strathfield Municipal Council. The agent's fee would usually be 2.0% plus GST of the sale price and we would receive an additional coordination fee of 0.5% plus GST of the sale price.

I suggest our engagement be for 12 months then reviewed, or cease upon completion of the tasks assigned to us, which ever is sooner. This means you will have access to all of our services on call and we would provide monthly reports in a format that you require.

I am sure there will be other property related issues that need to be addressed in the future and I believe this would be a very cost effective way of Strathfield Municipal Council having their own "property department" without the on costs.

I look forward to your response so we can continue with these exciting projects.

Kind Regards,



John Elvy
Director

International Property Group, 4th Floor, 112-114 Pitt Street, Sydney, NSW 2000 Australia. Telephone +61 2 9232 6886. Facsimile +61 2 9232 2885.
Suite 607, 100 Pitt Street, Sydney, NSW 2000 Australia. PG Box 182, Australia Square, NSW 2000 Australia.
www.internationalproperty.com.au

Independent Property Advisors

Appendix 19

Council letter to IPG of 17 May 2010



65 Homebush Road, Strathfield NSW 2135
PO Box 120, Strathfield NSW 2135
Telephone 02 9748 9999 | Facsimile 02 9764 1034
Email council@strathfield.nsw.gov.au
Web www.strathfield.nsw.gov.au
ABN 52 719 940 263

Authors name: David Backhouse

17 May 2010

Mr John Eivy
Director
International Property Group
PO Box H62
AUSTRALIA SQUARE NSW 2000

Dear John,

RE: STRATEGIC PROPERTY ADVISORY

Thank you for your letter dated 6 May 2010 in relation to the above and advise as follows:

Strathfield Town Centre Bus/Rail Interchange

Please proceed with the engagement of Kathy Jones to assist in the appropriate wording and layout of the submission, and confirm in writing her fee, not to exceed \$2,500 plus GST.

Matthews Park, Greenacre

I need to progress the disposal and sale of Matthews Park urgently as I require a return for investment into other property acquisitions. I would like to discuss options for Council in order to receive best returns and recent activity in the market. I am good to proceed with expression of interest exercise to best test the market. I would be pleased if you would proceed.

I look forward to review of the detailed proposal of the process to allow Council to understand the depth of the market and the price range, without committing Council to accept any offer.

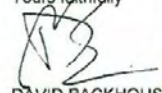
As you can appreciate, I am anxious to progress this one due to the need to also fund other acquisitions outside the scope of this proposal.

Fees

Council accepts your offer to engage International Property Group (IPG) on a monthly retainer of \$20,000 in lieu of a daily fee or a project by project arrangement, for a period of 12 months then reviewed, or cease upon completion of the tasks assigned to IPG, whichever is sooner.

I look forward to meeting with you soon and please don't hesitate to contact me on 9748 9924 if necessary.

Yours faithfully



DAVID BACKHOUSE
GENERAL MANAGER

Appendix 20

IPG 2011 Contract renewal emails 3 May 2011

Linda Seeto

From: John Elvy [jelvy@internationalproperty.com.au]
Sent: Tuesday, 3 May 2011 5:44 PM
To: David Backhouse
Subject: RE: Contract renewal

Thank you David

With Kind Regards,

John Elvy
 Director



**International
 Property
 Group**

jelvy@internationalproperty.com.au
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 Facsimile +61 2 9232 6886
Mobile 0414 255 770

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From: David Backhouse [mailto:david.backhouse@strathfield.nsw.gov.au]
Sent: Tuesday, 3 May 2011 12:34 PM
To: John Elvy
Subject: Re: Contract renewal

John on a same as basis !
 Ok
 David

David Backhouse

From: "John Elvy" <jelvy@internationalproperty.com.au>
Date: Tue, 3 May 2011 11:23:56 +1000
To: <david.backhouse@strathfield.nsw.gov.au>
Cc: Chris Demertze <cdemertze@internationalproperty.com.au>
Subject: Contract renewal

David

As you know our engagement as council's property and infrastructure advisors will expire at the end of this month. We would encourage you to continue our arrangement for another 12 months, as we believe with the new

government there will be a great deal of work required by us and your team in the promotion of the Interchange project. Also, the acquisition of Redmyre Road and development of a financially and socially beneficial “key worker” housing project. I would appreciate if you would confirm the continuation of our engagement at your convenience.

With Kind Regards,

John Elvy
Director

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Facsimile +61 2 9232 6886
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Appendix 21

IPG Letter of 5 July 2011



International
Property
Group

Tuesday, 5 July 2011

Mr David Backhouse
General Manager
Strathfield Municipal Council
65 Homebush Road
Strathfield NSW 2135

Sent via email (david.backhouse@strathfield.nsw.gov.au)

Dear David,

Re: Strategic Property Advisory

Further to our correspondence on Tuesday 3 May 2011, I write to you outlining the various tasks International Property Group are currently working on, in conjunction with and for Strathfield Council.

Strathfield Town Centre Bus/Rail Interchange

As per the outcome of the meeting on Thursday 16 June 2011 with The Hon. Mike Baird MP (Treasurer) and Mr. Charles Casuscelli MP (Member for Strathfield), an updated proposal will be submitted to The Hon. Don Page MP (Minister for Local Government) and The Hon. Brad Hazzard (Minister for Planning and Infrastructure), for a grant to fund the design, engineering and planning requirements for the Bus/Rail Interchange.

The previous request made to the former NSW Government was commended and they supported our intention to improve the transport performance and amenity of Strathfield, given its importance as a regional transport hub, however did not have any discretionary funding available at that point in time.

Matthews Park, 51 Robert Road, Greenacre

The contracts for the sale of the property to Seaparn Pty Ltd were exchanged on Tuesday 1 March, 2011 for \$5,625,000. This represents a rate of \$416/m² on 1.352 Ha (13,520 m²).

International Property Group's scope of works included:

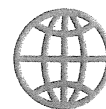
- ✓ Initial research to determine supply and demand for subject property in the marketplace;
- ✓ Conducted a highest and best use analysis and advised on sales strategy;
- ✓ Engaged and coordinated surveyor; REALSERVE - Real Estate Plans and Surveys;
- ✓ Engaged and coordinated environmental assessors; JBS Environmental and ENVIRON Australia;
- ✓ Engaged and commercial real estate agents; LJ Hooker Commercial and CB Richard Ellis;
- ✓ Coordinated marketing and advertising program with agents;
- ✓ Coordinated contract for the sale of land with Strathfield Council's solicitor; Maddocks;
- ✓ Negotiated final terms with Seaparn Pty Ltd.

We are monitoring the process until settlement occurs at the end of July/early August 2011.

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www.internationalproperty.com.au

Independent Property Advisors

1



International
Property
Group

Other Confidential Projects

- ✓ Asset Register - Freehold and Leasehold Properties
- ✓ Key Worker Housing - Bridge Road, Loftus Crescent, Station Street, Homebush
- ✓ Property Acquisition - 69 Redmyre Road, Strathfield

Fee Proposal

International Property Group (IPG) is a multi-disciplined company who offer completely independent property advice on all property matters. We are strategic property advisors and our role is to work with our clients to facilitate outcomes that are financially viable and environmentally sustainable.

The fee below includes input from all disciplines within the company, such as, property advisory, development management, financial structuring, government liaison, acquisition and disposal, marketing coordination, negotiation, qualification & appointment of agents, consultants and construction contractors. It would also include the completion of the updated submission to the NSW Government for the Strathfield Town Centre Bus/Rail Interchange.

As per our ongoing relationship and previous period of engagement, we recommended Strathfield Council engage International Property Group as their strategic property advisor for another 12 months on a retainer of \$20,000/month in lieu of an hourly rate, daily fee or project by project arrangement.

We suggested our engagement be until 31 May 2012, then reviewed, or cease upon completion of the tasks assigned to us, which ever is sooner. This means Strathfield Council will have access to all of our services on call and we would provide monthly reports in a format that you require.

We look forward to continuing on all of these exciting projects with Strathfield Council into the future.

Kind Regards,

John Elvy
Director

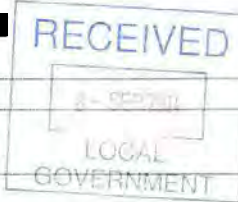
Appendix 22

Statement

Ms Jodie Bourke

STATEMENT

In the matter of:	Investigation into Strathfield Municipal Council pursuant to section 430 of the <i>Local Government Act 1993</i> .
Place:	[REDACTED]
Date:	4 September 2014
Name:	Jodie Bourke



STATES:

1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give under oath if required to do so. The statement is true to the best of my knowledge and belief and I make it knowing that, it may be tendered in evidence.
2. I am aware of the terms of reference for the investigation.
3. I was an employee of Strathfield Municipal Council (Council) from 27 July 2011 until 21 November 2013. Prior to this I was employed by Leichhardt Municipal Council.
4. I was employed by Council in the role of Manager, Finance and I was the Council's Responsible Accounting Officer. I reported to the Director, Corporate Services, Mr Neale Redman.
5. I had not been employed in a managerial role prior to being employed by Council.
6. I am currently employed as a Business and Finance Manager for another organisation.
7. I possess a Bachelor of Commerce (Accounting).
8. I am a Certified Practising Accountant (CPA). I was awarded this qualification in December 2013. I completed the study component of the CPA requirements in June 2013 and the completion of the practical component was certified by my mentor on 19 November 2013.
9. In 2013, the Council twice called for tenders from firms wishing to be considered for appointment as Council's auditor. I initiated the first tender process in January 2013 when I wrote a memorandum seeking approval from the General Manager, which he granted. This was the first tender process that I had been asked to convene. I had not previously been involved in a tender process.
10. My role in the initial tender process for the procurement of the auditor included initiating the process, drafting the request for tender, determining the membership of the evaluation panel,

Signature:.....

STATEMENT

participating as a member of the evaluation panel and drafting a report on the process, which I understood was required to facilitate consideration of the matter by the elected Council. I also undertook reference checking on the tenderer that was the mostly highly ranked by the initial tender panel.

11. The second tender process arose from a decision of the Council in May 2013. My role in relation to this second process was limited to providing comments on a draft of the revised request for tender document, undertaking some additional reference checks and preparing some information for a Councillor workshop.
12. Warton Thompson and Co (Walter Thompson) was Council's incumbent auditor. I recollect informing Phil Webster, of that firm, that the Council would be calling for tenders. I recall that we discussed the timing of the tender process. At the time, Mr Webster indicated that he would be going on leave in late January and February. I advised him that Council would call for tenders in March.
13. I recollect preparing the Request for Tender document for the initial tender process. I used a Council template. I used the previous Request for Tender and updated the document to reflect changes to Council's structure. I may have made other changes. I recollect the criteria were pretty much the same as those used for previous tender.
14. After preparing the Request for Tender document, I referred it to Council's Procurement Coordinator and Council's Principal Solicitor for review. It was finalised on or around 21 February 2013. I was on leave from 25 February 2013 and returned on 5 March 2013; therefore I am unsure if the final Request for Tender document was approved by Neale Redman.
15. I determined the membership of the evaluation panel for the initial tender process. I was asked to do this by Carol Chapman, Council's Procurement Coordinator. The panel was comprised of myself, Aneet Singh and Joe Sumegi. Charlie Ayoub was a member of the panel but was replaced by Joe Sumegi after the initial meeting of the panel where the criteria and weightings were considered. Carol Chapman was present on the two occasions when panel met and acted as Chairperson. Geoff Baker attended both meetings as the Probity Advisor.
16. Carol Chapman provided the panel members with a CD containing the submissions from the tenders, a day or two after the closing date for receipt of submissions.

Signature.....

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STATEMENT

17. When I received the submissions, I reviewed the list of who had made a submission. This is when I first became aware that Warton Thompson had not lodged a submission. I was surprised that they had not lodged a submission and could not understand why, because I had earlier discussed the tender process with Mr Webster of Warton Thompson. I called Geoff Baker to ask him what Council could do. He subsequently advised me that there was nothing we could do. I was both concerned and surprised at this.
18. Subsequent to my discussion with Mr Baker regarding the non-submission by Warton Thompson, I received an email from Phil Webster of Warton Thompson, dated 2 April 2013, enquiring about the status of the tender process. I started freaking out as soon as I received that email and sought further advice from Mr Baker; I sought advice from him on how to respond to Mr Webster. I had Geoff sit with me in my office and construct a response that was appropriately worded. I subsequently sent the response to Mr Webster on 3 April 2013 which advised him that the period for receipt of tenders had closed and which referred him to Carol Chapman.
19. Mr Webster subsequently contacted Ms Chapman on the day that I responded to him. Ms Chapman reported back to me that she had received a phone call from Mr Webster. She told me that she had advised him that the period for accepting tenders had closed, that late submissions cannot be accepted and that she was sorry but she couldn't help him.
20. Neale Redman subsequently told me he had received a call from Mr Webster. I had not discussed Warton Thompson's non-submission with Mr Redman prior to Neale telling me he had received a call from Mr Webster; I was mindful that we were not supposed to discuss the tender process with persons who were not involved in the evaluation. When Mr Redman told me that Warton Thompson had not made a submission, I responded that I knew that. I informed Mr Redman of the advice I had received from Mr Baker, to the effect that there was nothing that could be done about it. Mr Redman asked if we were sure that nothing could be done. When I confirmed this, he said we would have a meeting with Mr Baker.
21. There was a meeting with Mr Redman, Mr Baker and I where we discussed Warton Thompson's non-submission. I think it took place the day after my initial discussion with Mr Redman where he advised me of the call he took from Mr Webster. At the meeting, Mr Baker reiterated the advice that he had provided to me earlier.
22. I proceeded with my review and evaluation of the submissions in preparation for a meeting of the tender evaluation panel.

Signature: 

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STATEMENT

- 23. I recall that I had a further conversation with Mr Redman, in Mr Redman's office, prior to completing my review of the tender submissions, where we discussed the non-submission by Warton Thompson. He said that he believed that we would decline the tenders and readvertise. I then asked him "on what grounds"? He said on "on price". I said words to effect of "I think you will struggle with that because some of the submissions I have read so far are coming in under what Phil had previously charged us". He then suggested "what about maintaining good relations" or something to that effect. I responded that was not really relevant and asked on what grounds he was going to do it. He then referred to legislation not requiring a reason to be given unless you want to enter into direct negotiations with a particular company. I said that I didn't agree with that, meaning I didn't believe that declining the tenders and readvertising without stipulating a reason would be in accordance with the spirit of the legislation, as I thought that tender legislation was very specific and restrictive.
- 24. I felt that Mr Redman was seeking to influence me in undertaking the evaluation of the tender submissions. I have no knowledge of him having discussed the matter with Aneet or Joe.
- 25. It was my understanding that the role of the evaluation panel was to review the tender submissions and provide a report to the Council and that the Council was to make its decision based on the evaluation panel's report.
- 26. Aneet, Joe and I each independently reviewed and scored the submissions prior to meeting to discuss our evaluation.
- 27. The meeting of the Panel to discuss the evaluation probably took place on 10 April 2013 or around that time. Geoff and Carol were present when we met. Carol took note of the collated scoring. I can recall the meeting. We all had our notes on each of the submissions. We had the criteria and our predetermined weightings. Carol instructed us on the process; each of us to say what our individual assessment of the criteria was, one by one and then if our ratings were more than 2 points apart, we were to discuss it, so we could reach a happy medium for each criteria and an average score. At the meeting we were able to reach a consensus view that the preferred tenderer was Price Waterhouse Coopers (PWC).
- 28. The Panel was absolutely of the view that PWC was a suitable tenderer. It was the Panel's recommendation that Council should accept the tender from PWC. I drafted three versions of a report to provide this recommendation to the Council.

Signature: 

STATEMENT

- 29. One of the criteria for the audit tender was referees. The assessment of this criterion was based on information supplied by the tenderers such as the number of referees supplied, the number of NSW referees and whether any testimonials had been supplied.
- 30. After the Panel had agreed that PWC was the preferred tenderer, I undertook a reference checking process on PWC only. Notes that I made at the time indicate that I undertook this reference checking on 11 April 2013. I did not do this reference checking until after the Panel had met and agreed on the preferred tenderer.
- 31. The purpose of the reference checking was to enquire as to PWC's overall performance and to satisfy ourselves that other councils hadn't experienced any issues with them. My enquiries included whether they had good performance, their timeliness and their flexibility regarding audit times, their approach to differences of opinion, and continuity of staff. This was separate to the referee scoring process undertaken by the Panel.
- 32. After completing the reference check process, I then prepared the first of three versions of the report on the tender process for the Council. I submitted it to Neale on 15 April 2013, so he would know that it had been done and so that he would have the opportunity to review it. I also CC'd Colleen Alderton, the Governance Coordinator who coordinates reports for the business paper.
- 33. I recall drafting a memorandum dated 15 April 2013 about the audit tender which was addressed to the Executive. I was asked to provide the memorandum by Neale.
- 34. I had conversation with Neale Redman on 15 April 2013 regarding the audit tender and he told me at that point, that it was an organisational decision that needs endorsement prior to the Council meeting. He explained that if the Executive changes the decision, they are the ones taking the responsibility and it doesn't impact on me. I advised Neale that unless there is a lawful decision to call tenders again it would put me in difficult position ethically, as I know some of the tenderers and I don't want to have to explain why I am calling tenders again. Neale agreed that it was unlikely a legal decision could be justified. I made notes of this meeting with Neale on the day that it occurred and have referred to these notes when providing this statement.
- 35. Neale asked me whether Cathy Jones had seen the report. She hadn't as she had not been involved in the tender process. Neale asked me to sit with Cathy Jones to go through the report. I understood that this occurred after a meeting where the Executive had reviewed my

Signature: 

STATEMENT

report as part of the draft business paper. I am unsure if Cathy Jones attended that meeting with the Executive. I believe the General Manager took a high level advice from Cathy Jones.

36. I submitted a revised version of my report by email to Neale, with a CC to Cathy Jones and Colleen Alderton.
37. I was called into Neale's office after I submitted the revised version of the report to him. He said that he would not be putting forward my report. He advised me that he had received my revised report but he would be writing another report to seek fresh tenders. I asked on what basis. He said "in the best interests of the organisation". I told him that if one of the submitters decided to question, I would not be able to provide a reason. He said that I should put all calls through to him. I said that I was trying to protect him and told him not to put his name on the report. I told him that if one the submitters were to query it with the DLG or ICAC, he would take the blame for it, not the GM. I said that if the report stated that the recommendation was in the organisation's interest and Phil was appointed again, than that would show bias and other submitters would question this. I told him that I had discussed the issue with my husband and that I was so worried about everything I was considering resigning without a job to go to. He told me it was the organisation's decision and it didn't in any way reflect upon me, personally or professionally.
38. I asked Neale later whether the Executive was still happy with my performance and he agreed and explained that in the hierarchy of organisations, individual powers stop and it was in no way a reflection on me.
39. I recollect discussing my report with Cathy Jones. I recollect that Cathy told me during this discussion that they would have problems appointing PWC as they had some problem with them in the past. I understood that she was referring to the Executive.
40. I made further changes to my report and submitted a revised version on 3 May 2013.
41. I do not recall anyone raising a concern about an insufficient number of responses to the initial tender process.
42. I was not present at the Council meetings where the reports on audit tender process were considered. I had been told by Neale previously that generally Managers were not required to attend Council meetings.
43. I asked Neale if I could attend a few meetings, being where the draft budget was being presented to Council for approval to go on exhibition, the adoption of the budget and the

Signature: 

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STATEMENT

adoption of the financial statements, these being the main ones I would have liked to attend. On a number of occasions I was told I wasn't allowed to attend. I suggested I could sit in the public gallery and not be there as a member of staff. Neale's response was that Council didn't like people to attend unless they were there as a member of staff.

- 44. I did not author the report on the audit tender that was considered by the Council on 7 May 2013. I did prepare the first three pages of the confidential attachment to that report, which deals with the tender panel's evaluation of the submissions. I did not author the last page of the report which refers to Warton Thompson and which included the recommendation that Council decline to accept any of the tenders received.
- 45. I know that the General Manager saw my report on the audit tender prior to the May council meeting where Mr Redman's report on the tender process was considered. I know this because on 10 May 2013, the General Manager's Executive Assistant called me at around 10:30 am; she asked me to come and see the General Manager in the "Cottage", the building where his office is located. He had a number of things to raise with me, including his pay and budgets. We discussed these and then he asked me what had happened with the audit tender. I asked him what he wanted to know. He said that when he was here last Thursday he saw one report and on Monday he saw an entirely different report that had been included in the business paper, I told him that Neale had advised me that the "organisation" had decided to recommend that the tenders be declined and readvertised. David said he didn't know who the "organisation" was and he was sick of hearing that the "organisation" or "executive" had decided, and people should be standing up and saying "yes", it was their decision. He said that he had no prior knowledge of that decision and the report he saw on Monday was a poor report. I said that I didn't agree with the report and in fact thought it was highly unethical. The General Manager said that he would have Neale and me into a meeting to discuss the audit tender at a later stage. I also told him that I had advised Neale that I didn't want to participate in another tender process. I made notes of this meeting with the General Manager on the day that it occurred and have referred to these notes when providing this statement.
- 46. On 10 May 2013, after I had my discussion with the General Manager, I had a conversation with Neale Redman. We discussed the conversation I had with David. Neale agreed with everything that I reiterated and said he was fine with it. I told him that David wanted to discuss the issue further. I told him that as he was going on leave he better follow up with David; Neale said that he would. At some point I mentioned it was my understanding that the Councillors didn't even discuss or question the report. Neale told me that there was

Signature: 

STATEMENT

discussion, just not at the Council meeting. I asked what was discussed and he said he didn't know. He then said, "confidentially", that if there was a discussion and he wasn't aware of what was discussed, then who else would have discussed it with the Councillors and that "doesn't that contradict what the General Manager told me earlier". I reiterated that I was trying to protect him last week by not having his name on the report and that he didn't listen to me. He said that we just need to let the tender process run its course. I said at some stage during that conversation that I had been reading the tender guidelines and the decision to decline tenders could be seen to be anti-competitive and collusive behaviour and he argued that he didn't think that it would because the decision is to ensure that the organisation is to get the best value for the service. I asked what would happen if the organisation or the Executive overturned the Panel's recommendation again and he said not to jump ahead, to see what the process brings. I said that I didn't agree that the Executive could override the Panel's recommendation as the Executive hadn't read all of the submissions, so they couldn't reasonably determine a different outcome. I made notes of this conversation on the day that it occurred and have referred to these notes when providing this statement.

47. I told Neale that I didn't want to participate in another panel because there was no guarantee that the Executive wouldn't overturn the decision.
48. On 20 May 2013 I had a conversation with Neale regarding the second audit tender process. He said to me that he was going to put in writing an instruction to me to partake in the panel. I responded that I would then put in writing my reasons for not wanting to participate, for example that I thought that the decline of the tenders was unethical, that I didn't want to waste another week of my time going through a process when it appeared that there was a predetermined outcome and that if the organisation felt so strongly against PWC it could have taken the second submission that was only three points behind. I then said it was up to him how he wanted to handle it but I would probably seek some external advice. Neale asked from who and I said I wasn't sure. Neale said he would think about it some more. I said that the time frame was also tight, if they wanted to get the report for the June meeting, it would need to go out on 31 May 2013 and I had approved leave that day. I understood that Neale considered that it was part of my role as Manager, Finance, to be part of the panel; my view on this was that if he gave me a written instruction, I would respond to him as indicated here. I made notes of this conversation two days later on 22 May 2013.
49. The week following the conversation of 20 May 2013, I was at the local government conference. I received an email from Neale on 27 May 2013. In it, he advised me that he would be out of the office on the Wednesday, Thursday and Friday of that week for personal

Signature:..........

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STATEMENT

reasons and in view of this, he needed me to sit on the panel. He suggested that the panel meet on the Wednesday and invited me to call him if I wanted to discuss. I sent him an email to enquire whether he would be in the office between 5:30 pm and 6 pm because I was going to go back to the office to have a discussion with him; he sent a response that he wouldn't be in the office. I prepared an email to him that night and sent it to him the next day. I sent the email to document the reasons as to why I didn't want to participate in the panel. I returned to the office later that day and saw Neale and enquired as to whether everything was ok. He responded that it was, that his wife had a planned operation. He said he was going to participate in the panel.

- 50. I do not recall receiving a memorandum regarding the Audit Tender process dated 29 May 2013 addressed to me as Manager Finance from the Director Corporate Services in which Mr Redman asserts that the issues raised by me were "totally without substance".
- 51. I understand Cathy Jones was asked to review the request for tender documentation following the initial tender process and that she provided comments on amended criteria.
- 52. On 9 May 2013, Neale rang me to ask me to review Cathy Jones' comments on the criteria for the audit tender. I asked him why Cathy was reviewing the criteria when it had already been approved by the Procurement Coordinator and Legal. He responded that her comments were minor except for GIPA. I also asked him why he was sending it to me as I had already advised that I didn't want to be part of the Panel. He responded that the request was separate from the Panel and that I could not opt out of it as it was part of my responsibilities. I made notes of this conversation on the day that it occurred and have referred to these notes when providing this statement. I provided some comments to Neale in response to issues raised by Cathy.
- 53. On 5 June 2013, I had a conversation with Neale where he advised me that the decision on the audit tender had been deferred for a councillor briefing. He asked me to provide some analysis on a number of matters including what "value adding" services were offered by the tenderers, ASIC's requirements for not having auditors for more than 5 years continuously, resourcing of audits and turnover/loss of key personnel. I was also asked to provide reference checks for the top three ranked submissions. I subsequently undertook reference checking and made enquiries notwithstanding that I was not a member of the panel for the second tender process. I then provided Neale with information for the Councillor briefing.
- 54. I was not present at the Council meeting where the decision to ask for a briefing on the second audit tender was made. However, I was told that a councillor had raised a concern

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about the Corporations Act saying that an auditor couldn't be appointed for more than a five year period, unless there was a two year gap in the audit partner being used. I can't recollect whether I provided any advice on this issue. I was asked to provide the auditors' length of tenure for each of the councils contacted for reference checks as part of the information for the Councillor briefing.

55. I do not recall anyone raising a concern as to Warton Thompson and Co and/or Phil Webster's independence as Council's auditor having regard to the length of their tenure as Council's auditor.
56. As the Manager, Finance I had a copy of the licence agreement pertaining to the operation of the Hudson Park Golf Course (Hudson Park). The licence agreement was already in place when I commenced my employment with the Council.
57. Staff reporting to me were responsible for the issuing of invoices for licence fees on a monthly basis. This was a manual process undertaken by the Rates and Revenue Officers.
58. Council used a Debtors system to monitor monies due to Council. I reviewed the Debtors Trail Balance notwithstanding that this was a task that should have been routinely undertaken by the Rates and Revenue Officers. I undertook this task and issued directions and instructions relating to matters arising from the review because the Rates and Revenue Officers lacked the requisite skills and experience; these staff had previously been Rates Officers only. Their skill in revenue collection got better over time.
59. I recollect that I became aware that Titanium Golf (Titanium), the Hudson Park licensee, was in arrears. These arrears were referred to SR Law, a legal firm used by Council to assist in the recovery of sundry debts.
60. The normal process adopted by Council in relation to the recovery of overdue sundry debts was to first issue a statement to the debtor. When the debt was 30 days overdue we would refer the debt to SR Law, who would issue a reminder letter on Council letterhead. If there was no response, a letter of demand would be issued by SR Law on its letterhead. If that was not successful, court proceedings would be commenced.
61. On 2 May 2012, I received an email from Neale Redman which forwarded a response from Titanium's lawyers in regard to the debt.

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- 62. On 6 June 2012 I asked for an update. Rob Bourke, the Director Operations responded that we were waiting on external advice and that he would provide an update when it was received.
- 63. On 8 August 2012, I exchanged emails with SR Law, who were enquiring about the status of the matter. I advised that the matter was still in negotiations with our legal department and asked them please "hold" the matter.
- 64. On 14 August 2012 I asked Rob Bourke for an update pertaining to the debt owed by Titanium and enquired as to the need for me to establish a provision for a doubtful debt in the amount of \$168,412.35, which included four months of license fee arrears, reimbursement of utilities and a food inspection fee. On 15 August 2012, I received an email response from him in which he advised that the matter is still in investigation, that he thought we would have a result in two weeks and I should add it as a doubtful debt.
- 65. On 28 September 2012 I sent a further email to Rob Bourke seeking an update on the matter of debt owed by Titanium. I enquired as whether it would be likely that we would pursue the debt. I did this as I needed to consider how the matter was to be dealt with in the financial statements. I sent a courtesy copy to Neale Redman.
- 66. On 4 October 2012, I received a further enquiry from SR Law. I responded on 5 October 2012. I advised SR Law to close the file, that the matter was still in negotiation and that it was believed that a settlement would be reached. I indicated that if I was asked to pursue it in the future, I would ask them to reopen the file.
- 67. In regard to the 2013 financial statements and the amount owed by Titanium, I provided for \$168,412 as a doubtful debt. The "over 90 days" amount at that point in time was, according to my working papers, \$127,712 and the total amount due was \$202,195. I maintained the provision at the same amount as the previous year as I didn't want to reduce the provision, given that I knew at that time that it was unlikely the debt would be recovered.
- 68. The licence agreement for Hudson Park provided for annual CPI increases. Finance was responsible for calculating the annual increase and adjusting the invoiced fee.
- 69. I can't recall how it came to my attention that the annual CPI increases had not been calculated and that the license fee had not been adjusted accordingly. On 7 May 2013 I sent an email to the two Rate and Revenue Officers which advised them of the terms of the licence pertaining to the CPI increases and which asked them to calculate the amount of arrears and advise me. In the email I indicated that I needed to advise Neale of the amount

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in the next couple of days. Given this, I believe that Neale would have asked me to provide the information.

70. The Rates and Revenue Officers had been unaware of the need to make CPI adjustments because of a changeover of staff; this was an oversight. When we brought this to their attention they initially calculated the amount of increase and the arrears incorrectly. Steve Vasvari, who was one of the Rates and Revenue Officers, sent me email on 13 June 2013 advising me that the arrears were \$21,978; a spread sheet was attached. I forwarded the email to Neale Redman. The initial calculations were not checked by me. An invoice was issued for the arrears.
71. We subsequently went through and calculated the arrears properly and issued amendments. I checked the revised calculations.
72. When Council, in its capacity as Trust Manager for Hudson Park, received licence fee payments from Titanium, this money was deposited into the General Fund account.
73. I am aware that Council had procured services from the International Property Group (IPG).
74. My first knowledge of IPG was gained during my first week as a Council employee. On 29 July 2011 I attended a meeting where Mr John Elvy of IPG was present, along with others. I think that Deloitte was there. I think the reason for the meeting was related to the development of Council's long term financial strategy and that Deloitte had been engaged for that purpose. Neale Redman asked me to attend the meeting and I understood the reason for me doing so was to assist me in gaining an understanding of the business of Council. I was told that John Elvy was previously at Strathfield and at one stage, he was the Mayor.
75. IPG were used in relation to the sale of Matthews Park. Council's auditor raised a query 19 October 2011 in regard to whether there was any Council minute showing IPG engagement. I was subsequently advised by the auditors that they had located a September 2010 report to Council which referred to the sale of Matthews Park that indicated that associated costs would be incurred. I understood that this satisfied their query in relation to the matter at that time.
76. I also knew that IPG were doing some work in relation to the Strathfield Town Centre development.
77. I was also aware that IPG was to undertake some work in relation to Council's asset register. I had a meeting with David Backhouse on 16 February 2012 during which he requested

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financial summary information on IPG. I was subsequently contacted by Chris Demertze who worked for IPG; he said they were going to send me an email on what they required. I received an email from Chris Demertze on 22 February 2012 and responded on 29 February 2012 with information relating to operational and community land and buildings. I did not meet with Chris Demertze.

- 78. I remember having a conversation with Neale Redman in regard to IPG wanting us to do title searches; I commented at the time that it was ridiculous and questioned what we were paying them to do. To my knowledge, IPG work on the Asset Register did not result in any outcome for Council. To my knowledge IPG did not provide Council with an Asset Register. Ultimately I had responsibility for the asset registers as the asset registers Finance maintained were audited and presented in the financial statements.
- 79. In May 2012, Council's auditors were undertaking an interim audit and again queried whether there was a Council resolution pertaining to IPG's engagement; they observed that the voucher for payments to them just says "property services". On 15 May 2012 I sent an email to Neale Redman asking the question. I can't recall receiving a specific response from him.
- 80. In regard to my knowledge of the IPG retainer, there was never any determination given to me detailing what work they were undertaking for their \$20,000 per month.
- 81. Finance was not responsible for the monthly allocation of the IPG related expenditure to the correct project code. This was the responsibility of the section of Council which prepared the payment authorisation.
- 82. In relation to matters such as IPG, I was provided with information on a "needs to know" basis. That was one of my main issues with the lack of communication within the organization.
- 83. The expenditure on the IPG retainer was certainly not in the budget for 2011/2012. The Executive was aware of this. I think the expenditure would have been listed as a significant variation in Note 16.
- 84. I think the expenditure was included in the budget for 2012/2013. The amount of \$240,000 was something I was mindful of as having to be included. I recollect having discussed with Neale as to whether we going to continue paying them and if we were, that we needed to put it in the budget.

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- 85. I also had discussions with Neale about IPG in 2013, around the time that the tender process for the appointment of the external auditor was occurring. We discussed it in relation to the development of the budget for 2013/2014 and also having regard to the auditor's concerns and whether we really should be putting it out to tender.
- 86. I recall having at least one conversation with Neale pertaining to IPG where I said words to the effect of "that we really need to have done a tender for IPG because if nothing else, they are getting \$240,000 a year". I also raised that the Managing Director was a previous Mayor of Strathfield, so it rings alarm bells. I recall that Neale's response to me at the time was along the lines of "Well considering you put it that sharply Jodie, yes I'll see what I can do". Arising from this, I subsequently had a conversation with Neale on 14 June 2013 where he indicated to me that Council was waiting on legal advice in relation to the tender; Neale wanted legal advice as to whether it was required. I think Neale was going on leave; he advised me that if I received information, I was to discuss it with David Backhouse. If any queries related to the Town Centre then I was to discuss it with David Hazeldine. The elected Council adopts a high level budget which allocates funds to themes based on the Community Strategic Plan and Delivery Plan. The Council also has a more detailed line by line based budget that is not seen by the Councillors. I can't recall whether the Councillors would have been made aware, as part of the budget process, of the proposed budget allocation for IPG expenditure. However, there was reporting on a quarterly basis on consultant expenditure.
- 87. When the Council prepares the Quarterly review, we compared actual and budgeted expenditure. In regard to consultants, went through and identified all of expenditure against the consultancy job code. We ensured that there was a budget for that expenditure.
- 88. In regard to the legal expenditure for the Australian Catholic University, I am aware that there were reports to Council on this legal action and that the Council resolved to make budget allocations for the associated legal costs.
- 89. When Council pays for services, the payment authority is prepared by the section of Council which was responsible for incurring the expenditure. The responsibility for correctly allocating that expenditure to the correct project code rests with the relevant manager or member of their staff who prepared the authority. Limited checking is undertaken by the Finance staff to identify obvious errors such as transpositions. The Finance staff then arranged payment and record the expenditure.
- 90. I was involved in preparing Council's annual budget for adoption by the elected Council. The process was to replicate the previous year's budget and take into account increases in rates.

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I undertook trend analysis and identified items where spending was clearly higher than the amounts that had been allocated. I made adjustments to address this. The budget was then referred to the Executive for review and the identification of cuts necessary in order to achieve a balanced budget. In 2013, there were some workshops with the elected Council where they identified programs they wanted included.

91. As the Manager Finance I was not responsible for Procurement. This was the responsibility of the Group Manager, Corporate Services. Whilst that position was vacant, the Procurement Coordinator reported to the Director, Corporate Services.
- 92.
93. As the Manager Finance, I was not responsible for the internal review program undertaken by Council's Risk Management Coordinator. This position reported to the Group Manager, Corporate Services. Whilst that position was vacant, the Risk Management Coordinator reported to the Director, Corporate Services.
94. Council's procedures provided for written purchase orders to be issued by Council prior to goods and services being received. This sometime occurred but there were a lot of "confirmation" orders raised at or after the time of receipt of an invoice. It is my view that the practice of raising confirmation orders is not appropriate but I do not recall having discussed this with the Director of Corporate Services.
95. I did not routinely save internal emails to Council's Datawork's records management system. Most of the emails that I did save to Dataworks were to or from an external party such as SR Law.
96. I recollect having had conversations with Mr Redman as to what needed to be registered in Dataworks in relation to drafts of reports, and he indicated only the final version we agreed upon needed to be put on Dataworks.

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Appendix 23

Council response of 3 October 2014



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3 October 2014



Neale Redman

Mr Richard Murphy
 Senior Investigator
 Office of Local Government
 Locked Bag 3015
 NOWRA NSW 2541

Dear Mr Murphy

I refer to your letter dated 12 September 2014 in relation to Council's expenditure on services obtained from the International Property Group (IPG).

The following information is provided regarding your question whether the consideration and adoption of the Quarterly Budget Review Statement for the period 1 October 2011 to 31 December 2011 is the decision by which the elected Council approved the money for that years IPG related expenditure.

The 2011/12 budget adopted by Council on 23 June 2011 included the following funding:

Funding	Description	Purpose
\$150,000	Mainstreet Master Planning	Consulting services for planning of improvements to commercial centers in the Strathfield LGA
\$93,100	Town Planning – Strathfield Local Plan	Consulting services for development of planning controls for the Strathfield Local Plan
\$12,000	Corporate Property Expenses	Consulting services for management of Council property
\$255,100		

The IPG expenditure to be incurred was to be funded from these allocations.

Subsequently Council approved additional funding of \$240,000 as part of the December 2011 Quarterly Budget Review for Property Consultants.

Council considers that the expenditure incurred in relation to services provided by IPG had at all times been approved by Council.

Having regard to the above, Council does not accept your assertion that Council or a person purporting to act on behalf of Council incurred a liability for the expenditure on IPG services in the 2011/12 financial year without having the authorisation required pursuant to Clause 211 of the Regulation.



I wish to reinforce several points in relation to the dealings with IPG that have been raised by Council previously and in relation to your latest request.

Correspondence with IPG

The correspondences you have highlighted in relation to the General Manager's dealings with IPG came about as part of an escalation from other Council officer's inaction.

As previously stated in Council's correspondence to you dated 1 September 2014, IPG was to review Council's properties and required certain information from Council's Finance Section to undertake the work. Manager Finance, Ms Jodie Bourke, was tasked with providing such information. The General Manager was subsequently contacted by IPG, as an escalation, informing him that information still had not been provided which was delaying the work. The General Manager then instructed Ms Bourke to make contact with IPG in relation to the required information as a side-matter while Ms Bourke was providing information to the Executive on budget preparations on 20 February 2012.

Again, in relation to an email from the General Manager to IPG dated 3 May 2011, the former Director Technical Services, Patrick Wong, was responsible for the engagement and coordination of IPG. IPG were engaged on an annual basis. IPG had simply contacted the General Manager in May 2011, again as an escalation point, because IPG had not received any confirmation from the Director concerning their engagement. The General Manager followed up with the Director who informed the General Manager that the contract was to be renewed on the same basis. As a courtesy since an email had been sent to the General Manager, he merely responded to IPG forwarding on that message and the Director was expected to contact IPG to confirm their engagement.

Budget Control


As you would be aware the former Manager Finance, Ms Jodie Bourke, as Council's responsible accounting officer at that time had responsibilities, in accordance with clause 202 of the *Local Government (General) Regulation 2005*, as set out below:

- (a) *establish and maintain a system of budgetary control that will enable the council's actual income and expenditure to be monitored each month and to be compared with the estimate of the council's income and expenditure, and*
- (b) *if any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.*

At no time did Ms Bourke raise with the General Manager any concerns regarding budget allocations for expenditure incurred in relation to services provided by IPG.

Please contact me should you require any further information concerning this matter.

Yours faithfully



JASON ANDREW
GROUP MANAGER
ORGANISATIONAL PERFORMANCE

Appendix 24

IPG Projects and Tasks

IPG PROJECTS AND TASKS**Strathfield Town Centre Project**

Date	Task/Project Title	Details
May 2009	Start coordinating funding submission to NSW Government - for funding of Town Centre Bus/Rail Interchange	
May 2009	Coordinate meeting with NSW government and transport authorities	13/5/09 at Ministry of Transport
August 2009	Coordinate meeting with NSW Premiers Department Dianne Leeson	30/7/09 at Premiers Department
Oct 2009	Coordinate meeting to finalise NSW state government funding submission	21/10/09 at Strathfield Council
July 2009	Coordinate meeting Town Centre Master Plan & Associated Transport Solutions	7/7/09 at Strathfield Council
August 2009	Coordinate meeting with NSW government Sydney metro consultants	5/7/09 at ARUP Offices
Jan 2010	Coordinate funding submission to NSW Government - for funding of Town Centre Bus/Rail Interchange	13/1/10, Department Transport & Infrastructure. Submission for \$600,000 to fund detailed design, engineering and planning documentation
Nov 2010	Coordinate funding submission to Infrastructure Australia - for funding of Town Centre Bus/Rail Interchange	1/11/10, Infrastructure Australia
May/June 2011	Letters to state MPs and assistance with updated funding submission report to State MPs	
March 2012	Attend Strategy Review Meeting	22/3/12 at Strathfield Council
April 2012	Attend Project Control Group Meeting including preparing/updating project timeline spreadsheets	13/4/12
May 2012	Attend Project Control Group Meeting including preparing/updating project timeline spreadsheets	17/5/12
August 2012	Attend Project Control Group Meeting including preparing/updating project timeline spreadsheets	30/8/12
August 2012	Review of town centre stages 1 & 2 – Site Analysis	1/8/12
July 2012	Liaison with landowners in Town Centres associated with town centre/bus interchange site	2012 (July) - Initial meetings with landowners
Dec 2012	Discussions on interpreting FSR and land value for privately owned sites	Meeting 5/12/12 with IPG, HWL and Council Officers
Dec 2012	Landowner Negotiations Analysis Letter	17/12/12 – ie development analysis for sites, apportionment recommendations etc.
April 2013 - Ongoing	Coordinate Valuations Process (Challoner)	Coordinate Challoner Coordinate related liaison with land owners/representatives and agreements

Parramatta Road Corridor

Date	Task/Project Title	Details
July 2010	Councillor Workshop - Strategic Property Advice Presentation (Loftus Crescent) including preparation	29/7/10
Dec 2012	Preparation and organising of Councillor Brisbane Study Trip	7/12/12
Nov 2012	Councillor Workshop Presentation – Key Worker Housing & Parramatta Road including preparation	15/11/13 (\$2,000 on Dec 2012 invoice Urban Renewal Project)

Mathews Park

Date	Task/Project Title	Details
May 2010	Preparing due diligence documentation for Mathews Park sale	May 2010

Strathfield Council 31/3/14

Appendix 25

Submission

David Hazeldine

SUBMISSION BY MR DAVID HAZELDINE IN RESPONSE TO THE DRAFT S430
INVESTIGATION REPORT OF STRATHFIELD MUNICIPAL COUNCIL



6.1.12 What services did IPG provide?

203. It is clearly outlined in this submission there has not been "serious and substantial waste of local government money in relation to the Council procurement and expenditure on services from IPG". IPG have provided excellent value for money for Council and the local community as outlined by the extensive amount of high level work they undertook for Council which is outlined herein.

Overview of services provided

204. - 205. I disagree that the document/s Council provided were an attempt to identify the projects and tasks undertaken by IPG. The document was not prepared or submitted to indicate the full extent of the tasks and projects undertaken by IPG as the OLG did not specifically request such a document. The document simply served to provide an outline of some of the work that IPG undertook. A more detailed summary of the work that IPG undertook is provided below.

It is very clear that International Property Group (IPG) provided excellent value for money to Council. This value is demonstrated by:

- 1. The variety of projects they worked on for Council which involved numerous project tasks, many of which were complex and high level in nature and time consuming.*
- 2. The high level of professional commercial property and major project experience and expertise they provided Council which was necessary to undertake many of the*

SUBMISSION BY MR DAVID HAZELDINE IN RESPONSE TO THE DRAFT S430
INVESTIGATION REPORT OF STRATHFIELD MUNICIPAL COUNCIL

project tasks and to provide expert professional advice to Council in the many formal and informal project team meetings and Councillor workshops and briefings.

3. *Their professional relationships and extensive networks which particularly assisted Council in their ability to liaise and coordinate meetings with critical stakeholders in state government, State Departments and transport authorities' executive management.*

The following detail provides further substantiation and project and task based evidence of the above points that IPG provided excellent value for money to Council. This included the following major projects and tasks undertaken by IPG including but not limited

Strathfield Town Centre Project

IPG undertook liaison and coordination of meetings with critical state government and transport authorities executive management and government ministers to assist the progress of various critical elements of the project including:

- *Coordinating and chairing meetings with transport authority senior management including:*
 - *13/5/09 meeting & project presentation with STA, Railcorp, Ministry of Transport and private bus companies (refer Attachment A) to gain feedback and support of the project and similar meetings organised on 7/7/10 and 12/8/09.*
- *Numerous discussions and meetings with the state government WestMetro Project executive managers and design consultants in 2009 including:*
 - *23/7/09, 5/8/09 and 22/10/09 meetings to gain support of the project and to establish design linkages between the two projects (refer Attachment B)*
- *Coordinating and holding individual meetings with state government management and transport authorities including:*
 - *12/8/09, 16/5/09 and 13/8/09 meeting with Director from Premiers Department and also with Director from Department Planning .*
- *Meetings with state government executive management including a meeting with Les Welinga Director General NSW Transport & Infrastructure*

Coordination, preparation and lobbying of the funding submissions for the project including:

- *Funding submission for Town Centre Bus/Rail Interchange, NSW Government , lodged 13/1/10 including liaison and lobbying state government (refer Attachment C)*
- *Funding submission for Town Centre Bus/Rail Interchange, Infrastructure Australia, lodged 1/11/10 including liaison and lobbying Infrastructure Australia (IA) and responsible federal Minister/s.*
- *Funding submission for Town Centre Bus/Rail Interchange lodged, NSW Government, May 2011, Letters to state MPs and assistance with updated submission.*

There were numerous internal project team meetings which IPG participated in with Council Officers which began in 2009 through to 2013, which are clearly recorded in Council diary records and meeting notes.

SUBMISSION BY MR DAVID HAZELDINE IN RESPONSE TO THE DRAFT S430
INVESTIGATION REPORT OF STRATHFIELD MUNICIPAL COUNCIL

IPG also participated in more formal project team meetings such as meetings below which including their preparation and provision of project timelines.

- 3 April 2012 Attend Project Control Group Meeting including preparing/updating project timeline spreadsheets (refer Attachment D)
- 13 April 2012 Attend Funding and Strategy Review Meeting including preparing/updating project timeline spreadsheets.
- 24 April 2012 Attend Funding and Strategy Review Meeting including preparing/updating project timeline spreadsheet.
- 23 April 2012 Attend Project Control Group Meeting including preparing/updating project timeline spreadsheets.
- 17 May 2012 Attend Project Control Group Meeting including preparing/updating project timeline spreadsheets. Provide timeline document.
- 30 August 2012 Attend Project Control Group Meeting including preparing/updating project timeline spreadsheets. Provide timeline document.
- 5 Dec 2012 & 13 Dec 2012 Meetings to discuss interpreting FSR and land value for privately owned site.

IPG also participated in more specific issue related meetings such as:

- 22 March 2012 Attend Strategy Review Meeting
- 14 August 2012 Attend meeting re Town Centre Project with Council officers
- August 2012 Review of town centre stages 1 & 2 – Site Analysis (refer Attachment E)

IPG provide professional experience and expertise to liaise and negotiate with the private property owners relating to the Town Centre Project.

- 24 May 2012 - Council Resolution authorised IPG were authorised by Council resolution to undertake the liaison and negotiation with Key Property Owners including the three private land owners (ie 2 Strathfield Square, 5 Strathfield Square and 4-10 Albert Road) adjacent to Councils existing carpark.
- July 2012 - Initial meetings with representatives of each of the three private land holdings.
- October/November 2012 – Further meetings with representatives of each of the three private land holdings.
- April 2013 – Coordinate Valuations Process being undertaken by Challoner valuers
- Coordinate liaison with land owners/representatives regarding confidentiality agreements

Additional Town Centre Project tasks undertaken by IPG.

- Review and analysis of town centre site feasibilities
- 17 Dec 2012 - Development analysis for sites, apportionment recommendations etc. Provide commercial & industry perspective and insight eg floorspace value
- Review and interpretation of key planning controls floor space analysis in relation to different sites in town centre eg 1/8/12 email from IPG to Council.

SUBMISSION BY MR DAVID HAZELDINE IN RESPONSE TO THE DRAFT S430
INVESTIGATION REPORT OF STRATHFIELD MUNICIPAL COUNCIL

Mathews Park - IPG provided Council with their industry experience and expertise to ensure: planning and preparation, due diligence, marketing, coordination of stakeholders, site audits etc undertaken to ensure the highest possible sale price was negotiated for Council and the community. This included:

- May – July 2010 - Preparing due diligence documentation for Mathews Park sale including reviewing the service and utilities information
- July 2010 - Provide update on tasks completed to date including: coordinate RFPs from agents; coordination of agency agreement; preparation of due diligence documents
- July 2010 - Coordinate meeting between CBRE and LJHC to discuss marketing campaign and increase sales potential
- August 2010 - Coordinate meeting regarding Mathews Park EOI with Council officers and other representatives at Strathfield Council
- September 2010 - Coordinate the "Detailed Environmental Site Assessment" report by JBS Environmental Pty Ltd with report completed September 2010
- November 2010 - Coordinate with NSW Fire Brigade re: Amarina Avenue access issues
- November 2010 - Coordinate the proposals for "Site Audit" report with final report by Environ Australia Pty Ltd completed May 2011
- February 2011 - Facilitate the sale process of the Mathews Park site including complex final negotiations with the purchaser.
- September 2012 - Coordinate pre-DA meeting between Council and Hargraves Property Group

Strategic Property Advice

69 Redmyre Road

Significant work was undertaken by IPG in preparation for Councils acquisition of 69 Redmyre Road which is referred to in Council Reports of 25/5/10, 7/6/11 & 2/8/11.

Parramatta Road affordable housing and master planning

- Significant analysis and research and liaison with Council officers in preparation for Councillor workshops.
- 29/7/10 – Councillor Workshop – Strategic Property Advice relating to Council land in Parramatta Road (refer Attachment F)
- 15/11/12 – Councillor Workshop - Key Worker Housing and Master Planning Urban Renewal for Parramatta Road including preparation and analysis
- Analysis paper that IPG prepared that related to the workshops
- 7/12/12 - Brisbane Trip – Councillor Field Trip – All Councillors boarded flight to Brisbane with detailed fieldtrip itinerary, including meeting several project directors on urban renewal sites, fully organised by IPG

Review of Council's Operational Lands

SUBMISSION BY MR DAVID HAZELDINE IN RESPONSE TO THE DRAFT S430
INVESTIGATION REPORT OF STRATHFIELD MUNICIPAL COUNCIL

Significant work was undertaken by IPG on the review and analysis of Council's operational land holdings coordinated through Councils Corporate Services Department (refer Attachment G).

Development and lodgement of a grant application/funding request

206. - 207. IPG had a key role in the coordination and preparation of funding submission documents. However as outlined in point 205 IPGs work on the submission not only involved the coordination and preparation of the funding submission, but importantly also included a substantial amount of discussion, email correspondence and coordination of meetings with a range of senior management of transport authorities and state government executive management in order to gain feedback to improve the submission and to promote and gain support for the submission and the project as a whole. This work is of excellent value to Council as Council does not have the range of networks and contacts to undertake this high level coordination, this is one of the key reasons why a consultancy such as IPG with John Elvy's extensive networks and high level contacts provided great value to Council.

208. I agree that Council was very satisfied with IPGs work on the funding proposal. This related to the quality of the submission but also the associated high level stakeholder communication particularly as Council does not have the networks or contacts to undertake this high level of coordination necessary for a major transport infrastructure project.

Updating the funding submission for Town Centre Bus Interchange

209. The Federal Infrastructure submission did not just involve a revision, but required significant change from the NSW submission, eg. due to the different objectives, formatting and requirements that applied.

210. The statement that "IPG continued to promote the interchange proposal to Government, albeit without success" demonstrates a lack of understanding of major projects and the benefit of a long term strategy to promote and advance projects. The Strathfield Town Centre Project is not a short term minor project but a long term major transport infrastructure project that requires support from various stakeholders such as federal and state government, relevant departments, transport authorities and the regional and local community. The exposure and promotion of the project such as by IPG, irrespective of whether the specific funding proposals were successful or not, has importantly raised the awareness and understanding of the project to critical stakeholders and has laid the groundwork for continued promotion and future opportunities.

211. I disagree strongly with view expressed that "*money spent on the preparation of the two grant submissions and the subsequent promotion of the proposal was wasted given Council did not receive a grant and has not received external funding assistance*". This view demonstrates a naïve understanding of grant funding processes and that even the best prepared submissions may not receive funding due to a variety of factors and influences considered by the assessors. The money spent of the preparation and submission of the state and federal submissions was clearly very good value to Council.

It is also noted that IPG provided further value by coordinating a third funding submission in May 2011, being a second submission to the NSW Government for Town Centre Bus/Rail Interchange.

SUMMISSION BY MR DAVID HAZELDINE IN RESPONSE TO THE DRAFT S430
INVESTIGATION REPORT OF STRATHFIELD MUNICIPAL COUNCIL

212. It is agreed elected Council is the appropriate body to determine how resources are utilised for the benefit of the community. The governance structure of local government, integrated reporting and annual budgets provides elected Council such ability.

In addition elected Council provides this direction through an active and supportive role in the projects and associated processes.

In particular the three Funding Applications, had Councils endorsement including through specific briefings and signing of cover letters. These included letters signed by the Mayor Clr Maroun.

- Jan 2010 – NSW Government Funding Submission, was co-signed by IPG, General Manager and Mayor.
- 9/11/10 - Letter to Minister for Infrastructure Anthony Albanese MP re: Infrastructure Australia submission (refer Attachment H)
- 1/12/10 - Letter to Minister for Infrastructure Anthony Albanese MP with copy of Infrastructure Australia submission (refer Attachment H)

Advice on the development of the "Parramatta Road Corridor"

213. - 219 IPG at Councils request undertook an analysis of key worker affordable housing in the Parramatta Road corridor. The analysis included several Council owned properties in the Parramatta Road corridor. IPG then presented this to Councillors in a workshop

The first Parramatta Road strategic property advice Councillor Workshop presentation by IPG was in 29/7/10. Upon consideration the Councillors decided not to further pursue the proposals. IPG prepared a further presentation to the current Council in 15/11/12 and the Councillors decided to further explore the ideas which included affordable housing and master planning. This then lead to IPG preparing a Councillor field trip to Brisbane including preparing a detailed itinerary of site visits to major development sites and to hear from project directors. All the Councillors demonstrated their support of the field trip by boarding the plane that unfortunately had to return to Sydney due to inclement weather.

Work on the acquisition of 69 Redmyre Road

220. - 225. *Significant work was undertaken by IPG and value to Council was provided in preparation for the acquisition of 69 Redmyre Road which is referred to in Council Reports of 25/5/10, 7/6/11 & 2/8/11.*

Role in the sale of Mathews Park

226. Although I had minimal involvement in this process, Councils records indicate that in addition to the tasks that IPG undertook to assist Council with the sale of Mathews Park, outlined by OLG, they also undertook the following:

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- Preparing due diligence documentation for Mathews Park sale including reviewing the service and utilities information, May – July 2010.
- Coordinate the 'Detailed Environmental Site Assessment' report by JBS Environmental Pty Ltd with report completed September 2010.
- Coordinate the proposals for 'Site Audit' report with final report by Environ Australia Pty Ltd completed May 2011.

227. - 228. I disagree as it is clearly apparent why IPG was engaged to assist with the sale of Mathews Park. According to Council records they performed a number of roles in the sale of Mathews Park and were instrumental in the high sale price for this land for Council and community. IPGs expertise and experience in commercial property and project management enabled them to project manage this process for Council. Council's staff resourcing did not have enough time, experience or expertise to project manage a large scale commercial property transaction. Even if Council resourcing was available to liaise with the NSW Fire Brigade, procuring site surveyors, real estate agents and environmental auditors, it didn't have the level expertise and experience as IPG to advise on the marketing of the site and assist negotiate a high land sale price.

Development of an Asset Register

231. - 235. No comment, as I was not directly involved with this process and relied on others to verify the works undertaken by IPG on this matter, when I became responsible for signing IPG invoices (ie, the period from June 2012 to June 2013).

Provision of advice and services in relation to the furtherance of the Strathfield Town Centre Project

236. – 239. Council has made substantial progress on the Strathfield Town Centre Project to date with the assistance of the various consultants utilised including IPG. The work by IPG and other consultants to date on the project has provided comprehensive planning, research, design, economic feasibility, and stakeholder engagement and promotion that has assisted the project continued to progress, as demonstrated below.

Since the inception of the Strathfield Town Centre Project in the Strathfield Vision 2020 and the first specific project presentation to Councillors in January 2006 a substantial amount of progress has been made undertaken to date towards Council vision. The project is aiming to revitalise the town centre based around a high quality functional bus/rail interchange in association with a major development including community facilities, retail, commercial and residential floorspace in addition to improved open space and public domain.

Project Planning

As the project has progressed through the planned stages, Council has required the assistance of a range of external expertise (consultants) to undertake specific roles as the project process has required. The major stages of the project and the related commencement period of major consultants are outlined below.

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Project Stages and Consultants Utilised

Stage	Time Period	Description	Major Consultant/s Commencement Period
1	2006	Analysis & Review	Urban Designer (Sustainable Urbanism) Transport Consultant (GTA)
2	2006	Initial Consultation	
3	2007	Design options	
4	2007 - 2008	Feasibility & Funding	Traffic Modelling Consultant (Bitzios Consulting) Development Economist (Sphere Consulting) Quantity Surveyor (mbm)
5	2008	Draft Concept Masterplan	
6	2009 - 2011	Feasibility & Funding	Property & Project Development Advisors (IPG) Land Valuers (Egan Valuers) Architect (Axel Richter) Structural Engineering (ARUP) Land Surveyor (Craig & Rhodes)
7	2012- 2015	Implementation Planning	Legal Advisors (HWL Ebsworth) Probity Advisors (O'Connor Marsdens) Property & Project Development Advisors (EG Property) Land Valuers (Challoner Valuers) 3D Illustrators (Doug & Wolf) Urban Design Feasibility (Hill Thalys)
8	2016	Concept Plan Approval	(to be confirmed)
9	2016	Construction Documentation	(to be confirmed)
10	2017	Funding/Construction/Project Management	(to be confirmed)

Note: The Governance & Probity Plan has amended 'anticipated phases' that commence from stage 7.

Project Governance & Probity

Governance and probity are critical elements of the Strathfield Town and have been key considerations throughout the project.

As the project progressed and due to the scale, complexity and the likely development model being a private public partnership, Council consequently engaged legal advisers HWL Ebsworth in early 2012. Their role was to advise Council on how to formally incorporate best practice governance and probity appropriate to this specific project. This resulted in a comprehensive set of recommendations that were considered by Council and adoption in May 2011.

One of the recommendations adopted by Council was to engage a Probity Advisor specific to the project and for them to prepare a Governance and Probity Plan. The first version of this document was completed in January 2013 and the final version adopted by Council in September 2013. This document included a variety of elements to guide the project

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including: project management and reporting structure, procurement and engagement of consultants and also IPGs role in the liaison and negotiations with the private land owners.

Project Progress

The progress of the project is demonstrated by the extensive amount of studies and project work that has been undertaken including (but not limited to: consultation, analysis, conceptual design, economic analysis, pedestrian modelling, stakeholder liaison, traffic modelling, detailed design exploration, structural modelling, commercial analysis, design review, feasibility testing, land valuations and land owner liaison negotiations. This work to date has the Town Centre in a very strong and sound position and to an extent where the next steps of the project are now a state government election issue.

The following list demonstrates the extensive amount of project work undertaken to date:

General Studies & Reports

- Concept Plan Options, Strathfield Town Centre Project, March 2007
- Inspiration & Reference – Councillor Folders 2007
- Draft Concept Master Plan, Strathfield Town Centre Project, August 2008
- Artistic Illustrations of Strathfield Town Centre Concept Plan, Doug & Wolf,
- Cross Sectional Elevation of Strathfield Town Centre Concept Plan, Doug & Wolf,
- Movie Presentation of Strathfield Town Centre Concept Plan, Doug & Wolf,
- Funding Submission for the Strathfield Town Centre Bus/Rail Interchange, NSW Government, January 2010
- Detail Survey Of Strathfield Town Centre, Craig & Rhodes, October 2010
- Funding submission for Town Centre Bus/Rail Interchange, Infrastructure Australia, lodged November 2010
- Funding submission for Town Centre Bus/Rail Interchange lodged , NSW Government, May 2011
- Utilities searches and categorisation.
- Title Searches for all properties in Strathfield Town centre, Service First Registration Pty Ltd, February 2013
- 3D Survey Data Layer & conversion of existing survey data, Craig & Rhodes, July 2013

Confidential Working Documents - Studies & Reports

- Stage 1 Pedestrian & Traffic Issues, Strathfield Town Centre Master Plan, Jamieson Foley Traffic & Transport Pty Ltd & PRA Sustainable Urbanism, April 2006
- Financial Feasibility Assessment Report - Strathfield Town Centre Project, Sphere Consulting, March 2008
- Report on Project Delivery & Finance Options For Key Development Sites - Strathfield Town Centre Project, Sphere Consulting, May 2009
- Land Valuation, 2 & 5 Strathfield Square & 4 Albert Road, Egan National Valuers (NSW), October 2009
- RLB Project Feasibility Estimate
- Traffic Micro-simulation Modelling Study – Bitzios Consulting , June 2010

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- Quantity Surveying Report: Proposed Bus Interchange- Strathfield Town Centre Project , mbm Quantity Surveyors, June 2010
- Economic Appraisal Report: Proposed Bus Interchange - Strathfield Town Centre Project, Sphere Consulting, August 2010
- Strathfield Town Centre Existing Conditions Audit Report, Bitzios Consulting, August 2010
- Presentation of the Strathfield Centre VISSIM Model (power point), Bitzios Consulting, October 2010
- Preliminary Tunnelling Advice, Strathfield Bus Interchange – ARUP Pty Ltd , October 2009
- Report on Development Financial Feasibility - Strathfield Town Centre Building- Strathfield Town Centre Project , Sphere Consulting, November 2010
- Interchange Albert Road Portal Testing , ARUP,
- Structural Engineering Concept Testing of Concept Master Plan, ARUP, August 2011
- Concept Architecture Plans & Sections of Strathfield Town Centre Interchange & Buildings , Axel Richter, September 2011
- Masterplanning Estimate, Strathfield Town Centre Development, mbm Quantity Surveyors, May 2013
- Strategic Urban Analysis & Recommendations, Hill Thalys Architecture & Urban Projects Pty Ltd, April 2014
- Land Valuations, 2 & 5 Strathfield Square & 4 Albert Road, Challoner Valuers, November 2014

The amount of public and general consultation undertaken to date has been extensive and has consisted of 45 consultation sessions which has included 450 attendees and 120 submissions since April 2006. . This has involved three main consultation stages being

- 1) Initial Needs & Issues, Ideas and Visioning workshops in July to November 2006.
- 2) Consultation for the public exhibition of the 'Concept Plan Options' in March & April 2007.
- 3) Consultation for the public exhibition of the 'Draft Concept Master Plan' in August & September 2008.
- 4) Ongoing consultation with planning and transport authorities and other stakeholders.

The above consultation generally does not include specific stakeholder consultations which has included a further numerous meetings and sessions including: Department of Premier and cabinet, Department of Transport and Cabinet, Department of Planning, Ministry of Transport, Roads & Traffic Authority, Railcorp, Sydney Metro, State Transit Authority, Sydney Buses, Department of Transport & Infrastructure, Landcom/UrbanGrowth, NSW Police, Sydney Olympic park, Burwood Council, City of Canada Bay Council, Punchbowl Bus Company, Veolia Transport, Transit First and NSW Taxi Council.

The project progress and amount of work undertaken to date is also demonstrated through extensive reporting to Council through: Council reports, Councillor workshops, and Taskforce meetings and media coverage.

The Council Reports specific to the Town Centre Project demonstrate project progress and the amount of work undertaken. These reports include:

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- 18/04/2006 Strathfield Town Centre Project - Update
- 15/08/2006 Strathfield Town Centre Project - Update
- 07/11/2006 Strathfield Town Centre Project - Update
- 27 2/2007 Strathfield Town Centre Master Plan Project
- 03/04/2007 Strathfield Town Centre Community Participation Update
- 01/05/2007 Strathfield Town Centre Project - Update
- 04/09/2007 Strathfield Town Centre Project
- 06/11/2007 Strathfield Town Centre Project
- 15/04/2008 Strathfield Town Centre Project
- 29/07/2008 Strathfield Town Centre Master Plan Project
- 24/05/2012 Strathfield Town Centre Project
- 06/11/2012 Provision of Probity Services for Strathfield Town Centre
- 06/08/2013 Strathfield Town Centre Project – Governance and Probity Framework
- 20/08/2013 Green Amenity Factor: Parramatta Rd Corridor and Strathfield Town Centre
- 12/09/2013 Strathfield Town Centre Project – Governance and Probity Framework
- 17/09/2013 Powell's Creek Catchment Flood Study
- 01/07/2014 Strathfield Town Centre Project
- 02/09/2014 Strathfield Town Centre Traffic and Parking Taskforce
- 23/12/2014 Strathfield Town Centre Project Update

The Councillor Workshops specific to the Town Centre Project demonstrate project progress and the amount of work undertaken. These workshops include:

- 25/01/2006 Strathfield Town Centre Master Plan Study
- Nov 2006 Strathfield Town Centre Project Update
- 24/04/2007 Planning Forum
- 28/08/2007 Strathfield Town Centre Master Plan Project – Update
- Dec 2008 Strathfield Town Centre Masterplan Project – Update
- May 2009 Strathfield Town Centre Masterplan Project – Update
- 21/05/2009 Strathfield Town Centre - Delivery Strategy Plan
- Dec 2010 Strathfield Town Centre Masterplan Project – Consultation Update
- June 2011 Strathfield Town Centre Masterplan Project - Update
- 19/10/2012 Project update, project team, governance and probity
- 27/08/2013 PPP Probity and Processes

The Project Taskforce Meetings specific to the Town Centre Project demonstrate project progress and the amount of work undertaken. The Taskforce meetings include:

- 14/06/2013 Council Taskforce – Strathfield Town Centre Project
- 25/06/2013 Council Taskforce – Strathfield Town Centre Project
- 23/05/2014 Council Taskforce – Strathfield Town Centre Project
- 01/08/2014 Council Taskforce – Strathfield Town Centre Project
- 11/12/2014 Steering Committee – Strathfield Town Centre Project

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The Community and Stakeholder Workshops specific to the Town Centre Project demonstrate project progress and the amount of work undertaken. The workshops include:

- 25/01/2006 Strathfield Town Centre Master Plan Study
- 20/03/2007 Strathfield Town Centre Info Session
- Apr 2007 Strathfield Town Centre Master Plan Project – Public Exhibition
Concept Plan Options
- Aug 2007 Strathfield Town Centre Master Plan Project – Area Community
Forum
- 28/11/2007 Strathfield Town Centre Master Plan Project – Councillor Workshop
- Aug 2008 Strathfield Town Centre Masterplan Project – Public Information
Sessions August 2008 (Public Exhibition of Draft Final Concept
Masterplan
- 14/08/2008 Draft Concept Masterplan Strathfield Town Centre
- 13/04/2009 Minister Presentation
- Aug 2009 Strathfield Town Centre Masterplan Project – Project Update
- Sept 2010 Strathfield Town Centre Masterplan Project – Project Update (Area
Forum)
- 24/08/2011 Strathfield Town Centre Masterplan Project Community Information
Session
- Aug 2012 Strathfield Town Centre Masterplan Project – The Community's Vision

The media coverage specific to the Town Centre Project demonstrate project progress and the amount of work undertaken. The media coverage includes:

- Jun 2008 – Our Strathfield - "Town Centre Transport Study Underway"
- 21/08/2008 – Inner West Weekly – "Final Concept Close"
- Sept 2008 – Our Strathfield – "Community Comment Invited on Town Centre Project"
- 16/06/2009 – Inner Western Suburbs Courier – "Strathfield Traffic 'Solution'"
- Jul/Aug 2009 – Our Strathfield – "Progress Continues on Town Centre Project"
- 06/08/2010 – Strathfield Scene – "\$150M Town Square Plan Set for Take Off"
- Dec 2010 – Strathfield Scene – "Town Centre Plan Wins Support"
- Dec 2010 – Strathfield Scene – "Town Centre Plan Wins Over a Liberal Heavyweight
MP"
- 25/03/2011 – Strathfield Scene – "Welcome to new Political Era"
- 25/03/2011 – Strathfield Scene – "New Liberal MP Pledges Aid for Transport and
Town Centre Plan"
- 26/03/2011 – Strathfield Scene – "New Member Tipped for Big Role"
- April 2011 – Strathfield Scene - "Baird Backs Town Centre"
- Jun 2011 – Strathfield Scene – "Town Square – MP Invites Baird Back"
- 20/06/2011 – Strathfield Scene – "MP Takes on Transport and Infrastructure"
- July 2011 – Strathfield Scene - "How We Can Free Up Sydney's Roads"
- Jul 2011 – Strathfield Scene – "Big Guns Rolled Out for Final Town Centre Push"
- 08/07/2011 – Strathfield Scene – "How Can We Free Up Sydney's Roads"
- Aug 2011 – Strathfield Scene – "Community Update on Square"
- 29/09/2011 – Strathfield Scene – "Barron Elected Strathfield Mayor"
- 04/10/2011 – Inner West Courier – "New Mayor's Focus on Health"

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- 07/10/2011 – Strathfield Scene – “An Independent’s Day”
- 19/01/2012 – Inner West Courier – “Better Roads, Less Traffic – Residents have say on suburb’s future”
- 22/03/2012 – Strathfield Scene – “Treasurer Hears Concerns Over Town Centre Plans”
- 22/03/2012 – Inner West Courier – “Shut Up and Back Project”
- May 2012 – Burwood Scene - “Strathfield Square saved as Open Space”
- 04/05/2012 – Strathfield Scene – “Town Square Tower a ‘Mischievous Rumour”
- 12/06/2012 – Inner West Courier – “No Money for Carparks”
- 28/06/2012 – Inner West Weekly – “Planned Lights on the Blink – Key Feature of Underground Bus/Rail Interchange”
- 31/07/2012 – Inner West Courier – “Square will Remain Community Land”
- 12/04/2013 – Strathfield Scene – “Soaring Prices and New Development Sparks Talk of Strathfield Property Boom”
- June 2013 – Strathfield Scene - “Town Centre ‘a golden goose”
- 09/05/2014 – Strathfield Scene – “How ICAC’s Macquarie Street Massacre Could Affect Strathfield
- 09/05/2014 – Strathfield Scene – “Mayor Seeks Meeting with New Premier on Town Centre Plan”
- June 2014 – Inner West Courier “Welcome to Your Future – Stunning New Look for the Town Centre”
- Sept 2014 – Strathfield Scene - “New Town Centre Tasks Off”

6.1.13 Was there serious and substantial waste in relation to expenditure on IPG?

240. The following demonstrates that Council received value for money from IPG by the amount of work over a variety of projects and the high level project benefits they delivered for Council. This was guided by the management by Council’s Technical Services Department and the elected Council’s awareness of IPGs role and value in assisting with the preparation and planning of the Town Centre Project for the community.

The Technical Services Department managed IPG, and it was their responsibility through the Director Technical Services to review, consider and process the monthly invoices received from IPG under their retainer arrangement and ensure Council received value for money.

The retainer system essentially reserves the consultants’ time to be available to work on the agreed ongoing projects and tasks when the client requires these services. Under the retainer system the client receives a discounted rate on the consultants’ time in undertaking project tasks as compared to the standard staff charge out rates, providing the consultant satisfactorily undertakes the projects and tasks required by the client. The advantage to the Consultant is a regular work flow and a regular income stream. On the basis that the client is satisfied with the progress of the projects and tasks, the value of the works undertaken will generally exceed the monthly retainer amount however their potentially will be periods where due to the timing and work flow the value to the client will not exceed the monthly retainer amount.

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In the case of IPG, over the course of their retainer arrangement with Council, the major projects they were involved with included the Strathfield Town Centre Project, 69 Redmyre Road, Key worker housing, master planning Parramatta Road (including preparing the Brisbane Field Trip) the review of Councils operational lands (Asset Register), the pre-DA stages of Mathews Park.

It was the role of the Director of Technical Services to process and sign off the IPG invoices and ensure value to Council. As the Director managed IPG and their project tasks they were able to monitor the value to Council with the assistance of feedback from other Departments involved with the projects e.g. Corporate Services and the review of Councils operational lands. The Director would then be able to consider, process and sign the IPG monthly invoices based on up to date knowledge of the delivery and value of the project tasks being provided.

It should also be noted that Councillors, particularly Mayors and Deputy Mayors, were very aware of IPGs engagement and subsequent value. The Councillors provided direction on these various projects and tasks through extensive workshops, briefings, meetings and reports to Council over the period they were engaged and particularly regarding the Strathfield Town Centre Project. In addition to all the other processes outlined where Councillors were made aware of the project detail and facilitated their direction of the project, through the following processes that related specifically to IPG:

The following Councillor Workshops provided Councillors with an outline of the roles and project tasks (in closed session) that IPG were undertaking:

- 29/7/10 – Councillor Workshop – Strategic Property Advice relating to Council land in Parramatta Road (which IPG facilitated)
- 19/10/12 – Councillor Workshop – Strathfield Town Centre Project Governance and Probity (which IPG attended)
- 15/11/12 – Councillor Workshop - Affordable Housing and Master Planning in Parramatta Road (which IPG facilitated)
- 7/12/12 – Councillor Field Trip – All Councillors boarded flight to Brisbane with detailed fieldtrip itinerary, including meeting project directors on several sites in Brisbane (fully organised by IPG)

Councillors were made aware through the following closed session Council Reports (either in the report or through associated discussions) of the work IPG were undertaking:

- IPGs property negotiation role with Mathews Park
 - Council Reports: 3/8/10, 9/9/10, 23/11/10 & 24/2/11
- IPGs property negotiation role with 69 Redmyre Road
 - Council Reports: 25/5/10, 7/6/11 & 2/8/11
- IPGs property negotiation role with the Strathfield Town Centre Project
 - Council Reports: 24/5/12

Note: the 24/5/12 report expressly provides endorsement authorising John Elvy of IPG to approach the key property owners with a view to establishing the level of interest in participating in stages 1, 2 and/or 3 of the project.

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Councillors particularly Mayors and Deputy Mayors have had regular involvement in the Strathfield Town Centre Project that would have made them aware of IPGs involvement and role in the project. (Note: this is addition to all the other involvement and communication highlighted already in this document eg Council Reports). This specific involvement included:

The three Funding Applications for the Town Centre Project, which had Councillor endorsement including through specific briefings and signing of cover letters. These included letters signed by the Mayor Clr Maroun.

- Jan 2010 – NSW Government Funding Submission, was co-signed by IPG, General Manager and Mayor.
- 9/11/10 - Letter to Minister for Infrastructure Anthony Albanese MP re: Infrastructure Australia submission
- 1/12/10 - Letter to Minister for Infrastructure Anthony Albanese MP with copy of Infrastructure Australia submission.

Councillor Field Trips relating to the Town Centre Project and Parramatta Road provided extensive cross referencing to the projects, project status, tasks and consultants included:

- 14/1/09 - Councillor Field Trip – to research Blacktown, Parramatta & Chatswood Bus Interchanges
- 2/9/11 – Councillor Field Trip – to Willoughby Concourse Project Site Visit (including Mayor Clr Maroun & Clr Carney) with Willoughby Council General Manager and Project manager.
- 7/12/12 - Brisbane Trip – Councillor Field Trip – All Councillors boarded flight to Brisbane with detailed fieldtrip itinerary, including meeting several project directors on sites, fully organised by IPG

Media coverage where Councillors featured, would have involved briefings on the project beforehand such as:

- 16/06/2009 – Inner Western Suburbs Courier – Clr Kwon - "Strathfield Traffic Solution")
- 06/08/2010 – Strathfield Scene – Clr Carney - "\$150M Town Square Plan Set for Take Off"
- Dec 2010 – Strathfield Scene – Clr Maroun - "Town Centre Plan Wins Support"
- Dec 2010 – Strathfield Scene – Clr Maroun - "Town Centre Plan Wins Over a Liberal Heavyweight MP"
- April 2011 – Strathfield Scene – Clr McLucas - re: outline of project - "Baird Backs Town Centre"
- July 2011 – Strathfield Scene – Clr Carney – re: he is the public face of the project - "How We Can Free Up Sydney's Roads"
- Jul 2011 – Strathfield Scene – Clr Carney - "Big Guns Rolled Out for Final Town Centre Push"
- 08/07/2011 – Strathfield Scene – Clr Carney - "How Can We Free Up Sydney's Roads"
- Aug 2011 – Strathfield Scene – General Clr Involvement - "Community Update on Square"

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- o 29/09/2011 – Strathfield Scene – Cirs Barron & Carney - "Barron Elected Strathfield Mayor"
- o 04/10/2011 – Inner West Courier – Clr Barron - "New Mayor's Focus on Health"
- o 07/10/2011 – Strathfield Scene – Cirs Barron & Carney - "An Independent's Day" 19/01/2012 – Inner West Courier – Clr Barron - "Better Roads, Less Traffic – Residents have say on suburb's future"
- o May 2012 – Burwood Scene –Cr Carney and Cr McLucas – re: their meeting with Treasurer Mike Baird regarding funding "Strathfield Square saved as Open Space"
- o 04/05/2012 – Strathfield Scene – Clr Barron - "Town Square Tower a 'Mischievous Rumour'"
- o 12/06/2012 – Inner West Courier – Clr Barron - "No Money for Carparks"
- o 31/07/2012 – Inner West Courier – Clr Barron - "Square will Remain Community Land"
- o June 2013 – Strathfield Scene – Cr Vaccari – re: Clr Vacarri & MP Casuscelli to lobby the State Government "Town Centre 'a golden goose'"
- o 09/05/2014 – Strathfield Scene – Clr Bott - "How ICAC's Macquarie Street Massacre Could Affect Strathfield"
- o 09/05/2014 – Strathfield Scene –Clr Bott - "Mayor Seeks Meeting with New Premier on Town Centre Plan"
- o June 2014 – Inner West Courier – Cr Bott – re: launching new images of project "Welcome to Your Future – Stunning New Look for the Town Centre"
- o Sept 2014 – Strathfield Scene – Cr Bott – re: presentation to Western Sydney Business Chamber "New Town Centre Tasks Off"

241. – 244 It is quite incorrect to claim that Council has little to show for the \$760,000 paid to IPG pursuant to the retainer and that there was serious and substantial waste in relation to expenditure on IPG. The response provided to points 204. – 205. provides clear evidence of the extensive amount of projects and tasks and that IPG undertook for Council, how this has assisted to set the project up in a strong position and the subsequent excellent value for money they provided.

In addition many of the project tasks that IPG undertook included various 'commercial in confidence' matters that impacted how visibly or detailed the work they were involved with could be communicated. This therefore has impacted the ability of Council communicating publicly (ie in Council reports) and broadly about many of the tasks and projects steps that IPG has undertaken for Council. Instead these matters were communicated to Councillors in discussions when dealing with Closed Session Council Reports and in confidential Councillor briefings and workshops.

IPGs value to Council also related to the high level commercial experience, expertise and level of relevant networking and contacts they provided Council. This is a niche area where only a select group of consultancies have the ability to adequately assist the government sector. For instance IPG has been engaged by a number of government organisations including Willoughby Council, Bankstown Council, Department of Public Work, Macquarie University and the State Water Corporation in addition to many private corporations. This type of work includes high level commercial and project development expertise making such

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as IPG's current project management role with the Parramatta Town Square development (a project which has similarities to Councils Town Centre Project.

Local government would find it inefficient to recruit permanent staffing with such high level commercial attributes particularly as the salary package on a full time basis could not be justified and it is unlikely applicants would be available with these skill set or experience. Engaging consultants either fee based for single definable projects or on a retainer basis for multiple and less definable projects are practical and cost effective methods to engage the assistance of high level consultants such as IPG.

The legal and probity consultants engaged by Council, HWL Ebsworth and O'Connor Marsden, for the Town Centre Project worked professionally alongside IPG from 2012. HWL Ebsworth were first engaged by Council to advise on the legal aspects of the project in March 2012 and O'Connor Marsden were first engaged by Council as an interim Probity Adviser in May 2012. Both firms had thorough knowledge of IPG's role and projects and of the value they brought to Council and the project.

The professional awareness that HWL Ebsworth and O'Connor Marsden had of IPG's role, projects and of the value they added to the project is documented by:

- The Project Governance Recommendations prepared by HWL Ebsworth on 17 May 2012 which included: that IPG were to undertake property discussions.
- The drafting of the 'Town Centre Project Governance and Probity Framework' by O'Connor Marsden, including input from HWL Ebsworth.

Version 1 of the Governance and Probity Framework was completed in January 2013 and version 4 in June 2013, which was then adopted by Council in September 2013. This document includes a significant section on 'Negotiation Protocol with Landowners' which during this period was one of IPG's role. This would have necessitated O'Connor Marsden having a thorough understanding of this critical role IPG undertook during that period.

245. - 247. As previously indicated, I refute the unsubstantiated claim of maladministration and substantial waste of money in relation to IPG. The information provided in this submission clearly demonstrates that IPG provided very good value for money to Council and that there has been no associated maladministration.

248. – 250 In additions to Council's formal budgetary process, the elected Councillors and particularly Mayors and Deputy Mayors were clearly aware of IPG's engagement by Council and the critical role and value for money in major projects such as Mathews Park and the Strathfield Town Centre Project. The Councillors involvement and awareness of the value that IPG brought to Council is demonstrated in the response to point 240.

Appendix 26

Email from IPG to Council 22 August 2011

Email from IPG to Council (22/8/2011)**David Backhouse**

From: John Elvy <jelvy@internationalproperty.com.au>
Sent: Monday, 22 August 2011 4:55 PM
To: David Backhouse
Subject: Meeting Friday
Attachments: image003.png

David

I understand the purpose of our meeting on Friday is to discuss the land use etc of the properties around Parramatta Rd Homebush. I feel it would be opportune to also discuss the compilation of a detailed asset register for Council's operational and community assets. Can I suggest that my colleague, Chris Demertze come with me and while you and I are discussing Homebush he could meet with the appropriate person, ie Neal or Jodie to show what other asset registered we have produced with a view to creating a "purpose built" register to suit Strathfield. As we have discussed previously, it is very important to understand not only what assets there are, but the highest and best for those assets and the beneficial financial impact an asset review might have for council. This is part of our brief to Strathfield as your property and infrastructure advisors.

Please let me know if you agree.

With Kind Regards,

John Elvy
Director

jelvy@internationalproperty.com.au
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Appendix 27

Chronology

Legal & associated professional advice

Chronology – Legal & associated professional advice

Date	Description of Event/Document
4/5/2010	Council resolves to call for expression of interests for the provision of legal services
20/7/2010	Advertisement calling for expression of interests from legal service providers placed in Sydney Morning Herald
20/8/2010	Closing date for submission of expressions of interest
undated	Two page record pertaining to the assessment of the expressions of interest
1/12/2010	Information report to Council on Expressions of Interest
1/3/2011	Council considers report on the appointment of external legal service providers; Council resolved to appoint recommended providers
2/3/2011	Advice sent to legal firms advising of appointment to panel
24/3/2011	Legal Practice Policy and Legal Practice Procedure promulgated
1/2/2012	Capability Statement from HWL re provision of legal services for Town Centre project
6/3/2012	Council resolves to endorse General Manager's and Mayor's decision to engage experts on Australian Catholic University concept plan; report to Council indicate costs will be funded from recurrent budgets.
14/3/2012	Peter Garrett of HWL provides "preliminary scope of works" for Strathfield Town Centre project.
22/3/2012	Cost estimate for ACU Class Part 3A objection \$40,000 and initial estimate for Class 4 of \$20,000 to \$30,000.
22/3/2012	David Backhouse asked HWL for update on ACU matters and for a cost estimate.
27/3/2012	Council considered report on ACU enforcement proceedings authored by David Backhouse.
2/4/2012	Email from Peter Garrett of HWL attaching an "Updated Activity Schedule" and updated Scope of Works
22/5/2012	Advice from HWL re class 4 matter - seeks instructions - no revised costs estimate.
24/5/2012	Council considers report on ACU enforcement action; Council resolved to commence legal action; resolved that regular reports be provided
24/5/2012	Council resolves to allocate funds for Town Centre project.
16/8/2012	HWL provides cost estimate for Class 4 action: \$400,000
26/10/2012	David Backhouse sends email to Councillors regarding budget allocations for ACU matters.
16/4/2013	Council considered report on ACU matters; resolved to allocate additional \$75,000 in 2012/2013 budget - total \$275,000.

Date	Description of Event/Document
3/6/2013	Public interest disclosure made to the ICAC; detailed allegations regarding expenditure of legal services
4/6/2013	Council considered report on ACU matter - resolved to seek update on estimated costs so as to consider the budget implications; report states that the expenditure to date on ACU was \$247,976.
2/7/2013	HWL wrote to Council - provides \$100,000 estimate for ACU Class 1 matter
16/7/2013	Council considered ACU costs; resolved to be provided with an update on the costs and budgetary implications of the Class 1 appeal
15/10/2013	Letter from HWL enclosing September 2013 invoices - includes revised cost estimates including one for Town Centre of \$100,000 to \$250,000
22/10/2013	Council considers report on ACU action; adopts recommended budget of \$150000 for 2013/2014
31/1/2014	Letter from HWL provides revised cost estimate for Class 1 proceedings of \$140,000 to \$185,000.
14/2/2014	Council considers report on ACU action; adopts recommended budget of \$195000 for 2013/2014

Appendix 28

Chronology

Appointment of external auditor

Chronology – Appointment of external auditor

Date	Description of Event/Document
1/7/2000	Warton Thompson and Co appointed as Council's auditor (Minutes of Council meeting)
1/5/2007	Warton Thompson and Co reappointed as Council's auditor until 30/6/12 (Minutes of Council meeting)
30/6/2012	Warton Thompson and Co term as Council's auditor ends
16/1/2013	Memorandum from Manager, Finance to General Manager seeking approval to call for tenders
23/1/2013	General Manager approves call for tenders
5/3/2013	Initial <i>Request for Tenders</i> for the provision of Audit Services
26/3/2013	End of period for acceptance of tenders
11/3/2013	Jodie Bourke, Charlie Ayoub and Geoff Baker complete conflict of interest declaration forms pertaining to audit tender process
28/3/2013	Change in membership of tender evaluation panel; Joe Sumegi replaces Mr Ayoub and completes conflict of interest declaration form
1/4/2013	Opening of Tenders for Provision of Audit Services; 6 tenders received; no tender from Warton Thompson and Co. (Tender List recording the 6 tenders received)
2/4/2013	Phillip Webster of Warton Thompson and Co sends email enquiring re status of Audit Tender; Jodie Bourke responds
11/4/2013	Reference checks on highest ranked tenderer (Hand written notes on reference checks undertaken by Manager, Finance)
15/4/2013	Memorandum from Manager, Finance to Executive regarding "Audit Tender Evaluation".
15/4/2013	Manager, Finance submits report on tender process for Council meeting
2/5/2013	Manager, Finance submits revised (second) version of report for Council meeting (Email from Manager, Finance to Director, Corporate Services)
3/5/2013 (10:04 am)	Email from Corporate Strategy Coordinator to Manager, Finance and Director, Corporate Services providing advice on required content in the report to Council
3/5/2013	Revised report on evaluation of tenders for audit services authored by Manager, Finance (third version)
3/5/2013 (2:01 pm)	Email from Manager, Finance to Corporate Strategy Coordinator and Director, Corporate Services advising that report had been revised.
3/5/2013 (2:35 pm)	Email from Corporate Strategy Coordinator to Manager, Finance and Director, Corporate Services enquiring about content in the report to Council
3/5/2013 (2:39 pm)	Email from Manager, Finance to Corporate Strategy Coordinator and Director, Corporate Services advising that Mr Redman had decided to rewrite report himself recommending different outcome.

Date	Description of Event/Document
3/5/2013 (4:01 pm)	Email from Corporate Strategy Coordinator to Manager, Finance and Director, Corporate Services reiterating advice provided that morning regarding “DLG requirements for reports to council on tender evaluation”.
3/5/2013	Email from Kim Appleby to Neale Redman expressing concern about initial Audit Tender process. See Appendix 29
3/5/2013 4:38 pm	Manager, Finance scans notes pertaining to reference checks she undertook.
6/5/2013	Manager, Finance sends email asking that a document be registered (notes detailing her assessment of the tenders)
7/5/2013	Council considers report on first audit; resolves to adopt Neale Redman's recommendation. (Report on Evaluation of Audit Tenders authored by Director, Corporate Services, and Attachment to the Report & Extract of Minutes of Council meeting of 7/5/13 recording decision on tenders for audit services.)
8/5/2013	Corporate Strategy Coordinator provides Neale Redman with amended request for tender. See Appendix 30
9/5/2013	Memorandum from Director, Corporate Services to General Manager seeking approval for shortened advertising period.
9/5/2013	General Manager approves shortening of tender period for second audit tender
13/5/2013	Council advises tenderers advised of decision to call for fresh tenders
14/5/2013	Council invites fresh tenders for provision of audit services Tender no. 02/2013 (Revised Request for Tenders document)
16/5/2013	Manager, Finance responds to a query from a tenderer as to why Council resolved to decline and readvertise; indicates she wasn't sure. (Email)
20/5/2013	Council sends email to Phillip Webster advising tender has been readvertised
22/5/2013	Director, Corporate Services completes <i>Conflict of interest</i> form for second tender process
23/5/2013	Two emails from prospective tenderer seeking clarification of period of appointment specified in the Request for Tender.
24/5/2013	Two email responses from Council's Procurement Coordinator to prospective tenderers confirming term of proposed appointment.
27/5/2013	Email from Director, Corporate Services to Manager, Finance about her participation on the second tender evaluation panel. See Appendix 32
28/5/2013	Email response from Manager, Finance to Director, Corporate Services advising reasons why she did not wish to participate as a member the second tender evaluation panel. See Appendix 32
28/5/2013	End of period for acceptance of tenders for second audit tender process
28/5/2013	Tenders #2 opened 8 tenders received (Tender List recording the 8 tenders received in response second request for tenders)
29/5/2013	Memorandum from Director, Corporate Services to Manager, Finance addressing concerns she had raised. See Appendix 33
30/5/2013	Tender evaluation panel meets and agrees on scoring and ranking of tenders

Date	Description of Event/Document
4/6/2013	Report for Council on Evaluation of Tenders for Audit Services (2 nd tender process)
4/6/2013	Council considers recommendation on second round of audit tenders; resolves "That Council hold a series of Councillor workshops to consider this matter further". (Minutes)
5/6/2013	Notes indicate reference checks done on two of the tenderers.
27/6/2013	Councillor workshop held to provide further information concerning tenders received. (Copies of presentation slides and written information)
2/7/2013	Further report on second audit tender. Director, Corporate Services recommends Warton Thompson (ranked 4th); Council resolves to appoint Hill Spencer Steer (ranked 3 rd).
15/4/2014	Director, Corporate Services makes file note re the basis for his recommendation in regard to the initial tenders.

Appendix 29

Email

Ms Appleby to Mr Redman
3 May 2013

Email - Ms Appleby to Mr Redman - 3 May 2013

From: Kim Appleby [kim.appleby@strathfield.nsw.gov.au]
Sent: Friday, 3 May 2013 2:25:15 PM
To: Neale Redman
Subject: Council Reports

Hi Neale,

I've just been reviewing the Council Reports for 7 May 2013 and have a couple of concerns. Firstly, I am most concerned with Item CS1. Evaluation of Tenders for Audit Services and the recommendation to decline all tenders and call for fresh tenders.

My understanding is that a duly constituted/convened panel followed correct processes for calling tenders and that six (6) suitably qualified tenders were received. Pursuant to due process, the panel unanimously agreed on the preferred tenderer and this was prepared and reported. It is my further understanding that contrary to advice given, an amended report has been prepared for Council recommending that all tenders be declined and calling for fresh tenders. It would appear that this amendment is purely as a result of the former internal auditor not submitting a tender in time for the close of submissions.

I must advise you in good faith that pursuing such a course of action is highly unethical, and if Council were to be challenged on its decision making processes in relation to this tender, would put us in a very compromised position.

Further, I can advise that the matters being referred to Council for closed session on this business paper do not appear to meet the criteria under Part 10(a). This was the case also in recent times with the matter relating to Dalton Avenue. Once again, verbal advice was given on that too not meeting the criteria.

For discussion please.

Kim

× <http://www.strathfield.nsw.gov.au>

Kim Appleby | Group Manager Corporate Services
P 9748 9623 F 9764 1034
65 Homebush Road, Strathfield NSW 2135
www.strathfield.nsw.gov.au

All residents are eligible for three on call clean up collections per year. Book online at www.strathfield.nsw.gov.au.

Appendix 30

Emails – Amended Request for Tender 8 & 9 May 2013

Page 1 of 2

From: Jodie Bourke [jodie.bourke@strathfield.nsw.gov.au]
Sent: Thursday, 9 May 2013 11:16:43 AM
To: Neale Redman
Subject: RE: Draft Tender Request - Audit Services

Neale,

Responses below. Also the time period for the closure of the tender should be Australian Eastern Standard Time as we have finished daylight savings.

 <http://www.strathfield.nsw.gov.au>

Jodie Bourke | Manager Finance
 P 9748 9926 M 0434 182 679 F 9764 1034
 65 Homebush Road, Strathfield NSW 2135
www.strathfield.nsw.gov.au

All residents are eligible for three on call clean up collections per year. Book online at www.strathfield.nsw.gov.au.

From: Neale Redman
Sent: Thursday, 9 May 2013 10:11 AM
To: Jodie Bourke
Subject: FW: Draft Tender Request - Audit Services

Jodie

As discussed please review and provide me with any comments.

 **Neale Redman** | Director Corporate Services
 P 9748 9976 M 0419 238 883 F 9764 1034
 65 Homebush Road, Strathfield NSW 2135
www.strathfield.nsw.gov.au

All residents are eligible for three on call clean up collections per year. Book online at www.strathfield.nsw.gov.au.

From: Cathy Jones
Sent: Wednesday, 8 May 2013 8:21 PM
To: Neale Redman
Subject: Draft Tender Request - Audit Services

Neale

Attached is the amended tender request for audit services. The main changes are:

Date of closure – changed to 28 May 2013, which is a two week period. The copy had one week but you said you have changed it to two weeks.

Contractor requirement – the original advertised for services for a 6 year period ended 30 June 2018. Six contract which was agreed this year would finalise in 2019, not 2018. I further note in the original tender that 'the auditor will be appointed for a period of six years from 1 July 2012 to 30 June 2018'. While I understand that the first year will be the audit of 2012/13, this statement in the tender implies that the commencement of the contract is 1 July 2012 when the contract will not be agreed until mid-2013. Approval of the tender requires approval by the elected Council. Council has no capacity to sign a contract that states that an appointment is made that commences prior to most of the councillors being elected in Sept 2012. The previous contract ended on 30 June 2012 i.e. for transactions ending 30 June 2012. Their physical work ended in late October 2012. I don't think that we could have undertaken a tender process when the auditors were still performing work to ensure that Council resolved a new appointment prior to the election in September 2012. If you change the tender period ending from 30 June 2018 to 30 June 2019 then you are essentially saying that we have not had an auditor for 1 year, or you are extending the audit period to 7 years which is in breach of the LG Act.

GIPA Act – s.121 of the GIPA Act requires a contract to specify that Council has a right to records held by the contractor and they are required to produce within 7 days upon request. This requirement was missing from the draft tender request.

Fees – the original tender asked applicants to fix first year but to provide a method of determining fees over the length of

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Page 2 of 2

contract. This has been altered to 1st year fee and pegging future increases against an agreed measurement eg CPI. I don't believe you should be prescribing how tenderers want to increase fees. Some of the previous tenderers didn't even opt to increase the fee until 2016, and then did a dollar increase, not an inflation increase. That should be their prerogative.

Visits – requirement for applicants to provide names of the personnel who will be visiting council. The original did not ask for this information. It is difficult to prescribe this in a tender as staff turnover is possible in any organisation. If they have staff turnover and those people don't actually end up visiting the council, does this make their tender and the contract void?

Key Personnel – the draft tender has been altered to include requirements that applicants provide additional information on their capacity, which is significant in determining the most suitable applicants. In assessing the capacity of applicants to provide a total quality audit service of the nature required by Council, regard will be had to:

- the previous experience obtained at a senior level in the auditing of a medium sized urban council, the nature and diversity of such experience and the range and perceived quality of auditing services provided by the applicant in respect of existing and previous audit appointments;
- the extent to which the applicant is able to guarantee the continuity of involvement by the same principals and staff in the ongoing control and undertaking of the audit;
- the experience and qualifications of Principals in disciplines of a non-accounting nature which will need to be addressed as part of a complete managerial audit approach;
- the level of awareness of applicants of the political, social, economic and demographic factors which impact upon Council's operations; Does this really impact on their ability to perform a financial services audit?
- the range and nature of professional affiliation and associations held by the Principals and nominated staff.

Insurances – the name of Council's insurer was added. Is this really necessary considering we may not use these insurers for the full contract period?

Internal Audit – the document stated that Internal Audit is a function of the Risk Coordinator. This was changed to Internal Review on your advice as this function is not being actively performed at Council.

Scope of Work – added to services required 'Report on conduct of the audit'.

Minor issues – changes to no of residents of Strathfield. I question the 160 full-time equivalent staff in the document? 160 FTE is correct as per our budget and Jason's establishment. Also deleted mention of Enfield – the suburb of Enfield is located in Burwood Council.

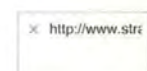
Shortening the tender period

You may need to provide explanation for the shorter tender period as it usually 21 days. Clause 171 of the Local Government Regulation states:

- (1) A council that believes there are exceptional circumstances rendering inappropriate a deadline that would, but for this clause, be required to be specified in an advertisement under clause 167, 168 or 169 or an invitation under clause 168 (4) or 169 (6) may decide on an earlier deadline. However, the earlier deadline must be a specified time on a date that is at least 7 days after:
 - (a) the date of the publication or first publication of the advertisement, or
 - (b) the date of the invitation.
- (2) A council must keep a record of:
 - (a) the circumstances requiring an earlier deadline to be specified in such an advertisement or invitation, and
 - (b) the name of the staff member who made the decision to change the deadline (if not made by the council).

Regards

Cathy



Cathy Jones | Corporate Strategy Coordinator
 P 9748 9937 F 9764 1034
 65 Homebush Road, Strathfield NSW 2135
www.strathfield.nsw.gov.au

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Appendix 31

Statement

Aneet Singh

STATEMENT

In the matter of:	Investigation into Strathfield Municipal Council pursuant to section 430 of the <i>Local Government Act 1993</i> .
Place:	Strathfield Municipal Council, Strathfield
Date:	18 June 2014

Name:	Aneet Singh
--------------	-------------

STATES:

1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give under oath if required to do so. The statement is true to the best of my knowledge and belief and I make it knowing that, it may be tendered in evidence.
2. I am aware of the terms of reference for the investigation as detailed in an information sheet provided to me. (Doc 1)
3. I have been an employee of Strathfield Municipal Council since 2/1/2013. I am employed in the role of Senior Accountant. I initially reported to the Finance Manager, Ms Jodie Bourke until she left Council. I now report to Mr Les O'Donnell who has been employed as the Chief Financial Officer.
4. I am a Certified Practising Accountant.
5. My responsibilities with Council include financial accounting, preparation of monthly reports, GST and BAS statements. I am responsible for entering budget allocations into Council's finance system.
6. Budget allocations are entered in against job numbers. A line manager is responsible for monitoring expenditure against job numbers. They get monthly reports to facilitate this.
7. I was involved in the two tender processes in 2013 for the appointment of Council's external auditor.
8. I became aware that I was to be involved in the tender process when informed of this by my then manager, Ms Jodie Bourke. I subsequently also received information about the process from Carol Chapman who is Council's Procurement Coordinator.
9. My role in the two audit tender processes was to assess the tender submissions against the criteria in the Request for Tender document. I scored the submissions and then participated

Signature: 

Page 1 of 3

STATEMENT

in discussion with the other members of evaluation panel to reach a consensus on how the tenders should be scored and ranked.

10. I recollect that the initial panel was comprised of Jodie Bourke, Joe Sumegi and myself who did the evaluations. Geoff Baker and Carol Chapman were also present. I can't recall whether Geoff Baker was also involved in the evaluation process.
11. My involvement in the initial audit tender process was the first time I had been involved in a Council tender based procurement process.
12. Jodie Bourke was not involved in the second tender process. Neale Redman was, as was Joe Sumegi, Geoff Baker and Carol Chapman.
13. I was not involved in developing the Request for Tender. I had no role in determining the criteria. I was involved in setting the weightings to be allocated to each criterion and in the evaluation of the submissions.
14. In regard to the initial audit tender process I was given a copy of the submissions which I evaluated independently of the other members of the panel. I spent approximately one and half days reading and evaluating the submissions. The panel then met to review our individual submissions. This meeting went for 3 or 4 hours to the best of my recollection.
15. When the initial panel met, we tabled our evaluations and discussed and explained the differences to each other. We reached a consensus as to how each submission was to be rated. It is my recollection that we reached a consensus as to which submission was the best.
16. It was my understanding that a report was going to be made to the elected Council on the evaluation of the tenders. I didn't know who was going to write that report.
17. I did not see any draft or final reports in relation to either of the tender processes prior to the matter being reported to Council.
18. I was not aware of the recommendations made to Council in the reports pertaining to the two audit tender processes.
19. It is my understanding that the panel's role was to make a recommendation as to who had submitted the most suitable tender, that this recommendation would be reported to Council but also that it was the Council's decision.

Signature:.....

STATEMENT

- 20. The members of the initial tender panel did not express any concern as to the number of tenders that were received. The initial tender panel considered that there tenders that could be recommended to Council for appointment.
- 21. The initial tender panel did not express any concern as to the criteria that we were using to assess the tenders. We did have discussion as to the relative weightings.
- 22. PWC was assessed as being the most suitable tenderer by both evaluation panels.
- 23. Prior to today, I was not aware that Walter Thompson and Co was the tenderer recommended to Council in regard to the second tender process. I was also not aware, prior to today, of the recommendation to not accept any tenders in relation to the first tender process.
- 24. The second audit tender panel process was essentially the same as the first process, in regard to that part of the process that I was involved in. My assessment of the submissions did not take as long as they were quite similar to the first submissions but I still needed to review them and did so.
- 25. It is my understanding that the evaluation process was completed in regard to both tender processes when the evaluation panel reached its consensus on the scores and rankings.

Signature:.....

Page 3 of 3



Office of Local Government

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

Doc 1 AR

SECTION 430 INVESTIGATION – STRATHFIELD MUNICIPAL COUNCIL

INFORMATION FOR PERSONS CALLED TO AN INTERVIEW AND/OR TO ASSIST THE INVESTIGATION

The Chief Executive of the Office of Local Government determined that there should be an investigation, pursuant to section 430 of the *Local Government Act 1993*, into certain aspects of Strathfield Municipal Council. The Terms of Reference are set out below:

- 1) *Whether there has been maladministration and/or serious and substantial waste of local government money in relation to Strathfield Municipal Council's:*
 - a) *procurement and expenditure on services from the International Property Group Pty Ltd (ACN 117 214 829);*
 - b) *procurement and expenditure on legal services and associated professional advice since 1 July 2011;*
 - c) *decisions of 7 May 2013 and 2 July 2013 pertaining to the appointment of an external auditor and the related tender processes.*
- 2) *Strathfield Municipal Council's conduct and performance as the Trust Manager of the Hudson Park (R62163) Reserve Trust since 1 July 2009.*
- 3) *Any other matter that arises directly from the principal investigation of the Council's work and activities set out in the terms of reference.*

The purpose of the investigation is to gather relevant information regarding the subject matter of the investigation. The Office of Local Government seeks the cooperation of all witnesses and other persons asked to provide information during the investigation.

Mr Richard Murphy and Mr Angus Broad have been authorised by the Chief Executive to conduct the investigation. They are members of the Office of Local Government's Investigations Team. They have been delegated all the powers and functions of the Director General under sections 430, 431 and 432 of the Act, for the purpose of conducting the investigation. The Act can be viewed online at www.legislation.nsw.gov.au.

Persons who are asked by investigating officers to provide information will be informed of the relevant term/s of reference. If this has not been done, the matter should be brought to the attention of the investigating officers as soon as possible.

The investigating officers will usually have a number of questions already prepared to ask persons assisting the investigation. All such persons will be given the opportunity to provide any further comments that they consider may be relevant to the investigation.

A person asked to provide information may be contacted in person or in writing. In the latter case, that letter should not be shown to anyone or used for any purposes other than to seek professional advice or for the purpose of complying with the request for information or documents contained in the letter.

T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
E dlg@dlg.nsw.gov.au W www.dlg.nsw.gov.au ABN 44 614 630 046



It is possible that a copy of the letter of request and/or the reply (including any documents handed over in response to the request) will become public documents. It is also possible that you will be identified in the investigation report that will be provided to the Minister for Local Government and the Council. The report will become a public document. Information and documents you provide to the investigating officers may be included in that report.

Investigating officers are unable to and do not receive evidence or information or documents under a pledge of secrecy or confidentiality, i.e. "off the record".

You are asked not to discuss any matters raised in the interview with any person other than for the purpose of seeking professional advice. Premature disclosure may hinder the investigation.

You are not obliged to answer the questions put to you by the investigating officers. You may be guided by any professional advice you have received.

You may be asked by the investigating officers to provide documents in your possession and relevant for the purposes of the investigation. It is a matter for you whether you comply with such a request.

However, if you decline to answer relevant questions and/or refuse to provide copies of relevant documents, you may be required to attend a formal interview where the investigating officers may direct you to provide evidence under oath. You may also be directed to produce any document that is in your custody or control. In this circumstance, witnesses are not excused from answering questions or producing documents.

You may, if you wish, bring an independent person to the interview (such as a lawyer or other professional person to assist you). If you do have a person accompanying you, that person should not hinder the interview. That person may provide advice to you on the questions being put. You are welcome to attend the interview unaccompanied.

Your interview may be electronically recorded to ensure that the Office has a full and accurate record. If the interview is recorded, you will be given a copy of the recording. If you are provided with a copy of your recorded interview, it should not be used for any purposes other than to seek professional advice.

In the alternative, the investigating officers may ask you for a written statement of evidence. The investigating officers will assist you with this process.

If you wish to clarify any matter, please do not hesitate to contact the Investigations Team, or the Leader, Investigations. You can contact the Office by telephone on 4428 4100.

As stated above, the purpose of the investigation is to gather all the relevant information regarding the subject matter of the investigation, and the assistance of those who are interviewed or otherwise contacted during the process is appreciated.



Appendix 32

Email exchange between
Neale Redman & Jodie
Bourke
27/28 May 2013

Email exchange between Neale Redman and Jodie Bourke – 27/28 May 2013

From: Jodie Bourke [jodie.bourke@strathfield.nsw.gov.au]
Sent: Tuesday, 28 May 2013 8:45:24 AM
To: Neale Redman
Subject: Re: Tender Audit

Neale,

I hope that your personal issues are rectified quickly and are nothing too serious. I am advising you now that I still do not wish to participate in the panel in the hope that you are able to find a suitable replacement in time.

As we have discussed over the last few weeks, I feel very uncomfortable with the decision you, or the Executive made in recommending that the original tender submissions be declined and fresh tenders be called.

I understand that the legislation permits for submissions to be declined and fresh tenders called without stipulating a reason. However, after you were advised that Warton Thompson and Co didn't lodge a submission you advised me before I had even finished evaluating the tenders that they were likely to be declined. Furthermore the decision to decline tenders was made without you even reviewing some or all of the tenders received. I also advised you that if the Executive was that uncomfortable with the recommendation of the panel, then it would be quite acceptable to go to the next preferred tenderer but this option was not considered (admittedly this conversation took place after the council meeting and resolution). You advised that the organisation didn't have an issue with the preferred tenderer Pricewaterhouse Coopers.

These facts have led me to believe that the decision to decline the tenders whilst not being illegal would be considered by a reasonable person to be unethical. I have had no assurance that you or the Executive would not discard the panel's recommendation once again if it wasn't in favour of Warton Thompson and Co. I strongly believe that you or the Executive have a pre-determined outcome and are requesting the panel to go through the evaluation process for the sake of following the process and not to be open and transparent.

Given the situation that has occurred I cannot guarantee a fair and impartial evaluation of a submission received by Warton Thompson and Co and therefore would have to declare a conflict of interest. I strongly believe that fresh tenders should not have been called as this has now given Warton Thompson and Co an opportunity to lodge a submission when they didn't previously lodge a submission due to an oversight as advised by you.

You are also aware that I have approved leave for Friday 31 May. The tender submissions close at 4:00pm Tuesday 28 May and you have arranged the tender evaluation meeting for 10:00am on Thursday 30 May in order for a decision to be made and a report submitted for the 4 June agenda due to be distributed on Friday 31 May. This essentially leaves only 1 day to read and assess what will likely be at least 6 submissions of 50-100 pages each. I feel that this is an unreasonable timeframe to adequately read and assess submissions when it previously took me the better part of 2 days to read and assess 6 submissions.

I also have previously advised you that the report submitted to Council was a contradictory report because it recommended to decline the tenders even though the panel had ranked the submissions. I have also advised you that it would take just one submitter to question this with the Division or similar agency and it could result in an investigation. I have told you that I didn't want my name or professional reputation associated or questioned as a result of any investigation which I fear may be initiated if Warton Thompson and Co are awarded the tender.

It is for all of the reasons listed above that once again I advise you that I do not wish to participate in the new tender evaluation panel.

Jodie Bourke
 Manager Finance
 Strathfield Council
 Ph: 02 9748 9926
 Mob: 0434 182 679

On 27/05/2013, at 4:19 PM, "Neale Redman" <neale.redman@strathfield.nsw.gov.au> wrote:

Jodie

Further to our discussions concerning the fresh tender for audit services I am unable to sit on the panel as I will not be in the office on Wednesday or Thursday and possibly Friday due to personal reasons.

In view of this I need you to sit on the Panel. As you will not be in the office until Wednesday I suggest that the Panel convene first thing Wednesday to agree the weightings and then review and assess the tenders.

Please give me a call if you would like to discuss.



Neale Redman | Director Corporate Services
 P 9748 9976 F 0419 238 883 F 9764 1034
 65 Homebush Road, Strathfield NSW 2135
www.strathfield.nsw.gov.au

All residents are eligible for three on call clean up collections per year. Book online at www.strathfield.nsw.gov.au

Appendix 33

Memorandum
Neale Redman to Jodie
Bourke
29 May 2013



Memorandum

A2

Date 29 MAY 2013
To MANAGER FINANCE
From DIRECTOR CORPORATE SERVICES
Subject TENDER AUDIT

I refer to your email dated 28 May 2013 and our subsequent discussions and confirm my advice to you concerning the issues raised.

The issues raised by you are totally without substance. At no time during the evaluation of the tenders by the panel had a decision been made concerning the outcome of the tender. The role of the tender panel is to carry out an evaluation of the tenders received and rank them according to the selection criteria. As indicated to you I then take into consideration the panel's ranking together with the financial analysis of the submissions and feedback provided by referees.

The decision to call for fresh tenders was made by Council following consideration of the report submitted. Your personal views concerning this decision are not relevant. In relation to your advice concerning your absence on leave and the timeframes for the tender I confirm my advice that I will sit on the panel as a result of your unavailability.

In regard to your comments concerning the report submitted to Council I do not accept that it was contradictory. As indicated to you the ranking of the tender submissions by the panel was taken into consideration by me as part of the assessment of the tender together with the financial analysis and reference checks.

At all times during the Audit Tender process Council has acted appropriately and in accordance with the relative legislative requirements. Your comments asserting otherwise are unfounded and inappropriate.


NEALE REDMAN
DIRECTOR CORPORATE SERVICES

Appendix 34

Chronology

Hudson Park

Chronology – Hudson Park

Date	Description of Event/Document
15/4/2008	Council's Environmental Committee considered report on unsuccessful tender process for Hudson Park Golf Course Redevelopment – no tenders received.
3/3/2009	Council meeting considered report on Hudson Park Golf Course Redevelopment. Resolved to close the tender for redevelopment of Hudson Park Golf Course and commence a new tender process for management of the pro shop, driving range and golf course based on a five (5) year licence agreement with a 5 year option.
4/7/2009	Letter from current licensee (Stacey Holdings) re financial viability and delay in tender process.
28/7/2009	Request for Tender for Hudson Park Golf Course and Driving Range Development and Management advertised.
6/8/2009	Council provides further information to some, but not all prospective tenderers.
11/8/2009	Titanium's solicitors write to Council seeking extension of the tender period.
17/8/2009	Request for Tender for Hudson Park Golf Course and Driving Range Development and Management closed - 1 tender received.
18/8/2009	Titanium's tender received See Appendix 35
26/8/2009	Council wrote to Titanium's solicitors seeking explanation for delay in lodging tender.
7/9/2009	Titanium's solicitors wrote to Council making submission regarding late tender.
9/9/2009	Minutes of the Tender Evaluation Committee.
3/11/2009	Briefing paper on Hudson Park prepared by Director Operations See Appendix 37
3/11/2009	Council considered report on second tender process for licence for Hudson Park Golf Course. Resolved to adopt recommendation to not accept complying tender and to authorise the GM to enter into negotiations for the redevelopment and management of the golf course. See Appendix 36
10/11/2009	Meeting between Council representatives and Stacey Holding re negotiation of licence terms
19/11/2009	Briefing paper on Hudson Park authored by Director Operations referring to meeting with Stacey Holding on 10/11/2009
3/12/2009	Letter from Titanium referring to discussions with Director Operations with revised proposal See Appendix 38
3/12/2009	Advice from Stacey Holdings' solicitor regarding proposed terms of agreement
11/12/2009	Further response from Stacey Holdings' solicitor regarding proposed terms of agreement
14/12/2009	Briefing to GM from Director Operations regarding current status of negotiations

Date	Description of Event/Document
24/12/2009	Council letter to Titanium acknowledging letter of 3/12/2009
14/1/2010	Meeting between Council and Titanium
3/2/2010	Council staff meet to discuss current status of negotiations. Determine to undertake due diligence regarding Titanium
3/2/2010	Council writes to Warton Thompson seeking due diligence report
5/2/2010	Warton Thompson provides due diligence report See Appendix 40
3/3/2010	Stacey Holdings terminates existing licence
8/3/2010	Meeting between Council representatives and Titanium re negotiation of licence terms
17/3/2010	Memorandum from Director Operations to Mayor & GM See Appendix 39
19/3/2010	Council provides draft licence to Titanium
1/4/2010	Titanium commences operation of the golf course & driving range
6/4/2010	Council considered urgent report on tHudson Park. Noted that current licensee had given 1 months' notice, noted that "the offer by Titanium Golf Management Pty Ltd (Titanium Golf) was the most advantageous proposal and better than the best submission that Council received from the tender process." resolved to enter into licensee agreement subject to Ministerial consent
3/5/2010	Council responds to Titanium's solicitor regarding contents of licence
19/5/2010	Final version of interim licence provided to Titanium
31/5/2010	Titanium advises that it will drop signed copies of the licence on 1 June 2010
4/6/2010	Director Operations provides memo to Mayor & GM to sign the interim licence
25/6/2010	Director Operations provides further memo to Mayor & GM to sign the interim licence
1/7/2010	Director Operations provides further memo to GM to sign the interim licence
7/9/2011	Council writes to Titanium regarding re-turfing works and raises need to update the business plan
1/10/2010	Completion of construction of kiosk due
1/11/2010	Titanium fails to pay licence fee
25/11/2010	Council writes to Minister Kelly seeking Ministerial consent to the licence
30/11/2010	Director Operations provides memorandum to Mayor & GM regarding the licence

Date	Description of Event/Document
1/12/2010	Director Operations provides further memorandum GM regarding the licence
10/12/2010	Crown Lands responds, seeking minor amendments
7/2/2011	Titanium provides sketch of proposed kiosk
24/3/2011	Council provides copies of licence for Minister's consent
1/4/2011	Anniversary of licence/occupation – CPI adjustment due
3/5/2011	Council provides further copies of licence for Minister's consent
8/6/2011	Licence Agreement returned with Minister's consent <i>See Appendix 41</i>
1/7/2011	Titanium fails to pay licence fee
9/8/2011	Council's lawyer advises Director Corporate Services that Titanium is liable for golf ball claims
8/9/2011	Council's risk Management Coordinator provides a memorandum to Director Corporate Services that a letter be sent to Titanium advising Council intended to enforce the indemnity provisions of the licence
25/11/2011	Council writes to Titanium regarding further re-turfing works and again raises need to update the business plan
1/12/2011	Titanium fails to pay licence fee
7/12/2011	Council's solicitor expresses the urgent need to recover the outstanding licence fees
1/1/2012	Titanium fails to pay licence fee
12/1/2012	Council staff meet with Titanium & negotiate debt repayment
16/1/2012	Council writes to Titanium confirming debt re-payment arrangements
29/3/2012	Memorandum from Manager Finance to GM, Director Operations, Director Corporate Services & solicitor advising of arrears & failure to make debt repayments
1/4/2012	Anniversary of licence/occupation – CPI adjustment due
2/4/2012	Council issues letter of demand to Titanium
30/4/2012	Titanium's solicitor communicates its claim
3/5/2012	Manager Community Lands provides memorandum to Director Corporate Services & Director Operations advising of a "drastic increase in the number as well as value" of golf ball claims
8/6/2012	Council's external solicitors provide preliminary advice

Date	Description of Event/Document
20/6/2012	Council's Director Operations provides memorandum to Council's solicitor See Appendix 44
27/6/2012	Council's external solicitors provided revised advice based on information provided to it by Council. Advice refers to Council having provided <i>"conflicting information in relation to some of the critical facts"</i> and records that they were <i>"instructed to prefer the facts set out in the memo from Rob Bourke dated 20 June 2012 in respect of any inconsistency"</i> .
29/6/2012	Council's solicitor provides advice on resolving the claim
2/8/2012	Council's solicitor asks Titanium's solicitor to quantify its losses
14/8/2012	Titanium's solicitor provides a response
28/9/2012	Manager Finance seeks advice from Director Operations of current position of Titanium's claim
28/9/2012	Director Operations advises Manager Finance matter is still in progress
2/11/2012	Titanium's Statement of Environmental Effects advises no building works are proposed
14/11/2012	Titanium lodges development application for installation of kitchen & dry bar area
4/12/2012	Council gets Highly Commended award at the 2012 Local Government Excellence in the Environment Awards in the Water Conservation category for the Hudson Park Golf Course Sustainability Project.
9/1/2013	Titanium lodges liquor licence application
15/2/2013	Director Operations provides memorandum to General Manager recommending recommended that Titanium Golf be offered 4 months' waiver of licence fees in settlement of the compensation claim
20/3/2013	Conference with external solicitors re Hudson Park
27/3/2013	Council's external solicitor seeks particulars from Council
1/4/2013	Anniversary of licence/occupation – CPI adjustment due, alternatively market adjustment of licence fee
3/5/2013	Council writes to Titanium providing a new form for golf ball claims
31/5/2013	Council writes to Titanium requiring its audited financial accounts & evidence of capital works. The letter also requests payment of arrears & attaches invoices for waste services See Appendix 43
12/6/2013	Manager, Community Lands provides memorandum to Director Corporate Services regarding golf ball claims
1/7/2013	Neale Redman advises HWL that Titanium has not responded to 31/5/13 letter; seeks further advice
2/7/2013	Titanium provides unaudited financial statements to Council
26/7/2013	Manager Finance provides memorandum to Director Corporate Services of Titanium's financial statements

Date	Description of Event/Document
15/8/2013	Council writes to Titanium applying CPI adjustment & demanding payment
22/8/2013	Council staff meet with Titanium regarding outstanding arrears, payments and Titanium's claim
28/8/2013	Council writes further letter to Titanium advising valuer appointed to do market review & other issues
1/9/2013	Titanium fails to pay licence fee
18/9/2013	Council's valuers provide valuation of market licence rent
26/9/2013	Council writes to Titanium advising licence fee adjusted to market rent
1/10/2013	Titanium fails to pay licence fee
11/10/2013	Council provides invoice for updated market adjustment
11/10/2013	Titanium writes to Council expressing concerns at Council's approach
23/10/2013	Council gives notice to Titanium that it wishes to enter into informal negotiations
1/11/2013	Titanium fails to pay licence fee
13/11/2013	Council meets with Titanium
1/12/2013	Titanium fails to pay licence fee
3/12/2013	Council considers report on Hudson Park; authorises the Mayor and the GM to take all necessary action in relation to the termination of the licence, recovery of outstanding money and dealing with compensation claim
14/1/2014	Council demands payment of outstanding debt
14/1/2014	Titanium's solicitors seek meeting with Council
20/1/2014	Notice of termination of licence issued
18/2/2014	Hudson Park Taskforce Meeting
19/3/2014	Council issues court proceedings against Titanium
4/2/2014	Council considers Motion & resolves that Council form a Taskforce to consider the future use and/or development of the Hudson Park Golf Facility.
15/5/2014	Hudson Park Taskforce Meeting
18/9/2014	Titanium is placed in liquidation

Appendix 35

Titanium tender

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT

Received over counter 18/8/09



TENDER FORM

Name of Principal: **General Manager**
Strathfield Municipal Council
 Address for lodgment of tenders: **65 Homebush Road**
PO Box 120
STRATHFIELD NSW 2135

The Tender Form consists of Pages 48 to 59 inclusive.

These pages must be submitted, completed and signed where appropriate, by the Tenderer, together with the relevant Schedules and any other requirements of the Tender.

PARTICULARS OF TENDERER

The Tenderer must provide in legible print the following details

Name of Tenderer: *TITANIUM GOLF MANAGEMENT P/L ACN 132.646.096*

Name of Tenderers Representative: *CARLO SALVATO*

If the Tenderer is a Corporation/ Partnership/ Individual Proprietor:

ACN, A.B.N or A.R.B.N. (if a Corporation): *69 132 646 096*

Registered Office: *ANDREW ASHTON CHARTERED ACCOUNTANT*
5 SOUTH ST DOUBLE BAY 2028

Address for service of notices: *OLIVER & COMPANY, SOLICITORS*
SUITE 8, LEVEL 1, 58 THE BOULEVARD STRATHFIELD
(P.O. BOX 98, STRATHFIELD) 2135

Contact Telephone No: () *02 9745.3511*

Facsimile No: () *02 9744.2412*

Mobile No: *0413 375 254*

Email Address: *CSALVATO@gmail.com*

CS

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



TITANIUM GOLF MANAGEMENT P/L.
I/we (name of tendered – block letters)
the undersigned, do hereby tender to perform the work for the redevelopment and
management of the Hudson Park Golf Course and Driving Range, as described in, and in
accordance with tender documents :

PART A (to be completed if the Tenderer is a corporation)

Executed by

TITANIUM GOLF MANAGEMENT P/L
.....
(Company name) ACN 132 646 096

In accordance with Section 127 of the Corporations Act 2001.

.....
Director *Director/Sole Director/Secretary
(*delete as applicable)

.....
Name of signatory in block letters CARLO SALVATO
Name of signatory in block letters

Dated:

PART B (to be completed if the Tenderer is an individual or partnership)

.....
Trading Name

1. (signature) 2. (signature)

..... Name of signatory in block letters
..... Name of signatory in block letters

..... (capacity) (capacity)

Dated:

(Note: In the case of partnerships, each partner is required to sign)

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



Invitation to Tender for Hudson Park Redevelopment and Management

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Handwritten initials, possibly "AM", in black ink.

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



PART E TENDER SCHEDULES

The Tenderer shall complete the following Schedules

- Schedule 1 Tender Pricing Schedules
- Schedule 2 Tenderer's Organisation
- Schedule 3 Experience and Performance
- Schedule 4 Compliance with Project Outcome Parameters
- Schedule 5 Insurance Details
- Schedule 6 Subcontractors and Contractors
- Schedule 7 Contact Details
- Schedule 8 Redevelopment Program
- Schedule 9 Tenderers Conflict Of Interest And Fair Dealing Declaration

- Attachment 1 Drawings
- Attachment 2 OH&S Management
- Attachment 3 Code of Conduct
- Attachment 4 Business Ethics Policy

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 1 - TENDER PRICING SCHEDULE

All Prices are exclusive of GST.

Item	Description	Conforming \$	Alternative \$
1	Investigation and design – clause C6	\$ NIL	\$
2	Reconstruction of the Pro Shop etc – clause C7	\$ NIL	\$
3	Upgraded Driving Range – clause C8	\$ TBA	\$
4	Upgrading of the Golf Course – clause C9	\$ TBA	\$
5	Screen Fencing Improvements – clause C10	\$ TBA	\$
6	Installation of equal access pathways – clause C11	\$ NIL	\$
7	Improved advertising and marketing – clause C12	\$ NIL	\$
8	Maintenance of the Pro Shop Building – clause C13	\$ NIL	\$
9	Management of the Site – clause C14	\$ NIL	\$
10	Provision of golf professional services – clause C15	\$ NIL	\$
11	Provision of all finance, personnel and others – clause C16	\$ NIL	\$
TOTAL TENDERED PRICE for the FIVE YEAR AGREEMENT PERIOD		\$	\$

In accordance with Clause D9:			
12	Monthly Agreement Fee	\$37,000.00	\$

In accordance with Clause D10					
13	Profit sharing in the operation of the Site	Conforming		Alternative	
		Golf Course	Driving Range	Golf Course	Driving Range
	Equal share of Profit	%	%	%	%

Tenders may add other items as deemed necessary

Signed *[Signature]* Dated *17th August 2009*

[Handwritten mark]

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 2 - TENDERERS ORGANISATION

A. Financial Information

When required, the Tenderer will provide Council the information sought in paragraphs (a) to (d) below for the purposes of financial review.

(a) The two most recent Annual Financial Statements (including balance sheet, profit and loss accounts and cash flow statements) audited or certified as correct by director and secretary (in the case of a company), partners (in the case of a partnership) or the proprietor (in the case of an individual tenderer).

(b) Particulars of principal banker and authority to obtain Bank reference.

Bank: BANKIA COMMERCIAL

Contact Person: PAUL SMITH

Contact details: 0271098437

(c) Particulars of any threatened or pending litigation, claims or undischarged judgments or orders.

no There is no threatened or pending litigation, claims or undischarged judgments or orders.

yes There is threatened or pending litigation, claims or undischarged judgments or orders.

Actions Pending: NIL

(d) Particulars of:

(i) Major debtors and creditors.

Debtors: NIL

Creditors: _____

(ii) Contingent liabilities over \$100,000.

Contingent liabilities: NIL

Contingent liabilities: NIL

Signed: [Signature] Dated: 17th August 2009

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



B. Business Information

TENDERERS WILL PROVIDE THE FOLLOWING INFORMATION:

- (a) A brief outline of the Tenderers current business, including which business lines account for the greater proportion of revenue.
 Details of current business attached yes no
- (b) Details about the Tenderers operation including time established, locations, facilities and resources.
 Details of organization attached yes no

C. Employee Information

The Tenderer will provide Council the information listed in (a) to (d) below for Council to evaluate whether the Tenderer has suitable resources and logistics arrangements to enable it to complete the Agreement.

- (a) Current total staff levels.
- (b) Names, experience, skills and period of employment with Tenderer of all personnel that will be assigned to this Agreement including those who will have management or supervisory responsibilities.
- (c) Copies of all appropriate licences for personnel as listed at (b) above.
- (d) Details of all equipment proposed by the Tenderer to ensure uninterrupted provision of the services to Council during the Agreement Term.

Signed:  Dated: 17th August 2009

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 3 - EXPERIENCE AND PERFORMANCE

Details of all comparable work completed in the past 5 years	
Client's name(s), location and Business.	① CLUB PEQUEN GOLF RESORT (SUNSHINE COAST) ② LAGUNA KEYS RESORT - PROSERPINE QLD - ③ TALWOODS INTERNATIONAL RESORT FOSTER NSW.
Details of work undertaken.	① DEVELOPMENT & MANAGEMENT OF PROJECT ② FULL MANAGEMENT PROGRAM VIC ③ FULL MANAGEMENT PROGRAM QLD
Value of contracts.	① \$1M - ② \$200,000 ③ \$150,000
Contact Name and details	PH DANINI CASSIDY 0417 675 977

Signed *[Signature]* Dated 17th August 2009

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



**SCHEDULE 4 - COMPLIANCE WITH PROJECT OUTCOME
PARAMETERS**

Tenderers should provide a fully detailed statement verifying that the tender provided will comply with Council's in accordance with the requirements of Part C.
Further provide a fully detailed description of all Works within and beyond the requirements.

TBA

Signed..........Dated..... 17th August 2009

Invitation to Tender for Hudson Park Redevelopment and Management


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HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 5 - INSURANCE DETAILS

Tenderers are to provide for each of the policies required under Part D the following details:

- Name of Insurer and the Insured
- Limits of cover
- Any exclusions from the policy
- Period of cover
- Certificates of currency (if applicable)
- Excesses

To BE PROVIDED

Signed..........Dated.....17th AUGUST 2009.....

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 6 - SUBCONTRACTORS AND CONTRACTORS

The tenderer will provide details of any proposed Contractors and sub-contractors who will undertake 10% or more of the Works.

Name and Address	Services to be provided
To be provided	

Signed  Dated 17th August 2009

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 7 - CONTRACT DETAILS

The Tenderer will nominate a person for the purposes of responding to clarifications, which may arise during the evaluation process, this person should be the sole point of contact for Council during the Tender evaluation process.

Contact details:

Name: CARLO SALVATO

Position: DIRECTOR.

Address : 5 SOUTH BAY
DOUBLE BAY

Telephone No. 0413 375 854.

Facsimile No. _____

E-mail. CSALVATO@gmail.com

Signature:

Signed..........Dated.....17th August 2009

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 8 - REDEVELOPMENT PROGRAM

In accordance with Clause B8 the Tenderer shall provide a preliminary Project Delivery Program in the form of a bar / gant chart and network diagram showing the sequence of delivery of the elements of the Project, their interaction, critical paths of related activities, and the periods of time proposed for their completion.

A handwritten signature in black ink, appearing to be "SKM", located in the bottom right corner of the page.

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



SCHEDULE 9 - TENDERERS CONFLICT OF INTEREST AND FAIR DEALING DECLARATION

I, CARLO SALVATO of
(insert name of duly authorised person)

C/- 5/40 SEYMOUR ST DOBBLE AVE
(insert address)

in the State of New South Wales, do solemnly and sincerely declare, in respect of the Tender for Redevelopment and Management of Hudson Park Golf Course and Driving Range for Strathfield Council or in respect of any contract arising from the Tender, that:

1. I hold the position of and am duly authorised by ("the Tenderer") to make this declaration on its behalf.
2. In accordance with the requirements of the Request to Tender, all the statements set out in the Tender are true and accurate and that the disclosure is complete and accurate in all material respects.
3. The Tenderer is not aware of any conflict of interest it has which may prohibit the competitive tendering process.
4. Neither the Tenderer nor any of its servants or agents had any knowledge of the price of any other Tenderer prior to submitting its tender nor has the Tenderer or any of its servants or agents disclosed to any rival Tenderer the Tenderer's price prior to the closing of tenders.
5. The Tenderer submitted its tender in good faith and has not deliberately set its tender price above or below the level of rival Tenderers.
6. As at the date of this declaration, the Tenderer intends to do the work set out in the tender.
7. Neither the Tenderer nor any of its servants or agents has entered into any contract, arrangement or understanding having the result that, in the event that it is successful in the tender, it will pay to any unsuccessful Tenderer any moneys in respect of or in relation to the tender or any contract resulting therefrom.
8. In submitting the tender, the Tenderer has not canvassed any Councillors or Council employees other than the officer designated as the contact officer for this tender.
9. To the best of the Tenderer's knowledge and belief, after due enquiry, no family relationship exists between the Tenderer or any employee of the Tenderer directly or indirectly involved in the preparation or submission of the Tender, except as otherwise disclosed below.
10. To the best of the Tenderer's knowledge and belief, the Tenderer or any employee of the Tenderer is not in any way connected with and do not have any actual or potential conflict of interest with any Council employee (whether employed on a permanent, casual or contractual basis), Council delegate or Councillor.

HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



- 11. The Tenderer has not engaged in any unethical behaviour or sought and/or obtained an unfair advantage in obtaining business with Strathfield Council and will not so engage in relation to this Tender.
- 12. The Tenderer is not currently engaged or discussing any proceedings against Strathfield Council.
- 13. The Tenderer has not entered into any agreement with any other known tenderer for the tendered services, nor has it obtained any knowledge of any tender prices of any other known tenderer, nor revealed its tender price to any other known tenderer.
- 14. The Tenderer will notify Strathfield Council in writing immediately any provision of this Tender Schedule becomes incorrect, with full details of the reasons.
- 15. The Tenderer understands and accepts that Council reserves the right to terminate any contract, transaction or agreement that Council may enter into with me or the aforesaid company as a result of this tender, should it subsequently be shown that I have failed to disclose herein any matter or contravene any statement relevant to this Declaration. I also accept Council's right to reject any future tenders from me or the aforesaid company, if I am shown to have made any false declaration herein or otherwise.

The following information is disclosed for the purposes of this statutory declaration:

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of

the provisions of the Oaths Act 1900.

SUBSCRIBED AND DECLARED at STRATHFIELD

this 18th day of August year 2009

[Signature]
(Signature of person making declaration)

Before me:

[Signature]
Solicitor/Justice of the Peace

[Handwritten initials]


HUDSON PARK GOLF COURSE
REDEVELOPMENT AND MANAGEMENT



ATTACHMENT 1: DRAWINGS

The following drawings are attached:

- Hudson Park and Golf Course map.
- Channel through Hudson Park map colour.
- Hudson Park Aerial Photo.

		
<p>Introduction ▶ Coaches ▶ Locations ▶ Courses ▶ Students ▶ Club Fitting ▶ Other Services ▶ Links</p>		
 <p>Club Fitting Centre</p> <p>Click here or on the image above to find out more about our new clubfitting facility</p> <p>GOLF COACHES</p> <p>Chris Marriott Greg McIntosh David Ng Ben Styles Marcus McPherson Cameron Adams Mark Cooper</p>	<p>Chris Marriott</p>  <p>Head Golf Instructor Singapore mallo1420chris_marriott@lifestylz.com.sg</p> <ul style="list-style-type: none"> • "AAA" Coaching accreditation by Gary Edwin Golf Australia • Head Golf Coach Singapore Sports School • Member of Singapore PGA • Golf Coordinator, Australian Coaching Council • 8 years of teaching experience • 25 years of Golfing experience • Singapore National Coach • SLGA & SGA Golf • Instructor at PSGEGA since 2001 <p>Chris is available for tuition in the following courses:</p> <ul style="list-style-type: none"> • Advanced • Elite/Professionals • Short Game • Golf Schools • Internat Lessons <p>Click here to book a lesson with Chris</p>	<p>All materials on this website are Copyright 2006 Lifestylz Pte Ltd. Any reproduction or use can only be done with the express permission of Lifestylz Pte Ltd.</p>
<p>Peter Senior & Gary Edwin Golf Academy A division of Lifestylz Pte Ltd 1 Orchid Club Road, Golf Driving Range #02-01 Singapore 769162 Phone: 65-6555-0776 mallo1420golfacademy@lifestylz.com.sg</p>		

CM

**CURRICULIM VITAE
CARLO SALVATO**

Monitor merchandise sales and golf course usage; prepare operational reports and analyses setting forth progress, adverse trends and appropriate conclusions and recommendations to maximize revenue and usage; analyse needs and plan short and long range goals.

Represent Club Pelican Golf Club in professional, civic, charity and alumni events.

Determine fiscal requirements and prepare budgetary recommendations.
Recommend various personnel actions including, but not limited to, hiring, performance appraisals and promotions.

**December 1998 – July 2004
Founded On- Pin GPS Golf Systems**

A technology company specialising in applying satellite communication technology to the management of golf courses.

Key Achievements

- First company to install GPS golf systems outside USA
 - Successfully set up distribution agreements with companies in Asia, Japan and Europe
 - Installed GPS systems to over 20 courses outside of USA
-

**January 1987 – December 1998
Professional Golf Caddie**

Caddied on the US tour, European tour, Japanese tour and Australasian tour for professional golfers such as Peter Senior, Ian Baker Finch and Robert Allenby.

Key Achievements

- Caddied at US Masters, US opens, British Opens and US PGA.
 - 28 tournament victories world wide with Peter Senior.
 - 12 year caddie partnership with Peter Senior
 - Caddied in President Cup teams 1994, 1996
 - Caddied for Peter Senior when he won 1989 Australian Open, Australian PGA and Johnny Walker Classic in a row.
-

Referees

Full contact details of all referees are available upon request.

- Mr Kieran O'Connor, Chairman of Titanium Enterprises
- Mr Bart Elias, retired Vice-President Macquarie Bank
- Mr John Hughes CEO of Walker Corporation

**CURRICULIM VITAE
CARLO SALVATO**

Key Achievements at Club Pelican

1. Increased the profile of the Golf Course which resulted in the Golf Club being ranked number 1 on the Sunshine Coast.
2. Directed and over saw the implementation of a golf course maintenance program that culminated in the golf club winning (in February 2006) the prestigious Golf Course Superintendents Association of America (GCSAA) & Golf Digest 2005 Environmental Leaders in Golf Award. This was the first time this award had been one by a southern hemisphere golf club.
3. Improved the overall financial position of the club by 47% in the 2005/2006 financial year.
4. Increased the membership base from 90 to 545 financial members over 3 years
5. Increased corporate golf revenue by 190% over 18 months
6. Introduced weddings and functions to the food & beverage operation in 2006, improving the net result in this department by 37%
7. Carlo managed the successful staging of the Australian Seniors Golf PGA Tournament in 2004 and 2005 and the successful staging of the Australian Ladies PGA Tournament in 2005 and 2006.

Management Role Summary

Carlo Managed and directed all phases of the Club Pelican Golf Club to include;

1. preparation of yearly business plan and review of business plan every quarter
2. golf shop store operations
3. food and beverage outlets
4. tournament promotions
5. equipment purchase and repair
6. grounds maintenance
7. oversee human resources legislation, policies and procedures including managing and directing over 70 staff
8. prepared financial strategies and day to day management and of the accounts department
9. preparing and presenting monthly Board Reports to the Owners of the Golf Club

Duties Performed

Direct the operation of the Club Pelican Golf Shop and Food and Beverage Outlets which includes merchandising, maintenance of records, analysis of personnel and space needs, inventory control, product evaluation, scheduling and customer service.

Plan and coordinate various events and activities to include golf tournaments and clinics; promote services and recruit businesses, clubs and individuals to use facilities; develop promotional materials and promote new services.

Serve as liaison with the management of the adjacent Ramada / Crown Plaza Hotel Washington Duke Inn regarding Golf Shop space, services to hotel guests, planning of policies and procedures and coordination of events and activities.

Direct and monitor the golf course grounds maintenance activities; coordinate purchase and repair of golf course maintenance equipment.

CS

CURRICULIM VITAE CARLO SALVATO

NAME – Carlo Salvato
Age – 40 years
Nationality – Australian (note Carlo holds an Australian and an EU passport.)
Education –

- Completed 1st Year Degree in Physical Education from Sydney University
- Completed New South Wales Higher School Certificate in 1986

Marital Status – Married with 2 children
Interests – Wine, Food, Real Estate, Golf
Contact – 61 (0) 413375854

Capability Statement

Carlo has strong management experience in golf and country club operations including business planning, budgeting, POS systems, tournament operations, merchandising, course maintenance, full service food and beverage operations and P&L responsibility for multi-million dollar golf facilities.

Carlo has proven marketing skills and has successfully increased revenues, levels of play and quality of facilities at Club Pelican.

While running daily operations of the 18-hole golf facility with a full-service restaurant, Carlo distinguished himself as a hard worker, thoughtful in customer relations and a talented manager with an eye for the bottom line.

EXPERIENCE

July 2004 – Current

General Manager – Titanium Golf

Carlo joined Titanium Enterprises (www.titaniumenterprises.com.au) in June 2004 to take up the role of General Manager for Titanium Golf. His first responsibility was to completely overhaul the operations of Club Pelican Golf Club. This golf club was purchased in May 2004 by Titanium Enterprises and the golf club was the centre of a residential development. The golf club was in poor condition and the revenue generated by the golf club showed a substantial loss. Carlo implemented a process to bring in strict cost controls and over a period of 12 months he built a new professional team around him.

Carlo completed his time with Club Pelican in November 2007 when Titanium Enterprises exited their position from the golf club.

During Carlo's time with Titanium Enterprises he also became an important part of their team when assessment and planning of new golf resorts were undertaken. Carlo recently completed the golf budget and profit forecast projections for Titanium Enterprises when the group completed a full due diligence report and submission on a development known as Laguna Quays in central Queensland.

He is currently managing the Tallwoods International Golf Resort in Northern NSW.

Pacific Heron

Titanium was responsible for the master planning of 407 Ha located at Coomera, on Queensland's Gold Coast. The proposed master plan featured a Greg Norman designed golf course, resort and exclusive residential components, again adopting environmentally sustainable design to enhance the local environmental integrity and ambience.

Titanium Enterprises has business interests in:

- Titanium's own development projects
- Development projects in joint venture with other parties
- Development and project management services providing expert strategies and advice in the acquisition, approval, implementation and delivery phases for developments
- Master planning, Town planning and Urban Design Services
- Golf Course Management providing services in operational management and environmental golf course management

Titanium Enterprises

Titanium Developments has established itself as a world leader in Ecologically Sustainable Development. It has residential, recreation and tourism developments underway in South East Queensland which will show-case world's best environmental practices and create communities where residents and visitors feel connected to a vibrant community and their local environment.

The group is always open to pursuing opportunities and enters into joint venture developments with like minded individuals and companies who share the same environmentally sustainable development objectives and goals.

The ultimate sponsor behind this transaction is Carlo Salvato who brings a wealth of experience both in master planning and golf course management & development. He was the General Manager of Titanium Golf and led the management team over many years.

Throughout his career he has worked extensively around the world including Europe, United States, Japan, Asia and Australia. Salvato has invaluable experience and knowledge in all aspects of the Golf Industry. His experience has given him a vast insight into the different styles of golf course management and operational structures.

Through his association with Titanium Enterprises, Salvato formed a strong working relationship with Greg Norman's golf course design architectural team, Great White Shark Enterprises, and formalised agreements with Greg Norman to be the preferred designer for all proposed golf courses undertaken by the group.

Carlo was directly involved with the following projects :-

The Edge Noosa

Acquisition, master planning and development of a 522 Ha site located in the Noosa hinterland, on Queensland's Sunshine Coast. The development incorporated an equestrian centre, hotel, villas, golf course, country club, orchards, catering school and day spa.

Pelican Links

Titanium was instrumental in the acquisition, master planning and development application for a 40 Ha site located at Caloundra on Queensland's Sunshine Coast. The development proposal was for a hotel resort complex, tennis and swimming facilities, a community centre including day care facility, alongside a residential development which sets the benchmark in sustainable residential development. The site is adjacent to Club Pelican 18 hole championship golf course designed by Greg Norman.

Appendix 36

**Council Report
Meeting
3 November 2009**

COUNCIL MEETING 3 NOVEMBER 2009 – CLOSED SESSION
ITEM 2. TENDER PROCESS - HUDSON PARK GOLF COURSE



Report by Rob Bourke, Director Operations

This report is being considered in Closed Session as it relates to information that would, if disclosed, confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business.

RECOMMENDATION

1. ***That Council note that the tenders received for the redevelopment and management of Hudson Park Golf Course do not make provisions for certain capital improvements sought by Council.***
2. ***That Council decline to accept any of the tenders.***
3. ***That Council authorise the General Manager to enter into negotiations with any of the tenderers (or any other person) with a view to entering into a contract for the redevelopment and management of Hudson Park Golf Course for the following reasons:***
 - a. ***Council declines to invite fresh tenders or applications based on the same or different details of the current tender as Council considers that there is scope for negotiating improved terms in relation to the tenders received by Council; and***
 - b. ***Council considers it likely that by entering into negotiations with any of the tenderers, Council may be able to proceed with the redevelopment of Hudson Park Golf Course and secure its management for a set term sooner than if it were to embark on the process of inviting fresh tenders or applications.***
4. ***That Council authorise the General Manager to enter into a contract with the person with the most advantageous proposal after negotiations provided that the proposal is no worse than the best submission that Council has received from the tender process.***
5. ***That a further report be submitted to Council following the negotiations and the entering into of an agreement with the successful party.***

PURPOSE OF REPORT

To advise Council of the results of the tender process in accordance with Council's Purchasing and Tendering Policy and Section 377 of the Local Government Act 1993 for redevelopment and management of Hudson Park Golf Course and Driving Range.

COUNCIL MEETING 3 NOVEMBER 2009 – CLOSED SESSION**ITEM 2: TENDER PROCESS - HUDSON PARK GOLF COURSE****BACKGROUND**

Council, at its meeting on 3 March 2009, resolved (minute no. 89/09):

- "1. That Council close the tender for redevelopment of Hudson Park Golf Course.*
- 2. That Strathfield Municipal Council resolves to call for new tenders for redevelopment of Hudson Park Golf Course and that the call for tenders be widely advertised and publicised."*

REPORT

The Request for Tender for Hudson Park Golf Course and Driving Range Redevelopment and Management was advertised on the 28 July 2009 and closed on the 17 August 2009. The scope of works for redevelopment of Hudson Park Golf Course and driving range included, but was not necessarily limited to the following areas:

1. Investigation and design associated with all the elements of the project works.
2. Reconstruction of the pro-shop and amenities block to provide modern and equal access facilities including golf shop, public amenities, changerooms, kiosk and eating area and ancillary facilities.
3. Upgrading and expansion of the existing 30 bay driving range.
4. Screen fence improvements.
5. Installation of equal access pathways.
6. Maintenance of pro-shop building.
7. Development and implementation of Golf Course and Driving Range marketing plan including all advertising and marketing.
8. Management of the site.
9. Management of the pro-shop including golf shop and kiosk facilities.
10. Provision of golf professional services including coaching and training.
11. Provision of all financial, personnel, and other resources to deliver the project including insurances and negotiated securities.

The tender proposed an agreement for a period of five (5) years with the option of renewal of a further five (5) years.

Tender Submission Details

At the closing of the tender, Council received a total of two (2) submissions. The details for these companies are provided below in alphabetical order.

- | | |
|---|---|
| 1. Stacey Holdings Pty Ltd
C/- Elliott House, Chartered Accountants
Level 8, 140 Arthur Street
North Sydney NSW 2060 | 2. Titanium Golf Management
C/- Andrew Ashton Chartered Accountant
5 South St,
Double Bay NSW 2028 |
|---|---|

COUNCIL MEETING 3 NOVEMBER 2009 – CLOSED SESSION

ITEM 2. TENDER PROCESS - HUDSON PARK GOLF COURSE

**Tender Evaluation Criteria**

The tenders were evaluated from a set of prescribed criteria including submission and completeness of forms, technical details such as conformity with tender requirements, support details such as the firm's capacity to undertake the project, commercial criteria such as the company's financial capability to undertake the project and tendered prices.

STAGE	CRITERIA	STACEY HOLDINGS	TITANIUM GOLF MANAGEMENT
1	Initial Evaluation	<i>PASSED</i>	<i>PASSED</i>
2	Key Requirements	<i>PASSED</i>	<i>FAILED</i>
3	Technical	<i>PASSED</i>	<i>Not provided</i>
4	Support	<i>PASSED</i>	<i>Not provided</i>
5	Commercial	<i>PASSED</i>	<i>Not provided</i>
6	Pricing	<i>PASSED</i>	<i>Not provided</i>

Financial Analysis

The tender form required submissions to tender prices for:

1. Improvement Costs
2. Management Costs
3. Monthly Agreement Fee (payable to Council)
4. Revenue Sharing of Golf Course Green Fees and Driving Range Fees between Council and Tenderer

The purpose of requesting prices for these items is to ensure that all submissions met the tender requirements and are evaluated equally and ensure that each submission has included sufficient allowance for management costs (staff etc). The tendered prices are shown below:

IMPROVEMENT COSTS			
Item	Description	1 Stacey Holdings	Titanium Golf
1	Investigation and design	\$0	\$0
2	Reconstruction of the Pro Shop etc	\$35,000	\$0
3	Upgraded Driving Range	\$50,000	\$tba
4	Upgrading of the Golf Course	\$0	\$tba
5	Screen Fencing Improvements	\$180,000	\$tba
6	Installation of equal access pathways	\$0	\$0
	TOTAL IMPROVEMENTS for first FIVE YEAR AGREEMENT PERIOD	\$265,000	\$0

COUNCIL MEETING 3 NOVEMBER 2009 – CLOSED SESSION

ITEM 2. TENDER PROCESS - HUDSON PARK GOLF COURSE



MANAGEMENT COSTS			
7	Improved advertising and marketing	\$15,000	\$0
8	Maintenance of the Pro Shop Building	Not Declared *	\$0
9	Management of the Site	Not Declared *	\$0
10	Provision of golf professional services	Not Declared *	\$0
11	Provision of all finance, personnel and others	Not Declared *	\$0
TOTAL TENDERED PRICE for the FIVE YEAR AGREEMENT PERIOD		\$15 000*	\$0

* Management costs (Items 8-11) were not declared on the tender form by Stacey Holdings, however are included within Stacey Holdings operating costs forecasts that were sent separate to the tender form.

Agreement Fee			
12	Monthly Agreement Fee	\$2,500	\$37,000

Revenue Sharing					
13	Revenue sharing in the operation of the Site	Stacey Holdings Pty Ltd		Titanium Golf Management	
		Golf Course	Driving Range	Golf Course	Driving Range
	Equal share of Revenue	50%	50%	0%	0%

Discussion

Titanium Golf Management application was generally incomplete failing most evaluation criteria and did not provide a revenue share as required by the tender, rather a single fixed fee. Stacey Holdings application passed all criteria and would be the most advantageous submission. Neither tender provided the level of investment expected in the scope of works, in particular for a 5 year + 5 year agreement that lasts 10 years.

The improvements in the scope of works aimed to increase revenue streams by construction of a kiosk/café and eating areas, extension of driving range and provision of modern facilities and amenities, as well as improved access. These improvements were not considered by either tenderer.

REFERRAL FROM OTHER DEPARTMENT

Council's solicitor advised that having considered the tenders submitted for the proposed contract, Council must either accept the most advantageous tender or decline to accept any of the tenders in their present form. This is a requirement of clause 178 of the Local Government

COUNCIL MEETING 3 NOVEMBER 2009 – CLOSED SESSION**ITEM 2. TENDER PROCESS - HUDSON PARK GOLF COURSE**

(General) Regulation 2005. If none of the proposals are considered acceptable in their present form, Council officers may not immediately engage in further negotiations with any of the tenderers with a view to improving the terms proposed in the tenders.

Before the General Manager may engage in further negotiations with any of the tenderers, Council must first pass a resolution not to accept any of the tenders and to enter into negotiations. Once this resolution is passed, clause 178(3)(e) of the Regulation permits the General Manager to engage in further negotiations with any person (whether or not the person was a tenderer).

Clause 178(4) of the Regulation requires any resolution to enter into negotiations to state the reasons for declining to invite fresh tenders or applications and for determining to enter into negotiations instead.

Other options available to Council, if it decides not to accept any of the tenders, include postponing or cancelling the proposal for the contract, or carrying out the requirements of the proposed contract itself.

FINANCIAL IMPLICATIONS

The value of the tender submissions and the current agreement are shown in Attachment 1.

Summary

The most advantageous tender for Hudson Park Golf Course is the submission from Stacey Holdings, however it does not make provisions for certain capital improvements sought by Council under an agreement term of 10 years (5+5 option). It is believed that there is scope for negotiating improved terms in relation to the tenders received by Council which would allow Council to proceed with the redevelopment of Hudson Park Golf Course and secure its management for a set term sooner than if it were to embark on the process of inviting fresh tenders or applications.

ATTACHMENTS

1. Tender value over a 5 year period

The tables below show the value of the tenders over a 5 year period for:

- A. Current Agreement
- B. Stacey Holdings Tender Proposal
- C. Titanium Golf Tender Proposal

Please note that for simplicity and to allow equal valuation Golf Course and Driving Range Forecasts are taken from Stacey Holdings Forecasts, improvements are amortised over five years and CPI is not included on agreement fees.

A. Current Agreement					
	Year 1	Year 2	Year 3	Year 4	Year 5
Agreement Fee	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000
Revenue Share Golf Course Green Fees (Council 100% Share)	\$330,000	\$340,000	\$350,000	\$361,000	\$371,000
Revenue Share Driving Range (Council 0% Share)	\$0	\$0	\$0	\$0	\$0
Fixed Licence Fee Driving Range	\$109,999	\$109,999	\$109,999	\$109,999	\$109,999
Improvements	\$0	\$0	\$0	\$0	\$0
Total	\$465,999	\$475,999	\$485,999	\$496,999	\$506,999

B. Stacey Holdings Tender Proposal					
	Year 1	Year 2	Year 3	Year 4	Year 5
Agreement Fee	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Revenue Share Golf Course Green Fees (Council 50% Share)	\$165,000	\$170,000	\$175,000	\$180,500	\$185,500
Revenue Share Driving Range * (Council 50% Share)	\$180,000	\$185,000	\$191,000	\$196,500	\$200,500
Improvements amortised over 5 years	\$53,000	\$53,000	\$53,000	\$53,000	\$53,000
Total	\$428,000	\$438,000	\$449,000	\$460,000	\$469,000

C. Titanium Golf Tender Proposal					
	Year 1	Year 2	Year 3	Year 4	Year 5
Agreement Fee	\$444,000	\$444,000	\$444,000	\$444,000	\$444,000
Revenue Share Golf Course Green Fees (Council 0% Share)	\$0	\$0	\$0	\$0	\$0
Revenue Share Driving Range (Council 0% Share)	\$0	\$0	\$0	\$0	\$0
Improvements amortised over 5 years	\$0	\$0	\$0	\$0	\$0
Total	\$444,000	\$444,000	\$444,000	\$444,000	\$444,000

Appendix 37

Councillor Briefing 3 November 2009



BRIEFING PAPER FOR COUNCIL

RE: TENDER – HUDSON PARK GOLF COURSE AND DRIVING RANGE
FROM: DIRECTOR OPERATIONS
DATE: TUESDAY 3 NOVEMBER 2009

=====

WHERE TO FROM HERE -

1. Council declines to accept any tenders in order to go into further negotiations. Whilst not successful Stacey Holdings provides opportunity for Council to negotiate a positive outcome. Such negotiation would look to maximise revenue and capital improvements over the optional 5 years term of the proposed 10 years license. (As outlined within the recommendation of the report).

2. The rationale of closing the tender negotiations will allow for Council to further maximise revenue and add value by offering 2 license opportunities within the Golf Course precinct.
 - ie. Propose a second license agreement with regard to establishing;
 1. A 5 plus 5 year license agreement for the redevelopment and management of Hudson Park Golf Course and Driving Range and
 2. A second license agreement to build and manage a Kiosk and Café within the Hudson Park facility. This will allow Council to realise potential revenue not previously captured and encourage usage and patronage within the whole precinct.

Yours faithfully,

ROB BOURKE
DIRECTOR OPERATIONS

1. Certain Capital Improvements
2. Decline any tenders
3. Negotiations to improve
4. Timing, licence good, term
5. GM to enter into contract
6. Report, recommendation

CONFIDENTIAL

Appendix 38

Letter from Titanium Golf Management 3 December 2009

TITANIUM

Golf Management

3rd December, 2009

Mr. Rob Bourke
Director Operations
P.O. Box 120
Strathfield NSW 2135

Dear Rob,

Re: Management of Hudson Park Golf Course

Further to our discussions Titanium Golf Management would like to submit the following proposal:

1. Monthly fee of \$37,000 per month paid to Council
2. Titanium to construct a Kiosk facility subject to Council Approval
3. 50% of Net Profit to be reinvested back into the Golf Course for Capitol works

We hope this offer meets council requirements and look forward to your response.

Sincerely,

Carlo Salvato
Chief Executive
Titanium Golf Management

Level 29, Chifley Tower 2 Chifley Square, Sydney NSW 2000

Appendix 39

Memorandum

17 March 2010



BRIEFING MAYOR AND GENERAL MANAGER

RE: HUDSON PARK GOLF COURSE LICENCE FOR MANAGEMENT
 FROM: DIRECTOR OPERATIONS
 DATE: 17 MARCH 2010

PURPOSE OF REPORT

To advise Council of the results of negotiations following the close of the tender process for Redevelopment and Management of Hudson Park Golf Course and Driving Range. To recommend that Council enter into a Licence Agreement with the most advantageous offer.

BACKGROUND

Council previously resolved on the 3 March 2009 (Minute No. 89/09)

TENDER PROCESS – HUDSON PARK GOLF COURSE REDEVELOPMENT

1. That Council close the tender for redevelopment of Hudson Park Golf Course.
2. That Strathfield Municipal Council resolves to call for new tenders for redevelopment of Hudson Park Golf Course and that the call for tenders be widely advertised and publicized."

At the completion of the tender process a further report considered the submissions and Council resolved on the 3 November 2009 (Minute No. 382/09)

TENDER PROCESS – HUDSON PARK GOLF COURSE

1. That Council note that the tenders received for the redevelopment and management of Hudson Park Golf Course do not make provisions for certain capital improvements sought by Council.
2. That Council decline to accept any of the tenders.
3. That Council authorise the General Manager to enter into negotiations with any of the tenderers (or any other person) with a view to entering into a contract for the redevelopment and management of Hudson Park Golf Course for the following reasons:
 - a. Council declines to invite fresh tenders or applications based on the same or different details of the current tender as Council considers that there is scope for negotiating improved terms in relation to the tenders received by Council; and
 - b. Council considers it likely that by entering into negotiations with any of the tenderers, Council may be able to proceed with the redevelopment of Hudson Park Golf Course and secure its management for a set term sooner than if it were to embark on the process of inviting fresh tenders or applications.

4. That Council authorise the General Manager to enter into a contract with the person with the most advantageous proposal after negotiations provided that the proposal is no worse than the best submission that Council has received from the tender process.
5. That a further report be submitted to Council following the negotiations and the entering into of an agreement with the successful party."

REPORT

Council entered into negotiations with both tenderers with the aim of improving the terms of the agreements including: -

- Increased Capital Improvements / Redevelopment
- Improved Management and Marketing
- Increased Revenue

1. Stacey Holdings Pty Ltd
C/- Elliott House, Chartered Accountants
Level 8, 140 Arthur Street
North Sydney NSW 2060

2. Titanium Golf Management Pty Ltd
(Titanium Golf)
C/- Andrew Ashton Chartered Accountant
5 South Street
Double Bay NSW 2028

Each tenderer was given the opportunity to provide a revised offer, a number of meetings were held with both parties, the outcome of the negotiations are as follows.

Stacey Holdings

In respect to the aims of the negotiations Stacey Holdings offered the following: -

Increased Capital Improvements / Redevelopment

Stacey Holdings offer did not include any scope of works in relation to the construction of a kiosk or café. Stacey Holdings capital investment is no different than the tender submission and includes: -

- Proshop reconstruction
- Driving Range Lighting
- Retaining wall
- Storage Area
- Screen Fencing Improvements

Improved Management and Marketing

Stacey Holdings chose to review their tendered marketing strategy and reduced spending from \$15,000 pa to \$10,000pa. This is a decrease over the life of the licence by \$50,000.

Increased Revenue

Stacey Holdings offer continued to provide Council with a 50% revenue share of both the course and driving range. (Outlined in Table 1 of Financial Implications section). The revenue share is estimated at a value of \$390,000 per annum.

Other Comments

Stacey Holdings advised that the company Principal Mr Geoff Scott planned on retiring within the term of the licence agreement and also requested that the licence be transferable to a party should he choose to sell the licence. These are major risks to Council and Stacey Holdings was advised that transfer of the licence would be unacceptable.

Titanium Golf

In respect to the aims of the negotiations Titanium Golf offered the following: -

Increased Capital Improvements / Redevelopment

Titanium Golf offered Council significant improvements / redevelopment that include: -

- construction of a new outdoor licensed kiosk / café facility,
- upgrade to signage and driving range equipment,
- significant capital investment based on reinvestment of 50% of net profit,

The capital investment funds may be spent as agreed between Council and Titanium Golf.

Improved Management and Marketing

Titanium Golf's offer provided a new marketing plan and has allocated an annual budget of 5% of turnover towards this task. They aim to re-brand the driving range with one of Australia & Korea's leading Golf Academies.

The proposal includes: -

- Annual Membership – with reduced fees and discounted shop merchandise.
- Local Schools Program
- Weekly Tournaments
- Corporate Days
- Social Group Packages

Increased Revenue

Titanium Golf offered a fixed Licence fee of \$440,000 per annum. (Outlined in Table 1 of Financial Implications section)

FINANCIAL IMPLICATIONS

A comparison of the offers is shown below in Table 1, Stacey Holdings proposal relies on the status quo and therefore has been calculated on the existing patronage (although the operator predicts marginal increases). Two scenarios have been provided for Titanium Golf the first is the status quo based on 20,000 rounds of golf, the second is in line with Titanium's business plan and assumes the increased marketing leads to a conservative increase to 30,000 rounds. (Figures have been standardised between Stacey Holdings and Titanium's Business Plans, CPI and other market fluctuations have not been taken into account). * The investment value quoted for Titanium Golf does not include the initial and ongoing investment by Titanium in their offer including the new snackbar, signage, marketing and driving range equipment. The figure is limited to the 50% net profit reinvestment; these costs are expected to be a further \$500,000 or more.

Table 1 - 10 Year Forecast

	Best Tender Offer		Revised Offer	
	Stacey Holdings	Stacey Holdings	Titanium 20000 rounds	Titanium 30000 rounds
Council income	\$3,900,000	\$3,900,000	\$4,440,000	\$4,440,000
Investment	\$415,000	\$365,000	\$222,230*	\$1,338,230*
Total	\$4,315,000	\$4,265,000	\$4,662,230*	\$5,778,230*

SUMMARY OF SUBMISSIONS

The offer by Stacey Holdings provided insufficient initiatives or a marketing strategy to significantly increase patronage from the current level and is considered financially worse than the best offer in the tender. Therefore the submission is not in the best interests of the Council.

The most advantageous offer for management of Hudson Park Golf Course is the submission from Titanium Golf that provides both a vision and new direction to increase patronage, significant capital investment and better financially than the best offer in the tender.

Notice of Termination

Stacey Holdings was advised during negotiations that their current offer as it stood would not be accepted by Council and that alternatives may be considered. Stacey advised that they would not consider further offers and provided 1 months notice of termination of the current licence agreement effective on the 31st March 2010.

An interim arrangement will be put into place with Titanium Golf Management Pty Ltd to manage the course effective on the 31st March 2010 to ensure continuity in operations.

Due Diligence

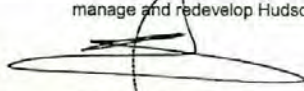
A due diligence assessment has been undertaken on Titanium Golf by Councils' Auditor Phillip A. Webster of Warton, Thompson & Co. Chartered Accountants. The assessment considered many factors required to manage Hudson Park Golf Course including the following: -

- Management experience and satisfactory business practices;
- Suitably qualified and experienced staff;
- Realistic business plan and profit projection;
- Readily available funds to finance proposed capital expenditure and ongoing working capital.

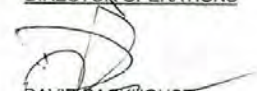
The report concluded *"It is my opinion that Titanium Golf Management Pty Ltd has the business and golf experience and expertise as well as the necessary financial capacity to successfully undertake the Management and Improvement of Hudson Park Golf Course."*

RECOMMENDATION

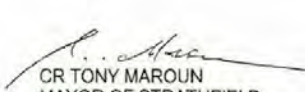
That the General Manager and Mayor approve in-principle appointment of Titanium Golf to manage and redevelop Hudson Park Golf Course subject to final approval by Council.



ROBERT BOURKE
DIRECTOR OPERATIONS



DAVID BACKHOUSE
GENERAL MANAGER



OR TONY MAROUN
MAYOR OF STRATHFIELD

Appendix 40

Letter from Warton
Thompson & Co
5 February 2010

Warton Thompson & Co

ABN 14 568 258 158
Chartered Accountants
Phillip A. Webster, FCA

1st Floor, 821-825 Pennant Hills Road,
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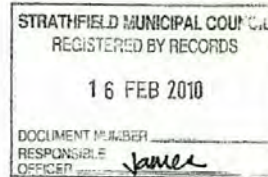
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5 February 2010

The General Manager
Strathfield Council
PO Box 120
Strathfield NSW 2135



Dear Sir,

Attention: James Ng

**Titanium Golf Management Pty Ltd
Proposal for Management of Hudson Park Golf Course
Report on Due Diligence and Financial Assessment**

I report I have undertaken Due Diligence and a Financial Assessment of Titanium Golf Management Pty Ltd (Titanium) to determine the suitability and financial capability of the company to manage and improve Hudson Park Golf Course for a ten-year term.

Documentation Examined

I advise that I have sighted and examined the following documentation in the preparation of my Report:

- Financial Reports for Titanium Golf Management Pty Ltd for year 2009.
- Extract of company details obtained from Australian Securities and Investments Commission.
- Business Plan for the company detailing its objectives, mission, capital works program, the products and services offered, market analysis, marketing strategy, sales strategy, and management summary.
- A summary of Titanium Golf Management Pty Ltd's (and Titanium Enterprises) involvement and experience in golf course development and management.
- Budgeted Profit and Loss Statements.
- Asset Management proposal for Hudson Park golf Course.
- Hudson Park Golf Course Employee Handbook.

Titanium Golf Management Pty Ltd Due Diligence and Financial Assessment

- Maintenance Reports for Tallwoods Golf Club during Titanium's Chief Executive Officer, Carlo Salvato, term as Golf General Manager.
- Details of Mr Carlo Salvato's previous involvement in golf course development and management in particular Greg Norman designed golf courses such as Vintage Golf Club and Club Pelican.
- Letter from Titanium detailing it's financial commitments to the management and development of the golf course.

Result of Examination of Documentation

1. Titanium Golf Management Pty Ltd

Titanium Golf Management Pty Ltd is a privately owned company with an issued capital of \$10. The company was incorporated on 8 August 2008 with the sole director and shareholder being Mr Carlo Salvato. Prior to the incorporation of the company Mr Salvato operated his business under the business name of Titanium Enterprises.

The Financial Report for year 2009 shows a turnover of \$936k and a gross profit of \$760k which in percentage terms calculates at 81.20% which is well in excess of standard gross profit percentages of 30-35%. The Operating Profit was \$204k which calculated at 21.79% and is considerable very satisfactory. This company has no debt other than a small loan of 2.5k due to the company's director.

The company's current ratio is 72% which less than the accepted industry benchmark of 100% however it has adequate cash assets to meet any short-term commitments.

2. Experience and Expertise of Company Management

Titanium's Director and Chief Executive Officer has been involved in the golf industry for the past 21 years with his early experience being as a professional golf caddy for Australian golfer, Peter Senior, on the lucrative US and European tours. He then lived in Asia where he started a technology company called ON-Pin, which specialised in providing golf course and management systems for some of the best courses in Australia and Asia.

In 2004 Mr Salvato became involved in a consortium called Titanium Enterprises, which owned and managed the Greg Norman designed Pelican Waters Golf Club on the Sunshine Coast. The course conditioning improved greatly under the stewardship of Titanium Enterprises and was granted an environmental award in the United States and has appeared on the Queensland Government website acknowledging the work of the Titanium team led by club manager Carlo Salvato. This is the only golf course in Australia to achieve such an honour. In 2005 Club Pelican was voted "No 1 Resort Course on the Sunshine Coast" by Golf Australia Magazine and is regarded as a premium location for a corporate golf experience.

Titanium Golf Management Pty Ltd Due Diligence and Financial Assessment

Mr Salvato's involvement lasted for four years when he accepted the position of Golf General Manager at Tallwoods Golf Course, a very popular golf course. His responsibilities involved checking the condition of the golf course on a daily basis with the Course Superintendent in readiness for the day's golfers and any specific golfing events. He was also responsible for the Food and Beverage side of the business at Tallwoods. Together with the Golf Operations Manager he would review golf bookings for the day, reading and examining financial reports from the previous day's trading as well as attending meetings with clients and other visitors to Tallwoods.

Throughout his career, Mr Salvato has worked extensively around the world including Europe, United States, Japan, Asia and Australia. His experience has given him a vast insight into the different styles of golf course management and operational structures. Through his association with Titanium Enterprises, Mr Salvato formed a strong working relationship with Greg Norm's golf course design architectural team, Great White Shark Enterprises, and formalised agreements with Greg Norman to be the preferred designer for all proposed golf courses undertaken by the group.

3. Business Plan

Titanium has prepared and developed a very professional Business Plan. The Business Plan proposes to take over the management of Hudson Park Golf Course for an annual fee of \$444,000 plus 50% of the net profit being earmarked for golf course capital works.

The Business Plan states that Titanium has the following objectives:

- Revitalise the golf course and attract a loyal local clientele.
- Use Titanium strategic alliances to make Hudson Park a popular social golf destination.
- Exceed customers' expectations.
- Implement professional management standards and assemble experienced and effective staff.
- Update the Pro Shop and Driving Range facilities as well as construct an outdoor pavilion with BBQ facilities and snack bar that will seat fifty people.
- Form a strategic alliance with local businesses and the cluster of schools in the area promoting and advertising the golf course.

The Capital Works Program detailed by Titanium indicates that \$550,000 will be spent over a five-year period on the following projects:

- Survey base of existing golf course
- Reconstruction of Tees and providing additional Tee areas
- Fairway topdressing and amendment program
- Providing additional subsurface drainage
- Bunker reconstruction
- Weed eradication program
- Screen fencing improvements

Titanium Golf Management Pty Ltd Due Diligence and Financial Assessment

Titanium also proposes to acquire from their own resources new equipment such as:

- Driving Range equipment
- Food Service and outdoor seating equipment for Snack Bar
- New signage to promote the golf course
- Application for a Liquor Licence

4. Budgeted Income and Expenditure

Titanium has prepared Budgeted Income and Expenditure Statements based on the playing of 20,000 and 30,000 rounds of golf at an average cost of \$18 per round and it is anticipated that the number of rounds will increase to 35,000 by the third year of operations. Additional income is expected to be derived from Pro Shop Sales, Driving Range Fees and Golf Lessons.

In view of the fact that Titanium will pay an annual fee of \$444,000 to Strathfield Council and will apply 50% of the net profit into golf course capital works, it has been necessary to examine these Profit and Loss Statements closely to determine Titanium's financial capacity to meet the terms of the agreement. Indications are that Titanium will (on the basis of projected number of golf rounds) produce an accumulated net profit for five years of approximately of \$1.92m. Titanium proposes that one-half of this profit is to be applied to funding the above-mentioned capital works, of \$550,000. Therefore \$0.96m will be available to fund anticipated capital works of \$0.55m. The profit of \$1.92m is after the payment of \$444,000 per annum to Strathfield Council.

Conclusion

Many factors need to be considered in determining the suitability and capability of Titanium Golf Management Pty Ltd to satisfy the requirements of the proposed management of Hudson Park Golf Course. Perhaps the most important considerations are as follows:

- Management experience and satisfactory business practices.
- Suitably qualified and experienced staff.
- Realistic Business Plan and Profit Projections.
- Readily available funds to finance proposed capital expenditure and ongoing working capital.

a) Management Experience and Satisfactory Business Practices

An examination of the Business Plan together with information relating to Mr Carlo Salvato's past and current business and professional ventures indicates that he has the necessary management experience to undertake and provide the proposed management and upgrade of the golf course and that he has undertaken their operations using acceptable business practices.

Titanium Golf Management Pty Ltd Due Diligence and Financial Assessment

b) Suitably Qualified and Experienced Staff

Likewise, an examination of the Business Plan and other information also indicates that Mr Carlo Salvato and his associated team including Chris Marriott (Golf Instructor) and Ben Marshall (Superintendent) have suitably experienced and qualified staff to operate those activities requested by Strathfield Council.

c) Realistic Business Plan and Profit Projections

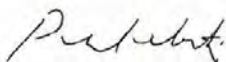
The Business Plan has been very well development and clearly indicates Titanium's objectives, strategies, and financial obligations as well as funding requirements for capital expenditure. Budgeted Income and Expenditure Statements also indicate that Titanium will generate sufficient profits to fund capital works expenditure as well as provide the company with a suitable return on it's investment. The company has also produced an Asset Management Procedures booklet as well as Employee Handbook booklet for the guide and use by employees.

d) Funds Available to Finance Capital Expenditure and Working Capital

An examination of Financial Reports relating to Titanium suggest that the company has been able to adopt satisfactory business principles that has enabled it to generate profits which, in addition to returning a profit to the company, will assist in funding additional capital expenditure on new equipment such as driving range equipment, signage and snack bar seating.

It is my opinion that Titanium Golf Management Pty Ltd has the business and golf experience and expertise as well as the necessary financial capacity to successfully undertake the Management and Improvement of Hudson Park Golf Course.

Yours faithfully,



P A Webster FCA
Warton Thompson & Co

Appendix 41

Licence

HUDSON PARK (R62163) RESERVE TRUST

And

TITANIUM GOLF MANAGEMENT PTY LTD

LICENCE AGREEMENT
FOR OCCUPATION OF LAND FOR
USE AS A PUBLIC GOLF COURSE

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AGREEMENT dated this Eighth day of June 2010

BETWEEN HUDSON PARK (R62163) RESERVE TRUST, a corporation established, constituted and appointed, in terms of Section 92, *Crown Lands Act 1989* (NSW), as Trustee of Reserve No R62163 for public recreation notified in Gazette published 3 October 1930 (hereinafter called the **Licensor**), whose affairs are managed by STRATHFIELD MUNICIPAL COUNCIL of 65 Homebush Road, Strathfield NSW 2135 (hereinafter called the **Council**)

AND TITANIUM GOLF MANAGEMENT PTY LTD (ABN 69 132 646 096) of 5 South Street Double Bay NSW 2028 Double Bay NSW 2028 (hereinafter called the **Licensee**).

THE PARTIES AGREE AS FOLLOWS

1. **INTERPRETATIONS, DEFINITIONS AND ADMINISTRATION**

1.1 **Authority for grant of Licence**

1.1.1 The Licensor warrants that the Premises is a reserve within the meaning of the CL Act and that the Reserve Trust is empowered pursuant to sections 102 and 103 of the CL Act to licence the Premises.

1.2 **Effect of Instrument**

1.2.1 The Licensor and the Licensee expressly acknowledge that no rights or interests are conferred on either Party by the provisions of this instrument unless:

(a) The Minister has granted consent under Section 102 of the CL Act to the grant of this Licence.

2. **DEFINITIONS**

In this Licence unless the contrary intention appears:

Access Plan means the drawing annexed to each Premises Appendix depicting the Premises and a description of the route of access to the Enclosed Area.

Base Annual Rent means:

(a) the Initial Rent, where the rent has not been re-determined or adjusted in accordance with clauses 14.4 or 14.5, or

(b) in any other case, the Rent as last re-determined or adjusted in accordance with those provisions.

Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales

CL Act means the *Crown Lands Act 1989* (NSW)

Commencement Date means the date referred to in Column 2 of Item 16 of Schedule 1

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Consumer Price Index Number means in relation to a quarter the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Due Date means the date for payment of the Monthly Rent under this Licence as is specified in Column 2 of Item 6 of Schedule 1.

Enclosed Area means the fenced area (which comprises the Premises and Third Party Exclusive Areas) described in each Premises Appendix as the Enclosed Area and shown on the Plan annexed to each Premises Appendix where land is, or is intended to be fenced.

Environmental Law means any Law or state protection policy incorporated by reference to or being part of any Law relating to protection of the environment.

Expiry Date means the date referred to in Column 2 of Item 17 of Schedule 1.

Good Industry Practice means, in relation to any undertaking and any circumstances, the exercise of the skill, diligence, prudence, foresight and judgment which would be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, applying the best standards currently generally applied in the golf course operation and management industry.

GST, taxable supply, consideration, tax invoice and GST amount have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous Substance means a substance that because of its quality, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed.

Improvements mean any structure of a permanent nature attached to the land.

Initial Monthly Rent means the initial Monthly Rent payable per month under this Licence in respect of the Premises as is specified in Column 2 of Item 5A of Schedule 1.

Initial Rent means the initial Rent payable per annum under this Licence in respect of the Premises as is specified in Column 2 of Item 5 of Schedule 1.

Law includes:

- (a) the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, whether state, federal or otherwise;
- (b) the common law and the law of equity;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, policy or standard, whether or not enforceable by law, and
- (e) any applicable direction, policy, rule or order that is given in writing by a regulator, whether or not enforceable by law.

whether present or future.

Licence means this licence, including all Schedules and Annexures hereto.

Licensee means the licensee referred to in Column 2 of Item 2 of Schedule 1

Licensee Fixtures means any plant or equipment, fittings or improvements in the nature of fixtures brought onto the Premises by, or on behalf of, or at the request of, the Licensee

Licensor means the licensor referred to in Column 2 of Item 1 of Schedule 1 and includes its assigns, and for the purpose of clauses 35, 36, 37, 38, 39, 40, 41 and 42 includes Her Majesty the Queen, the State of New South Wales and the Minister and their heirs, successors, agents, servants, employees and contractors

Market Rent means the rent that would reasonably be expected to be paid for the Premises if it were offered for the same or a substantially similar use to which the site may be put under this Licence

Market Rent Review Date means the date described as such in Column 2 of Item 6 of Schedule 1

Minister means the Minister administering the CL Act.

Monthly Rent means an amount equal to the Rent divided by twelve (12).

Party / Parties means the parties to this Licence.

Premises means the land and/or the buildings described in the Premises Appendix and on the plans annexed thereto.

Permitted Use means the use shown in Column 2 of Item 15 of Schedule 1

Regulations means the *Crown Lands Regulation 2006* (NSW).

Rent means the Base Annual Rent together with all other payments due to be paid by the Licensee as Rent under this Licence.

Sub-Licensee means a person who holds a sub-licence of any part of the Premises from the Licensee in accordance with the provisions of this Licence.

Term means the term of operation of this Licence in relation to the Premises.

Term of Agreement means the period of time set out in or determined in accordance with Column 2 of Item 18 of Schedule 1.

Third Party Exclusive Areas means those areas that are exclusively for the use of third parties as shown on the Plan annexed to each Premises Appendix.

3. CONSTRUCTION

3.1 Interpretation

This Licence shall be constructed in accordance with this clause 3.1, unless the context requires otherwise:

3.1.1 **Plurals:** words importing the singular include the plural and vice versa;

3.1.2 **Gender:** words importing any gender include the other gender;

- 3.1.3 **Persons:** a reference to a person includes:
- (a) an individual, a firm, unincorporated association, corporation and a government; and
 - (b) the legal personal representatives, successors and assigns of that person.
- 3.1.4 **Headings:** headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in constructing this Licence.
- 3.1.5 **Clauses and sub-clauses:** a reference to a clause includes all sub-clauses, paragraphs, sub-paragraphs and other components which form part of the clause referred to.
- 3.1.6 **Time:** a reference to time is a reference to local Sydney time.
- 3.1.7 **Money:** a reference to \$ or dollars is a reference to the lawful currency of Australia.
- 3.1.8 **Defined terms:** if a word or phrase is defined, cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.
- 3.1.9 **Writing:** a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.
- 3.1.10 **Contra preferentum:** no rules of construction shall apply to the disadvantage of any Party responsible for preparation of this Licence or any part of it.
- 3.1.11 **Statutes:** a reference to a Statute, Act, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.
- 3.1.12 **Licence:** a reference to this Licence shall include any extension or variation of this Licence; and
- 3.1.13 **Priorities:** if an inconsistency occurs between the provisions of this Licence and the provisions of a licence granted in accordance with this Licence, the provisions of this Licence shall prevail; and
- 3.1.14 **Without limitation:** any phrase introduced by the words 'including', 'include', 'in particular', 'for example' or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words.
- 3.2 **Warranties and Undertakings**
- 3.2.1 The Licensee warrants that it:
- (a) has relied only on its own inquiries about this Licence; and
 - (b) has not relied on any representation or warranty by the Licensor or any person acting or seeming to act on the Licensor's behalf.
- 3.2.2 The Licensee shall comply on time with undertakings given by or on behalf of the Licensee.

3.3 Further Assurances

- 3.3.1 Each Party must do everything necessary to give full effect to this Licence.
- 3.3.2 Pursuant to clause 7, this Licence and any other agreement subsidiary to this Licence continue in full force and effect.

3.4 Relationship of Licensor and Licensee

Nothing contained or implied in this Licence shall be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Licensor and the Licensee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Licensee and the Licensor or either of them will be deemed to create any relationship between them other than the relationship of Licensor and Licensee upon the terms and conditions only as provided in this Licence.

3.5 Time to be of the Essence

Where in any provision of this Licence a Party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

4. SEVERABILITY

Any provision of this Licence which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

5. ESSENTIAL CONDITIONS OF LICENCE

The Licensor and the Licensee agree that the clauses specified in Column 2 of Item 19 of Schedule 1 are essential conditions of this Licence.

6. PERMITTED USE

6.1 Grant of Licence

The Licensor grants to the Licensee a right to occupy the Premises for the Permitted Use.

6.2 Permitted Use only

The Licensee shall not

- 6.2.1 use the Premises, or
- 6.2.2 allow them to be used (except pursuant to a licence granted by the Licensor).

for any purpose other than the Permitted Use specified or referred to in Column 2 of Item 15 of Schedule 1.

6.3 No exclusive possession

The Licensee acknowledges that this Licence does not confer exclusive possession of the Premises upon the Licensee

7 COMMENCEMENT OF LICENCE AND TERM

This Licence shall commence on the date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 16 of Schedule 1 and, subject to clauses 10 and 11, shall continue in force until the Expiry Date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 17 of Schedule 1

8. NO RIGHT TO PURCHASE OR TRANSFER OF LICENCE RIGHTS

8.1 The grant of this Licence does not confer upon the Licensee

8.1.1 a right to purchase or lease any part of the Premises; or

8.1.2 any tenancy or other estate or interest in any part of the Premises, other than contractual rights as Licensee under this Licence

8.2 Subject to any other provisions of this Licence, the Licensee shall not during the Term of this Licence, sub-licence, part with possession of the Premises, transfer or create any interest in this Licence or authorise or permit any person to occupy the Premises without the prior written consent of the Licensor and the Minister. The licence is not transferable

9. LICENSEE TO YIELD UP

9.1 The Licensee shall forthwith upon the expiration or other determination of this Licence or any extension of it peaceably vacate the Premises at the Licensee's expense.

9.2 If requested by the Licensor, the Licensee shall:

9.2.1 remove all Licensee Fixtures, signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Licensee (other than a notice displayed by the Licensor);

9.2.2 rehabilitate the Premises, (to the extent to which it has been altered or affected by the Licensee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Licensee Fixtures to the reasonable satisfaction of the Licensor;

9.2.3 ensure that when it vacates the Premises in relation to its occupation of the Premises under this Licence, the Premises comply with any Environmental Law to the extent applicable at the time of granting of this Licence; and

9.2.4 leave the Premises in a clean and tidy condition.

9.3 Clause 9.2 does not apply unless the Licensor permits the Licensee to carry out any works on the Premises reasonably required in order to comply with that clause, and the Licensee shall not carry out any such works without the prior written consent of the Licensor

10. TERMINATION OF LICENCE - S109 TO APPLY

- 10.1 Without limiting the Licensee's statutory or other rights apart from this Licence, the Parties acknowledge that, subject to clause 10.2, this Licence shall terminate under section 109 of the CL Act if the Reserve is revoked or that part of the Reserve is revoked that comprises the whole or part of the Premises unless the revocation notification otherwise provides.
- 10.2 Where only part of the Premises is affected by the revocation or proposed revocation the Parties undertake to consult to determine if an agreement under Section 109(3) can be reached for the continuation of this Licence in respect to that part of the Premises not affected by the revocation.
- 10.3 The Licensee expressly acknowledges that as provided by Section 109(5) of the CL Act, no compensation is payable in respect of the termination of this Licence by the operation of Section 109.

11. TERMINATION OF LICENCE ON DEFAULT

- 11.1 The Licensor may terminate this Licence in the manner set out below in the following circumstances:
- 11.1.1 if the Rent or any part of it or any moneys owing to the Licensor under this Licence is or are in arrears for one month, whether formally demanded or not;
- 11.1.2 if the Licensee breaches an essential condition of this Licence or any rule or regulation made under this Licence;
- 11.1.3 if defects notified under a provision of this Licence are not remedied within the time specified in the notice;
- 11.1.4 if the Licensee is a corporation and an order is made or a resolution is passed for its winding up, except for reconstruction or amalgamation;
- 11.1.5 if the Licensee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntarily or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- 11.1.6 if the Licensee is a company and is placed under official management or enters a composition or scheme of arrangement; and
- 11.1.7 if the Licensee or any person claiming through the Licensee conducts any business from the licensed Premises after the Licensee has committed an act of bankruptcy.
- 11.2 In the circumstances set out in clause 11.1 the Licensor may end this Licence by:
- 11.2.1 notifying the Licensee that it is ending this Licence;
- 11.2.2 re-entering the Premises, with force if necessary, and ejecting the Licensee and all other persons from the Premises and repossessing them; or
- 11.2.3 doing both.
- 11.3 If the Licensor ends this Licence under this clause 11, the Licensee shall not be released from liability for any prior breach of this Licence and other remedies available to the Licensor to recover arrears of Rent shall not be prejudiced.

11.4 If the Licensor ends this Licence under this clause 11 or this Licence terminates under clause 10, the Licensor may remove the Licensee's property and store it at the Licensee's expense without being liable to the Licensee for trespass, detinue, conversion or negligence. After storing it for at least one month, the Licensor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

12. ACCEPTANCE OF RENT NOT WAIVER

Demand or acceptance of Rent or any other moneys due under this Licence by the Licensor after termination of this Licence does not operate as a waiver of the termination.

13. HOLDING OVER BY LICENSEE

13.1 At the end of the Term of Agreement as specified in Column 2 of Item 18 of Schedule 1, the Licensee shall be entitled with the consent of the Licensor and the Minister to remain in possession of the Premises on the following terms and conditions:

13.1.1 the Licensee shall become a monthly tenant of the Licensor at a monthly rental equivalent to one twelfth proportion of the annual Rent payable at the time of expiration or sooner determination of this Licence, and

13.1.2 the Licensee shall comply with and be bound by the terms and conditions of this Licence insofar as the terms and conditions are applicable, provided that the Licensor may from time to time by notice in writing served on the Licensee direct that any particular condition not apply or be amended in the manner set out in the notice.

13.2 The Licensor and the Licensee expressly agree that where any provision of this Licence confers any right, duty, power or obligation on a Party upon the expiration or determination of this Licence or on the Expiry Date and the Licensee is authorised to remain in possession of the Premises pursuant to a consent granted under this clause 13, the emergence of the right, duty, power or obligation shall be postponed until such time as the Licensee ceases to be entitled to possession pursuant to this clause 13.

13.3 The tenancy created by operation of this clause 13 may be determined by the Licensor serving on the Licensee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.

13.4 The tenancy created by operation of this clause 13 may be determined by the Licensee serving on the Licensor a notice stating that as from a date specified in the notice (such date to be no earlier than the date that is three (3) months after the date of receipt of the notice by the Licensor) the tenancy is surrendered.

13.5 Any holding over should not exceed 12 months.

14. LICENSEE'S RENT AND OUTGOINGS

14.1 Licensee to Pay Rent

The Licensee covenants with the Licensor that the Licensee shall during the whole of the Term of Agreement and any extension of it pay the Rent to the Licensor in accordance with the provisions of this clause 14 without demand free of exchange and without deduction whatsoever.

14.2 Goods and Services Tax

14.2.1 The Parties agree that all payments to be made and other consideration to be provided by the Licensee under this Licence are GST exclusive unless explicitly expressed otherwise. If any payment or consideration to be made or provided by the Licensee to the Licensor is for a taxable supply under this Licence on which the Licensor must pay GST and the Licensor gives the Licensee a tax invoice, the Licensee shall pay to the Licensor an amount equal to the GST payable (the GST Amount) by the Licensor for that taxable supply upon receipt of that tax invoice.

14.2.2 The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount shall not include any amount incurred in respect of penalty or interest or any other amounts payable by the Licensor as a result of default by the Licensor in complying with the GST Law.

14.3 Rent and Adjusted Rent

The Licensee shall pay to the Licensor on each Due Date the Monthly Rent in advance adjusted as provided in clauses 14.4 and 14.5

14.4 Calculation of Annual Rental Adjustment

14.4.1 On each anniversary of the Due Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times C/D$$

where:

R represents the Base Annual Rent following adjustment under this clause 14.4;

B represents the Base Annual Rent before adjustment under this clause 14.4;

C represents the Consumer Price Index Number for the last quarter for which such a number was published before the Due Date; and

D represents the Consumer Price Index Number for the last quarter before the last adjustment of Rent (or in the case of the first adjustment of Rent, the last quarter before the Commencement Date) for which such a number was published

14.4.2 In the event that such index be discontinued or abolished, the Minister may at his absolute discretion nominate another Index

14.4.3 If the reference base for the Consumer Price Index is changed, regard shall be had only to Index numbers published in terms of the new reference base or to Index

numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician

14.4.4 Any Rent adjusted under this clause 14.4 shall be adjusted to the nearest whole dollar

14.4.5 An adjustment of Rent made under this clause 14.4 shall take effect on its Due Date, notwithstanding that any Rent notice to the Licensee is not issued until after that date specified or referred to in Column 2 of Item 6 of Schedule 1

14.5 Market Rent Review

14.5.1 In addition to the Rent adjustment provided for in clause 14.4, the Rent may subject to the following provisions of this clause 14.5, be re-determined to an amount that is the Market Rent on that date with effect on and from each Market Rent Review Date by the Licensor

14.5.2 A redetermination of Rent for the purposes of clause 14.5.1 shall be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before and up to six months after that Market Rent Review Date specified or referred to in Column 2 of Item 8 of Schedule 1.

14.5.3 Where the Licensor does not re-determine the Rent as provided for in clause 14.5.1 it may subsequently re-determine the Rent at any time before the next Market Rent Review Date. No succeeding Market Rent Review Date shall be postponed by reason of the operation of this clause 14.5.3.

14.5.4 A redetermination of Rent made under clauses 14.5.1 or 14.5.3 shall take effect and be due and payable on the next Due Date following the date of issue of the notice of redetermination (or where the said Due Date and the date of issue of the notice of redetermination are the same, then that date) even if the Licensee wishes to dispute the redetermination.

15. CONTINUING OBLIGATION

The obligation of the Licensee to pay Rent is a continuing obligation during the Term of Agreement and any extension of it and shall not abate in whole or in part or be affected by any cause whatsoever

16. NO REDUCTION IN RENT

16.1 Subject to this Licence the Licensee shall not, without the written consent of the Licensor, by any act, matter or deed or by failure or omission impair, reduce or diminish directly or indirectly the Rent reserved or imposed by this Licence. However, if at any time during the Term of Agreement:

16.1.1 some natural disaster or other serious event occurs which is beyond the reasonable control of the Licensee, and

16.1.2 as a result of the damage caused by the natural disaster or other serious event the Licensee is not able to use the Premises in a reasonable manner,

the Licensee's obligations to pay Rent shall abate to the extent proportional to the effect on the Licensee's ability to occupy and use the Premises until the Premises are restored to a

condition in which the Licensee is able to conduct the Licensee's activities and/or occupy the Premises in a reasonable manner.

17. LICENSEE TO PAY RATES

- 17.1 The Licensee shall when the same become due for payment pay all (or in the first and last year of the Term of Agreement the appropriate proportionate part) rates, taxes, assessments, duties, charges and fees, whether municipal, local government, parliamentary or otherwise, which are at any time during the currency of this Licence separately assessed and lawfully charged upon, imposed or levied in respect of the Licensee's use or occupation of the Premises to the extent referable to the Licensee's use or occupation of the Premises.
- 17.2 Where the Licensor requires evidence for such payments the Licensee shall produce such evidence within ten Business Days after the respective due dates for payment.
- 17.3 In the case where such rates, taxes, duties and fees so covenanted to be paid by the Licensee are not paid when they become due, the Licensor may if it thinks fit pay the same and any such sum or sums so paid may be recovered by the Licensor as if such sums were Rent.

18. LICENSEE TO PAY OTHER CHARGES

The Licensee shall pay all other fees, charges and impositions for which it may properly be liable which are imposed by an authorised third party and which are at any time during the Term of Agreement or any extension of it payable in respect of the Premises or on account of the use and occupation of the Premises by the Licensee.

19. LICENSEE TO PAY FOR SERVICES

The Licensee shall as and when the same become due for payment pay to the Licensor or to any other person or body authorised to supply the same, all proper charges for gas, electricity, water or other services supplied to the Licensee or consumed in or on the Premises, by or on behalf of the Licensee.

20. LICENSEE TO PAY COST OF WORK

Whenever the Licensee is required under this Licence to do or effect any act, matter or thing, then the doing of such act, matter or thing shall, unless this Licence otherwise provides, be at the sole risk, cost and expense of the Licensee.

21. COSTS PAYABLE BY LICENSEE TO LICENSOR

- 21.1 Except when Law limits costs being recovered by the Licensor from the Licensee, the Licensee shall pay in full the Licensor's reasonable legal costs, the fees of all consultants and all duties, fees, charges and expenses incurred reasonably, properly and in good faith by the Licensor in consequence of or in connection with or incidental to:
- 21.1.1 the preparation and completion of this Licence;
- 21.1.2 any variation of this Licence made otherwise than at the request of the Licensor;

- 21.1.3 any application for the consent of the Licensor and the Minister if applicable under this Licence;
- 21.1.4 any and every failure to comply, breach or default by the Licensee under this Licence;
- 21.1.5 the exercise or attempted exercise of any right power, privilege, authority or remedy of the Licensor under or by virtue of this Licence;
- 21.1.6 the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Licensee and the inspection of it, in this case the costs to be mutually agreed;
- 21.1.7 any entry, inspection, examination, consultation or the like, which discloses a breach by the Licensee of any covenant of this Licence; and
- 21.1.8 the Licensee requiring the Licensor to do any act, matter or thing under this Licence, unless otherwise provided for in this Licence.

22. COSTS PAYABLE BY LICENSOR

The Licensor shall pay its own direct and external consultants costs in relation to any rental redetermination matter without reimbursement from the Licensee.

23. INTEREST ON OVERDUE MONEYS

The Licensee shall pay interest to the Licensor on any moneys due and payable under this Licence or on any judgment in favour of the Licensor in an action arising from this Licence until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Licensor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest shall accrue and be calculated daily.

24. MANNER OF PAYMENT OF RENT AND OTHER MONEYS

The Rent and other moneys payable in accordance with this Licence shall be paid to the address or bank account specified in Column 2 of Item 9 of Schedule 1 or to such other person or at such other address as the Licensor may from time to time direct by notice in writing served on the Licensee.

25. OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES

25.1 Access

Subject to the clauses hereunder, the Licensor confirms that the Licensee shall have unfettered and free access to and from the Premises at all times, provided however that

- 25.1.1 the Licensee shall strictly observe the reasonable directions and requirements of the Licensor at all times regarding the methods and routes of access to the Premises taken by the Licensee; and

25.1.2	the Licensee as far as is practicable, shall be required to use existing access tracks to, from, within and surrounding the Premises.
25.2	Entry by the Public
	The Licensee shall allow the public to have right of access over that part of the Premises as specified in Column 2 of Item 20 of Schedule 1 and any such part of the Premises shall be suitably signposted. Otherwise the Licensee may prohibit unauthorised entry to the remainder of the Premises. If required by the Licensor, plans showing the areas where public access is authorised and unauthorised shall be displayed in a prominent location at the entrance to the Premises.
25.3	Additions and Alterations
	The Licensee shall not make any additions or alterations to the Premises without first obtaining the written consent of the Licensor, the Minister and the Council in its role as the statutory planning authority. Any additions or alterations consented to by the Licensor and the Minister shall be carried out at the Licensee's expense.
25.4	Maintenance of Premises and Enclosed Areas
	The Licensee shall keep the Premises, and shall ensure that the Premises are kept clean and tidy and in good order and condition, having regard to the extent of the Licensee's occupation of the Premises under this Licence.
25.5	Licensee to erect barricades etc
	Where the Premises or any part of the Premises become to the knowledge of the Licensee (or which ought reasonably to be in the knowledge of the Licensee) unsafe, hazardous or dangerous the Licensee shall forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.
25.6	No residence on Premises
	The Licensee shall not reside or permit any other person to reside on the Premises, unless Schedule 2 (Special Conditions) permit otherwise.
25.7	Licensee not to remove material
25.7.1	The Licensee shall not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Licensor and the Minister and subject to such conditions as the Licensor or the Minister may determine.
25.7.2	Clause 25.7.1 does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any Improvement authorised by or under this Licence provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.
25.8	Licensee not to burn off
	The Licensee shall not carry out any burning off on the Premises except with the prior consent of the Licensor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the <i>Rural Fires Act 1997</i> (NSW). Any consent granted in accordance with this clause 25.8 shall be subject to such reasonable conditions as the Licensor may impose.
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25.9 Rodents and Vermin

The Licensee shall take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and shall in the event of failing to do so if required by the Licensor employ from time to time a duly certified pest exterminator at cost of the Licensee and as approved by the Licensor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause 25.9 the Licensee and any one acting on the Licensee's behalf shall not use any substance or undertake any activity prohibited by any Law.

26. ADVERTISING

26.1 The Licensee shall not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Licensor's written consent other than safety signs, in respect of which the Licensor's consent shall not be required.

26.2 The Licensor may at any time by notice in writing require the Licensee to discontinue to use any piece or mode of advertising to which the Licensor has granted consent under sub-clause 26.1 which in the opinion of the Licensor has ceased to be suitable or has become unsightly or objectionable and the Licensee on receipt of the notice shall comply accordingly.

27. NOTIFICATION OF ACCIDENT

The Licensee shall give to the Licensor prompt notice in writing of any serious accident or serious defect at or in the Premises or any part of them, unless the defect or accident is capable of being and is promptly remedied by the Licensee.

28. LICENSEE NOT TO COMMIT NUISANCE ETC

28.1 The Licensee shall not:

28.1.1 carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business;

28.1.2 carry on or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Licensor or owners or occupiers of adjoining or neighbouring lands or buildings, or

28.1.3 use the Premises for any illegal activity.

29. HAZARDOUS SUBSTANCES

The Licensee shall not keep any Hazardous Substance on the Premises without prior consent of the Licensor, which consent shall not be unreasonably withheld.

30. RELICS

- 30.1 Unless authorised to do so by a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974* and subject to observance and compliance with any conditions imposed on the grant of such permit or consent, the Licensee shall not knowingly disturb, destroy, deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and shall take every reasonable precaution in drilling excavating or carrying out other operations or works in the Premises against any such disturbance, destruction, defacement or damage.
- 30.2 If the Licensee becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises, the Licensee shall within 24 hours notify the Licensor and the Director-General of the Department of Environment and Conservation of the existence of such relic place or item.
- 30.3 The Licensee shall not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in clause 30.2 without the approval of the Director-General of the Department of Environment and Conservation and the Licensee shall observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

31. ARTEFACTS

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Licensor and the Licensee shall as authorised by the Licensor watch or examine any excavations and the Licensee shall take all reasonable precautions to prevent such articles or things being removed or damaged and shall as soon as practicable after discovery thereof notify the Licensor of such discovery and carry out the Licensor's orders as to the delivery up to or disposal of such articles or things at the Licensor's expense.

32. OWNERSHIP AND REMOVAL OF LICENSEE FIXTURES AND IMPROVEMENTS

- 32.1 Unless otherwise agreed in writing between the Parties, during the Term of Agreement and any extension of it, ownership of all Licensee Fixtures vests in the Licensor. Notwithstanding anything contained in this Licence, the Licensee shall not be entitled to remove any of the Licensee Fixtures, fittings or equipment from the Licensed property, without the prior written consent of the Licensor (which may be withheld in the Licensor's absolute discretion).
- 32.2 Upon expiration or other determination of this Licence all Improvements undertaken by the Licensee become the property of the Licensor.

33. GENERAL REQUIREMENT TO REPAIR

Without prejudice to the specific obligations contained in this Licence, the Licensee shall to the satisfaction of the Licensor at all times keep the Premises in good repair and properly maintained in all respects.

34. BREAKAGES

The Licensee shall immediately at the Licensee's expense make good any breakage, defect or damage to the Premises (including broken glass) or to any adjoining premises or to any facility or appurtenance of the Licensor (or the Licensor's other licensees, occupants, occupiers or other persons claiming through or under the Licensor) occasioned by want of care, misuse or abuse on the part of the Licensee or otherwise occasioned by any breach or default of the Licensee hereunder.

35. INDEMNITIES AND INSURANCE**35.1 Indemnity for use of Premises**

35.1.1 The Licensee shall indemnify and keep indemnified the Licensor from and against any and all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever to which the Licensor shall or may be or become liable for or in respect of the Licensee's occupation operation and use of the Premises or for or in respect of all losses, damages, accidents or injuries of whatsoever nature or kind and howsoever sustained or occasioned (and whether to any property or to any person or resulting in the destruction of any property or the death of any person or not) at or upon the Premises or originating on the Premises although occurring or sustained outside the same, except to the extent that any such claims and demands arise from or are contributed to by the negligence or wilful act or omission on the part of the Licensor.

35.2 Indemnity Continues After Expiration of Licence

The obligations of the Licensee under this clause 35 continue after expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

35.3 Exclusion of Consequential Loss

Despite any other provision of this Licence, the Licensor excludes, and the Licensee agrees that it shall have no rights against the Licensor, for liability for consequential or indirect loss arising out of this Licence, including in respect of loss of profits or loss of business.

36. INSURANCE - PUBLIC RISK & PROPERTY

The Licensee shall effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk and property insurance (for loss of or damage to tangible property (real or personal)) for amounts not less than the amounts set out in Column 2 of Item 12 of Schedule 1 for each and every claim, or such other amounts as the Licensor may from time to time reasonably require as the amounts payable in respect of liability arising out of any one single accident or event.

37. PROVISIONS RE POLICIES

37.1 The Licensee shall produce to the Licensor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Licensee pursuant to this Licence.

37.2 The Licensee shall not at any time do or bring upon the Premises anything which it ought reasonably believe may render void or voidable any policy of insurance. If the Licensee brings anything onto the Premises whereby the rate of premium on such insurance is liable to be increased, the Licensee shall obtain insurance cover for such increased risk and pay all additional premiums on the Premises required on account of the additional risk caused by the use to which the Premises are put by the Licensee.

37.3 The Licensee shall use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things, the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

38. INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION

38.1 The Licensee shall indemnify and keep indemnified the Licensor from and against any and all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever arising from the non-compliance by the Licensee with any Law, including any New South Wales or Commonwealth legislation, that may apply to the Licensee's use and occupation of the site and access thereto and the Licensee's operation of its business from the site and access thereto.

38.2 This clause 38 shall not merge on the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

39. INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW

39.1 Without prejudice to any other indemnity granted by this Licence, the Licensee shall indemnify and keep indemnified the Licensor from and against any and all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever arising from a breach by the Licensee of any Environmental Law, which breach is in relation to the Premises.

39.2 This clause 39 shall not merge on expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

40. NO LIABILITY FOR FAILURE OF SERVICES

The Licensor shall not be under any liability for any loss, injury or damage sustained by the Licensee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Licensor or enjoyed by the Licensee in conjunction with the Premises or this Licence, provided that such failure is not due to the negligent or wilful act or omission of the Licensor its servants or agents.

41. LICENSEE NOT TO IMPOSE LIABILITY ON LICENSOR

Subject to any other provision of this Licence, the Licensee shall not without the written consent of the Licensor by any act, matter or deed or by failure or omission, cause or permit to be imposed on the Licensor any liability of the Licensee under or by virtue of this Licence or otherwise, even where the Licensee may be entitled to do so under any Law.

42. RELEASE OF LICENSOR FROM LIABILITY

- 42.1 The Licensee shall occupy, use and keep the Premises at the risk of the Licensee and hereby releases to the fullest extent permitted by Law the Licensor from all claims and demands of every kind resulting from any accident, damage or injury occurring therein, but excluding such claims and demands to the extent that such claims and demands arise out of the negligent or wilful acts omissions or default of the Licensor, and the Licensor shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Licensee or any agent or servant of the Licensee or of any member of the public whilst in or upon the Premises, but excluding such loss or damage claims and demands to the extent that such loss or damage, claims and demands arise out of the negligent acts or wilful omissions or default of the Licensor
- 42.2 The obligations of the Licensee under this clause 42 continue after the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination

43. LICENSOR'S WARRANTIES AND COVENANTS
43.1 General

The Licensor represents, warrants and undertakes to the Licensor that:

- 43.1.1 it is validly existing under the Laws of the place of its incorporation and has the power and authority to carry on its business as that business is now being conducted;
- 43.1.2 it has the power, capacity and authority to enter into and observe its obligations under this Licence;
- 43.1.3 this Licence and the obligations created hereunder are binding upon it and enforceable against it in accordance with their terms and do not and will not violate the terms of any other agreement or any judgment or court order to which it is bound;
- 43.1.4 there is no proceeding pending or threatened, or any other event, matter, occurrence or circumstance which to the Licensee's knowledge, challenges or may have a material adverse impact on this Licence or the ability of the Licensee to perform its obligations under this Licence (the Licensee must promptly inform the Licensor of any such event that occurs during the Term of Agreement or any extension of it);
- 43.1.5 all information which it provides to the Licensor, whether prior to, on or after the Commencement Date, is true and correct in every respect and is not misleading or deceptive; and
- 43.1.6 it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Licence

43.2 Hazardous Chemicals

The Licensor warrants that it has not received any notice pursuant to the *Environmentally Hazardous Chemical Act 1985* (NSW)

44. LICENSOR'S POWERS AND FUNCTIONS**44.1 Approval by Licensor**

44.1.1 In any case where pursuant to this Licence the doing or executing of any act, matter or thing by the Licensee is dependent upon the approval or consent of the Licensor, such approval or consent shall not be effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Licensor in its absolute discretion and may be given subject to such conditions as the Licensor may determine unless otherwise.

44.1.2 Any failure by the Licensee to comply with a condition imposed by the Licensor pursuant to clause 44.1.1 constitutes a failure by the Licensee to comply with a condition of this Licence.

45. APPLICATION OF CERTAIN STATE AND COMMONWEALTH LAWS**45.1 Proportionate Liability**

Part 4 (titled "Proportionate Liability") of the *Civil Liability Act 2002* (NSW) does not apply to this Licence.

45.2 Licensee to Comply with all Commonwealth and NSW State Laws

45.2.1 The Licensee shall comply with the requirements of all Laws and the requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises and nothing in this Licence affects this obligation.

45.2.2 The Licensee shall forthwith on being served with a notice by the Licensor comply with any notice or direction served on the Licensor by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs, alterations or works on or to the Premises.

45.3 Licensee to Comply with Environmental Laws

In relation to the Premises and its use of the Premises, the Licensee shall:

45.3.1 comply with relevant Environmental Law;

45.3.2 use its best endeavours to prevent a breach of any Environmental Law;

45.3.3 report any breach, even if accidental; and

45.3.4 provide to the Licensor as soon as reasonably practicable details of notices received by or proceedings commenced against the Licensee pursuant to an Environmental Law:

(a) relating to a breach or alleged breach by the Licensee of an Environmental Law, or

(b) requiring the Licensee to carry out works to decrease the affectation of the Premises by any Hazardous Substance

45.4 Licensee's Failure to Comply with Statutory Requirements

Where the Licensee breaches any Law in relation to its use of the Premises, it is taken to breach a condition of this Licence.

46. NOTICES

46.1 Service of Notice on Licensee

Any notice served by the Licensor on the Licensee must be in writing and shall be sufficiently served if:

46.1.1 served personally or left addressed to the Licensee at the address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Licensee notifies in writing to the Licensor;

46.1.2 sent by email to the Licensee's email address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Licensee notifies in writing to the Licensor;

46.1.3 sent by facsimile to the Licensee's facsimile number stated in Column 2 of Item 10 of Schedule 1 or such other number as the Licensee notifies in writing to the Licensor; or

46.1.4 forwarded by prepaid security mail addressed to the Licensee at the address stated in Column 2 of Item 10 of Schedule 1;

and every such notice must also be served on the Licensee's solicitors as they may be nominated from time to time, or such other address or facsimile number as the Licensee's solicitors notify in writing to the Licensor, by any methods identified in clauses 46.1.1, 46.1.2 or 46.1.3.

46.2 Service of Notice on Licensor

Any notice served by the Licensee on the Licensor must be in writing and shall be sufficiently served if:

46.2.1 served personally or left addressed to the Licensor at the address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Licensor notifies in writing to the Licensee;

46.2.2 sent by email to the Licensor's email address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Licensor notifies in writing to the Licensee;

46.2.3 sent by facsimile to the Licensor's facsimile number stated in Column 2 of Item 11 of Schedule 1 or such other number as the Licensor notifies in writing to the Licensee; or

46.2.4 forwarded by prepaid security mail addressed to the Licensor at the address stated in Column 2 of Item 11 of Schedule 1;

and every such notice must also be served on the Licensor's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Licensor's solicitors notify in writing to the Licensee, by any methods identified in clauses 46.2.1, 46.2.2 or 46.2.3.

46.3 Notices

- 46.3.1 Any notice served by the Licensor or the Licensee under this Licence shall be effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Licensor or by the Licensee to the other
- 46.3.2 Any notice sent by prepaid security mail shall be deemed to be served at the expiration of 2 Business Days after the date of posting
- 46.3.3 Any notice sent by facsimile machine shall be deemed to be served on the first Business Day after the date of transmission (provided that the sending Party receives a facsimile machine verification report indicating that the notice has been transmitted).

47. PROCEDURE - DISPUTE RESOLUTION

- 47.1 In the event that the Licensor and the Licensee are in dispute regarding any matter relating to or arising under this Licence or in respect of any approvals or consents to be granted by the Licensor (except those approvals or consents where the Licensor has an obligation to act reasonably) to the Licensee hereunder or where it is acting in its statutory capacity, then either the Licensor or the Licensee may give notice and particulars of such dispute to the other Party.
- 47.2 Where a notice of dispute is served pursuant to this clause 47 the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner
- 47.3 If the dispute is not resolved informally within 21 days of service of written notification, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of this Licence.
- 47.4 A third party appointed in accordance with this clause 47 may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- 47.5 Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause 47, except where either Party seeks urgent interlocutory relief.
- 47.6 Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This clause 47.6 does not in any way limit a mediator's power to apportion fees under clause 47.4.
- 47.7 Notwithstanding the existence of a dispute under this or any other clause of this Licence the Parties must, unless acting in accordance with an express provision of this Licence, continue to perform their obligations under this Licence

Miscellaneous

48. NO MORATORIUM

Any present or future legislation which operates to vary obligations between the Licensee and the Licensor, except to the extent that such legislation is expressly accepted to apply to this Licence or that its exclusion is prohibited, is excluded from this Licence.

49. NO WAIVER

No waiver by a Party of any breach of any covenant obligation or provision in this Licence either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Licence contained or implied. None of the provisions of this Licence shall be taken at Law to have been varied, waived, discharged or released by a Party unless by express consent in writing.

50. NO MERGER

Nothing in this Licence merges, postpones, extinguishes, lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Licence or under any other agreement.

51. COUNTERPARTS

51.1 A Party may execute this Licence by signing any counterpart.

51.2 All counterparts constitute one document when taken together.

52. CONTACT PERSON

The Licensor and the Licensee each must nominate a person to contact about matters arising under this Licence. The person so nominated is the person referred to in Column 2 of Items 13 and 14 of Schedule 1 or such other person as the Licensor nominates in writing to the Licensee and the Licensee nominates in writing to the Licensor from time to time.

53. APPLICABLE LAW

This Licence shall be construed and interpreted in accordance with the Laws of New South Wales.

54. NO HOLDING OUT

The Licensee shall not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Licensor, nor shall the Licensee act as or represent itself to be the servant or agent of the Licensor.

55. WHOLE AGREEMENT
55.1 The provisions contained in this Licence expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
55.2 No further or other provisions whether in respect of the Premises or otherwise shall be deemed to be implied in this Licence or to arise between the Parties hereto by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Licence.
55.3 The existence of any such implication or collateral or other agreement is hereby negated.
56. SPECIAL CONDITIONS
The Special Conditions set out in Schedule 2 (Special Conditions) apply to and form part of this Licence and the Licensee acknowledges and agrees that it must comply with the Special Conditions at all times during the Term of Agreement and any extension of it, including providing any services, undertaking any tasks, performing any functions and using the Premises and operating its business from the Premises in accordance with any obligations set out in Schedule 2 (Special Conditions).

Schedule 1

Item	Clause	Column 1	Column 2
1	2	Licensor	Hudson Park (R62163) Reserve Trust
2	2	Licensee	Titanium Golf Management Pty Ltd (ABN 69 132 646 096)
3		<i>Not Used</i>	<i>Not Used</i>
4		<i>Not Used</i>	<i>Not Used</i>
5	2	Initial Rent	\$444,000 per annum (exc GST)
5A	2	Initial Monthly Rent	\$37,000 per month (exc GST)
6	2	Due Date	The Commencement Date and each monthly anniversary of the Commencement Date during the Term of the Agreement and any extension of it (ie holding over period).
7	14.4	Annual Rental Adjustment	12 months from Commencement Date and annually thereafter.
8	14.5	Market Rent Review Date	3 years from Commencement Date and every 3 years thereafter, as applicable, depending on the Term of Licence and any extension of it (ie holding over period).
9	24	Address for Payment of Rent Electronic funds transfer details for payment of rent	C/- Strathfield Municipal Council PO Box 120 Strathfield NSW 2135 Name of financial institution: Commonwealth Bank BSB: 062-216 Acc no: 10058882 Account in name of: Strathfield Municipal Council
10	46.1	Licensee's address for Service of Notices	Titanium Golf Management Pty Ltd Level 29, Chifley Tower, 2 Chifley Square, Sydney NSW 2000 Attention: Carlo Salvato Phone: 97465702 Facsimile: N/A Email: csalvato1@gmail.com
11	46.2	Licensor's address for Service of Notices	C/- Strathfield Municipal Council PO Box 120 Strathfield NSW 2135 Attention: Rob Bourke Phone: 97489969 Facsimile: N/A Email: robert.bourke@strathfield.nsw.gov.au

Item	Clause	Column 1	Column 2
12	36	Public Risk Insurance Amount Property Insurance Amount	\$10 Million \$875000
13	52	Licensor's Contact Person	General Manager
14	52	Licensee's Contact Person	Carlo Salvato Chief Executive
15	6	Permitted Use	18 hole public golf course, with golf driving practice range, golf professional's shop and kiosk.
16	7	Commencement Date	1 April 2010
17	7	Expiry Date	1 April 2015 with a 5 year option
18	2	Term of Agreement	The period of time beginning on the Commencement Date and finishing on the Expiry Date.
19	5	Essential Conditions of Licence	Clauses 6.2, 6.3, 8, 14, 33, 36, 37, 38, 45.2, 45.3 and 45.4.
20	25.2	Entry by the public	Daybreak to 11.00 pm, 7 days per week

Schedule 2 Special Conditions

Business Plan

The Licensor must conduct its business at the Premises in accordance with the following "Hudson Park Golf Course Business Plan" (the **Business Plan**), which is incorporated into and forms part of this Licence.

At least two (2) months prior to each anniversary of the Commencement Date, the Licensee must convene a meeting with the Licensor to discuss and agree an updated Business Plan for the twelve (12) month period immediately following the anniversary of the Commencement Date.

Any changes to the Business Plan must be agreed in writing between the Parties. If the Parties are unable to agree a revised Business Plan for any period, then:

- the existing Business Plan will continue to apply, and
- the Licensor may terminate this Licence by at least one (1) month's written notice to the Licensee.

Reporting and Audit

Within fourteen (14) days of the end of each month, the Licensee must provide the Licensor with a detailed written report regarding the operation of its business at the Premises, including details of all payments received and all payments made in relation to the Licensee's business. The monthly report must include such information and be in such format as the Licensor requests from time to time.

Within 60 days of the end of each financial year, the Licensee must provide the Licensor with audited financial accounts for the operation of its business at the Premises.

The Licensee must provide the Licensor with such other written reports, evidence or information concerning the Premises, the Licensee and the operation of the Licensee's business at the Premises as may be requested by the Licensor from time to time.

The Licensor or its nominated representative has the right at all reasonable times and on reasonable notice to visit the Premises and the Licensee's other premises and to audit and inspect all records, procedures and systems of the Licensee (and its affiliates) which relate to the Premises, the Licensee and the operation of the Licensee's business at the Premises in order to verify the Licensee's compliance with the terms and conditions of this Licence and to establish confidence in the Licensee's processes and quality assurance arrangements. The Licensee must fully co-operate with the Licensor in relation to any audit or inspection conducted pursuant to this provision.

Standard of Operation

The Licensee must operate its business at the Premises and perform its other obligations under this Licence:

- (a) in a timely, efficient, proper and workmanlike manner using reasonable care, skill and diligence;
- (b) using a sufficient number of suitably trained, qualified, skilled and experienced personnel (for the avoidance of doubt, the Licensee is responsible for any training of its personnel that may be required so as to enable the Licensee to perform its obligations in accordance with the terms and conditions of this Licence, and the Licensor will not be liable to pay any fees, charges or expenses in relation to any such training).

- (c) in accordance with:
 - (i) Good Industry Practice;
 - (ii) all applicable Laws; and
 - (iii) the reasonable directions of the Licensor from time to time; and
- (c) between such hours as are set out in this Licence or as requested by the Licensor from time to time

Contract management

Each Party must appoint a Contact Person (as specified in Column 2 of Items 13 and 14 of Schedule 1). The Parties must manage and administer this Licence as follows:

- (a) the Licensee's Contact Person has responsibility for managing the Premises and the operation of the Licensee's business at the Premises;
- (b) the Parties must procure that their Contact Persons:
 - (i) meet at least quarterly (or such other period agreed in writing between the Parties) to discuss the Premises and the operation of the Licensee's business at the Premises, including:
 - (A) contract compliance; and
 - (B) any issue of concern or interest to either Party and any proposed solutions for addressing the same; and
- (c) work in good faith to resolve any issues of concern.

Supplier's Personnel generally

The Licensee must ensure that its personnel have the relevant training, qualifications, skills and experience necessary to properly maintain the Premises and operate the Licensee's business at the Premises

The Licensor may require that the Licensee replace (at the Licensee's expense) any of the Licensee's personnel and ensure that the same are not engaged to work at the Premises, and the Supplier must promptly (and in any event within seven (7) days) replace such personnel, if at any time:

- (a) the Licensor considers that the performance of such personnel is unsatisfactory; or
- (b) such personnel commit a breach of any policies applicable to the Premises or the operation of the Licensee's business at the Premises

The Licensee must use its best endeavours to minimise the turnover rate of its personnel and to minimise any disruption caused by such turnover.

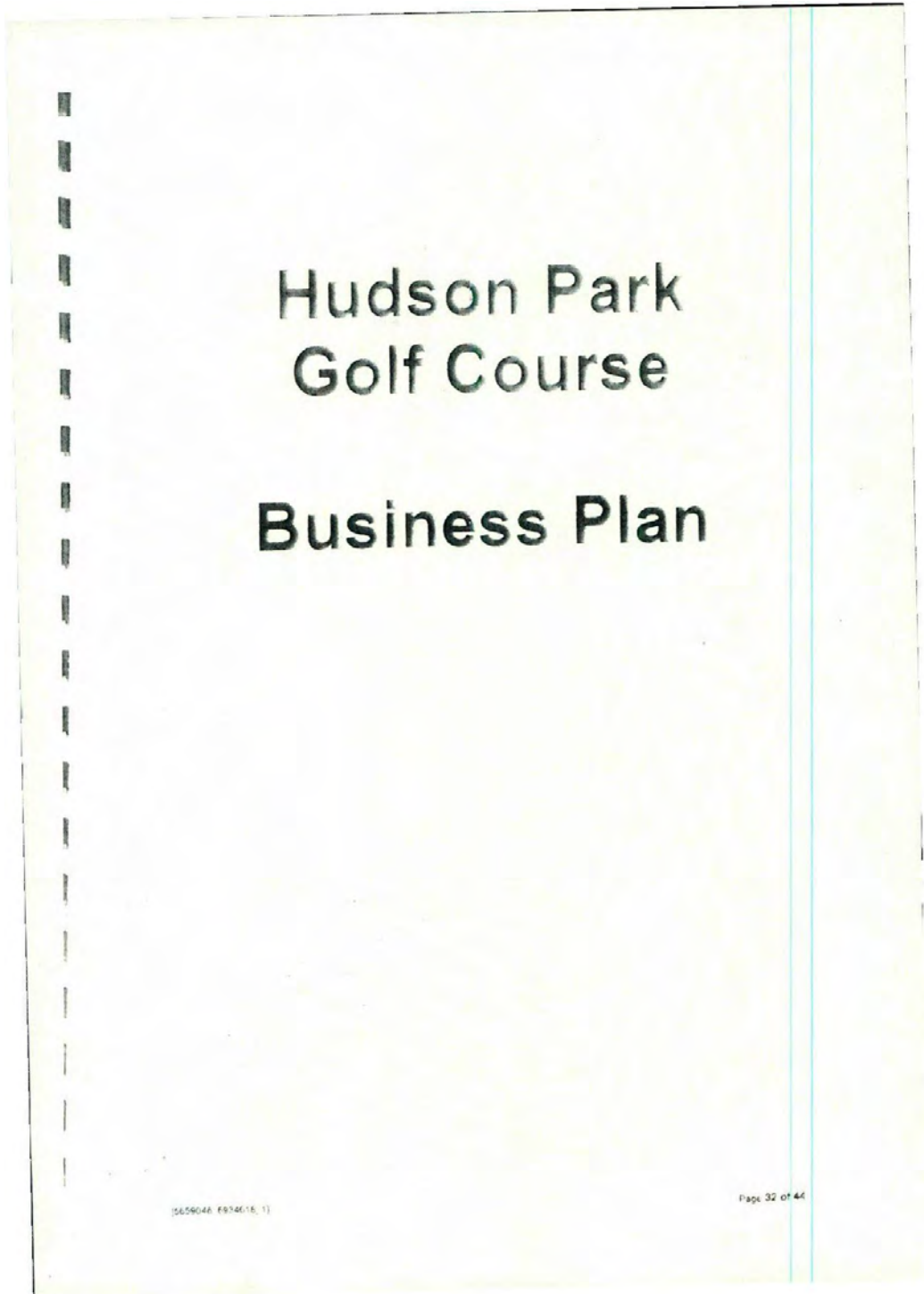
Capital Works

Subject to obtaining the Licensor's and the Council's (in its role as the statutory planning authority) prior written consent before undertaking any capital works, the Licensee must invest at least 50% of Net Profit from the operation of its business at the Premises back into capital works on the Premises

For the purpose of this provision, **Net Profits** means the profit made by the Licensee from the operation of its business at the Premises before any management fees, operator's fees, dividends or similar are paid to the Licensee or any of its affiliates or personnel.

Construction of new Kiosk

Subject to obtaining the Licensor's and the Council's (in its role as the statutory planning authority) prior written consent before undertaking any capital works, the Licensee must complete construction of a new kiosk at the Premises within six (6) months of the Commencement Date. The new kiosk must the following minimum specifications: the construction of an outdoor pavilion with BBQ facilities and a snack bar that would seat up to 50 people.



Executive Summary

The Hudson Park Golf Course is located in the heart of Strathfield, New South Wales, 13km from the City Centre. The course is strategically placed and has a catchment area of only a 30 – 40 minute drive from any suburb in the Sydney Metropolitan area. The property includes an 18 Hole Golf Course, Driving Range and Pro Shop.

Hudson Park Golf Course currently produces an annual total of 20,000 golf rounds. It is acknowledged throughout the Australian Golf Market that for all golf models, i.e. private, semi private or public, that annual golf rounds need to be in excess of 30,000 for a club to break even. It is preferable to be over 35,000 rounds.

Titanium Golf has proposed to take over the Management of Hudson Park Golf Course for an annual fee of \$444,000 per annum plus 50% of the net profit to be put back into the golf course for capital works.

1.1 Objectives

The objectives of Hudson Park Golf Course for the first three years of operation include:

- Revitalize the course and attract a loyal local clientele
- Use Titanium strategic alliances and players' word-of-mouth recommendations to make Hudson Park a popular social golf destination
- Exceeding customer's expectations.
- Implement professional management standards and assemble experienced and effective staff

1.2 Mission

The mission of Hudson Park Golf Course is to become a popular course with Social Clubs and the local residents of the Strathfield area.

Hudson Park Golf Course is an 18 hole facility that offers a challenging layout and value for money. The property currently includes a Pro Shop and Driving Range. Titanium Golf aim to update the Pro Shop and Driving Range facilities, as well as construct an outdoor pavilion with BBQ facilities and snack bar that would seat up to 50 people.

Hudson Park Golf Course will form a strategic alliance with the local businesses and the cluster of schools in the area promoting and advertising the golf course.

Hudson Park will require extensive landscape work and improvements. This work will be continuous over a three year period. Work will be determined by both Strathfield Council and Titanium Golf on a priority basis and confined within the annual budget. Titanium Golf's ergonomic module will be utilized to improve playing surfaces by 15-20% under current budget allowances and will increase budget to reflect round growth.

1.3 Capital Needs

Forecast capital expenditure to ensure long term integrity of the golf course

• Survey base of existing golf course	\$15,000
• Tees Reconstruction/ Additional Teeing Area	\$130,000 (over 5 yrs)
• Fairway Topdressing and Amendment Program	\$60,000 (over 2 yrs)
• Requirements for additional subsurface drainage	\$25,000 (over 5 yrs)
• Bunker reconstruction	\$150,000 (over 5 yrs)
• Weed eradication program	\$20,000 (over 2 yrs)
• Screen Fencing Improvements	\$150,000 (over 5 yrs)
Total	\$550,000

In addition the following new equipment will be purchased:

- Driving Range equipment
- Food Service and outdoor seating equipment for Snack Bar
- New signage to be displayed for the promotion of the golf course
- Application for a Liquor License for Hudson Park

Titanium will also endeavour to purchase 15 motorised golf carts, which will attract Corporate Golf and Social Clubs to the course.

2.1 Products and Services

The Hudson Park Golf Course will offer the following services:

- 18-hole golf course
- Pro Shop
- Driving range
- Licensed Snack bar

3.1 Market Analysis Summary

According to the 2006 census, Strathfield had a total population of 20,482 people. It has become one of the most culturally diverse suburbs in Sydney, particularly so in the high-density housing regions around Strathfield railway station. Overall 51.5% of people were born overseas, with migrants born in South Korea (8.6%), China (8%), India (7.8%), Hong Kong (2.6%) and Sri Lanka (2.4%). Of residents born in Australia, only 22% have Australian parents. Overall common ancestries (by country of birth parents) include China (18%), UK (8.3%), India (8.2%), Italy (5.6%), Lebanon (4.8%), Ireland (4.6%) and Greece (2.7%).

It is estimated that there are over 200,000 social golfers in the greater Sydney Metropolitan area, who are all located within a 30-40 minute drive to Hudson Park Golf Course.

The suburb is home to a significant number of schools. Independent schools include:

- St Patrick's College (5-12)
- Santa Sabina College, which is now listed on the Register of the National Estate (7-12)
- Santa Maria Del Monte, the junior school of Santa Sabina College (K-6)
- Meriden Anglican School for Girls (K-12)
- St Martha's Catholic Primary School (K-6)
- Sydney Adventist College, Strathfield Campus (5-12)
- Trinity Grammar Preparatory School (K-6)

There are also a number of state schools in the area:

- Strathfield Girls High (7-12)
- Strathfield South High (7-12)
- Strathfield South Public School (K-6)
- Homebush Boys High (7-12)
- Homebush Public School (K-6)

3.2 Marketing Strategy

Titanium Golf will take an active role in marketing the Hudson Park Golf Course. It has allocated an annual budget of 5% of turnover which is well in line with industry standards.

With Titanium Golf's international alliances it plans to re-brand the driving range with one of Australia & Korea's leading Golf Academies.

Hudson Park Golf Course will aggressively market to the following groups:

- **Local Residents** – The course will initiate a membership drive. Membership fees will reflect a 25% discount for Course use and 10% discount on purchases from the Driving Range, Pro Shop and Snack Bar.

- **Local Schools** – Hudson Park will introduce golf programs in the local schools in the Strathfield area.
- **Weekly Tournaments** - It will introduce "Father and Son" tournaments on a weekly basis where kids under 15 years of age play free.
- **Local Business** – Incorporate monthly Corporate Days with the local businesses in the Strathfield area. This will enable them to introduce clients to Hudson Park and network within the community.
- **Social Groups** – Hudson Park will market group packages and discounts to Social Groups in the Sydney Metropolitan area. These packages will include 25% on green fees for groups of 12 or more.

3.3 Sales Strategy

The Hudson Park Golf Course is to aggressively gain market share of the local residents and social groups.

Hudson Park Golf Course will use the following pricing structure:

- **Membership Fees:** Annual membership fee is \$250. Members will have a 25% discount on course use and a 10% discount on purchases in the Pro Shop.
- **Weekday Fees:** Adult 18 holes is \$20 (members \$15), 9 holes is \$15 (members \$12)
- **Weekend Fees:** Adult 18 holes is \$25 (members \$18.75), 9 holes \$15 (members \$12)
- **Social Groups:** Weekday \$20 per player, Weekend \$25 per player
- **Child (under 15):** Play free if playing with a paying adult

Groups of 12 players or more will receive 25% discount on green fees.

Management Summary

Carlo Salvato will be the manager of daily operations of the Hudson Park Golf Course. Chris Marriott (an AAA Golf Instructor) will be the manager of the Pro Shop, as well as the Head Teaching Pro and supervisor of the teaching staff. Ben Marshall (Superintendent) of Titanium Golf will consult with Council Superintendent with regards to Golf Course Maintenance.

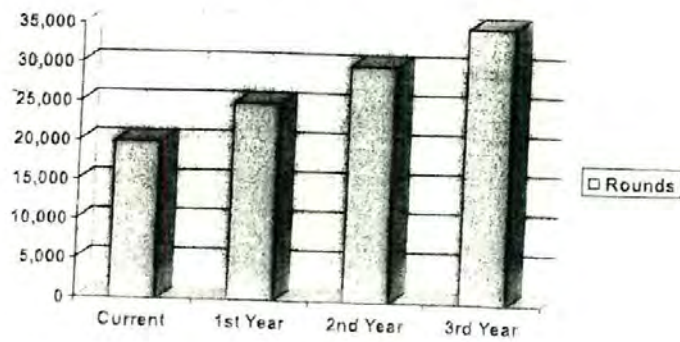
4.1 Personnel Plan

The minimum personnel needed for the Hudson Park Golf Course will be:

- Manager
- Assistant Manager
- Head Teaching Pro/Pro Shop Manager
- Greens and Landscape Superintendent
- 2 Pro Shop Staff
- 2 Snack Bar Staff

5.1 Sales Forecast

The following is the Golf Rounds forecast for three years.



Dated this 11 day of MARCH 2016

THE COMMON SEAL of Titanium Golf Management Pty Ltd was affixed in the presence of:

[Signature]
Signature

CARLO SALVATO
Print Name

DIRECTOR / SEC
Office Held

THE COMMON SEAL of Hudson Park (R2163) Reserve Trust was affixed in the presence of:

[Signature]
First Signatory

David Bartholomew
Print Name

General Manager
Office Held

Second Signatory

Print Name

Office Held

Second Signatory

Print Name

Office Held

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Page 38 of 44

Ministerial Consent*

Under authority of Section 102 of the *Crown Lands Act 1989* (NSW).

Dated this Eighth day of June 2010 B

SIGNED by [Signature] under delegation

Branwyn Connolly
Print Name

Director South
Print Position of Delegate

If Ministerial consent is not required under Section 102 of the *Crown Lands Act 1989* (NSW), please attach evidence of authorisation.

***Note on Minister's Consent to a licence (other than a temporary licence)**

Before consenting to a licence by a reserve trust, the delegated departmental officer should consider whether the proposed licence:

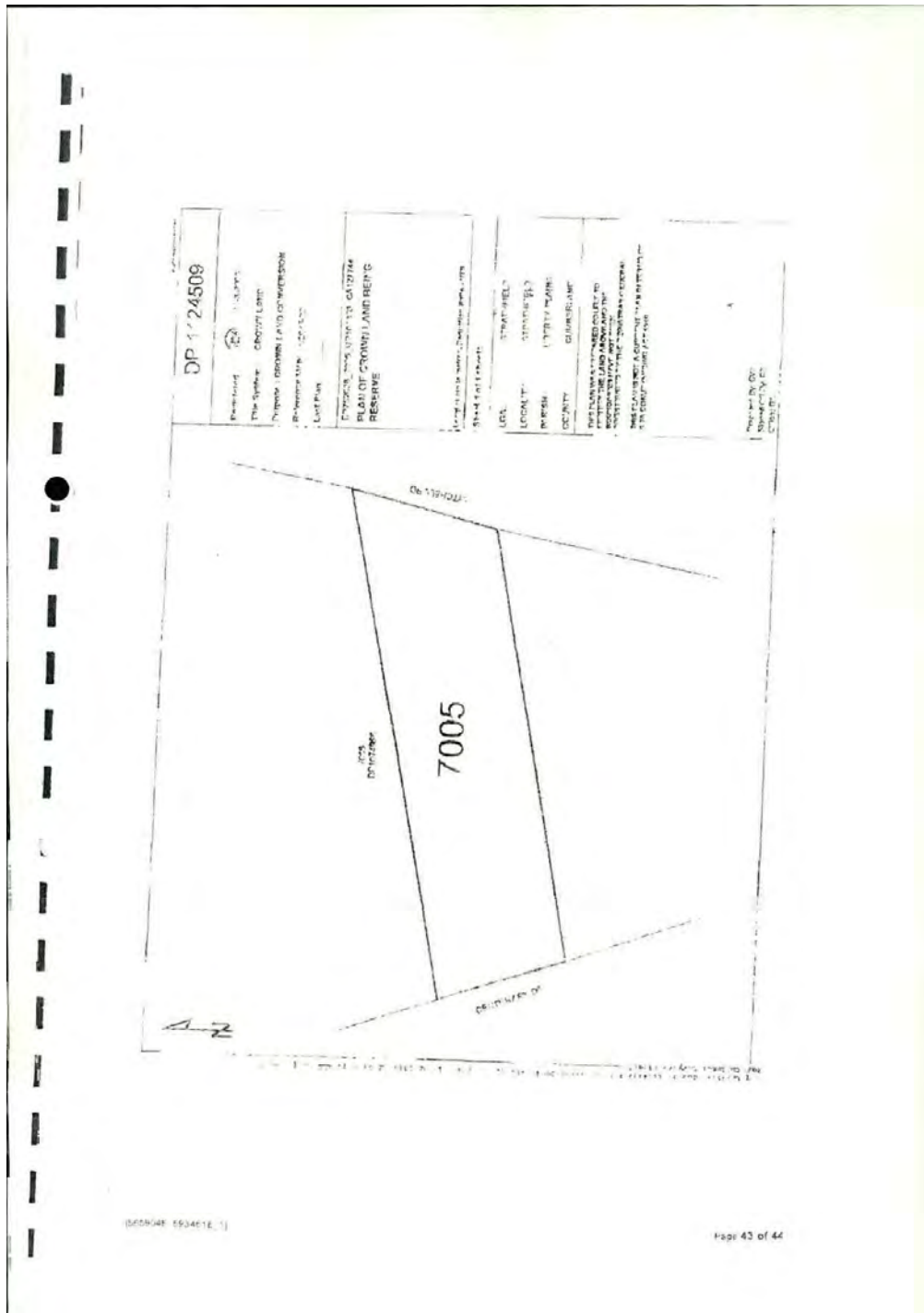
- * conforms with the Lands template as appropriate in the circumstances
- * purpose is compatible with the reserve purpose
- * is in the public interest
- * is compatible with the plan of management (if applicable)
- * is for an appropriate term
- * was or is proposed to be selected by public competition or, if not, the circumstances relating to the selection of the proposed licensee
- * proposed rent represents a proper return to the public for the use of the public land
- * contains provisions for the periodic updating or review of the rent
- * has no native title impacts
- * contains clauses relating to
 - the termination of the licence in the event of a revocation of the reserve
 - the indemnification of the Reserve Trust, the Crown and the NSW Government against claims for compensation
 - appropriate insurance provisions

PREMISES APPENDIX

THIS IS A PREMISES APPENDIX REFERRED TO AND DEFINED IN THE LICENCE AGREEMENT BETWEEN THE HUDSON PARK (R62163) RESERVE TRUST AND TITANIUM GOLF MANAGEMENT PTY LTD. IN ACCORDANCE WITH THE PROVISIONS OF CL ACT FOR THE PERMITTED USE, THIS PREMISES APPENDIX VARIES AND FORMS PART OF THE LICENCE AND ITS TERMS ARE INCORPORATED IN THEIR ENTIRETY INTO THE LICENCE.

Descriptions of Land

Parish	Liberty Plains
County	Cumberland
Town / Locality	Strathfield
Deposited Plans	The following five (5) lots: Lots 7008 & 7009 in DP1074952 Lots 7006 & 7007 in DP1074956 Lot 7005 in DP1124509
Plans	The four (4) pages attached to this Licence



Page 1 of 1

GLOBALX INFORMATION SERVICES PTY LTD

Level 2, 76 Arden Terrace, Spring Hill QLD 4001, Phone: 1300 898 807 Fax: 1300 727 605
http://www.globalx.com.au

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 1006/112401

SEARCH DATE	TIME	POSITION NO.	DATE
22/02/10	12:03 AM		

LETTER OF TITLE HAS NOT ISSUED

LAND

6. TITLE IN DEPOSITED PLAN: 124106
AT STRATHFIELD
LOCAL GOVERNMENT AREA STRATHFIELD
PARISH OF LEGGIE PLAINS COUNTY OF CUMBERLAND
TITLE NUMBER: 12124804

FIRST SEARCH

22/02/10 12:03 AM SOUTH WALES (01/05/10)

SECOND SEARCH (NOTIFICATIONS)

- 1. THE LAND IS SUBJECT TO THE MEANING OF PART 5 OF THE CRACKLANDS ACT 1965 AND THERE ARE RESTRICTIONS ON TRAVELLER ACCESS DELINEATED ON THE LAND UNDER THAT ACT, WHICH ARE REPORTED CORRECT BY THE REGISTER.
- 2. LIMITED TIME LIMITATION PURSUANT TO SECTION 267(1) OF THE REAL PROPERTY ACT, 1950, THE BOUNDARIES OF THE LAND COMPRISED HEREIN HAVE BEEN RE-DETERMINED BY THE REGISTERAL GENERAL.
- 3. NOTIFICATION OF GOVERNMENT GAZETTE DATED 04 04 1978 FOR EASEMENT FOR PIPELINE EFFICIENCY AND PART OF THE LAND BELOW DESCRIBED AS AMONG OTHERS IN DE495007.
- 4. NOTIFICATION OF GOVERNMENT GAZETTE DATED 01-05-1983 IN CASE NO. 166 VARIATION OF SITE OF EASEMENT FOR PIPELINE AT SITE NO. 12 5 SEP 12 12 08 1980.

NOTICES

UNREGISTERED INSTRUMENTS

*** SEARCH ***

10/02/10 12:03 AM

12/02/10

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Appendix 42

Extract from Reserve Trust Handbook

Extract from Reserve Trust Handbook

1. *The trust consults the local Land and Property Management Authority office as to the appropriateness of the proposed use and the leasing or licensing arrangements. Preliminary discussions should include market rent for the site, appropriate discounts for non-commercial users and potential improvements.*
2. *The trust should generally invite competitive tenders or proposals in order to attract the best operator and financial return for the trust. The Land and Property Management Authority will advise whether it wishes to be involved in the review and selection process.*
3. *Once the most suitable lessee/licensee has been selected, the trust's solicitor prepares a draft lease or licence as far as practicable using the standard lease conditions template or licence template.*
4. *The trust's solicitor provides the draft lease/licence to the lessee/licensee.*
5. *If the lessee/licensee requests any amendments that the trust proposes to agree to, the amendments are incorporated into the draft agreement.*
6. *The trust sends the final draft to the Land and Property Management Authority for comment and in principle consent.*
7. *The Land and Property Management Authority notifies the trust of any amendments and its' in principle approval. If the agreement is a lease for a term exceeding 5 years, advertising costs will be requested and on receipt, arrangements made to advertise the Minister's intention to give consent in accordance with Section 102(2) of the Crown Lands Act 1989. Provided any concerns that may be received from the public are resolved satisfactorily, the trust will be requested to prepare the final documents.*
8. *When the final form of the document is agreed to by all parties and approved by the Land and Property Management Authority, the trust's solicitor issues three copies to the lessee/licensee for signing.*
9. *All three copies are signed by the parties, stamped with the appropriate stamp duty (leases only) and returned to the Land and Property Management Authority. When the reserve trust is executing the agreement it needs to be in accordance with Section 50 of the Interpretation Act 1987.*
10. *The three executed documents are checked to confirm that they match the approved draft and include any amendments notified by the Land and Property Management Authority. The Minister's consent is then added to the documents.*
11. *One copy is retained by the Land and Property Management Authority and two copies are returned to the trust's solicitor for registration and delivery to the parties.*
12. *With respect to leases over three (3) years, the trust is required to register the lease at Land & Property Information NSW. All leases may be registered on the title.*

Appendix 43

Council's letter to Titanium

31 May 2013



65 Homebush Road, Strathfield NSW 2135
PO Box 120, Strathfield NSW 2135 | P 02 9748 9999 | F 02 9764 1034
E council@strathfield.nsw.gov.au | www.strathfield.nsw.gov.au | ABN 52 719 940 263

31 May 2013

Mr Carlo Salvato
Titanium Golf Management
PO Box 168
DOUBLE BAY NSW 1360

Dear Sir

RE: STRATHFIELD MUNICIPAL COUNCIL (COUNCIL) AS MANAGERS FOR HUDSON PARK (R62163) RESERVE TRUST (LICENSOR) LICENCE AGREEMENT TO TITANIUM GOLF MANAGEMENT PTY LTD (LICENSEE) HUDSON PARK GOLF COURSE (PROPERTY)

We refer to the licence agreement between the Licensor (Council acting as managers) and the Licensee for the Property dated 8 June 2011 (Licence Agreement).

The Licensee has alleged that Council has failed to maintain the Property and facilitate an acceptable playing standard in accordance with the Licence Agreement. The Licensee has further alleged that this failure by Council equates to a financial loss to the Licensee of \$324,000.00.

Information required by Council

Before Council can assess the Licensee's allegations, Council requires the following information to be provided by the Licensee in accordance with the Licence Agreement.

1. Detailed written reports regarding the operation of the business at the Property, including details of all payments made and received which are required within 14 days of the end of the month;
2. Audited financial accounts for the operation of the business from the Property for the following periods:
 - 2009/2010 financial year
 - 2010/2011 financial year
 - 2011/2012 financial year; and
3. Evidence of any capital works undertaken by the Licensee during the term of the Licence Agreement together with the amount of Net Profits (as defined in the Licence Agreement).

Agreement) from the operation of the business from the Property put back into the capital works.

Please arrange for the above information to be supplied to Council by 30 June 2013.

Outstanding arrears

In addition, we note that arrears of \$168,412.35 remains outstanding. This amount is broken up as follows

Date	Arrears	Amount
November	Rent	\$40,700.00
July 2011	Rent	\$40,700.00
December 2011	Rent	\$40,700.00
January 2012	Rent	\$40,700.00
April 2012	Utilities	\$5,459.35
April 2012	Food shop inspection	\$153.00

In accordance with clause 15 of the Licence Agreement, the Licensee is required to pay the rent during the term of the Licence Agreement and such rent shall not abate or be affected by any cause whatsoever.

Accordingly, we request payment of the outstanding arrears of \$168,412.35 by 30 June 2013.

Attached please find invoices for the provision of waste services to the property for 2010/11 and 2011/12. Payment of these invoices is required within 30 days.

If you have any queries, please do not hesitate to contact me on 9748 9976.

Yours sincerely



NEALE REDMAN
DIRECTOR CORPORATE SERVICES

Appendix 44

Memorandum 20 June 2012



Memorandum

To: GEOFF BAKER

From: DIRECTOR OPERATIONS *(Acting C.M.)*

Date: 20 JUNE 2012

Re: HUDSON PARK GOLF COURSE

April 2010 – Titanium commenced @ Hudson Park Golf Course. At this time I recall at least 6 greens on the western side of the course were practically dead. Greens maintenance issues were present and after investigations it was found that due to an irrigation problem these affected greens were not watered and thus suffered heat stress. I met with the staff and Carlo in order to work out what we were able to do.

Following this I agreed, in conjunction with staff and Carlo, that we would bring forward the innovations and reseed these greens rather than install temporary greens as the golfers would be affected. Subsequently the nine greens on the western side of the course were reseeded by the end of April 2010.

Due to the ongoing concerns raised by Carlo I needed to step in and manage things at the Council as they were causing ongoing problems, generally in relation to the ongoing maintenance problems that is greens, fees, standards, communication and staffing.

Once the seed established, by May 2010 up until March 2011 I managed to alleviate Carlo's concerns and although there were a number of issues the course remained of an average standard.

Around March/April a similar concern was raised by Carlo in relation to the state of the greens once again. It was identified that one of the staff did not water the green as he should have. Due to the heat the greens were overstressed and burnt. After all the treatments the greens would not come back.

At this time discussions had commenced about replacing all of the greens with a new variety of grass. Council needed to reduce its water costs and maintenance programs in line with sustainability initiatives and budget constraints. Whilst the new turfing proposal was being developed by legal, my team and me, the greens remained in poor condition and I chose not to reseed, rather wait for the new greens to be installed and therefore player numbers decreased.

There is no doubt the weather pattern of heat and rain caused a significant impact on the course.

In November 2011 I had decided to replace nine out of the eighteen holes. After the nine greens were re-turfed there were numerous problems with establishment. The contractor and Council had conflicting opinions, that is maintenance programs, grass level, watering, disease etc. After numerous meetings on and off site the greens were opened by Christmas 2011. However, it took another 2 months to establish to satisfaction (Carlo/Council Contractor).

Council needed to proceed to Stage 2 of the re-turfing of the next nine greens. Carlo would not agree as he had expressed concerns regarding the loss of golfers. Monica and I met with Carlo and I was able to get his agreement to proceed. He had wanted to wait until September 2012.

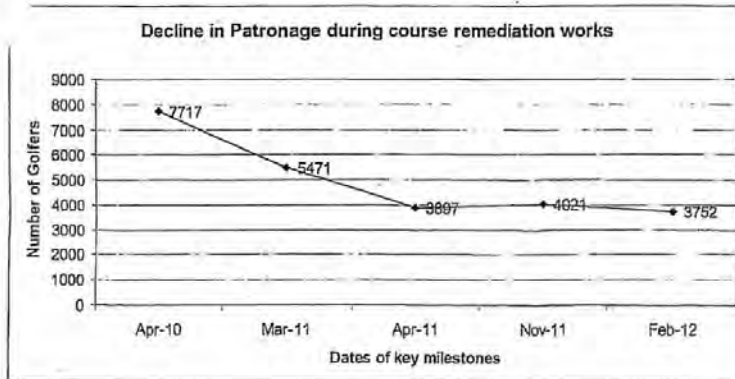
Monica

Re-turfing commenced in February 2012 and was completed and greens were reopened on 1 April 2012.

Although this summary is my recollection there have and continue to be establishment problems of the green even up until now. The decline in patronage is reflected in the figures for golf course users as set out below:

	Gross usage	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2009-2010	22660	5296	4909	4738	7717
2010-2011	18675	4779	4528	5471	3897
2011-2012	15795	4021	4073	3752	3949

NB: 2011-2012 4th Quarter figures still to be collated – usage has been represented approximately



Milestones

- April 2010 – Irrigation issues identified and greens reseeded
- March/April 2011 – greens not watered, overstressed, unable to be rectified
- November 2011 – nine greens re-turfed, unable to establish
- February 2012 – re-turfing commenced

Note – *Cost if you calculate it on Carlo's costs its approx 1000 hectares x 927 = \$927,000!*

Appendix 45

Extract from Record of Interview Robert Bourke

Extract from Record of Interview – Robert Bourke

Q220: *Do you recall that the CPI adjustment was not done for a couple of years?*

A: *That was brought to my attention. Once again, financial the chief financial officer and their staff should have been monitoring at the time, they should have been monitoring CPI in terms of licence agreements and other fees and charges. So, it was their role to*

Q221: *To monitor that?*

A: *Yes.*

Q223: *And on 17 June 2013, an invoice was struck for backdated CPI adjustment; do you recall that?*

A: *It was raised around that time, yes.*

Q224: *Did you check the figures?*

A: *No. Finance would have a calculation for CPI adjustment. At that time, I believe that governance were playing a major role in terms of their involvement in the course and governance and financials because of some issues with the financial officer of the time.*

Q225: *Were you aware that there was*

A: *One sorry, one being that there was a he was in arrears. We didn't know. They were supposed to keep track of that. They obviously, they didn't keep track of that, and when I found out we got involved and then we wrote to them or we met with them to*

Q226: *What's your recollection that you found out about the arrears for some time?*

A: *Not till after the fact, no, and the same with the CPI adjustment. That's something that financial officers are to control.*

Q227: *Were you aware that there was a further CPI adjustment claim on 26 August 2013?*

A: *No.*

Q228: *And I assume, and it goes without saying that you wouldn't have, therefore, checked the amount?*

A: *Not my role. I'm a strategic officer with council, so the detail is something that unless it's raised with me to go and deal with, it's not raised with me. There's other officers accountable and responsible for those duties.*

Q231: *Were you involved in meetings in respect of discussions over the business plan for the golf course?*

A: *In the interim early stages, yes.*

Q232: *When did you stop being involved in that?*

A: *Normally, with other things such as the golf course, the manager is responsible to manage those sorts of details and arrange that with me if there's any issues, and I'd step in and say, look, we need to tick off these targets or KPIs that related to the licence or the business plan. There were some issues with the client or the licensee over a number of years, commenced with the arrears. So there was the relationship wasn't as we would have liked, which I would think had an effect on the licence and some of those KPIs in there which*

Q233: *Did you have direct involvement when issues arose with the licensee?*

A: *When I was asked to, when they were escalated to me.*

Q237: *The special conditions also require the provision of audited financial returns. Do you recall that?*

A: *Annually?*

Q238: *Annually.*

A: *Yes.*

Q239: *Do you recall whether they were provided?*

A: *Am I aware they were no.*

Q240: *Do you recall seeing any of them?*

- A: *No. I'd have to go through the financial officer.*
- Q241: *What's your understanding of reporting to financial*
- A: *Well, for accountability of profit and loss statements for the annual period of the business in this regard, the golf course itself and its licence.*
- Q242: *And they had an important purpose?*
- A: *Of course they did. Demonstrated from the legal sense, taxation also, but they were running the business in accordance with the licence, in accordance with accounting standards and in accordance with the law.*
- Q243: *And also, can I suggest to you, because there was a profit sharing arrangement with council?*
- A: Yes, *right, yes.*
- Q244: *Was there some contention between yourself and Monica Kelly as to what was required?*
- A: *My word. Monica was supposed they were supposed to do a lot of things. They requested that all the legal documentation, tenders, contracts go through legals.*
- Q245: *Who's they, sorry?*
- A: *Sorry, the legal team which was Geoff Baker at the time, I think was one of them. And it was their role to oversee it and to guide the managers and myself in terms of these clauses and requirements. They wanted that. They asked for it and the general manager gave it to them. Now, that's their expertise. So I expected them to come to me, raising it with me. Unfortunately, we didn't get on well.*
- Q246: *You and Monica?*
- A: *No, not at all. There's a number of reasons for that. But it was their role, so I tried to hold them to account for that. That's what they were required to do.*
- Q247: *So in terms of the audit of the financial statements, did you*
- A: *What happened then, the legal people would identify these audits need to be and that's part of our reply to the Crown, that they are submitted*

on time. They're given to the financial people. They speak to the manager and they ascribe it to me, and that's good business having these pro checks within council, good governance checks. That's what we expect. We didn't get that a lot of the time. So although there might have been a few gaps there, you know, we'd taken steps to ensure that these things don't happen again. And by that what I mean is people have been exited from the organisation, officers not doing the right thing, moving them and being terminated on performance or, you know, these other issues related to performance. So and as you would see from the structure, both Monica and both people have moved on. That's just that's business.

Q335: *In respect of the arrears, do you recall when you first became aware that he hadn't paid rent in November 2010?*

A: *I was made aware, I think he was up to four months in arrears, that was when it was brought to my attention.*

Q336: *So that would have been after January 2012?*

A: *I can't it would be on an email.*

Q337: *Let me see how you that letter which sets out the dates of the non-payment of licence fees.*

A: *Yes. I wasn't made aware of it from finance until three or four months after the fact, that they for some reason hadn't advised me. They didn't raise it with me till three or four months when he went into arrears; simple as that. So when they raised it, I reacted and did something about it. Why they waited two or three months, I'm not too sure. You'd have to ask Jodie Bourke that or one of the officers.*

Q338: *Now, the letter I just showed you, which is dated 31 May 2013 written to Mr Salvato at Titanium Golf Management, asked for audited accounts for the operation of the business for 2009/2010, the following financial year, and the financial year after that that is, 2011/2012. Were you aware that those audited statements had not been provided?*

A: *No.*

Q339: *There's a financial statement here dated 30 June 2010. Have you seen that before?*

A: *I just say to you one thing with regard to that. If that was the case, given this is a large business working on behalf of the trust and council, why the financial manager didn't pick up or the auditor's didn't pick this up, that would be the question. It's the financial department's role to raise that and escalate those things, and, again, I say to you, the delay in letting me know about the arrears was one issue; this is another issue. We rely on that information to go into our reporting.*

Q340: *So it's a concern to you that it appears this information wasn't picked up?*

A: *Well, I would if it's not there, it's not a case that you might not have your hands on it or they can't find it, but I would assume the financial manager should have that's their core business, their bread and butter is to check these things. As an executive member, I find it very disappointing that that's the case. When it was brought to my attention, hey, let's do something about it. So, not knowing those things and assuming that those things had been checked, the balances, tick the boxes, with the financial manager and with the auditor. If someone does raise it, then I have no idea. That's my role.*

Appendix 46

Council submission in
response to draft report
(including attachments)



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14 August 2015

Ms Marcia Doheny
Chief Executive Office of Local Government
Locked Bag 3015
Nowra NSW 2541

Dear Ms Doheny

Strathfield Municipal Council: Section 430 Investigation and Draft Investigation Report

Your reference: A417724

Council refers to your letter to Mr Backhouse dated 21 July 2015 and the opportunity to make a submission in relation to the Draft Investigation Report. Council wishes to take this opportunity to provide the following submission, in accordance with Council resolution Minute Number 244/15, through its governing body being the seven elected Councillors.

It should be noted that six of current Councillors were first elected to Council in September 2012 with one other Councillor being first elected in October 2010.

Overview

We fully support Council's officers and believe that this Council is achieving great results for its local community.

The matters raised in this inquiry relate to historical issues which have been dealt with appropriately and to Council's satisfaction. In this respect Council is of the opinion that the Draft Investigation Report should be modified to reflect the context in which it is now being brought to publication.

Should a final report be presented to Council at a later date, Council will advise the Minister of what it has done, or intends to do following that publication in accordance with its obligations under section 434(1) of the *Local Government Act 1993* (Act).

Reservations

Council has previously raised some concerns about the context in which this investigation has taken place. A copy of letters from K & L Gates to the Office of Local Government (OLG) dated 14 April 2015 and 7 May 2015 are enclosed.

For convenience we quote from the 14 April 2015 letter:

"The relevant chronology includes:

- | | |
|------------------------|--|
| <i>June 2013:</i> | <i>The Office of Local Government, with the fulsome co-operation of Council launches enquiries into the activities of Council.</i> |
| <i>4 March 2014:</i> | <i>The determination of the Chief Executive of the Office of the Local Government to conduct an investigation under Section 430 of the Local Government Act, 1993 (NSW) (Act).</i> |
| <i>14 March 2014:</i> | <i>Direction to Council to produce documents.</i> |
| <i>14 March 2014:</i> | <i>The date of the first (unfinalized) report produced by Sinc Solutions (commissioned by Council) which was provided to the Office of Local Government.</i> |
| <i>27 March 2014:</i> | <i>Minister for Local Government issues a Performance Improvement Order (Notice of Intention) under Section 438A of the Act.</i> |
| <i>4 June 2014:</i> | <i>Revised final Sinc Solutions Report produced which was provided to the Office of Local Government.</i> |
| <i>24 July 2014</i> | <i>Performance Improvement Order issued.</i> |
| <i>20 January 2015</i> | <i>Letter from the Acting Chief Executive of the Office of Local Government inviting comments and submissions on the draft Report</i> |
| <i>17 March 2015:</i> | <i>Comments and submissions of the General Manager: David Backhouse and the Director of Corporate Services: Neale Redman provided.</i> |
| <i>[21 July 2015:</i> | <i>Revised draft report provided to elected Councillors to make a submission]</i> |

Council and the relevant Offices of the Council, complain that:

- a. Performance Improvement Order issued during the course of a Section 430 investigation concerning matters the subject of the section 430 investigation;*
- b. The actions taken by the Office of Local Government is at odds with its own framework for implementing early intervention orders, especially having regard to the fact that the Officers and staff of Council were available co-operative and forthcoming;*
- c. Council has approached the investigation, at all material times, cooperatively;*
- d. The issuance of the Performance Improvement Order prior to the conclusion of the Section 430 investigation, to some degree or other, corrupts the Section 430 processes and the outcome because the Order gainsays the section 430 processes;*
- e. Issuing a concluded Report on the Section 430 Investigation is likely to further impugn the integrity of Council and Officers of the Council unless careful consideration is given to what are assessed to be defects in the Section 430 process. Certain, but not all, of the defects complained of are subject of the comments and submissions provided by the General Manager Mr Backhouse and the Director of Corporate Services Mr Redman, whose reputations particularly are assailed.*

We have been instructed to assist Council in seeking an outcome that allows a Section 430 Investigation to be properly reported whilst redressing some reputational damage which has already been, and might further be, occasioned to Council and certain of its Officers."

Referencing other aspects touched upon in the 14 April 2015, the 7 May 2015 letter, and for that matter the letter of 3 June 2015, Council makes further comment concerning *process* (want of compliance with the framework for improvement and intervention) and *reputational damage* (to Council and its Officers), below.

Questions of integrity

Council continues to have trust and confidence in both its General Manager and the Director Corporate Services. While the Draft Investigation Report in certain of its findings and analysis in some measure impugns the integrity of the General Manager and the Director Corporate Services such is contrary to the knowledge and experience of Councillors. It is Councillors experience in our dealings with each officer (and in Councillors observations, in their dealings with staff and others) each of the General Manager and the Director Corporate Services have acted in a forthright and good faith manner in the best interests of Council.

What follows is by reference to each of the Terms of Reference in addition to other points that we would like to bring to your attention for consideration and action.

1A. Procurement and expenditure on services from International Property Group (IPG)

Council considers and is satisfied that Council officers at all times acted in good faith under the belief that the procurement was exempt from tendering in accordance with section 55(3) of the Act (i.e. that IPG was on a State Government Contract). The engagement of IPG and the services it provided were necessary to implementing a number of significant programs and projects endorsed by Council.

The initial engagement was considered through Knight Frank Newmark which traded as International Property Group. Knight Frank is a well-renowned national and international company which undertakes government consultancy work for all tiers of government. So the belief they were on a state government contract although seemingly misplaced, in fact ought not, of itself, put the General Manager on enquiry.

Council's own inquiries reveal (and this is somewhat dissonant with the Draft Investigation Report) the General Manager was directly involved in the retention of IPG in as much as he gave the "sign off" so to speak to the retention of IPG. He did so based upon the advice of professional officers to him that IPG was an entity which fell within the exemptions mentioned (and this is referred to in some detail in the Draft Investigation Report). He did not, on his own admission; make any inquiry beyond the advice of the senior staff reporting directly to him. There was no reason to doubt that advice. Council does not accept the conclusion reached in the Draft Investigation Report that a General Manager, acting reasonably, is obliged to spend time second guessing the advice of responsible Officers, unless the General Manager is on notice.

As to the merits; IPG were engaged as property and government advisory specialists by Council's Technical Services Department. Council understands the work IPG performed played a fundamental role in critical Council projects such as the sale of Matthews Park (resulting in a sale price that far exceeded the projected value) and Strathfield Town Centre Project, and smaller projects including review of Council's property assets to determine best use, acquisition of 69 Redmyre Road, Parramatta Road planning and Loftus Crescent affordable housing proposals.

Council endorsed and was kept up-to-date concerning the services provided by IPG. We note that OLG has been previously provided with statements from former Mayors, who were involved during the period of IPG's engagement, confirming this fact. However, of concern, is the fact that these statements appear to have not been accepted nor appreciated by the authors of the Draft Investigation Report. Upon reviewing the 'List of Persons from whom Statements were obtained' in Annexure 4 of the OLG's Draft Investigation Report, the Investigators failed to speak with such critical witnesses who were elected officials at the time nor accept the facts and inferences revealed in written statements. In addition, the Investigators failed to speak with other critical witnesses such as the contractors themselves including IPG employees.

Council is satisfied that the expenditure for the engagement was approved. The current Councillors were not on Council for a large portion on the engagement (particularly the initial engagement) but we understand, from our own enquiries the elected Council at the time approved and directed the engagement of IPG. It is our experience that Council holds workshops each year as part of the development of Councils annual budget. Key Council projects are discussed at the workshops and key projects are included in the Operational Plans which are then formally adopted by Council resolution. Obviously, it would be prudent for the OLG to refer to the statements from former Mayors of the day to confirm their recollection on these specific circumstances given the current Councillors weren't in office at the time.

The records show Council was aware of the engagement of IPG and their associated works through various Reports to Council, including but not limited to:

- | | | |
|-------|------------------|-----------------------|
| i. | 25 May 2010 | Minute Number: 132/10 |
| ii. | 25 May 2010 | Minute Number: 136/10 |
| iii. | 29 June 2010 | Minute Number: 163/10 |
| iv. | 3 August 2010 | Minute Number: 200/10 |
| v. | 9 September 2010 | Minute Number: 233/10 |
| vi. | 23 November 2010 | Minute Number: 284/10 |
| vii. | 24 February 2011 | Minute Number: 27/11 |
| viii. | 19 May 2011 | Minute Number: 82/11 |
| ix. | 7 June 2011 | Minute Number: 100/11 |
| x. | 23 June 2011 | Minute Number: 105/11 |
| xi. | 2 August 2011 | Minute Number: 129/11 |
| xii. | 24 May 2012 | Minute Number: 78/12 |

- | | | |
|-------|-----------------|-----------------------|
| xiii. | 29 May 2012 | Minute Number: 83/11 |
| xiv. | 29 June 2012 | Minute Number: 103/12 |
| xv. | 6 November 2012 | Minute Number: 193/12 |

Council is satisfied that there was no serious or substantial waste of local government money in relation to the services provided by IPG. IPG performed the works Council requested and Council received value for money through the engagement of IPG.

1B. Procurement and expenditure on legal services and associated professional advice since 1 July 2011

The Draft Report raises issue with the original Legal Panel being appointed through an Expression of Interest process rather than an official tender process. While the procurement processes are reasonably similar, Council rectified this by appointing a new Legal Panel at its Ordinary Meeting on 5 August 2014 (Minute Number: 194/14).

Council's use of external legal service providers has always been prudent. A significant portion of Council's legal expenses incurred were associated with the Australian Catholic University (ACU) development and subsequent proceedings. This matter was of great concern and importance to the local Strathfield community and Council. The local community as well as Councillors were strongly opposed the ACU's expansion: such was evident to Council through public meetings called to gauge the communities' views. We, as Councillors, directed the actions taken by Council's officer and were kept updated through Reports to Council in relation to the proceedings and associated costs, and allocated additional funds on multiple occasions. During the last election, most of the Councillors publically campaigned to fight the ACU development. Councillors were democratically elected to fight the development and did so at the behest of the communities' wishes including as evidenced through public forums and in the best interests of the local community. In this context it is essential to appreciate that the largest singular legal expense related to the ACU matter; such was endorsed by the community and approved by Council.

Council is aware that disclosure was made to the OLG that expenditure associated with the ACU was inadvertently not included in the QBRS legal expenditure by Council's responsible accounting officer at the time due to job number discrepancies. Council has since amended and rectified its systems to ensure such errors cannot occur again.

As a matter of record Council reiterates, at all times, Council was fully aware of the progress of the ACU matter and associated legal expenses incurred through the various Reports to Council, including but not limited to:

i.	14 February 2012	Minute Number: P10/12
ii.	6 March 2012	Minute Number: 39/12
iii.	13 March 2012	Minute Number: 14/12
iv.	27 March 2012	Minute Number: 39/12
v.	24 May 2012	Minute Number: 79/12
vi.	5 June 2012	Minute Number: 101/12
vii.	25 October 2012	Minute Number: 169/12
viii.	5 February 2013	Minute Number: 24/13
ix.	26 February 2013	Minute Number: 33/13
x.	9 April 2013	Minute Number: 74/13
xi.	16 April 2013	Minute Number: P21/13
xii.	4 June 2013	Minute Number: 124/13
xiii.	2 July 2013	Minute Number: 160/13
xiv.	16 July 2013	Minute Number: P54/13
xv.	22 October 2013	Minute Number: 262/13
xvi.	18 February 2014	Minute Number: P10/14
xvii.	15 April 2014	Minute Number: P31/14
xviii.	27 May 2014	Minute Number: 114/14
xix.	1 July 2014	Minute Number: 164/14
xx.	5 August 2014	Minute Number: 193/14
xxi.	2 December 2014	Minute Number: 336/14
xxii.	23 December 2014	Minute Number: 349/14
xxiii.	3 February 2015	Minute Number: 36/15
xxiv.	17 February 2015	Minute Number: P12/15

1C. Decisions of 7 May 2013 and 2 July 2013 pertaining to the appointment of an external auditor and the related tender processes.

The Draft Report raised issue with the tender processes for an external auditor in 2013.

After the initial tender, Council supported the recommendation to invite fresh tenders in accordance with the provisions of the *Local Government (General) Regulation 2005* and unanimously resolved accordingly (Minute Number: 88/13) at its Ordinary Meeting on 7 May 2013.

The subsequent tender resulted in three new submissions being received by Council.

Council resolved to conduct a workshop to enable further information to be provided concerning the tender submissions received, in order that the Council decision to appoint an external auditor was fully informed.

Council appointed an appropriately qualified auditor on 2 July 2013 in accordance with the *Local Government Act 1993* (Minute Number: 162/13).

Remedial action has already been taken. Council has enhanced its procurement policies and procedures since the events in question. These improvements have been approved by and endorsed by Council's temporary advisor, in this respect, the Internal Audit Bureau. This was done in accordance with the Performance Improvement Order placed on Council by the minister on 24 July 2014.

2. Strathfield Municipal Council's conduct and performance as the Trust Manager of Hudson Park (R62163) Reserve Trust since 1 July 2009.

Council has considered in detail the analysis contained at paragraph 538 to 738 (page 105 to 142 of 150) of the Draft Investigation Report.

Council has carried out its responsibilities as the Trust Manager prudently and with due diligence. Council is satisfied its officers engaged reputable professionals and experts to provide advice and guidance throughout the tender process and during the licence period whilst ensuring the facility remained operational for the local community. It is our view that Council officers acted appropriately by engaging professional advisors and implemented actioned based on the advice received.

Council's external auditor at the time was engaged to conduct due diligence on the proposed licensee, Titanium Golf Management, and Council, in good faith, relied and acted on that advice. When the licensee fell into arrears, Council officers took steps to manage the situation including

obtaining legal advice both in-house, through Council's former Principal Solicitor, and external advice from Maddocks Lawyers and HWL Ebsworth.

Council took possession of the Hudson Park Golf Course and Driving Range facility in January 2014 and has been running it effectively ever since. Council fully supported the action taken by Council officers in terminating the licence agreement, taking possession of the facility and pursuing the outstanding arrears. This was resolved according by Council (Minute Number: 311/13) at its Ordinary Meeting on 3 December 2013.

Litigation to recover the full arrears was undertaken, but the company was put into liquidation and director bankrupted therefore recovery of the full arrears could not be achieved. Council exhausted all legal mechanisms to recover the arrears.

Further, in respect to tendering, Council has employed a Procurement Specialist and amended Council's Procurement and Tendering policies and guidelines to ensure that additional internal controls are now in place. These amendments have been approved and endorsed by Council's temporary advisor, Internal Audit Bureau, who was appointed by the Minister under a Performance Improvement Order issued on 24 July 2014.

Findings and Recommendations

In light of Council's above responses to each of the terms of reference, we consider that the findings of maladministration and serious and substantial waste are all without foundation, out of proportion and unjustified. They are an affront to the quality of services that Council and its officers consistently deliver to the local community.

In respect to recommendations, we provide the following commentary:

- i. Council works closely with and reviews the performance of the General Manager. At the most recent annual review, Council unanimously noted the overall performance of the General Manager as significantly exceeding expectations (Minute Number: 240/14) at its Extraordinary Meeting on 30 September 2014. It should also be noted that the results from the General Manager's prior performance appraisals were of a similar rating.

- ii. Council considers the reference to considering a surcharge against a Council officer, based on the facts contained in the Draft Report, to be totally unwarranted and unacceptable. Considering such action, in circumstances like this where Council officers and/or Councillors act in good faith and on reasonable advice, is not justified by the facts of the matter. IPG undertook substantial works for Council and to be surcharged any proportion of the fees would be unreasonable as professional services were delivered. There are no allegations of corruption. The works were clearly managed by the Technical Services Department. The engagement of IPG was based on the advice of professional officers to the General Manager. The General Manager was not on notice in relation to the procurement process for IPG and the General Manager acted to terminate the IPG engagement as soon as the issue was brought to his attention.

In his letter of 30 April 2015 to Principal Investigator Murphy, the General Manager wrote:

"Importantly I received no advice to the contrary nor were any issues raised, at any stage throughout the engagement of IPG, including from Council's Manager Finance (and responsible accounting officer) Jodie Bourke nor from Council's Principal Solicitor Monica Kelly each of whom knew of the engagement and had unfettered access to myself and the executive team.

In conclusion I do not agree, in fact I refute, the contention that in the ordinary discharge of my duties that I need to go behind the advice of the responsible officers who have the direct executive responsibility for the matters at hand and who report to me, and in whom I have trust. I do agree that I have that duty and responsibility if I am in fact on notice that the advice I am receiving is erroneous. I had no such notice..."

Council accepts that the General Manager never received any advice from Council's external auditors or Council officers such as the former Manager Finance and former Principal Solicitor to the contrary.

- iii. Council, through the General Manager, reviews the performance of Council's Directors on a regular basis. All reviews are carried out in accordance with the Act, Council's policies and industrial relations obligations.

- iv. In relation to legal and professional services expenses, Council receives quarterly and annual reports on the level of expenditure on legal fees and consultants fees. As your Draft Report notes, Council is well placed to monitor the level of expenditure and it does so.
- v. In relation to record keeping, Council is satisfied it complies with the *State Records Act* and has upgraded its electronic records management system in June 2014 and implemented many actions to improve its recording keeping. Council is in regular consultation with State Records Authority in relation to its records management responsibilities.

Identification of Council staff and contractors

Council is strongly concerned that the naming of Council staff and contractors will cause undue prejudice to be suffered by such persons or entities as a result of their being personally named and identified in this report. In addition, we understand there are other Council staff named in the Draft Investigation Report who have not been provided with a copy nor the opportunity to respond.

In this context see the letters enclosed from our Solicitors dated 14 April and 7 May 2015.

The context in which this is raised includes:

- a. The fact that the General Manager and senior staff were engaged at the time of referral in bringing forward the Sinc Solutions Report and outcomes;
- b. The co-operation extended to the Investigation (see below);
- c. The want of assistance afforded by reference to early intervention protocols;
- d. The advent of and the outcomes engendered by the PIO process;
- e. The length of time taken to complete the investigation.

The 'Report of the Section 430 Investigation into "Body Hire" Arrangements Operating At Wyong Shire Council Between January 2007 And May 2010' (**Wyong Section 430 Report**) set a reasonable and sensible precedent where it referred to Council officers involved in connection with the issues considered by that investigation for contextual purposes only and only identified such persons by reference to the position they held within the Council at the relevant time. Council strongly advocates that this principal be pursued; that names be removed; and the Report refer to Council officers and contractors from the position they held within the Council at the relevant time, throughout the entirety of the Report.

This is a critical issue for all persons and contractors personally named throughout the Draft Investigation Report. Officers and contractors named throughout the Draft Report are likely to suffer irrevocable reputational damage merely by their being named in the final Report.

Comparison with Recommendations and Findings from past Section 430 Investigations

Council believes there is a huge discrepancy in relation to the recommendations and proposed actions between this current Report and the Wyong Section 430 Report. The amounts detailed in this Report are clearly overshadowed by the figures involved at Wyong (approximately \$17,813,449 including GST). However, the recommendations and proposed actions contained in this Report are significantly more punitive compared to the Wyong 430 Report, which points to a lack of consistency in the investigative processes.

Council strongly urges the OLG to reconsider the recommendations and proposed actions contained in this Report in light of the comparison with the Wyong 430 Report.

Interactions with the OLG, its Investigators and Council officers

Council contends its officers have fully cooperated with the OLG and its Investigators at all times and exerted very considerable resources to meet the OLG's demands during the course of the Section 430 investigation and the preliminary enquires stages. The entire process has exceeded two (2) years. Yet, Council has received neither feedback nor assistance from the OLG at any time, nor the opportunity to fully understand the process and/or have an open dialogue. The only time officers have spoken directly with the OLG has been on the one occasion when they were formally interviewed.

The lack of communication, feedback, and assistance from the OLG during this process is contrary to Council's understanding of the OLG's role to provide guidance, advice and support to assist councils to comply with appropriate standards of internal governance, and to work with councils which fail to comply with the appropriate standards of governance or to improve their performance.

Early Intervention Framework

Council also contends that the Section 430 Investigation which commenced on March 2014 and Performance Improvement Order issued on 24 July 2014 both dealt with the same matters and potentially contravened the principles and protocols established in relation to the Early Intervention Framework.

Council refers to the OLG's 'Improvement and Intervention Framework in relation to NSW Councils' dated January 2014 ('the Framework') which states:

4. Policy Statement

The Division works with local councils to ensure a strong and sustainable sector.

Our aim is to proactively and collaboratively support councils to improve through information and advice.

Where councils are not performing as expected we will:

- *Respect the democratic mandate of councils and importance of self improvement by encouraging councils and individuals to voluntarily act appropriately and meet their obligations under the Act.*
- *Commit to maintain strong and constructive relationships with councils even if intervention is required to deliver appropriate local solutions.*

...

8. Business rules/processes

- a) *The order of intervention wherever possible should be:*
1. *Encourage voluntary compliance/good practice*
 2. *Persuade to comply/improve practice*
 3. *Enforce to comply/impose penalty.*
- b) *Each intervention step should be based on an analysis and review of presenting issues to ensure appropriate action.*


Council asserts that the actions by the OLG and its Investigators in relation to the issuing of the Performance Improvement Order during the Section 430 Investigation and subsequent interactions have not been in the spirit, nor in compliance with, the policy and intention of the Framework.

Conclusion

The matters raised in the Draft Investigation Report are now of a historic nature. Since the time of these events, Council has implemented new internal control systems, procurement procedures and policies and employed additional experienced resources.

Council has full confidence in its officers and the robustness of its new internal control systems and procurement procedures and policies. Council's internal control systems and procurement procedures have been analysed and assessed by, the Internal Audit Bureau, who was appointed by the Minister as Council's temporary advisor under a Performance Improvement Order issued on 24 July 2014. Council's compliance with the new systems and procedures were also tested and assessed as part of the Performance Improvement Order by an independent auditor, InConsult who confirmed that Council's new systems are effective and functioning at best practice levels. These details have been reported to Council as well as the Minister as required under the Order. Please find attached in 'Annexure A' a copy of these reports.

Whilst Council notes the comments in the Draft Investigation Report, concerning *executive responsibility* of managers for staff, it should be noted that key staff related to these historic issues have left Council. These key staff include:



Council has engaged experienced new staff including a Chief Financial Officer (CFO) and Procurement Specialist to further strengthen Council's systems and knowledge base.

We again restate our full support for Council's officers and our complete confidence that Council is functioning in the best interests of the local community.

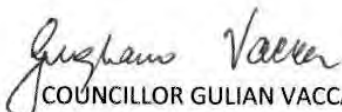
Council strongly submits that the Draft Investigation Report should be amended in deference to our submission. Council and its officers have and continue to cooperate, in good faith, with the OLG in respect of this Investigation.


It should be noted that Council will take such steps as it may be advised to protect its rights and reputation in the community. If certain issues are not addressed in any subsequent and/or finalised Report, Council reserves its rights to take any action it deems necessary to protect the Council, its officers and the local Strathfield community.

Thank you for affording Council the opportunity to comment on the Draft Investigation Report.

Please forward any correspondence in relation to this submission to Council's legal representative in this matter, Mr Bryan Belling from K&L Gates.


Yours faithfully


COUNCILLOR GULIAN VACCARI
MAYOR


COUNCILLOR ANDREW SOULOS
DEPUTY MAYOR


COUNCILLOR DANIEL BOTT


COUNCILLOR RAJ DATTA


COUNCILLOR STEPHANIE
KOKKOLIS


COUNCILLOR HELEN MCLUCAS



7 May 2015

Our reference
bellinb.7410098.00001

Ms Marcia Doheny
Acting Chief Executive
Office of Local Government
Locked Bag 3015
Norwa NSW 2541

Dear Ms Doheny

Strathfield Municipal Council: Section 430 Inquiry

We act for Strathfield Municipal Council.

We enclose the following:

1. Our letter to Acting Chief Executive: Steve Orr dated 14 April 2015.
2. Letter Principal Investigator: Richard Murphy to Mr David Backhouse dated 16 April 2015.
3. Mr Backhouse's reply dated 30 April 2015.

We have not heard from your Office in response to the letter to Mr Orr. That is understandable in circumstances where you are doubtless being briefed in all manner of things following your recent appointment.

For your further assistance we make the following (not exhaustive) comments:

Our client Council, and importantly the officers of our client Council, continue to harbour the concerns articulated in our letter to Mr Orr referred to.

Most particularly, our client and its officers, are concerned that a section 430 Report might be published into the public domain, damaging to the reputations of Council its Councillors officers and staff in circumstances where exculpatory or explanatory evidence is available to be adduced but is not adduced because the opportunity to address the ultimate issues of concern is not afforded those whose reputations might be impugned

It can be seen from the very extensive comments made by General Manager, Mr Backhouse and Director Corporate Services Mr Neale Redman to the first draft of the Investigation Report that it is very important effected persons are afforded a very complete opportunity to address matters adverse to such persons before adverse findings are placed into the public domain. This is especially so if it later transpires that there was, on more complete inquiry, exculpatory or

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Partner
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bryan.belling@kigates.com

24464906v1 BELLINB

exclusionary or other explanatory evidence available which was not adduced because effected persons were unaware that a particular adverse finding was in prospect.

In our letter to Mr Orr we commented:

It seems to us that all interests can be accommodated by either:

- (a) *our having the opportunity to make further submissions on behalf of Council and its Officers, directed to specific matters of concern as evidenced in the comments and submissions provided by the General Manager and the Director of Corporate Services of the 17 of March 2015; or*
- (b) *the further addended Report of the investigation be provided to Council before it is published to enable Council to make further submissions to be directed to any residual issues of concern, if any*

Having reflected on the issues further those we represent favour option (b) in so concluding we respectfully also repeat our earlier comment:

Might we say, with respect, that this is not an attempt by Council (or its Officers) to negotiate the terms of the outcome of the Report. It is rather an attempt, in the events as have happened, to facilitate the Office of Local Government's discharge of its public responsibilities while paying proper regard to the reputation of Council, its Officers and staff.

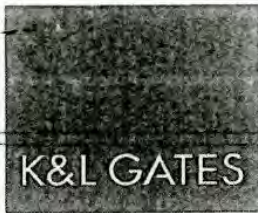
We are happy to confer on the best way forward should that be of assistance.

Mr Belling has the carriage of the matter.

Yours faithfully



Bryan Belling
Partner



POSTED

14 April 2015

Our reference
bellinb

Steve Orr
Acting Chief Executive
Office of Local Government
Locked Bag 3015
Norwa NSW 2541

Dear Mr Orr

Strathfield Municipal Council: Section 430 Report
Your Reference: A41005R

We have received instructions from Strathfield Municipal Council (**Council**) concerning the pending *Report of the Section 430 Investigation into Strathfield Municipal Council (Report)*.

We seek an agreement about, or an accommodation concerning, the finalization and the further publication of the Report.

The relevant chronology includes:

- June 2013: The Office of Local Government, with the fullsome co-operation of Council launches enquiries into the activities of Council.
- 4 March 2014: The determination of the Chief Executive of the Office of the Local Government to conduct an investigation under Section 430 of the Local Government Act, 1993 (NSW) (**Act**).
- 14 March 2014: Direction to Council to produce documents.
- 14 March 2014: The date of the first (unfinalized) report produced by Sinc Solutions (commissioned by Council) which was provided to the Office of Local Government.
- 27 March 2014: Minister for Local Government issues a Performance Improvement Order (Notice of Intention) under Section 438A of the Act.
- 4 June 2014: Revised final Sinc Solutions Report produced which was provided to the Office of Local Government.
- 24 July 2014: Performance Improvement Order issued.

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- 20 January 2015 Letter from the Acting Chief Executive of the Office of Local Government inviting comments and submissions on the draft Report
- 17 March 2015: Comments and submissions of the General Manager: David Backhouse and the Director of Corporate Services: Neale Redman provided.

Council and the relevant Offices of the Council, complain that:

- (a) a Performance Improvement Order issued during the course of a Section 430 investigation concerning matters the subject of the section 430 investigation;
- (b) the actions taken by the Office of Local Government is at odds with its own framework for implementing early intervention orders, especially having regard to the fact that the Officers and staff of Council were available co-operative and forthcoming;
- (c) Council has approached the investigation, at all material times, cooperatively;
- (d) the issuance of the Performance Improvement Order prior to the conclusion of the Section 430 investigation, to some degree or other, corrupts the Section 430 processes and the outcome because the Order gainsays the section 430 processes;
- (e) Issuing a concluded Report on the Section 430 Investigation is likely to further impugn the integrity of Council and Officers of the Council unless careful consideration is given to what are assessed to be defects in the Section 430 process. Certain, but not all, of the defects complained of are subject of the comments and submissions provided by the General Manager Mr Backhouse and the Director of Corporate Services Mr Redman, whose reputations particularly are assailed.

We have been instructed to assist Council in seeking an outcome that allows a Section 430 Investigation to be properly reported whilst redressing some reputational damage which has already been, and might further be, occasioned to Council and certain of its Officers.

It seems to us that all interests can be accommodated by either:

- (a) our having the opportunity to make further submissions on behalf of Council and its Officers, directed to specific matters of concern as evidenced in the comments and submissions provided by the General Manager and the Director of Corporate Services of the 17 of March 2015; or
- (b) the further addended Report of the investigation be provided to Council **before** it is published to enable Council to make further submissions to be directed to any residual issues of concern, if any

Might we say, with respect, that this is not an attempt by Council (or its Officers) to negotiate the terms of the outcome of the Report. It is rather an attempt, in the events as have happened, to facilitate the Office of Local Government's discharge of its public responsibilities while paying proper regard to the reputation of Council, its Officers and staff.

We are happy to confer with you as to the best way forward should that be of assistance.

Mr Belling has the carriage of the matter.

Yours faithfully



Bryan Belling
Partner



A



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10 July 2015

Neale Redman

The Hon Paul Toole MP
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

Performance Improvement Order

I refer to the Performance Improvement Order dated 24 July 2014 issued by you under Section 438A of the Local Government Act 1993 (the Act).

Pursuant to Section 438F of the Act please find attached the following:

Strathfield Council Compliance Report
Attachment A - Final Revised Report – Sinc Solutions Review of Procurement Services,
4 June 2014 Recommendations and Actions.
Attachment B - Contact with IAB regarding Performance Improvement Order.
Attachment C - Monthly Reports from Temporary Advisor, IAB
Internal Audit Report Procurement Function by InConsult.

In accordance with Section 438H (2) of the Act, Council provided the temporary advisor, IAB, with a draft copy of the report on 4 June 2015. The comments received from IAB are included in Attachment C.

Should you require any further information please contact Council's Director of Corporate Services, Mr Neale Redman on 9748-9976 or neale.redman@strathfield.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to read "David Backhouse".

DAVID BACKHOUSE
GENERAL MANAGER

Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
1	Take immediate steps to implement internal controls to ensure that all procurement and expenditure on goods and services complies with all relevant statutory requirements and Council's policies, delegations and guidelines.	<ol style="list-style-type: none"> SINC Solutions report recommendations currently being implemented. 100% (54) recommendations completed. Refer to Attachment A for detailed actions. 	Director Corporate Services	Refer to Attachment A.	Completed	Completed May 2015.
1a	Utilise the services of the temporary advisor to assist Council in assessing the adequacy or otherwise of the existing system of internal control.	<ol style="list-style-type: none"> IAB appointed by Minister Regular meetings held with IAB. Information provided to IAB. 	General Manager	Refer to Attachment B	Completed	Completed June 2015.
1b	Have due regard to the advice of the temporary adviser as to changes that are required to ensure Council has an effective system of internal control.	Advice received from IAB incorporated into changes implemented.	IAB Director Corporate Services	Refer to Attachment C	Completed	Completed June 2015.
1c	Prepare an improvement plan (including milestones) with advice and direction provided by the temporary adviser requiring all required changes to be implemented within 12 months, or earlier if so advised by the temporary adviser.	<p>This document serves as the Strathfield Council Improvement plan and details the required actions, what actions were undertaken, their verifications, responsibilities, milestones and dates.</p> <p>This item will only be complete once all items are complete with the Improvement Plan.</p>	Director Corporate Services	Draft Performance Improvement Plan provided to IAB on 16 Sept 2014	Completed	Completed June 2015.

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
1d	Require, for the next 12 months, the General Manager to report in writing to the monthly meeting of Council and each meeting of the Internal Audit Committee, on progress against the improvement plan.	Report to be submitted to each Council meeting and Audit Committee Meeting.	General Manager	Council meetings: 7 Oct 2014 4 Nov 2014 2 Dec 2014 3 Feb 2015 3 Mar 2015 7 Apr 2015 5 May 2015 2 Jun 2015 Audit Committee meetings 17 Nov 2014 9 Dec 2014 19 Feb 2015 12 May 2015	n/a	This report and Attachments constitutes the reporting requirements to Council.

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
4	Engage a suitably qualified person approved by the temporary advisor to undertake a compliance review within 12 months to assess the implementation and effectiveness of Council's internal controls in ensuring that procurement and expenditure on goods and services complied with relevant statutory requirements and Council's policies, delegations and guidelines.	Appointment of provider to undertake Compliance Review approved. Review to be undertaken.	Group Manager Organisational Performance	March 2015	Completed	Completed June 2015.
5	Report the findings of the compliance review to a public Council meeting and the Office of Local Government.	Procurement Compliance Review carried out and report submitted to Council meeting 2 June 2015	General Manager	June 2015	Completed	Final report to Council July 2015
6	Ensure that the performance management process governing the employment of the General Manager, Directors and Council's responsible accounting officer is effective in ensuring that:		General Manager	30 November 2014	Completed	Completed. Refer comments below

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
6a	Appropriate performance criteria pertaining to the establishment and maintenance of effective internal controls over procurement and expenditure are stipulated in contracts of employment and performance agreements.	A full review was undertaken of the senior staff performance appraisal system and relevant documentation, including Performance Agreements, Contracts of Employment, delegations, and associated completed documentation for performance appraisals to date. Council have implemented the following improvements: 1) Position Descriptions have been implemented for Senior staff which will more clearly define responsibilities for internal controls relating to procurement and expenditure; and 2) Position Descriptions and Delegations have been included into the formal performance appraisal system.	General Manager	30 Nov 2014	Completed	Completed. We have reviewed the relevant documentation during January 2015. Whilst the standard OLG Contracts of Employment for the General Manager, Senior Staff and the CFO utilised do not specifically refer to internal controls, the Performance Agreements do contain detail.

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
6b	The persons holding these positions are capable of fulfilling their responsibilities in regard to Council's internal control system.	A review of Council performance appraisal records reflect that Council has actively demonstrated at a senior staff level, that staff are held to account by the General Manager, in relation to their individual responsibilities for the organisation. Further, Manager level staff are also held accountable in relation to their individual responsibilities for the organisation. Performance reviews for these staff are effectively completed and recorded in Council's 'eperform' system.	General Manager	30 Nov 2014	Completed	Completed. Section 7.5 of the performance agreements does requires at least an annual review and these have been carried out. Refer to our January 2015 report for further detail.

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
6c	Their performance in fulfilling these responsibilities is regularly and effectively assessed.	<p>Senior staff have undergone formal and regular performance appraisals. The previous two (2) formal review dates include:</p> <ul style="list-style-type: none"> General Manager: 22/8/13 and 26/8/14 Director Corporate Services: 26/11/13 and 4/9/14 Director Operations: 26/11/13 and 28/8/14 Director Technical Services: (commenced employment 21/8/13) 4/9/14 <p>Performance reviews for Senior staff also include a list of current projects and relevant actions of the annual Operational Plan which addresses the strategies as set out in the Community Strategic Plan.</p> <p>Informal reviews are also undertaken as required.</p> <p>All senior staff performance appraisals are overseen by an independent (external or internal) person.</p>	General Manager	30 Nov 2014	Completed	Completed. Refer comments and recommendations in our January 2015 report.

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
6d	Timely and appropriate action is taken to address poor performance.	As noted above, a review of Council performance appraisal records reflect that Council has actively demonstrated that Directors are held to account by the General Manager with Manager level staff being held to account by Directors, in relation to their individual responsibilities for the organisation. This has been demonstrated through the performance management of both senior staff and Manager level staff due to performance issues.	General Manager	30 Nov 2014	Completed	Completed. Refer comments and recommendations in our January 2015 report.
6i	In doing so, Council is required to: have due regard to clauses 207 and 209 of the <i>Local Government (General) Regulation 2005</i> .	References to sections of relevant legislation have been included into the new Position Descriptions for all senior staff.	General Manager	30 Nov 2014	Completed	Completed. Refer comments and recommendations in our January 2015 report.

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
6ii	In doing so, Council is required to: assess the adequacy of its current performance management process.	Council has undertaken a comprehensive review of its performance management process for both senior staff and non-contract staff, benchmarking the system against relevant industry recognised systems and documentation, and has implemented improvements as noted above.	General Manager	30 Nov 2014	Completed	Completed. Refer comments and recommendations in our January 2015 report.
6iii	In doing so, Council is required to: have due regard to the advice of the temporary adviser and/or other suitably qualified person.	Council to receive advice from IAB at completion of 6a-6d	General Manager IAB to advise Council	30 Nov 2014	Completed	Completed. Refer comments in our February 2015 report.
6iv	In doing so, Council is required to: prepare an improvement plan (including milestones) with advice and direction provided by the temporary adviser requiring all required changes to be implemented within 12 months or earlier if so advised by the temporary adviser.	An Improvement Plan relating to item 6 is not required.	General Manager	30 Nov 2014	Completed	Completed

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
1. Other	Council is to provide the Office of Local Government with a monthly progress report detailing achievements against actions taken to improve performance using any template provided by the Office.	<ol style="list-style-type: none"> 1. Template has not been supplied to Council by OLG or IAB. 2. Report to be supplied to OLG the Friday preceding Council Meeting (*Council does not meet in January however a report will be provided to OLG) 	Director Corporate Services	3 Oct 2014 31 Oct 2014 20 Nov 2014 2 Jan 2015* 30 Jan 2015 27 Feb 2015 3 Apr 2015 1 May 2015 29 May 2015	Completed	
2. Other	Council is to give the temporary adviser an opportunity to review the proposed progress report at least 7 days before it is given to the Office and is to give the Office a copy of the temporary advisor's comments (if any) on the progress report.	Draft report to be supplied to IAB 3 weeks prior to Council meeting at which it is to be considered.	Director Corporate Services	16 Sep 2014 21 Oct 2014 18 Nov 2014 23 Dec 2014 20 Jan 2015 17 Feb 2015 24 Mar 2015 21 Apr 2015 19 May 2015	Completed	IAB received sufficient time to review this current progress report.
3. Other	A compliance report pursuant to section 438F of the Act is to be submitted to the Minister within 12 months from the service of this order on the Council. The report is to detail actions taken to comply with this order and the findings of the compliance review detailed in the order.	Information submitted to the Council meeting 7 July 2015 to be submitted to the Minister as the Compliance report	Director Corporate Services	July 2015	Completed	Report to be submitted to Council Meeting July 2015.

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Strathfield Council Compliance Report Pursuant to S438F of the Local Government Act 1993

Item No.	Order requirements	Corrective and Preventative Actions (What is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates & Key Milestones	Current Status	Temporary Advisor Comments
4. Other	Documentary evidence is to be provided to substantiate actions taken and any improvements to Council's performance.	Relevant documentary evidence as required, is referenced within this document.	Director Corporate Services	n/a	Completed	IAB concurs with this assessment.

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**Attachment A - FINAL REVISED REPORT - SINC SOLUTIONS REVIEW OF PROCUREMENT SERVICES 4 JUNE 2014
RECOMMENDATIONS AND ACTIONS**

Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
1	Low	That the new sub-delegations register should contain the specific clause number(s) of the each piece of legislation where relevant.	Council's sub delegation register currently includes the section/clause numbers of legislation for specific powers and functions. Delegations of general powers and functions refer to the legislation only.	Legal Officer	November 2014	Completed	
2	Low	That to reduce the risk of non-compliance with relevant delegation, a list of applicable delegations for an individual staff member should be available for each staff member to access and check, in addition to the Register of Delegations which contains all staff delegations. Council may wish to consider a database system of delegations where data can be downloaded as applicable at any time, or searches can be done, for example, on who has delegations for a particular piece of legislation.	All individual staff delegations are available. Staff are required to sign their individual delegation and are provided with a copy.	Legal Officer	July 2014	Completed	
3	Medium	That the 'Contracts Register' does not correspond to the tender register. The 'Contracts Register' should be checked against the 'Tender Register' on a regular basis for accuracy. The 'Contracts Register' could be updated as a formal step in the contract engagement process.	Contracts Register checked against Tender Register. All contracts updated. Legal Officer now responsible for reviewing Contracts Register and Tender Register on a monthly basis.	Legal Officer	July 2014	Completed	

**Attachment A - FINAL REVISED REPORT - SINC SOLUTIONS REVIEW OF PROCUREMENT SERVICES 4 JUNE 2014
RECOMMENDATIONS AND ACTIONS**

Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
4	Low	That the Procurement Coordinator have a greater checking role in ensuring that all actions are complete, and physically sighted as complete, and noted accordingly in the checklist with applicable dates and notations. The review observed that the 'Tendering Checklist and Workbook' was used for most tenders reviewed but was not used as intended, or used to its full capacity and there are responsibilities and tasks listed for multiple staff. The Manager of the Tender should then sign the completed Tendering Checklist confirming that all actions have been completed.	Tendering Checklist and Workbook updated to require verification by Procurement Coordinator responsible for ensuring all processes are complied with and documentation completed.	Procurement Manager	July 2014	Completed	
5	Low	That the 'Tendering Checklist and Workbook' be reworded and formatted to allow quick checking off on processes to improve compliance and use of the 'Tendering Checklist and Workbook'. It is recommended that the wording be reduced in some areas and a tick box system be included. For example: "The Procurement Coordinator allocates a tender number and this is entered onto the tender register" could read	Tendering Checklist and Workbook reformatted to improve use and compliance.	Procurement Manager	July 2014	Completed	

**Attachment A - FINAL REVISED REPORT - SINC SOLUTIONS REVIEW OF PROCUREMENT SERVICES 4 JUNE 2014
RECOMMENDATIONS AND ACTIONS**

Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
6	Medium	<p><i>instead: Tender number allocated Tender register updated. It is noted that the checklist already has a responsibility column.</i></p> <p>Expression of interest procurement processes appear to be considered by Council as less compliant than tender processes, and does not always use the same procurement process as the tender system. Given that an Expression of Interest procurement process may result in a contract in excess of \$150,000, it is recommended that all Expression of Interests processes follow the established tender process and use the same documentation. This should be reviewed again in six (6) months time.</p>	<p>Purchasing and Tendering Guidelines amended to ensure consistency between EOJ and Tendering processes. Refer to Part 8. Tendering Checklist and Workbook amended to include Expressions of Interest</p>	Procurement Manager	<p>July 2014</p> <p>October 2014</p>	Completed	

**Attachment A - FINAL REVISED REPORT - SINC SOLUTIONS REVIEW OF PROCUREMENT SERVICES 4 JUNE 2014
RECOMMENDATIONS AND ACTIONS**

Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
7	Low	That the 'Request to Tender' template should be reviewed as follows: d) Page 28 – some guidance should be inserted for staff as to what "registration/licence number" information is applicable and to be specified. e) Page 29 – Referees – Council may wish to specify the number of referees to be included by the tenderer, and a comment that they may be contacted by Council. f) Page 30 – Financial Position – refer other comments within this report.	Request to Tender template updated to provide further information concerning registration/licensing requirements. Refer to Identity of Tenderer p17, Schedule p29, Organisational Profile p30, Subcontractors p31. Information regarding Referees updated. Refer to p30	Procurement Manager	October 2014	Completed	
8	Medium	That the 'Procurement Policy' and the key requirements listed within should be disseminated to all staff on a regular basis. Council should consider regular procurement training or regular reminders in key compliance issues being sent to all Council staff involved in procurement.	Tendering training provided for all Directors and Managers in October/November 2013. Staff responsible for procurement have received training regarding Council policy and procedures. Reminders will be provided to staff on a regular basis.	Group Manager Organisational Performance	July 2014	Completed	
9	Low	That the 'Procurement Policy's' section on "Preferred Suppliers and Supply Contracts" should be reviewed following completion of the recent EOI process for preferred suppliers.	Policy reviewed and updated	Procurement Coordinator	November 2014	Completed	

**Attachment A - FINAL REVISED REPORT - SINC SOLUTIONS REVIEW OF PROCUREMENT SERVICES 4 JUNE 2014
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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
10	Low	That a regular audit be conducted on Council's use of suppliers listed as "Preferred Suppliers and Supply Contracts" to ensure compliance with the 'Procurement Policy' and contractual arrangements.	The use of Preferred Suppliers will be audited on a 6 monthly basis as part of Procurement auditing. Audit Work Plan endorsed by the Audit Committee.	Risk Management Coordinator	February 2015	Completed	
11	Medium	That the 'Purchasing and Tendering Guidelines', the 'Tendering Checklist, and Workbook' be reviewed in relation to the Financial Assessment process of the tenderers, and the contents of the Report to Council in relation to the Financial Assessment. Currently the guidelines (and tenders reviewed in practice) are unclear as to whether the financial assessment process refers to the assessment of the costs supplied by the tenderer to undertake the project, or the financial capacity of the tenderer to undertake the project. This may be better defined as two (2) distinct processes, as currently the review is unsure as to whether the financial capacity of the tenderer to undertake the project is adequately assessed.	Purchasing and Tendering Guidelines and Tender Checklist & Workbook amended to clarify assessment of price and financial capacity as separate processes. Refer to Section 11.4.3. Templates have been developed to separate the assessment of price and non price criteria.	Procurement Manager	July 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
12	Medium	That the 'Purchasing and Tendering Guidelines' be reviewed in relation to the allocation of weighting of assessment criteria. It is recommended that more guidance be provided to staff, and/or examples provided.	Purchasing & Tendering Guideline reviewed to provide further guidance concerning the allocation of weighting of assessment criteria. Refer to Section 11.5.	Procurement Manager	July 2014	Completed	
13	Low	That there is no document available to list the nominated and authorised assessment Committee. For example, in tender 01/12, and this should be created and implemented.	A template has been created for the nomination and approval of Tender Evaluation Panels.	Procurement Manager	August 2014	Completed	
14	Low	That copies of emails related to tender process should be stored in easily accessible format, that is, not in "tmp" format. Recommendation 16 – low	Councils Document Management System captures emails in msg and htm file formats.	Procurement Manager	July 2014	Completed	
15	Low	That the title/position of each person should be included on the Conflict of Interests forms. For example, "Anthony Clarke" has signed a form for tender 01/12, but it is unknown who this person is (whether staff member or independent expert).	Conflict of Interest Form has been amended to require position and name to be completed.	Procurement Manager	July 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
16	Low	That Conflict of Interests provisions should be revisited by the Tender Assessment Committee following the receipt of all submissions (after closing date), to capture any conflict of interests that arise with any tenderer and a written record retained on file.	Purchasing and Tendering Guidelines and Tendering Checklist and Workbook amended to require completion of Conflict of Interest Disclosure Form following receipt of tender submissions. Refer to Section 12.1.	Procurement Manager	August 2014	Completed	
17	Low	That it should be clearly documented when Tender Evaluation Committee members check for tenderer conformity.	Purchasing and Tendering Guidelines and Tendering Checklist and Workbook amended to clarify process relating to assessment of Tender conformity. Refer to Section 11.7.	Procurement Manager	October 2014	Completed	
18	Low	That any internal and external email correspondence regarding a tender, should include in the subject line of the email the relevant tender number	Purchasing and Tendering Guidelines amended to require reference to the Tender No in all correspondence. Refer to Section 13.3.	Procurement Manager	August 2014	Completed	
19	Low	That Council retain copies of the actual tender newspaper advertisement for example, on tender 02/13 and either retain the original or scan the documents into council's record keeping system.	Tendering Workbook and Checklist amended to require newspaper advertisement to be registered into Councils Document Management System.	Procurement Manager	August 2014	Completed	
20	Low	That non-price criteria and price criteria be separated when evaluating tenders and scoring	A new template has been developed concerning evaluation of price. Purchasing and Tendering Guidelines have been amended to separate evaluation of price and non price criteria. Refer to Section 11.4.3	Procurement Manager	August 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
21	Low	That tender records must clearly indicate how pricing was assessed and scored. On the tenders reviewed it is unclear as to how pricing, including individual rates have been assessed and scored, that is whether individual pricing has been considered or just the lump sum value; or how additional cost-savings proposed by tenderers have been considered.	A new template has been developed for evaluation of price which provides guidance concerning assessment of pricing.	Procurement Manager	July 2014	Completed	
22	Low	That all tender documentation must be clear as to whether tender pricing is assessed including or excluding GST	Tender documentation updated to clarify all pricing is GST inclusive	Procurement Manager	July 2014	Completed	
23	Low	That guidelines be provided to members of Tender Evaluation Committees on how "price" is scored. The current 0-10 scoring criteria does not correspond to pricing for example, 0 = "does not meet requirements".	New template has been developed for evaluation of price which now ranks tenderers according to price.	Procurement Manager	July 2014	Completed	
24	Low	That price be either scored separately, or scored in exactly the same way to all other criteria (0-10) and this is to be addressed at the commencement of the tender evaluation process, prior to the closing of the tenders.	A new template has been developed concerning evaluation of price. Purchasing and Tendering Guidelines have been amended to separate evaluation of price and non price criteria. Refer to Section 11.4.3	Procurement Manager	August 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
25	Low	That tenders were not always compliant with the Strathfield Council Purchasing and Tendering Guidelines which states at section 11.10 Tender Panels that "copies of all tender assessment matrixes completed by members of the tender assessment panel must be placed on the tender file with the names of the members noted on each". This should be checked for compliance by the Procurement Coordinator.	Tendering Workbook and Checklist amended to specify signed assessment matrixes to be registered on the tender file.	Procurement Manager	September 2014	Completed	
26	Low	That the tender assessment matrixes/score sheet be amended to include a provision for the tender Committee member's name, signature and date.	Tender assessment matrixes have been amended to clearly indicate that they must include the name and signature and date completed.	Procurement Manager	July 2014	Completed	
27	Low	That since there is no Tender Evaluation Report from the Tender Evaluation Committee, all members should sign the completed final Tender Evaluation sheet (which incorporates all scores) to reflect agreement on the final scores and ranking. It is recommended that a Tender Evaluation Report be implemented.	Tender Panel Evaluation Report template developed to document final scores and recommended tenderer. The report is signed by each Panel member.	Procurement Manager	September 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
28	High	That both referee checks and a finance check should be conducted for all tender processes and for at least the highest ranked and/or preferred tenderer. At least two (2) referee checks should be conducted on referees as determined by the Tender Evaluation Committee, and in accordance with agreed questions. Results of the referee checks and finance checks should be documented and then circulated to all members of the Tender Evaluation Committee for their review and consideration. Agreement should be reached by the Tender Evaluation Committee as to the preferred tenderer following these checks, prior to completing the Report to Council recommending the tenderer. It is recommended that this agreement be a formal process which reflects the information available to each committee member and their agreement on the recommended tenderer in the absence of a Tender Evaluation Report.	Purchasing & Tendering Guidelines amended to require 2 reference checks and a financial check for the highest ranked/preferred tenderer with the result being provided to the Tender Evaluation Panel. Refer to Section 11.4.3. A reference check template has been developed. Tender Panel Evaluation report template developed which identifies highest ranked/preferred tenderer/s to enable reference/financial checks to be carried out. Results of reference/financial checks provided to Tender Evaluation Panel who then determine recommended tenderer.	Procurement Manager	July 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
29	Low	That a standard minimum finance check be conducted for all tender processes to be determined by Strathfield Council. This could include a detailed financial check purchased through a broker. It is recommended that more detailed finance checks be undertaken for larger or higher value projects.	Purchasing and Tendering Guidelines amended to require that the Chief Financial Officer review the financial capacity of tenderers. Refer Section 11.4.3.	Procurement Manager	July 2014	Completed	
30	Low	That all procurement decision making should be formalised, signed and dated by the appropriate persons. There should be no handwritten notes from persons identified only by initials on council records.	Documentation has been amended to provide for name, signature and date to be completed.	Procurement Manager	August 2014	Completed	
31	Low	That the Report to Council for tender processes should also include: a) Tender number b) Details of referee checks results c) Details of financial checks results	Purchasing and Tendering Guidelines amended to require information to be included. Refer to Section 11.12. Council report template developed outlining information to be included.	Procurement Manager Governance Coordinator	October 2014	Completed	

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32	Low	That the Tendering Checklist be reviewed to further break down the steps regarding the Tender Evaluation Committee. The Tendering Checklist currently has one step as: "Select Tender Evaluation Committee and arrange meeting to develop weighting criteria in order to assess tenders. Plan the date the Evaluation meeting will be held." This should be broken down into three (3) separate steps as they are significant to the entire process: 1) Select the Tender Evaluation Committee members, ensuring any conflict of interests are identified and managed; 2) Tender Evaluation Committee meet to develop weighting criteria prior to the closing of the tender; and 3) Tender Evaluation Committee set Evaluation meeting date/s.	Tendering Checklist and Workbook has been amended to clearly identify action to be taken.	Procurement Manager	July 2014	Completed	
33	Low	That the names of the Tender Evaluation Committee selected should be also included into the checklist as they are currently not recorded in any documentation.	Tendering Checklist and Workbook has been amended to include names of Tender Evaluation Panel members.	Procurement Manager	July 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
34	Low	That the assessment criteria weightings should be determined at a formal meeting and records kept of the final weightings and authorisation by each member of the Tender Evaluation Team. There is currently no formal documented process for the Tender Evaluation Team to establish and determine the weightings for the tender assessment criteria.	Purchasing and Tendering Guidelines and Tendering Workbook and Checklist amended to require Tender Panel to formally approve weighting of criteria. Refer to Section 11.5.	Procurement Manager	July 2014	Completed	
35	Low	That the actual weightings be excluded from the public and retained by the Tender Evaluation Committee only. It is noted that the Purchasing and Tendering Guidelines refer to the weightings being included onto the tender documentation.	Purchasing and Tendering Guidelines and Tendering Workbook and Checklist amended to clarify weighting of criteria is not included in the tender documentation.	Procurement Manager	July 2014	Completed	
36	Low	That the Tender Evaluation Committee be determined and authorised at the same time the General Manager's approval is sought by memo to hold a tender process. Part of this memo could include the proposed Tender Evaluation Committee, which then also gains appropriate authorisation.	Tendering Workbook and Checklist amended and template developed to require appointment of Tendering Evaluation Panel members at the same time as approval to invite tenders.	Procurement Manager	July 2014	Completed	

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37	Low	That there be a proforma document for staff to use to complete the memo seeking the General Manager's authorisation to hold a tender process. This will ensure standard and complete information is included in this memo to the General Manager for all tender and EOJ processes.	Template developed for General Manager authorisation to proceed with a tender.	Procurement Manager	July 2014		
38	Low	That Tender Evaluation Committee members' surnames (in addition to just a first name or initials) should always be included within all tender documentation, along with their position title, to ensure completeness of records.	Documentation has been amended to include name, signature and date.	Procurement Manager	July 2014	Completed	
39	Low	That RFT documentation be made clear as to what "necessary Licences and Registrations" are required by the tenderer for each tender. It is recommended that this be made clear as to what is required to be listed by each tenderer for their company and their subcontractors. This will also allow Council to check on the currency of the required licences and registrations.	Request to Tender template updated to provide further information concerning registration/licensing requirements. Refer to Identity of Tenderer p17, Schedule p29, Organisational Profile p30, Subcontractors p31.	Procurement Manager	October 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
40	Low	That all draft tender documentation that requires approval by a particular staff member be officially approved by that person through memo, email, or other official means.	Tendering Checklist and Workbook amended to require formal approval of draft tender documentation.	Procurement Manager	September 2014	Completed	
41	Low	That all draft documentation be identified via version number so it is clear what document version a staff member has approved.	Tendering Checklist and Workbook amended to require that draft documentation be identified by a version number.	Procurement Manager	September 2014	Completed	
42	Low	That more than two (2) compliant companies should always be invited to tender following an Expression of Interest process. All compliant companies arising from the Expression of Interest process should also be invited to submit a tender.	Purchasing and Tendering Guidelines amended to require that all compliant submissions from an EOJ process be invited to tender and that a minimum of 3 be invited where possible. In exceptional circumstances, less than 3 can be invited. Refer to 11.1.	Procurement Manager	October 2014	Completed	
43	Medium	That the General Manager address the issues raised in this report regarding the Tender for the Provision of Audit Services with the Director Corporate Services.	Issues raised in connection with the Audit Services Tender addressed.	General Manager	February 2014	Completed	
44	Low	That Council considers all recommendations within this report and update any policy, procedures and templates as appropriate.	All recommendations considered and relevant documentation updated accordingly.	Director Corporate Services	November 2014	Completed	

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Item Number	Rating	Report Recommendation	Corrective and Preventative Actions (what is to be done, how, what was completed, and what was checked)	Responsible Officer	Due Dates and Key Milestones	Current Status	Temporary Advisor Comments
45	Medium	That the various actions listed within the report for Directors and Group Managers regarding the use of contractors, and the need to either run tender processes or further investigate contract variations should be actioned as a priority.	Report recommendations referred to all Directors. Training provided for all Directors and Managers concerning Tendering, Contract Management training provided for relevant staff. Quarterly monitoring of contractor expenditure has been implemented to identify possible non compliances.	Directors Managers Procurement Manager	June 2014	Completed	
46	Low	That Regular procurement monitoring be implemented for any preferred suppliers engaged under the recent Expression of Interest process, to ensure that across the entire Council total spend does not exceed \$150,000 for each contractor, and that staff are aware when the tender process should be initiated for work that would normally involve a preferred supplier.	Council has received legal advice that multiple separate engagements of Preferred Suppliers which results in exceeding \$150,000 total expenditure does not require a tender to be called. Quarterly monitoring of contractor expenditure will be carried out to highlight any possible expenditure which may require a tender to be carried out.	Legal Officer Procurement Coordinator	August 2014	Completed	
47	Low	That all of the Strathfield Council tenders on the tender register would qualify as a Class 1 contract and therefore should appear on the Register of Government Contracts.	Contracts Register checked against Tender Register. All contracts updated. Legal Officer now responsible for reviewing Contracts Register and Tender Register on a monthly basis.	Legal Officer	July 2014	Completed	
48	Low	That future Council Annual Reports should accurately report all applicable contracts awarded for the period for \$150,000 and over, in accordance with the Local Government (General) Regulation 2005 clause 217 (a2).	Annual Report will include all contracts as per the Contracts Register.	Corporate Strategy Coordinator	November 2014	Completed	

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49	Low	That Council update its Contracts Register to include all applicable contracts awarded.	Contracts Register reviewed and updated. Updating of the register to be undertaken by the Legal Officer and reviewed on a monthly basis.	Legal Officer	July 2014	Completed	
50	Medium	That a regular audit be conducted on tender processes to ensure that they are compliant with legislation and Council procedures. This could be done by Council's Corporate Strategy Coordinator, Ms Cathy Jones.	Auditing of tender processes will be carried out on a 6 monthly basis. Audit Work plan endorsed by the Audit Committee.	Risk Management Coordinator	February 2015	Completed	
51	Low	That consideration be given to providing the Procurement Coordinator with additional formal procurement training and/or exposure to larger councils and their tender processes.	Procurement Coordinator has undertaken the following training/development May 2013 Certificate IV in Government October 2013 Tendering Requirement October 2013 Contract Management November 2013 Local Government Procurement Annual Conference. Further guidance and support provided by the Procurement Manager.	Procurement Manager	July 2014	Completed	
52	High	That Council consider the addition of a higher level Procurement Manager position in its Corporate structure with the position being organisationally focussed on strategic procurement. This position should review all purchasing within Council; ensure all staff involved in	Procurement Manager engaged in May 2014 to implement recommendations and provide strategic advice concerning Procurement.	Director Corporate Services	May 2014	Completed	

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		<p>purchasing are compliant, and if not, take appropriate action to ensure compliance; conduct regular purchasing checks from purchase through to approval, receipt of goods and processing through Finance; and overview contract management and report discrepancies to the General Manager for action. The position would also focus on the strategic procurement of high spend items which is likely to provide significant savings for Council. It is recommended that this position would initially report directly to the General Manager and not to a Director. Council could still retain the current Procurement Coordinator position as an assistant role to the Procurement Manager position, and continue to run the tender processes and undertake general procurement administrative duties.</p>					
53	Low	<p>That Council consider the inclusion of a probity advisor/auditor on tender panels on an irregular basis to obtain valuable external feedback and review on procurement compliance.</p>	<p>Councils Risk Management Officer will act as Probity Advisor for tenders. Selected tenders are subject to external management and/or probity advice via organisations such as Local Government Procurement.</p>	Procurement Manager	July 2014	Completed	

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54	Medium	That Council continue to review and implement the report recommendations made by Mr Viv Hudson, and Ms Marnie Van Dyk, Risk Management Coordinator, as a matter of priority.	Recommendations implemented including new procedures concerning the issuing of Purchase Orders.	Procurement Manager	April 2014	Completed	

Attachment B - Contact with IAB Regarding Performance Improvement Order

Date	Details	From
21/08/14	1st Meeting with IAB	
21/08/14	Request re OLG template for Implementation Plan	Council
26/08/14	Documentation re Appointment of Audit Committee emailed	Council
28/08/14	Copy of documentation re Appointment of Audit Committee provided	Council
28/08/14	Copy of documentation re ICAC Operation Torrens Recommendations and Actions provided	Council
28/08/14	Copy of documentation re ICAC Operation Centurion Recommendations and Actions provided	Council
28/08/14	Copy of documentation re Enterprise Risk Management provided	Council
28/08/14	2nd Meeting with IAB	
28/08/14	Copy of Independent Audit Committees in Public Sector Organizations received	IAB
28/08/14	Further request re OLG template for Implementation Plan	Council
11/09/14	3rd Meeting with IAB	
11/09/14	Sinc Solutions High and Medium rated Recommendations and Actions provided	Council
14/09/14	Various documents requested by IAB emailed	Council
16/09/14	Draft Performance Improvement Plan emailed	Council*
24/09/14	Advice regarding changes to the format of the Performance Improvement Plan received	IAB

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27/09/14	Draft Council report regarding Performance Improvement Plan emailed for comment.	Council
01/10/14	Comments received regarding draft report.	IAB
03/10/14	Final report regarding Performance Improvement Plan emailed.	Council
09/10/14	Documentation cross-referencing Evidence Supporting Need for Order emailed.	Council
13/10/14	Documentation verifying action taken in response to Sinc Solutions recommendations provided.	Council
17/10/14	4th Meeting with IAB	
17/10/14	Updated documentation concerning implementation of Sinc Solutions recommendations provided.	Council
21/10/14	Draft Council report regarding Performance Improvement Plan emailed for comment.	Council
31/10/14	Comments received regarding draft report.	IAB
10/11/14	Documentation concerning Tender No 4/2014 – Fogo provided	Council
18/11/14	Draft Council report regarding Performance Improvement Plan emailed for comment.	Council
18/11/14	Documentation regarding Performance Management system emailed.	Council
28/11/14	Comments received regarding draft report.	IAB
16/12/14	Letter to IAB concerning status of outstanding items	Council
19/12/14	Letter from IAB concerning status of outstanding items	IAB
23/12/14	Draft Council report regarding Performance Improvement Plan emailed for comment.	Council

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09/01/2015	Letter from IAB concerning status of outstanding items	IAB
16/01/2015	Letter to IAB concerning status of outstanding items	Council
20/01/2015	Draft Council report regarding Performance Improvement Order emailed for comment	Council
22/01/2015	5th Meeting with IAB	IAB
29/01/2015	Comments received regarding draft report	IAB
03/02/2015	Councillor Briefing concerning the status of the matters set out in the Performance Improvement Order	Council/IAB
17/02/2015	Letter to IAB concerning status of outstanding items	Council
17/02/2015	Draft Council report regarding Performance Improvement Order emailed for comment	Council
27/02/2015	Comments received regarding draft report	IAB
20/03/2015	Meeting with IAB and InConsult regarding Procurement Review	Council
25/03/2015	Draft Council report regarding Performance Improvement Order emailed for comment	Council
01/04/2015	Comments received regarding draft report	IAB
27/04/2015	Draft Council report regarding Performance Improvement Order emailed for comment	Council
28/04/2015	Comments received regarding draft report	IAB
28/05/2015	Draft Council report regarding Performance Improvement Order emailed for comment	Council
29/05/2015	Comments received regarding draft report	IAB

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04/06/2015	Draft Council report regarding Performance Improvement Order emailed for comment	Council
02/07/2015	Comments received regarding draft report	IAB

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ATTACHMENT C TO SEPTEMBER 2014 PERFORMANCE ORDER MONTHLY REPORT

AUDIT COMMITTEE APPOINTMENT PROCESS

TEMPORARY ADVISOR COMMENTS

Timeline of Actions Taken by Council

- Council resolved to establish an Audit Committee in September 2013.
- Expressions of Interest for Appointment of Independent members of the Audit Committee closed 18 December 2013.
- Information Report provided to Councillors in May 2014 advising that the 3 applications received for appointment as Independent Members of the Audit Committee were considered to be suitable.
- Council resolved on 5 August 2014 to amend the Audit Committee Charter to provide for the appointment of 2 Councillors and 3 Independent members and Chairperson of the Committee.

IAB Comments on Process

As temporary advisor, IAB has reviewed the processes followed to appoint the audit committee members as required by the Performance Order. With the exception of the following two observations, the process was conducted appropriately.

1. Whilst the originally constituted Audit Committee Charter and the public advertisement for the available positions for independent members, specifically stated that committee membership would comprise 1 Councillor and 2 Independents, 2 Councillors and 3 Independent members were ultimately appointed. Whilst IAB agrees that this membership structure is neither unusual in the local government sector nor inconsistent with the Division of Local Government's Internal Audit Guidelines 2010, it did contravene the original Audit Committee Charter.

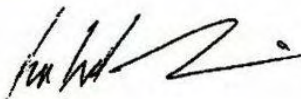
Further, there is no evidence available to demonstrate that the decision to alter the composition of the Audit Committee was made in consultation with Council. As noted above, the decision to appoint 2 Councillors and 3 Independents was made by the General Manager and put to Council in May 2014. A subsequent change to the Audit Committee Charter was therefore required and put to Council in August 2014.

2. One of the three subsequently appointed independent members, Nella Gaughan is currently co-chair of the "Save our Strathfield" resident group. Her application for appointment as an independent audit committee member appropriately declared her association with this group as a potential area of conflict. However, when the selected candidates were put to Council for endorsement in May 2014, this potential conflict was not disclosed as Council management had already considered that no conflict existed and therefore disclosure to Council was not necessary.

Conclusion

Whilst the processes followed above could have been handled with greater transparency, neither ultimately impacted on the final composition of the Audit Committee with regards to independent members.

No further action to amend the composition of the Audit Committee is considered necessary.



Rob McKimm
DIRECTOR

ATTACHMENT C



ATTACHMENT TO OCTOBER 2014
PERFORMANCE ORDER MONTHLY REPORT
TEMPORARY ADVISOR COMMENTS

During the month of October, IAB as temporary advisor, has continued to work with Council management on the following matters;

1. Ensuring outstanding recommendations from past reports as noted in the Performance Order have been adequately implemented, and
2. Commencing a walkthrough of the procurement process

Outstanding Recommendations

IAB has reviewed management's assessment of the implementation status of prior report recommendations. With regards to the Sinc Solutions report, IAB concurs with management's view that 48/54 of the recommendations have been implemented. Our assessment involved obtaining sufficient and appropriate evidence to demonstrate to implementation. As a result of our assessment we raised the following observations with management. Note that these observations did not impact on the assessment of completeness made by management.

1. Exploring the possible efficiencies of combining the tender and contracts registers
2. Ensuring the tender checklist includes reference to the Expression of Interest process.
3. Reference the tender evaluation matrix into the Procurement guidelines
4. Clarifying who should fulfil the role of the probity advisor during the tender evaluation stage and ensuring reference to the probity role is made in the procedural documents.

Management welcomed the opportunity to consider the above improvement observations.

Council management has also responded to the matters raised from prior reports which have been mapped to the Sinc Solutions report actions. Testing of the effectiveness of the remediation activities will be encompassed in the procedural walkthrough mentioned below.

Procedural Walkthrough

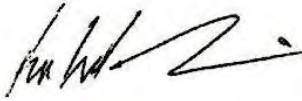
Despite the implementation of the above recommendations, IAB has commenced a process to 'walk' a sample set of transactions through the revised procurement process. The objective of this walkthrough is to assess whether the revised system controls have been embedded into the process. This work will continue into November and be reported upon as part of the next month's report.

Other Matters

The following other matters are noted;

1. With recent changes to Councillor's, audit committee membership and consequently the setting of an audit committee meeting has been affected. Management is aware of and is acting on the issue created by a Councillor audit committee member now being the Mayor.

2. The review of Council's Performance Management System is scheduled to be reviewed during November and will be reported in our next report.



Rob McKimm
DIRECTOR

October 31, 2014

Attachment C

**ATTACHMENT TO JANUARY 2015****PERFORMANCE ORDER MONTHLY REPORT****TEMPORARY ADVISOR COMMENTS**

During the months of December 2014 and January 2015, IAB as temporary advisor, has continued to work with Council management principally on the following matters;

1. Ensuring outstanding recommendations from past reports as noted in the Performance Order have been adequately implemented,
2. Reviewing and providing commentary on Council's Performance Management Processes in accordance with the Section 6 of the Performance Order

Outstanding Recommendations

As in prior months, IAB has reviewed management's assessment of the implementation status of prior report recommendations. With regards to the Sinc Solutions report, there remains two matters (52/54) for Council to close. These matters relate to the conduct of regular audits over tendering and procurement processes. In my correspondence with Council dated 19 December 2014, I suggested that a suitable method to close out these items would be for Council to;

- Develop an audit work plan and 6 months review schedule for both areas
- Assign the conduct of the audit to a suitably qualified independent person
- Schedule on the Audit Committee's agenda to receive and approve the proposed work plan, agree the timing of the work and receive and note the full reports once completed.

At the date of this report, Council management is considering this option.

Internal Audit Function

During the period, I have discussed the status of the outsourcing of the internal audit function with Council management and I understand that tenders have been called and some submissions received. As part of completing Item 2 of the Order, it is expected that management will provide me with the results of their selection processes in the near future in order to close this requirement.

Item 4 of the Order requires Council to engage a suitably qualified person, approved by the temporary advisor, to conduct a review of the effectiveness of controls over procurement and expenditure. Management has informed me that they have included this requirement in the scope of work for the appointed internal auditor and I concur with that approach.

Performance Management System

A key outstanding matter from prior reports was the review of Council's Performance Management System in accordance with the various components of Item 6 of the Order. During the review period, we were provided with the Office of Local Government's view on employment contracts and employee performance measures and subsequently with access to the necessary information in order to address this Item.

As a result of our review we have noted that Council is using the standard OLG Contracts of Employment for all senior employees including the General Manager. In all cases, the Employee Contract is supported by a documented Performance Agreement signed by the employee.

The Performance Agreements contained reference to the maintenance of internal controls including that of procurement and expenditure. We recommend that the components of these Performance Agreements be regularly reviewed to ensure they remain current and focussed on those areas specific to Council's business environment.

We have sighted evidence of the most recent senior management's performance review by the General Manager and the General Manager's performance review. We noted that an independent representative from Workplace Law was present at the 2013/2014 performance review and sighted a copy of the report from that organisation summarising observations and outcomes from that assessment.

Further, we sighted evidence of the General Manager's feedback to Directors on their performance. This feedback was sufficiently specific for the Director's to be quite clear about their areas for development. We recommend that the General Manager considers regularly reviewing the status of achievement of the areas of development and documents the results of those assessments.

As a result of our review of the Performance Management System, a number of the outstanding items in the Performance Report could be considered closed. We expect their status to be updated in the February 2015 report.



Rob McKimm
DIRECTOR

29 January 2015

Attachment C



**ATTACHMENT TO FEBRUARY 2015
PERFORMANCE ORDER MONTHLY REPORT
TEMPORARY ADVISOR COMMENTS**

During the month of February 2015, IAB as temporary advisor, has continued to work with Council principally on the following matters;

1. Providing an update presentation to Councillors on the implementation progress of matters relating to the Performance Order
2. Reviewing the processes for appointing the internal audit and compliance review provider, and
3. Reviewing responses from Council's General Manager with regards to the recommendation made in the December 2014/January 2015 Temporary Advisor report.

Outstanding Recommendations

As in prior months, IAB has reviewed management's assessment of the implementation status of prior report recommendations. With regards to the Sinc Solutions report, there were two remaining matters relating to the conduct of regular audits over tendering and procurement processes which were closed during February 2015. We consider that all Sinc Solutions matters are now closed.

Internal Audit Function

I have reviewed the process to request tenders from suitable suppliers for the provision of Outsourced Internal Audit Services. The tender request also included the Compliance review noted at Item No. 4 of the Performance Order.

Based on the evidence provided, the process appears to have been conducted appropriately and as required by Item No. 4 of the Performance Order, I approve the appointment of InConsult to conduct the compliance review. Note that as Temporary Advisor, I was not required to approve the appointment of InConsult to provide internal audit services to Council.

Performance Management System

My January 2015 report contained two recommendations for management to consider to improve the Performance Management System. In brief these were;

1. that the components of the Performance Agreements be regularly reviewed to ensure they remain current and focused on those areas specific to Council's business environment, and
2. that the General Manager considers regularly reviewing the status of achievement of the areas of development and documents the results of those assessments.

Council's General Manager has considered these recommendations and responded in writing. There are no further outstanding matters with regards to the Performance Management System.

Remaining Performance Order Requirements

In order to ensure Item No 1 and 4 of the Performance Order are addressed appropriately, I intend to meet with InConsult to discuss their scope and objectives for the Compliance Review prior to its commencement. I will also monitor the results of the review.



Rob McKimm
DIRECTOR

27 February 2015

Attachment C



ATTACHMENT TO MARCH 2015

PERFORMANCE ORDER MONTHLY REPORT

TEMPORARY ADVISOR COMMENTS

During the month of March 2015, IAB as temporary advisor met with Council Management and InConsult to discuss the scope and objectives of the Compliance Review required under the Performance Order.

It was agreed InConsult would provide IAB with the Terms of Reference of the review for my input as necessary. At the date of this report the document has not yet been received.

InConsult's Compliance Review is expected to occur during April. If available, the results of the review will be reported in the April Temporary Advisor report.

There are no other matters to report.

A handwritten signature in black ink, appearing to read 'Rob McKimm', with a stylized flourish at the end.

Rob McKimm
DIRECTOR

1 April 2015

Attachment C



ATTACHMENT TO APRIL 2015
PERFORMANCE ORDER MONTHLY REPORT
TEMPORARY ADVISOR COMMENTS

During the month of April 2015, IAB as temporary advisor reviewed the Terms of Reference prepared by InConsult for the conduct of the Compliance Review. No changes were made to that document. At the date of this report, the review is in progress.

There are no other matters to report.

A handwritten signature in black ink, appearing to read 'Rob McKimm', with a stylized flourish at the end.

Rob McKimm
DIRECTOR

29 April 2015

Attachment C



ATTACHMENT TO JUNE 2015 STRATHFIELD MUNICIPAL COUNCIL PERFORMANCE ORDER REPORT

TEMPORARY ADVISOR COMMENTS

Pursuant to Section 438G of the Local Government Act 1993, IAB Services was appointed as a temporary advisor to Strathfield Municipal Council for the period of 12 months from the service of the order on the Council. The order was dated 24 July 2014.

IAB as temporary advisor, has worked with Council to complete all actions required to improve performance outlined in the order.

IAB has been given an opportunity to review the proposed compliance report and a copy of these comments should also be forwarded by Council to the Office of Local Government and Minister.

During the course of the order, the council, councillors and members of council staff have co-operated with the Temporary Advisor and have provided all information reasonably requested in order for us to discharge our responsibilities.

The requirements of the Performance Order are broadly defined within three key areas shown below together with our overall conclusion.

1. Establish an Audit Committee and Internal Audit Function

Strathfield Council now has an operational Audit Committee whose Charter aligns with guidance provided by the Office of Local Government. As Temporary Advisor we reviewed the appointment of Committee members and were ultimately satisfied with that process. The Committee met on a number of occasions during the year.

Further, after a competitive tender process reviewed by the Temporary Advisor, Council appointed InConsult to conduct a program of internal audits. The first of these audits was the compliance review referred to below.

2. Establish Improved Internal Controls over procurement and expenditure on goods and services

In the initial months of the Performance Order, Council focused on completing the 54 control recommendations made by Sinc Solutions. As Temporary Advisor, we reviewed the implementation of all 54 recommendations for action and were satisfied that they had been adequately and appropriately implemented. As part of our responsibilities during our appointment, we also worked with Council Management to further develop areas of control relevant to the procurement of goods and services.

Finally, we reviewed and were satisfied with the Terms of Reference for the required Compliance Review performed by InConsult. Their report highlighted that Council's procurement system controls had improved considerably over the past year. There were

1

8 recommendations made in the report; 5 moderate risk and 3 low risk. Each recommendation had been responded to by Council Management with responsibility and timing assigned. We reviewed the responses and where necessary sought assurances regarding the implementation of these recommendations and proposed timing. We were also satisfied that Council's proposed implementation and timing of further remedial actions was appropriate.

It is noted though that the due date for a number of the agreed actions extend beyond the completion date of the Performance Order. Council's Audit and Risk Committee should ensure that these matters are addressed as intended.

3. Ensure the Performance Management Process includes Responsibility for Internal Controls

IAB's January 2015 report contained two recommendations for management to consider to improve the Performance Management System. In brief these were;

1. that the components of the Performance Agreements be regularly reviewed to ensure they remain current and focused on those areas specific to Council's business environment, and
2. that the General Manager considers regularly reviewing the status of achievement of the areas of development and documents the results of those assessments.

Council's General Manager has considered these recommendations and responded in writing. There are no further outstanding matters with regards to the Performance Management System.

Conclusion

At the date of this report, we are of the opinion that Council has adequately addressed each of the Performance Order requirements. IAB recommends that the total final report, including these comments, now be tabled at Council and then forwarded to the Minister.



Robert McKimm
DIRECTOR

1 July 2015



Strathfield Council

Internal Audit Report – Procurement Function Final

24 May 2015

InConsult Pty Ltd

Prepared by: John Waghorn - Senior Consultant

Reviewed by: Mitchell Morley - Director



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Internal Audit Report – Procurement Function

Audit Objectives

The audit was designed to assess the implementation and effectiveness of Council's internal controls in ensuring that procurement and expenditure on goods and services complies with relevant statutory requirements and Council's policies, delegations and guidelines.

Audit Scope

The scope of our review included an examination of:

- The current Procurement Policy and Purchasing and Tendering Guidelines
- The level of compliance with the Policy and Guidelines for the following methods of procurement
 - Tendering
 - Quotation
 - Credit card
 - Petty cash
 - Use of Local Government Procurement/ State Government Contract/ Procurement Australia arrangements including quotes from the supplier lists
 - Council preferred supplier/standing order arrangements including quotes from the supplier lists
 - Sole supplier arrangements for specialist services
 - Direct engagement for minor works
- Matching of payments received with purchase order amounts
- The extent of implementation of the recommendations from the SINC Solutions review of procurement

Audit Timing

The audit planning commenced in early April 2015 and the field work was carried out at Council from 8 April to 10 April and from 28 April to 29 April.

The draft report was circulated to management in mid May 2015 and responses were incorporated into the final report.



Audit Approach

Initial scoping meetings were held with Neale Redman, Director Corporate Services and Diane Ross, Procurement Specialist to help us understand Council's procurement processes and systems and to identify associated risks and controls.

We also reviewed Council's current Procurement Policy and Purchasing and Tendering Guidelines, a list of all creditor payments since 1 July 2014 and the recommendations from the SINC Solutions review.

Based on the outcome of these activities we developed a detailed audit program. We undertook detailed testing of the level of compliance with key controls by examining the following samples of transactions:

- Review of 5 recent tenders to ensure compliance with Council Policy and Government requirements
- Review of 62 creditor payments ensuring that procurement practices were adhered to. These were made up of:
 - 8 payments from existing contract arrangements
 - 14 payments from Local Government Procurement/ State Government Contract/Procurement Australia arrangements including quotes from the supplier lists
 - 9 payments from Council's preferred supplier/standing order arrangements including quotes from the supplier lists
 - 21 payments from specific supplier quotes ranging from \$500 - \$150,000
 - 5 payments from sole supplier arrangements for specialist services
 - 5 non EFT payments for refunds or minor service provision under \$500 where quotes were not required
- 5 credit card statements and associated purchases
- 4 petty cash recoupments and associated purchases
- Sample of 10 payments through the accounts payable system to ensure payment amounts are matched with purchase order amounts

We also verified that all of the recommendations relating to procurement from the SINC Solutions review conducted in 2014 have in fact been implemented.

Summary of Audit Findings

Positive Findings

Audit found that the Procurement systems in place at Strathfield Council had improved significantly over the past 12 months. Importantly, Council has implemented all of the recommendations from the SINC Solutions review of Procurement Services which was undertaken in the first half of 2014. Appendix 1 summarises the results of our verification review of the actions taken in response to the SINC Solutions review.

Many of the systems improvements have been paper based as Council's existing Fujitsu Accounting System is no longer being supported and consequently enhancements are not possible. The creation of



the role of Procurement Specialist has been pivotal to the improvements to the Procurement system. The current Procurement Specialist has extensive experience in both state and local government procurement and is eager to further enhance the efficiency and effectiveness of Council's Procurement systems.

Centralisation of the Procurement process has led to a significantly higher level of internal control being applied to the creation of purchase orders. All purchase requisitions are now being reviewed and signed off by the Procurement Specialist or Procurement Officer prior to the actual purchase order being finalised and sent to the supplier. All procurement documentation is now being retained in a separate folder in Council's Electronic Content Management system.

Our sample testing found a very high level of compliance with Council's Procurement Policy and Guidelines. In the few instances where there were non-conformances these were minor and reasonable explanations were provided.

The utilisation of Local Government Procurement, State Government and Procurement Australia contracts has also seen more regimen applied to the Procurement processes. In addition, preferred supplier and standing order arrangements have been established to streamline procurement arrangements. These arrangements are generally operating effectively and it has been indicated that they will be subject to regular review to ensure that they achieve the efficiencies for which they are designed.

Opportunities for Improvement

Whilst the audit revealed a high level of compliance with adopted procurement policies and procedures, we did identify a small number of opportunities to further tighten procurement controls and/or improve efficiency.

Council could improve its processes by creating supporting documentation for a number of aspects of the Procurement process. For example, there is currently no policy document covering the use of corporate credit cards. Similarly there is no documentation to guide Finance staff when the submitted tax invoice does not match the purchase order amount.

Council should also continue to monitor the use of preferred suppliers and standing orders to ensure that it is obtaining the best value for money for its purchases of goods and services under these arrangements.

It was noted during the audit that 2 tenders that closed on 15 November 2014 had still not been assessed and reported to Council. Delays of this extent could lead to the invalidation of the prices and conditions submitted by the tenderers at a cost to Council.

In total we identified 8 recommendations for improvement. The importance of these can be summarised as follows:

Total Recommendations	Breakdown of Recommendations by Importance Level			
	Extreme	High	Medium	Low
8	0	0	5	3



In determining the importance of each recommendation we used the following ratings scale:

Extreme	Key controls are not in place around a critical business function which is exposing Council to substantial risk. Immediate remediation action needed to bring controls to acceptable standards.
High	Significant control exposure was noted that could result in significant financial or reputational loss. Short term attention/review is required.
Medium	Isolated control gaps were noted, which if not addressed may in future lead to significant exposure.
Low	Minor control gaps and/or longer term opportunities for improvement were noted.

Please refer to Appendix 2 of this document for Detailed Findings.

Acknowledgements

We would like to thank management and staff in the Procurement and Finance areas for their time and cooperation during the course of the audit.

.....
 Mitchell Morley, BEd, PMIIAA
 Director, InConsult

Sydney, May 2015

Appendix 1: Internal Audit Verification of Relevant Actions in Response To - Sinc Solutions Review of Procurement Services 4 June 2014

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
1	Low	That the new sub-delegations register should contain the specific clause number(s) of the each piece of legislation where relevant.	Council's sub delegation register currently includes the section/clause numbers of legislation for specific powers and functions. Delegations of general powers and functions refer to the legislation only.	Legal Officer	November 2014	Completed	Not checked as not part of the Procurement process
2	Low	That to reduce the risk of non-compliance with relevant delegation, a list of applicable delegations for an individual staff member should be available for each staff member to access and check, in addition to the Register of Delegations which contains all staff delegations. Council may wish to consider a database system of delegations where data can be downloaded as applicable at any time, or searches can be done, for example, on who has delegations for a particular piece of legislation.	All individual staff delegations are available. Staff are required to sign their individual delegation and are provided with a copy.	Legal Officer	July 2014	Completed	Not checked as not part of the Procurement process. Delegations of Authority for procurement of goods and services were reviewed and found to be appropriate.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
3	Medium	That the 'Contracts Register' does not correspond to the tender register. The 'Contracts Register' should be checked against the 'Tender Register' on a regular basis for accuracy. The 'Contracts Register' could be updated as a formal step in the contract engagement process.	Contracts Register checked against Tender Register. All contracts updated. Legal Officer now responsible for reviewing Contracts Register and Tender Register on a monthly basis.	Legal Officer	July 2014	Completed	Recently accepted tenders are in Contracts Register.
4	Low	That the Procurement Coordinator have a greater checking role in ensuring that all actions are complete, and physically sighted as complete, and noted accordingly in the checklist with applicable dates and notations. The review observed that the 'Tendering Checklist and Workbook' was used for most tenders reviewed but was not used as intended, or used to its full capacity and there are responsibilities and tasks listed for multiple staff. The Manager of the Tender should then sign the completed Tendering Checklist confirming that all actions have been completed.	Tendering Checklist and Workbook updated to require verification by Procurement Coordinator. Procurement Coordinator responsible for ensuring all processes are complied with and documentation completed.	Procurement Manager	July 2014	Completed	Updated Tendering Checklist and Workbook in place. Tendering Checklist and Workbook are being used for new tenders.



Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
5	Low	That the 'Tendering Checklist and Workbook' be reworded and formatted to allow quick checking off on processes to improve compliance and use of the 'Tendering Checklist and Workbook'. It is recommended that the wording be reduced in some areas and a tick box system be included. For example: "The Procurement Coordinator allocates a tender number and this is entered onto the tender register" <i>could read instead: Tender number allocated Tender register updated.</i> It is noted that the checklist already has a responsibility column.	Tendering Checklist and Workbook reformatted to improve use and compliance.	Procurement Manager	July 2014	Completed	Updated Tendering Checklist and Workbook in place. Tendering Checklist and Workbook are being used for tenders.
6	Medium	Expression of interest procurement processes appear to be considered by Council as less compliant than tender processes, and does not always use the same procurement process as the tender system. Given that an Expression of Interest procurement process may result in a contract in excess of \$150,000, it is recommended that all	Purchasing and Tendering Guidelines amended to ensure consistency between EOI and Tendering processes. Refer to Part 8. Tendering Checklist and Workbook amended to include Expressions of Interest	Procurement Manager	July 2014 October 2014	Completed	Guidelines updated and a consistent process is being used. Tendering Checklist and Workbook now incorporates Expressions of Interest.



Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
7	Low	<p>Expression of Interests processes follow the established tender process and use the same documentation. This should be reviewed again in six (6) months time.</p> <p>That the 'Request to Tender' template should be reviewed as follows:</p> <p>d) Page 28 – some guidance should be inserted for staff as to what "registration/licence number" information is applicable and to be specified.</p> <p>e) Page 29 – Referees – Council may wish to specify the number of referees to be included by the tenderer, and a comment that they may be contacted by Council.</p> <p>f) Page 30 – Financial Position – refer other comments within this report.</p>	<p>Request to Tender template updated to provide further information concerning registration/licensing requirements. Refer to Identity of Tenderer p17, Schedule p29, Organisational Profile p30, Subcontractors p31.</p> <p>Information regarding Referees updated. Refer to p30</p>	Procurement Manager	October 2014	Completed	Request to tender template updated as recommended.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
8	Medium	That the 'Procurement Policy' and the key requirements listed within should be disseminated to all staff on a regular basis. Council should consider regular procurement training or regular reminders in key compliance issues being sent to all Council staff involved in procurement.	Tendering training provided for all Directors and Managers in October/November 2013. Staff responsible for procurement have received training regarding Council policy and procedures. Reminders will be provided to staff on a regular basis.	Group Manager Organisational Performance	July 2014	Completed	Some procurement training provided between July and October 2014. Current Procurement Specialist provides face to face advice to staff re tendering procedures.
9	Low	That the 'Procurement Policy's' section on "Preferred Suppliers and Supply Contracts" should be reviewed following completion of the recent EOI process for preferred suppliers.	Policy reviewed and updated	Procurement Coordinator	November 2014	Completed	Procurement Policy updated and appears appropriate.
10	Low	That a regular audit be conducted on Council's use of suppliers listed as "Preferred Suppliers and Supply Contracts" to ensure compliance with the 'Procurement Policy' and contractual arrangements.	The use of Preferred Suppliers will be audited on a 6 monthly basis as part of Procurement auditing. Audit Work Plan endorsed by the Audit Committee.	Risk Management Coordinator	February 2015	Completed	Preferred supplier arrangements working effectively. 6 monthly audits by Risk Management Coordinator not checked.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
11	Medium	That the 'Purchasing and Tendering Guidelines', the 'Tendering Checklist, and Workbook' be reviewed in relation to the Financial Assessment process of the tenderers, and the contents of the Report to Council in relation to the Financial Assessment. Currently the guidelines (and tenders reviewed in practice) are unclear as to whether the financial assessment process refers to the assessment of the costs supplied by the tenderer to undertake the project, or the financial capacity of the tenderer to undertake the project. This may be better defined as two (2) distinct processes, as currently the review is unsure as to whether the financial capacity of the tenderer to undertake the project is adequately assessed.	Purchasing and Tendering Guidelines and Tender Checklist & Workbook amended to clarify assessment of price and financial capacity as separate processes. Refer to Section 11.4.3. Templates have been developed to separate the assessment of price and non price criteria.	Procurement Manager	July 2014	Completed	Assessment of pricing of the tenderer's bid is clearly separated from assessment of the financial capacity of the tenderer. Non price and price criteria are separately identified and assessed as per Guidelines and Checklist and Workbook.
12	Medium	That the 'Purchasing and Tendering Guidelines' be reviewed in relation to the allocation of weighting of assessment criteria. It is recommended that more	Purchasing & Tendering Guideline reviewed to provide further guidance concerning the allocation of weighting of assessment criteria. Refer to Section 11.5.	Procurement Manager	July 2014	Completed	Guidelines Section 11.5 appears adequate in conjunction with other changes to the tender

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
13	Low	<p>guidance be provided to staff, and/or examples provided.</p> <p>That there is no document available to list the nominated and authorised assessment Committee. For example, in tender 01/12, and this should be created and implemented.</p> <p>That copies of emails related to tender process should be stored in easily accessible format, that is, not in "tmp" format.</p> <p>Recommendation 16 – low</p>	<p>A template has been created for the nomination and approval of Tender Evaluation Panels.</p>	Procurement Manager	August 2014	Completed	<p>assessment process and templates.</p> <p>Template in place and being used.</p>
14	Low	<p>That the title/position of each person should be included on the Conflict of Interests forms. For example, "Anthony Clarke" has signed a form for tender 01/12, but it is unknown who this person is (whether staff member or independent expert).</p>	<p>Councils Document Management System captures emails in msg and htm file formats.</p>	Procurement Manager	July 2014	Completed	All documentation related to tenders is being captured and filed in Council's ECM system.
15	Low	<p>That the title/position of each person should be included on the Conflict of Interests forms. For example, "Anthony Clarke" has signed a form for tender 01/12, but it is unknown who this person is (whether staff member or independent expert).</p>	<p>Conflict of Interest Form has been amended to require position and name to be completed.</p>	Procurement Manager	July 2014	Completed	Conflict of Interest Form has been updated accordingly.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
16	Low	That Conflict of Interests provisions should be revisited by the Tender Assessment Committee following the receipt of all submissions (after closing date), to capture any conflict of interests that arise with any tenderer and a written record retained on file.	Purchasing and Tendering Guidelines and Tendering Checklist and Workbook amended to require completion of Conflict of Interest Disclosure Form following receipt of tender submissions. Refer to Section 12.1.	Procurement Manager	August 2014	Completed	System is in place and operational as per Section 12.1 of Guidelines.
17	Low	That it should be clearly documented when Tender Evaluation Committee members check for tenderer conformity.	Purchasing and Tendering Guidelines and Tendering Checklist and Workbook amended to clarify process relating to assessment of Tender conformity. Refer to Section 11.7.	Procurement Manager	October 2014	Completed	System is in place and operational as per Section 11.7 of Guidelines.
18	Low	That any internal and external email correspondence regarding a tender, should include in the subject line of the email the relevant tender number	Purchasing and Tendering Guidelines amended to require reference to the Tender No in all correspondence. Refer to Section 13.3.	Procurement Manager	August 2014	Completed	Section 14.3 of the Guidelines appears to adequately cover this recommendation.
19	Low	That Council retain copies of the actual tender newspaper advertisement for example, on tender 02/13 and either retain the original or scan the documents into council's record keeping system.	Tendering Workbook and Checklist amended to require newspaper advertisement to be registered into Councils Document Management System.	Procurement Manager	August 2014	Completed	Advertisements are being kept and filed in documentation management system.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
20	Low	That non-price criteria and price criteria be separated when evaluating tenders and scoring	A new template has been developed concerning evaluation of price. Purchasing and Tendering Guidelines have been amended to separate evaluation of price and non price criteria. Refer to Section 11.4.3	Procurement Manager	August 2014	Completed	Section 11.4.3 of the Guidelines and the assessment template have been amended accordingly.
21	Low	That tender records must clearly indicate how pricing was assessed and scored. On the tenders reviewed it is unclear as to how pricing, including individual rates have been assessed and scored, that is whether individual pricing has been considered or just the lump sum value; or how additional cost-savings proposed by tenderers have been considered.	A new template has been developed for evaluation of price which provides guidance concerning assessment of pricing.	Procurement Manager	July 2014	Completed	New template is in place and being used.
22	Low	That all tender documentation must be clear as to whether tender pricing is assessed including or excluding GST	Tender documentation updated to clarify all pricing is GST inclusive	Procurement Manager	July 2014	Completed	Included in Section 2.10 of the Request for Tender documentation.
23	Low	That guidelines be provided to members of Tender Evaluation Committees on how "price" is scored. The current 0-10 scoring criteria does not	New template has been developed for evaluation of price which now ranks tenderers according to price.	Procurement Manager	July 2014	Completed	New Pricing template in place.



Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
24	Low	<p>correspond to pricing for example, 0 = "does not meet requirements".</p> <p>That price be either scored separately, or scored in exactly the same way to all other criteria (0-10) and this is to be addressed at the commencement of the tender evaluation process, prior to the closing of the tenders.</p>	<p>A new template has been developed concerning evaluation of price. Purchasing and Tendering Guidelines have been amended to separate evaluation of price and non price criteria. Refer to Section 11.4.3</p>	Procurement Manager	August 2014	Completed	New Pricing template in place.
25	Low	<p>That tenders were not always complaint with the Strathfield Council Purchasing and Tendering Guidelines which states at section 11.10 Tender Panels that "copies of all tender assessment matrixes completed by members of the tender assessment panel must be placed on the tender file with the names of the members noted on each". This should be checked for compliance by the Procurement Coordinator.</p>	<p>Tendering Workbook and Checklist amended to specify signed assessment matrixes to be registered on the tender file.</p>	Procurement Manager	September 2014	Completed	Checklist in place and being used. Assessment matrixes are signed off by all Tender Panel members.
26	Low	<p>That the tender assessment matrixes/score sheet be amended to include a provision for the tender Committee member's name, signature and</p>	<p>Tender assessment matrixes have been amended to clearly indicate that they must include the name and signature and date completed.</p>	Procurement Manager	July 2014	Completed	Name and signature being recorded on assessment matrixes.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
27	Low	<p>date.</p> <p>That since there is no Tender Evaluation Report from the Tender Evaluation Committee, all members should sign the completed final Tender Evaluation sheet (which incorporates all scores) to reflect agreement on the final scores and ranking. It is recommended that a Tender Evaluation Report be implemented.</p>	<p>Tender Panel Evaluation Report template developed to document final scores and recommended tenderer. The report is signed by each Panel member.</p>	<p>Procurement Manager</p>	<p>September 2014</p>	<p>Completed</p>	<p>Tender Panel Evaluation Report template in place and being used.</p>
28	High	<p>That both referee checks and a finance check should be conducted for all tender processes and for at least the highest ranked and/or preferred tenderer. At least two (2) referee checks should be conducted on referees as determined by the Tender Evaluation Committee, and in accordance with agreed questions. Results of the referee checks and finance checks should be documented and then circulated to all members of the Tender Evaluation Committee for their review and consideration.</p>	<p>Purchasing & Tendering Guidelines amended to require 2 reference checks and a financial check for the highest ranked/preferred tenderer with the result being provided to the Tender Evaluation Panel. Refer to Section 11.4.3. A reference check template has been developed.</p> <p>Tender Panel Evaluation report template developed which identifies highest ranked/preferred tenderer/s to enable reference/financial checks to be carried out.</p> <p>Results of reference/financial</p>	<p>Procurement Manager</p>	<p>July 2014</p>	<p>Completed</p>	<p>Both referee checks and financial capacity checks are being conducted for the highest ranked tenderer.</p>

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
		Agreement should be reached by the Tender Evaluation Committee as to the preferred tenderer following these checks, prior to completing the Report to Council recommending the tenderer. It is recommended that this agreement be a formal process which reflects the information available to each committee member and their agreement on the recommended tenderer in the absence of a Tender Evaluation Report.	checks provided to Tender Evaluation Panel who then determine recommended tenderer.				
29	Low	That a standard minimum finance check be conducted for all tender processes to be determined by Strathfield Council. This could include a detailed financial check purchased through a broker. It is recommended that more detailed finance checks be undertaken for larger or higher value projects.	Purchasing and Tendering Guidelines amended to require that the Chief Financial Officer review the financial capacity of tenderers. Refer Section 11.4.3.	Procurement Manager	July 2014	Completed	Section 11.4.3 of the Guidelines appears adequate and is being implemented.
30	Low	That all procurement decision making should be formalised, signed and dated by the appropriate persons. There should be no handwritten notes	Documentation has been amended to provide for name, signature and date to be completed.	Procurement Manager	August 2014	Completed	Documentation updated and being utilised.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
31	Low	<p>from persons identified only by initials on council records.</p> <p>That the Report to Council for tender processes should also include:</p> <ul style="list-style-type: none"> a) Tender number b) Details of referee checks results c) Details of financial checks results 	<p>Purchasing and Tendering Guidelines amended to require information to be included. Refer to Section 11.12.</p> <p>Council report template developed outlining information to be included.</p>	<p>Procurement Manager</p> <p>Governance Coordinator</p>	October 2014	Completed	Report template includes this information as per Sections 11.11 and 11.12 of the Guidelines.
32	Low	<p>That the Tendering Checklist be reviewed to further break down the steps regarding the Tender Evaluation Committee. The Tendering Checklist currently has one step as: "Select Tender Evaluation Committee and arrange meeting to develop weighting criteria in order to assess tenders. Plan the date the Evaluation meeting will be held." This should be broken down into three (3) separate steps as they are significant to the entire process: 1) Select the Tender Evaluation Committee members, ensuring any conflict of interests are identified and managed; 2) Tender Evaluation Committee meet to develop weighting criteria prior to the</p>	<p>Tendering Checklist and Workbook has been amended to clearly identify action to be taken.</p>	Procurement Manager	July 2014	Completed	Separate procedures are in place and being implemented.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
		closing of the tender; and3) Tender Evaluation Committee set Evaluation meeting date/s.					
33	Low	That the names of the Tender Evaluation Committee selected should be also included into the checklist as they are currently not recorded in any documentation.	Tendering Checklist and Workbook has been amended to include names of Tender Evaluation Panel members.	Procurement Manager	July 2014	Completed	Procedures are in place and being implemented.
34	Low	That the assessment criteria weightings should be determined at a formal meeting and records kept of the final weightings and authorisation by each member of the Tender Evaluation Team. There is currently no formal documented process for the Tender Evaluation Team to establish and determine the weightings for the tender assessment criteria.	Purchasing and Tendering Guidelines and Tendering Workbook and Checklist amended to require Tender Panel to formally approve weighting of criteria. Refer to Section 11.5.	Procurement Manager	July 2014	Completed	Procedures are in place and being implemented.
35	Low	That the actual weightings be excluded from the public and retained by the Tender Evaluation Committee only. It is noted that the Purchasing and Tendering Guidelines refer to the weightings being included onto the tender documentation.	Purchasing and Tendering Guidelines and Tendering Workbook and Checklist amended to clarify weighting of criteria is not included in the tender documentation.	Procurement Manager	July 2014	Completed	Guidelines and Checklist have been amended accordingly and are being implemented.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
36	Low	That the Tender Evaluation Committee be determined and authorised at the same time the General Manager's approval is sought by memo to hold a tender process. Part of this memo could include the proposed Tender Evaluation Committee, which then also gains appropriate authorisation.	Tendering Workbook and Checklist amended and template developed to require appointment of Tendering Evaluation Panel members at the same time as approval to invite tenders.	Procurement Manager	July 2014	Completed	Approval to invite Tenders template includes a section on tender panel composition.
37	Low	That there be a proforma document for staff to use to complete the memo seeking the General Manager's authorisation to hold a tender process. This will ensure standard and complete information is included in this memo to the General Manager for all tender and EOJ processes.	Template developed for General Manager authorisation to proceed with a tender.	Procurement Manager	July 2014	Completed	Template in place and being used.
38	Low	That Tender Evaluation Committee members' surnames (in addition to just a first name or initials) should always be included within all tender documentation, along with their position title, to ensure completeness of records.	Documentation has been amended to include name, signature and date.	Procurement Manager	July 2014	Completed	Templates have been amended to include full details of panel members.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
39	Low	That RFT documentation be made clear as to what "necessary Licences and Registrations" are required by the tenderer for each tender. It is recommended that this be made clear as to what is required to be listed by each tenderer for their company <u>and</u> their subcontractors. This will also allow Council to check on the currency of the required licences and registrations.	Request to Tender template updated to provide further information concerning registration/licensing requirements. Refer to Identity of Tenderer p17, Schedule p29, Organisational Profile p30, Subcontractors p31.	Procurement Manager	October 2014	Completed	Template has been updated to request this information from tenderers and their contractors.
40	Low	That all draft tender documentation that requires approval by a particular staff member be officially approved by that person through memo, email, or other official means.	Tendering Checklist and Workbook amended to require formal approval of draft tender documentation.	Procurement Manager	September 2014	Completed	Checklist and Workbook amended accordingly.
41	Low	That all draft documentation be identified via version number so it is clear what document version a staff member has approved.	Tendering Checklist and Workbook amended to require that draft documentation be identified by a version number.	Procurement Manager	September 2014	Completed	Checklist and Workbook require documents to be identified by the version number.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
42	Low	That more than two (2) compliant companies should always be invited to tender following an Expression of Interest process. All compliant companies arising from the Expression of Interest process should also be invited to submit a tender.	Purchasing and Tendering Guidelines amended to require that all compliant submissions from an EOJ process be invited to tender and that a minimum of 3 be invited where possible. In exceptional circumstances, less than 3 can be invited. Refer to 11.1.	Procurement Manager	October 2014	Completed	Section 11.1 of the Guidelines addresses this recommendation.
43	Medium	That the General Manager address the issues raised in this report regarding the Tender for the Provision of Audit Services with the Director Corporate Services.	Issues raised in connection with the Audit Services Tender addressed.	General Manager	February 2014	Completed	Not reviewed by Internal Audit
44	Low	That Council considers all recommendations within this report and update any policy, procedures and templates as appropriate.	All recommendations considered and relevant documentation updated accordingly.	Director Corporate Services	November 2014	Completed	Policy, Guidelines, Checklists and Templates have all been updated as required.
45	Medium	That the various actions listed within the report for Directors and Group Managers regarding the use of contractors, and the need to either run tender processes or further investigate contract variations should be actioned as a priority.	Report recommendations referred to all Directors. Training provided for all Directors and Managers concerning Tendering. Contract Management training provided for relevant staff. Quarterly monitoring of contractor expenditure has been implemented to identify	Directors Managers Procurement Manager	June 2014	Completed	Quarterly monitoring of contractor expenditure is in place. Audit was advised that training programs were delivered in mid 2014.

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
46	Low	That Regular procurement monitoring be implemented for any preferred suppliers engaged under the recent Expression of Interest process, to ensure that across the entire Council total spend does not exceed \$150,000 for each contractor, and that staff are aware when the tender process should be initiated for work that would normally involve a preferred supplier.	possible non compliances. Council has received legal advice that multiple separate engagements of Preferred Suppliers which results in exceeding \$150,000 total expenditure does not require a tender to be called. Quarterly monitoring of contractor expenditure will be carried out to highlight any possible expenditure which may require a tender to be carried out.	Legal Officer Procurement Coordinator	August 2014	Completed	Quarterly monitoring of contractor expenditure in place. April 2015 report reviewed.
47	Low	That all of the Strathfield Council tenders on the tender register would qualify as a Class 1 contract and therefore should appear on the Register of Government Contracts.	Contracts Register checked against Tender Register. All contracts updated. Legal Officer now responsible for reviewing Contracts Register and Tender Register on a monthly basis.	Legal Officer	July 2014	Completed	All accepted tenders are now in Contract Register.
48	Low	That future Council Annual Reports should accurately report all applicable contracts awarded for the period for \$150,000 and over, in accordance with the Local Government (General) Regulation 2005 clause 217 (a2).	Annual Report will include all contracts as per the Contracts Register.	Corporate Strategy Coordinator	November 2014	Completed	Annual Report for 2013/2014 included section on contracts over \$150,000

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
49	Low	That Council update its Contracts Register to include all applicable contracts awarded.	Contracts Register reviewed and updated. Updating of the register to be undertaken by the Legal Officer and reviewed on a monthly basis.	Legal Officer	July 2014	Completed	Contracts Register appears up to date.
50	Medium	That a regular audit be conducted on tender processes to ensure that they are compliant with legislation and Council procedures. This could be done by Council's Corporate Strategy Coordinator, Ms Cathy Jones.	Auditing of tender processes will be carried out on a 6 monthly basis. Audit Work plan endorsed by the Audit Committee.	Risk Management Coordinator	February 2015	Completed	InConsult audit examined tender process which is being correctly followed.
51	Low	That consideration be given to providing the Procurement Coordinator with additional formal procurement training and/or exposure to larger councils and their tender processes.	Procurement Coordinator has undertaken the following training/ development May 2013 Certificate IV in Government October 2013 Tendering Requirement October 2013 Contract Management November 2013 Local Government Procurement Annual Conference. Further guidance and support provided by the Procurement Manager.	Procurement Manager	July 2014	Completed	Procurement Specialist provides mentoring to the Procurement Coordinator.
52	High	That Council consider the addition of a higher level Procurement Manager position in its Corporate structure with	Procurement Manager engaged in May 2014 to implement recommendations and provide strategic advice	Director Corporate Services	May 2014	Completed	Procurement Specialist position created reporting to the Director



Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
		<p>the position being organisationally focussed on strategic procurement. This position should review all purchasing within Council; ensure all staff involved in purchasing are compliant, and if not, take appropriate action to ensure compliance; conduct regular purchasing checks from purchase through to approval, receipt of goods and processing through Finance; and overview contract management and report discrepancies to the General Manager for action. The position would also focus on the strategic procurement of high spend items which is likely to provide significant savings for Council. It is recommended that this position would initially report directly to the General Manager and not to a Director. Council could still retain the current Procurement Coordinator position as an assistant role to the Procurement Manager position, and continue to run the tender processes and undertake general procurement</p>	<p>concerning Procurement.</p>				<p>Corporate Services. Current incumbent has extensive state and local government procurement experience. Role is focused on procurement strategy and policy and procedure development and oversight of procurement and tendering processes.</p>

Item No.	Rating	Report Recommendation	Corrective and Preventative Actions	Responsible Officer	Due Dates and Key Milestones	Current Status	Internal Auditor Comments
53	Low	<p>administrative duties.</p> <p>That Council consider the inclusion of a probity advisor/auditor on tender panels on an irregular basis to obtain valuable external feedback and review on procurement compliance.</p>	<p>Councils Risk Management Officer will act as Probity Advisor for tenders. Selected tenders are subject to external management and/or probity advice via organisations such as Local Government Procurement.</p>	Procurement Manager	July 2014	Completed	Evidence sighted of Local Government Procurement management of tender for FOGO contract.
54	Medium	That Council continue to review and implement the report recommendations made by Mr Viv Hudson, and Ms Marnie Van Dyk, Risk Management Coordinator, as a matter of priority.	<p>Recommendations implemented including new procedures concerning the issuing of Purchase Orders.</p>	Procurement Manager	April 2014	Completed	New centralised purchase order procedures are in place and working effectively.



Appendix 2: Detailed Internal Audit Findings

Finding 1: Tender Assessment		Priority: Medium
<p>Tender evaluation criteria were established for all tenders reviewed by audit. For the tenders that had been finalised, the Tender Evaluation Report clearly identified the supplier to be awarded the tender and that tender evaluation criteria were properly applied. Reports to Council were sighted for the 3 finalised tenders.</p> <p>There was no assessment on file for the 2 tenders which are still current. Tender submissions for both of these closed on 25/11/14 so it is now over 5 months after the tender submission closing date. One of these tenders was for options for food and organic material waste collection and disposal which is quite a complex tender while the other was for Media and Communication Services where two staff conflicts of interest were identified with one of the tenderers. Extended delays in finalising tenders could lead to the invalidation of the prices and conditions submitted by the tenderers.</p>		
<p>Recommendation</p> <p>1.1 Council should endeavour to finalise tenders as soon as possible after the tender submission period has closed and, in particular, should finalise evaluation of the two tenders currently still open as soon as possible.</p>		
<p>Person Responsible</p>	<p>Director Corporate Services</p>	
<p>Due Date</p>	<p>31 July 2015</p>	
<p>Management Comment:</p> <p>Agreed. Tender 2014/04 - Collection and Processing of Food Organics / Garden Organics has been delayed as a result of the scale and complexity of the tender proposals received and the detailed analysis required for the submissions.</p> <p>Tender 2014/08 - Public Relations and Media Communications has been delayed as a result of staff turnover. It is anticipated that reports concerning the tenders will be submitted to the July 2015 Council Meeting.</p>		

Finding 2: Managing Conflicts of Interest		Priority: Medium	
<p>The Procurement Policy and Purchasing and Tendering Guidelines outline the need for staff to declare a conflict of interest where one exists and how to address the conflict. In the tenders that were reviewed by audit there were two cases recorded of a conflict of interest being identified with a former employee now working for a tenderer for Council's Media and Communication Services.</p> <p>It is evident that staff are aware of the requirement to declare their conflicts of interest and are completing the prescribed forms. In such cases these staff members should be removed from the tender evaluation process. There was no detail on the file of how these conflicts of interest were addressed by management as the tender has not been assessed as yet.</p>			
Recommendation		Person Responsible	Director Corporate Services
2.1 Council should ensure that those staff members with a disclosed conflict of interest are removed from the Tender Assessment Panel deliberations for the tender.		Due Date	31 July 2015
		Management Comment:	
		Agreed. Council's current procedures provide for the determination of any conflict of interest to be made by management. The matter referred to has now been determined with an alternate panel member appointed.	



Finding 3: Local Government Procurement and State Government Contracts

Priority: Low

Council regularly uses Local Government Procurement (LGP) to source preferred suppliers. State Government Contracts and Procurement Australia Contracts are also used where appropriate.

LGP and State Government Contract references are included on the purchase order. However there is generally no evidence on the supplier invoice that the prices charged for the goods and services supplied are at or below the government contract rate. Council has recently changed its Procurement Policy to require competitive quotes for purchases over \$10,000 for goods and services supplied under LGP and State Government Contracts. Council is proposing to use Vendor Panel, an online procurement system, to assist in this regard.

Recommendation

3.1 Where appropriate Council should continue to seek quotes from LGP and State Government Contract suppliers for supply of specific goods and services to ensure that Council is obtaining the LGP price or better through a competitive process. The proposed use of Vendor Panel is supported to achieve this outcome.

3.2 Where these contracts are used, Council should verify that the price charged is at or below the contract rate

Person Responsible

Procurement Specialist

Due Date

31 August 2015

Management Comment:

Agreed. Council currently utilises suppliers under LGP and State Government contracts. Council's Purchasing and Tendering Guidelines outline the use of Vendor Panel in this process as well as the requirement that prices being quoted are in accordance with the terms of the contract.



Finding 4: Preferred Supplier Panels

Priority: Low

Strathfield Council has a range of preferred supplier panels for regularly sourced services and goods. Functional requirements and detailed specifications are developed prior to going to the market for companies to apply for inclusion on these Panels. Preferred Supplier Panels were selected in 2014 after expressions of interest. Standard hourly rates for services were sought by Council as well as annual fees for specific types of works.

Some areas selected for preferred supplier arrangements do not warrant this status as the volumes of work are not sufficient for that type of service. In these cases individual job quotes should be called for these items in accordance with Council's Procurement Policy and Purchasing and Tendering Guidelines.

Recommendation

4.1 Council should review the range of preferred supplier arrangements and only seek expressions of interest where the frequency of work justifies going into preferred supplier arrangements.

Person Responsible

Procurement Specialist

Due Date

31 December 2015

Management Comment:

Agreed. Council will ensure only appropriate procurement will be sourced via preferred supplier arrangements.



Finding 5: Standing Order Purchases		Priority: Medium	
<p>There is a risk that standing orders are used excessively to avoid standard procurement procedures exposing Council to risk of fraudulent activity and financial loss.</p> <p>Standing orders should be used for repetitively required services of the same nature. The level of standing order usage is currently being reviewed by the Procurement Specialist. The review is to be focused on determining the categories of goods and services that should be covered by standing orders.</p>			
Recommendation		Person Responsible	Procurement Specialist
5.1 Council should review the categories of goods and services for which standing orders should be allocated.		Due Date	31 December 2015
		Management Comment:	
		Agreed. The types of goods and services for which standing orders are raised will be reviewed effective from 1 July 2015.	



Finding 6: Multiple Purchases from the Same Supplier	Priority: Medium
<p>There is a risk that procurement of multiple goods or services from the same supplier during the course of the year may result in expenditure exceeding the \$150,000 thresholds for calling of tenders. Council obtained legal advice in 2014 that it can issue a number of unrelated contracts to a single service provider where the value of each contract is less than \$150,000 but the aggregate value of all contracts issued to that service provider over time may be greater than \$150,000 without the requirement to call tenders. However, multiple contracts that exceed \$150,000 could potentially be the result of “order splitting” to avoid having to call tenders. It may also occur as a result of creating a standing order against which multiple purchases are charged.</p> <p>Council has recently implemented a quarterly review of supplier payments that are over \$100,000 for the year to determine whether this is occurring. Review of the most recent report as at 14 April 2015 shows that all payments to service providers in excess of \$100,000 in the current year are justified by existing contracts or ongoing service supply arrangements pending decisions on future contract arrangements. If expenditure to any one supplier exceeds \$150,000 per annum Council should take steps to ensure that order splitting has not occurred and that no single good or service exceeds \$150,000.</p>	
Recommendation	Person Responsible
6.1 Where the annual value of goods or services supplied by a single supplier not appointed via a tender process exceeds \$150,000, Council should take steps to ensure that order splitting has not occurred and that no single good or service exceeds \$150,000.	Due Date
	Management Comment:
	<p style="text-align: center;">Procurement Specialist</p> <p style="text-align: center;">31 December 2015</p> <p>Agreed. Council currently undertakes periodic review of expenditure by supplier to ensure that tendering requirements are being met.</p>



Finding 7: Corporate Credit Card Usage		Priority: Medium	
<p>Inadequate procedures covering Corporate Credit Card use could lead to potential for misuse of the cards.</p> <p>There is no policy in place for corporate credit card use other than section 4.4 of the Purchasing and Tendering Guidelines. This is not detailed enough and does not impose any limits on the use of corporate credit cards. Audit testing revealed that one officer purchased goods for \$745 that should have been obtained by purchase order. It was noted that he had been instructed to comply with procurement policy in future. There were also two purchases by another officer over \$500. One was for a councillor computer for \$1199 and the other for \$3850 for 20 job advertisement credits for Hallmark Editions. Again these could have been acquired through the normal procurement systems.</p> <p>Corporate Credit Cards are reconciled on a monthly basis. However, there is no overall authorisation of credit card usage other than the officer authorising their own expenditure.</p>			
Recommendation		Person Responsible	Director Corporate Services
7.1 Council should develop a detailed Corporate Credit Card Usage Policy.		Due Date	31 August 2015
7.2 The policy should require someone senior to the card holder to authorise payment of the monthly credit card accounts.		Management Comment:	
7.3 Council should regularly monitor corporate credit card purchases to ensure they are only used for purchases as per the Corporate Credit Card Policy.		Agreed. Guidelines concerning the use Corporate Credit Cards will be implemented which address the issues identified.	



Finding 8: Procurement Finalisation		Priority: Low
<p>There is a risk that invoices are paid for amounts that exceed the purchase order price without appropriate authorisation.</p> <p>If the invoice price is different to the purchase order price, the original purchase order is adjusted to the new price after authorisation by the purchasing officer provided it is within their approved delegation level. For part payments, the system records progressive totals and, when the order amount is exceeded, payment is referred back to the Authorising Officer to approve if it is a minor variation or to raise a new purchase order for standing orders for the balance of the period or services to be provided under the order.</p> <p>Creditors staff generally refer invoices that significantly differ from the purchase order amount back to the authorising officer and Procurement Specialist if no comments about the reason for the difference are on the approval of the invoice. Creditors staff usually pay accounts where the difference is minor or attributable to reasonable freight or delivery costs not included on the purchase order.</p> <p>There are no formal written guidelines to support these arrangements.</p>		
Recommendation		
<p>8. Council should develop formal guidelines for processing of invoices that do not match purchase orders. These should be incorporated into the Purchasing and Tendering Guidelines and made known to all staff with authority to sign off purchase orders and invoices.</p>		
Person Responsible	Director Corporate Services	
Due Date	30 September 2015	
Management Comment:		
Agreed. Guidelines will be implemented to clarify the requirements.		