



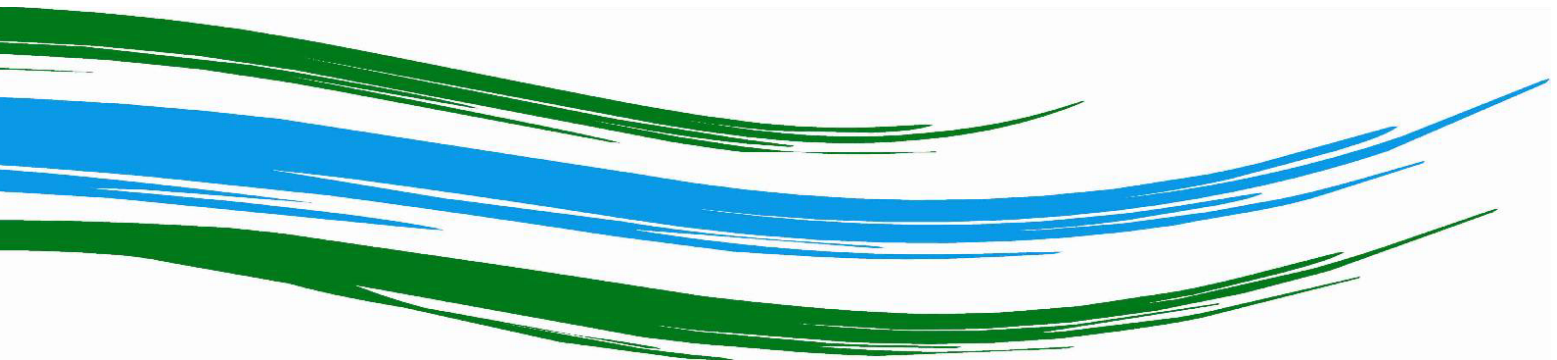
# Camden Council

## Business Paper

**Ordinary Council Meeting**  
**13 May 2014**

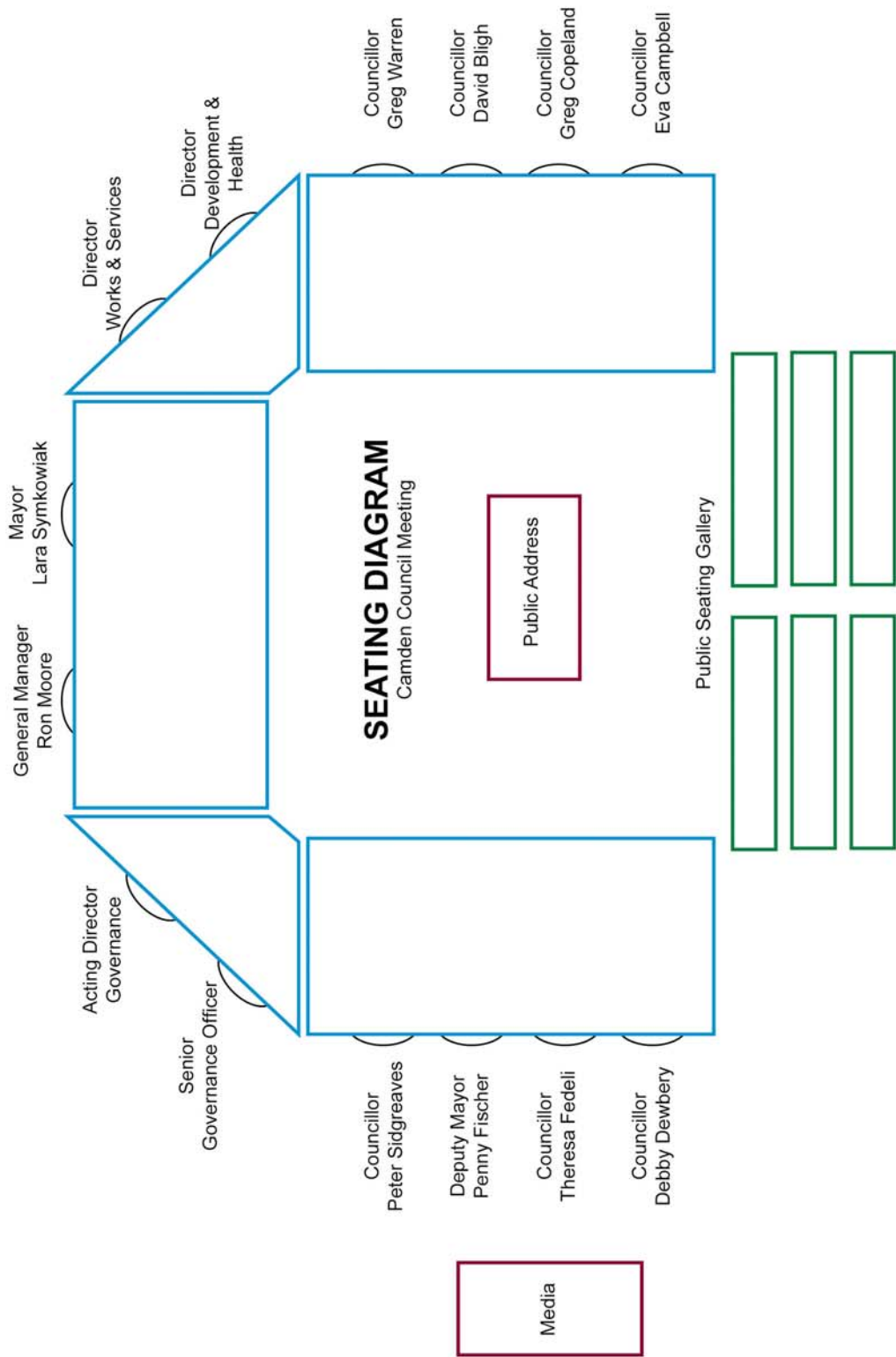
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**Community Room, Camden Civic Centre**  
**Oxley Street**  
**Camden**



## COMMON ABBREVIATIONS

AEP	Annual Exceedence Probability
AHD	Australian Height Datum
BCA	Building Code of Australia
CLEP	Camden Local Environmental Plan
CP	Contributions Plan
DA	Development Application
DECCW	Department of Environment, Climate Change & Water
DCP	Development Control Plan
DDCP	Draft Development Control Plan
DoPE	Department of Planning & Environment
DWE	Department of Water and Energy
DoH	Department of Housing
DoT	NSW Department of Transport
EIS	Environmental Impact Statement
EP&A Act	Environmental Planning & Assessment Act
EPA	Environmental Protection Authority
EPI	Environmental Planning Instrument
FPL	Flood Planning Level
GCC	Growth Centres Commission
LAP	Local Approvals Policy
LEP	Local Environmental Plan
LGA	Local Government Area
MACROC	Macarthur Regional Organisation of Councils
OLG	Office of Local Government, Department of Premier & Cabinet
OSD	Onsite Detention
REP	Regional Environmental Plan
PoM	Plan of Management
RL	Reduced Levels
RMS	Roads & Maritime Services (incorporating previous Roads & Traffic Authority)
SECTION 149 CERTIFICATE	Certificate as to zoning and planning restrictions on properties
SECTION 603 CERTIFICATE	Certificate as to Rates and Charges outstanding on a property
SECTION 73 CERTIFICATE	Certificate from Sydney Water regarding Subdivision
SEPP	State Environmental Planning Policy
SRA	State Rail Authority
SREP	Sydney Regional Environmental Plan
STP	Sewerage Treatment Plant
VMP	Vegetation Management Plan
WSROC	Western Sydney Regional Organisation of Councils



*Please do not talk during Council Meeting proceedings.  
Recording of the Council Meeting is not permitted by members of the public at any time.*



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## ORDINARY COUNCIL

### ORDER OF BUSINESS - ORDINARY COUNCIL

Prayer .....	6
Acknowledgment of Country.....	7
Recording of Council Meetings.....	8
Apologies.....	9
Declaration of Interest.....	10
Public Addresses .....	11
Confirmation of Minutes.....	12
Mayoral Minute .....	13
ORD01     Fit Out and use of Units 5 and 6 as an Occasional Outside of School Hours (OOSH) Centre at 5-9 Iando Way, Currans Hill.....	14
ORD02     Community Management Scheme for the Oran Park Town Centre .....	37
ORD03     2013/14 - 2016/17 Revised Delivery Program and 2014/15 Draft Operational Plan (Budget).....	50
ORD04     Local Government NSW - Request for Legal Assistance - Canterbury City Council .....	64
ORD05     Tender for Consultancy Services For Work Health And Safety Management System .....	66
ORD06     Closure Of The Meeting To The Public.....	71

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## ORDINARY COUNCIL

**SUBJECT: PRAYER**

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### PRAYER

Almighty God, bless all who are engaged in the work of Local Government. Make us of one heart and mind, in thy service, and in the true welfare of the people we serve: We ask this through Christ our Lord.

Amen

\*\*\*\*\*

Almighty God, give thy blessing to all our undertakings. Enlighten us to know what is right, and help us to do what is good: We ask this through Christ our Lord.

Amen

\*\*\*\*\*

Almighty God, we pause to seek your help. Guide and direct our thinking. May your will be done in us, and through us, in the Local Government area we seek to serve: We ask this through Christ our Lord.

Amen

\*\*\*\*\*

### AFFIRMATION

We affirm our hope and dedication to the good Government of Camden and the well being of all Camden's residents, no matter their race, gender or creed.

We affirm our hope for the sound decision making by Council which can improve the quality of life in Camden.

*Either – "So help me God" or "I so affirm" (at the option of councillors)*

\*\*\*\*\*

We pledge ourselves, as elected members of Camden Council, to work for the provision of the best possible services and facilities for the enjoyment and welfare of the people of Camden.

*Either – "So help me God" or "I so affirm" (at the option of councillors)*

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## **ORDINARY COUNCIL**

**SUBJECT: ACKNOWLEDGMENT OF COUNTRY**

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I would like to acknowledge the traditional custodians of this land on which we meet and pay our respect to elders both past and present.

## **ORDINARY COUNCIL**

**SUBJECT: RECORDING OF COUNCIL MEETINGS**

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In accordance with Camden Council's Code of Meeting Practice and as permitted under the Local Government Act this meeting is being audio recorded by Council staff for minute taking purposes.



## **ORDINARY COUNCIL**

**SUBJECT: APOLOGIES**

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Leave of absence tendered on behalf of Councillors from this meeting.

### **RECOMMENDED**

**That leave of absence be granted.**

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## ORDINARY COUNCIL

**SUBJECT:       DECLARATION OF INTEREST**

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NSW legislation provides strict guidelines for the disclosure of pecuniary and non-pecuniary Conflicts of Interest and Political Donations.

Council's Code of Conduct also deals with pecuniary and non-pecuniary conflict of interest and Political Donations and how to manage these issues (Clauses 7.5 -7.27).

Councillors should be familiar with the disclosure provisions contained in the Local Government Act 1993, Environmental Planning and Assessment Act, 1979 and the Council's Code of Conduct.

This report provides an opportunity for Councillors to disclose any interest that they may have or Political Donation they may have received relating to a Report contained in the Council Business Paper and to declare the nature of that interest.

### **RECOMMENDED**

**That the declarations be noted.**

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## ORDINARY COUNCIL

**SUBJECT: PUBLIC ADDRESSES**

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The Public Address segment (incorporating Public Question Time) in the Council Meeting provides an opportunity for people to speak publicly on any item on Council's Business Paper agenda or on any matter within the Local Government area which falls within Council jurisdiction.

Speakers must book in with the Council office by 4.00pm on the day of the meeting and must advise the topic being raised. Only seven (7) speakers can be heard at any meeting. A limitation of one (1) speaker for and one (1) speaker against on each item is in place. Additional speakers, either for or against, will be identified as 'tentative speakers' and should only be considered where the total number of speakers does not exceed seven (7) at any given meeting.

Where a member of the public raises a question during the Public Address segment, a response will be provided where Councillors or staff have the necessary information at hand; if not a reply will be provided at a later time. There is a limit of one (1) question per speaker per meeting.

All speakers are limited to 4 minutes, with a 1 minute warning given to speakers prior to the 4 minute time period elapsing.

Public Addresses are recorded for administrative purposes. It should be noted that speakers at Council meetings do not enjoy any protection from parliamentary-style privilege. Therefore they are subject to the risk of defamation action if they make comments about individuals. In the event that a speaker makes potentially offensive or defamatory remarks about any person, the Mayor/Chairperson will ask them to refrain from such comments.

The Mayor/Chairperson has the discretion to withdraw the privilege to speak where a speaker continues to make inappropriate or offensive comments about another person.

### **RECOMMENDED**

**That the public addresses be noted.**

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## **ORDINARY COUNCIL**

**SUBJECT: CONFIRMATION OF MINUTES**

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Confirm and adopt Minutes of the Ordinary Council Meeting held 29 April 2014

**RECOMMENDED**

**That the Minutes of the Ordinary Council Meeting held 29 April 2014, copies of which have been circulated, be confirmed and adopted.**

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## **ORDINARY COUNCIL**

**SUBJECT:       MAYORAL MINUTE**

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Consideration of Mayoral Minute (if any).



ORD01

## ORDINARY COUNCIL

ORD01

**SUBJECT: FIT OUT AND USE OF UNITS 5 AND 6 AS AN OCCASIONAL OUTSIDE OF SCHOOL HOURS (OOSH) CENTRE AT 5-9 IANDO WAY, CURRANS HILL**  
**FROM:** Director, Development & Health  
**TRIM #:** 14/48755

**APPLICATION NO:** 951/2013  
**PROPOSAL:** Fit out and use of units 5 and 6 as an OOSH (Occasional Outside of School Hours) centre  
**PROPERTY ADDRESS:** Units 5 and 6, 5-9 Iando Way, Currans Hill  
**PROPERTY DESCRIPTION:** Lot 1168, DP 1158630  
**ZONING:** B1 Neighbourhood Centre  
**OWNER:** Australasian Commercial Property Group Pty Ltd  
**APPLICANT:** Urbanesque Planning Pty Ltd

### PURPOSE OF REPORT

The purpose of this report is to seek Council's determination of a development application (DA) for the fit out and use of Units 5 and 6 as an Occasional Outside of School Hours (OOSH) Centre at 5-9 Iando Way, Currans Hill.

The DA is referred to Council for determination as there remain unresolved issues received in one submission from the public and there is a proposed variation to the Camden Development Control Plan 2011 (DCP).

### SUMMARY OF RECOMMENDATION

That Council determine DA 951/2013 for the fit out and use of Units 5 and 6 as an OOSH pursuant to Section 80 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by granting consent subject to the conditions contained in this report.

### EXECUTIVE SUMMARY

Council is in receipt of a DA for the fit out and use of units 5 and 6 as an OOSH centre at 5-9 Iando Way, Currans Hill.

The DA has been assessed against the *Environmental Planning and Assessment Act 1979*, the Environmental Planning and Assessment Regulation 2000, relevant Environmental Planning Instruments, Development Control Plans and policies. The outcome of this assessment is detailed further in this report.

The DA was publicly exhibited for a period of 14 days in accordance with Camden Development Control Plan 2011 (DCP). One submission was received (objecting to the proposed development). **A copy of the submission is provided with the Business Paper supporting documents.** In addition Council received a petition from the applicant in support of the application signed by 41 local residents.

The issues raised in the submission relate to the potential parking impacts on an adjacent store known as Sam's Take Away, adverse economic impacts on Sam's Take

away due to loss of sales, the issue of 15 minute timed on-street parking zones on Lando Way and the removal of the undercover area in a nearby public reserve.

The parking impacts of the proposed development have been assessed as part of the application. The development complies with the car parking rates of the DCP. The OOSH centre requires a total of 6 car parking spaces and a total of 7 spaces have been allocated to Units 5 and 6 during the assessment of the original DA for the parent building. These spaces are located to the rear of Units 5 and 6.

A condition is recommended requiring the preparation of a Plan of Management for the operation of the OOSH centre to instruct parents to utilise the existing parking at the rear of the site for drop off and pick up's. This will encourage parents of children who attend the facility to utilise the designated spaces at the rear of Units 5 and 6 as opposed to the on-street parking which is located adjacent to Sam's Take Away store.

The economic impact of the proposed OOSH centre on the adjacent Sam's Take Away store is not a consideration under Section 79C of the *EP&A Act*. However, it is considered that the nature of the B1 Neighbourhood Centre zone may encourage parents picking up or dropping off children at the OOSH centre to utilise the services available within the zone, and therefore the store may benefit from the operation of the centre, rather than be economically impacted by it.

The issue of the timed on-street parking discriminating against disabled people is not an issue for this DA in that the timed parking relates to on-street spaces located in front of the IGA store. The subject site has two accessible parking spaces in relation to disabled parking requirements.

The removal of the undercover area in a nearby public reserve is not relevant to the DA. It is understood that the removal of the gazebo area was for the safety of the community to discourage underage drinking and loitering.

The applicant proposes a variation to the DCP in relation to the proposed hours of operation. The DCP limits the hours of operation for a child care centre from 7am to 6pm, however the applicant proposes operational hours from 7am to 7pm. The DCP also states that Council may consider longer hours if no adverse impacts on neighbouring properties will occur.

Council staff have assessed this DCP variation and recommend that it be supported. There will be no significant adverse impacts on surrounding neighbours as a result of the proposal in relation to noise, traffic or parking. A number of conditions are also recommended to ensure the operations of the OOSH centre will not cause nuisance to adjoining properties.

Based on the assessment, it is recommended that the DA be approved subject to the conditions contained in this report.

## AERIAL PHOTO



## THE SITE

The site is commonly known as Units 5 and 6, 5-9 Iando Way, Currans Hill and is legally described as Lot 1168, DP 1158630.

The site has a frontage of 63.5m to Iando Way, 22m to Currans Hill Drive, a depth of 28.54m and an overall area of 2,238.54m<sup>2</sup>.

The site currently accommodates a two storey neighbourhood centre comprising of 6 units including hair salon, restaurant, and grocery store (IGA) and associated landscaping, vehicular access and loading area, and 25 space car park.

The surrounding properties are characterised by a mix of small commercial developments, schools, child care centres and low-density residential development.

The Manooka Valley residential subdivision and Gregory Hills residential suburb lies to the north of this area whilst to the east exists the LGA boundary for Camden and Campbelltown. To the south lies Narellan Road with the Mount Annan residential suburb on the opposite side. To the east is the industrial suburb of Smeaton Grange with Camden Valley Way located on the opposite side.



## HISTORY

The relevant development history of the site is summarised in the following table:

Date	Development
26 April 2007	Construction of a neighbourhood centre consisting of two buildings and a total of 10 commercial tenancies approved by DA 1163/2006
11 July 2008	Modification to original approval to amend the building design to create one building and minimise number of units to a total of 6 through the consolidation of 4 units to accommodate a mini-supermarket, and other modifications approved at Council Meeting by DA 1163(2)/2006
7 August 2008	Modification to original approval to make minor amendments to the building design approved by DA 1163(3)/2006

## THE PROPOSAL

DA 951/2013 seeks approval for the fit out and use of Units 5 and 6 as an OOSH (Occasional Outside of School Hours) centre.

Specifically the proposed development involves:

- fit out including removal of internal stud walls, new floor to ceiling glazed doors, laying of rubber surfaces, reconfiguration of existing kitchen and bathroom facilities;
- use as an OOSH centre including vacation care;
- care for up to 21 school-aged children from age 5 to 12;
- employment of 2 staff members;
- hours of operation from 7am to 7pm Monday to Friday: and
- erection of 1.8m high glass fencing and shade cloth structure in outside play area 2.

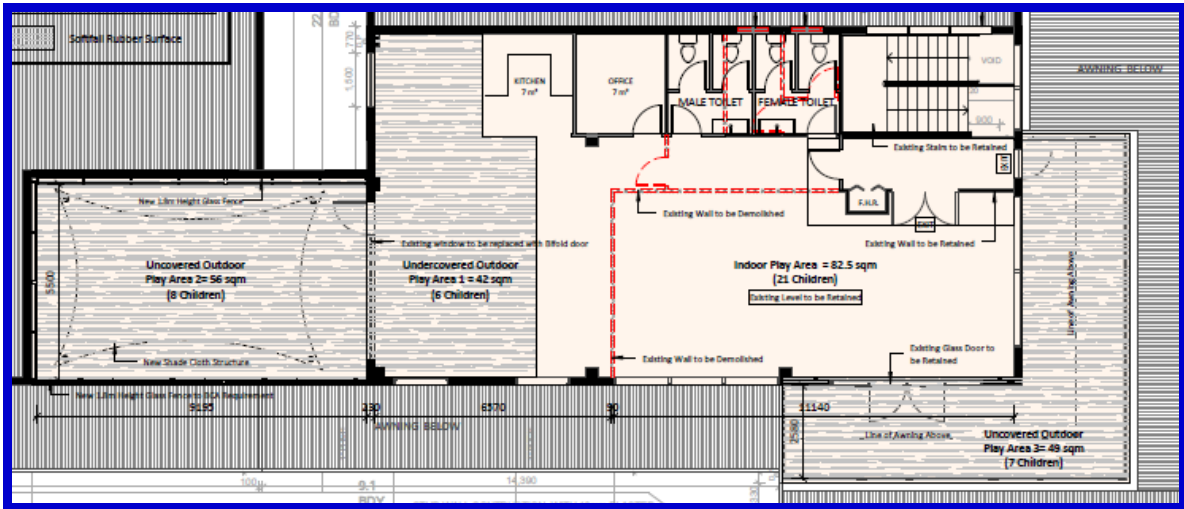
No signage is proposed as part of this application and will be subject to a separate application, where required.

The value of the works is \$50,000.00

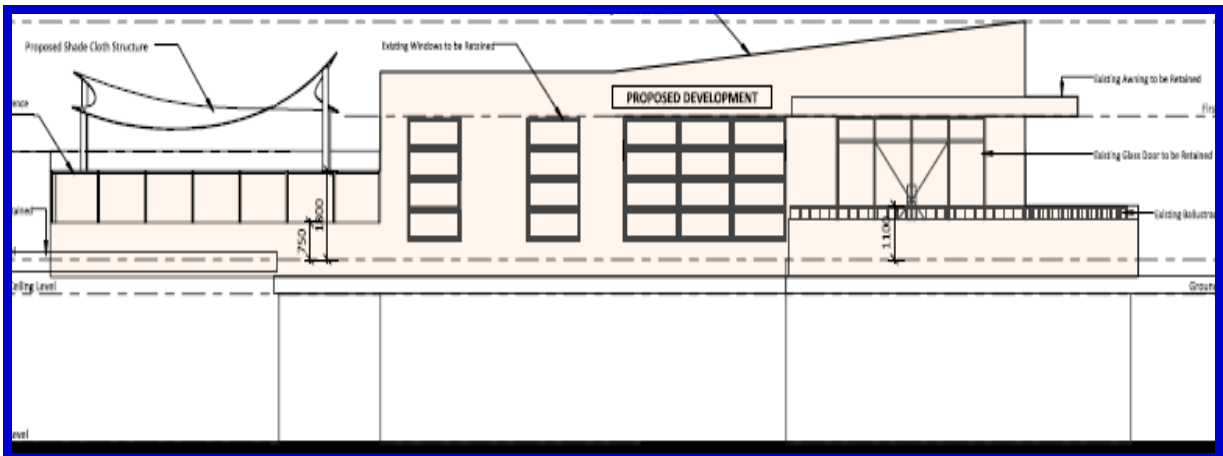
**A copy of the proposed plans is provided as attachment 1 to this report.**

ORD01

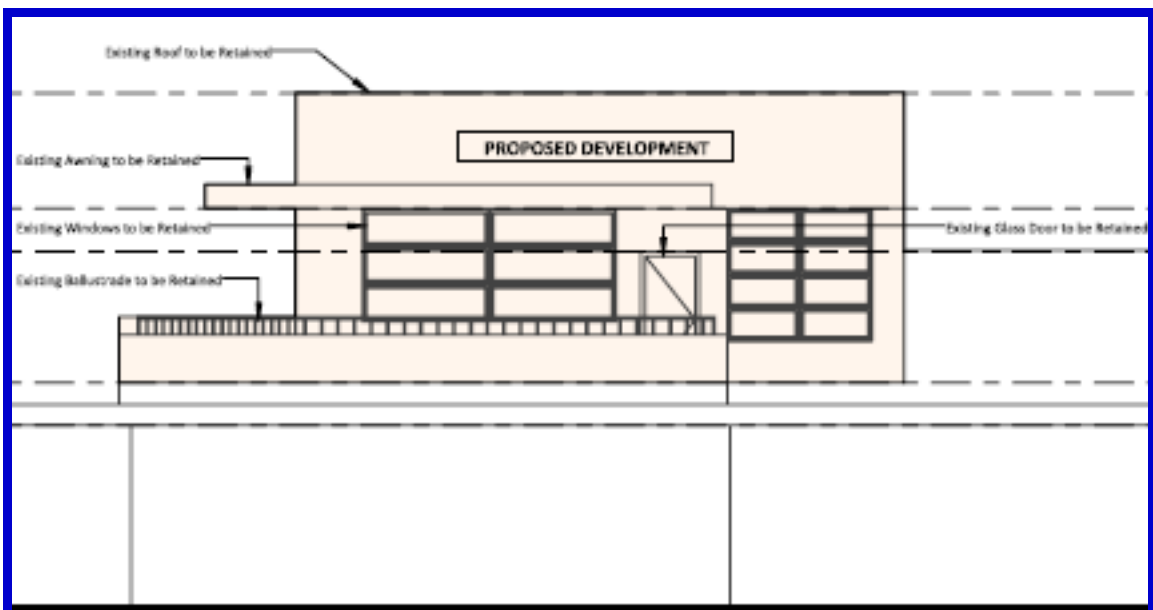
**PROPOSED FLOOR PLAN**



**PROPOSED NORTH-EAST ELEVATION**



**PROPOSED NORTH-EAST ELEVATION**



## ASSESSMENT

### ***Environmental Planning and Assessment Act 1979 – Section 79(C)(1)***

In determining a DA, the consent authority is to take into consideration the following matters as are of relevance in the assessment of the DA on the subject property:

#### ***(a)(i) The Provisions of any Environmental Planning Instrument***

The Environmental Planning Instruments that relate to the proposed development are:

- Deemed State Environmental Planning Policy No 20 – Hawkesbury-Nepean River
- Camden Local Environmental Plan 2010

An assessment of the proposed development under the Environmental Planning Instruments is detailed below.

#### Deemed State Environmental Planning Policy No 20 – Hawkesbury-Nepean River (SEPP)

The proposed development is consistent with the aim of the SEPP (to protect the environment of the Hawkesbury-Nepean River system) and all of its planning controls.

There will be no detrimental impacts upon the Hawkesbury-Nepean River system as a result of the proposed development.

#### Camden Local Environmental Plan 2010 (LEP)

##### *Permissibility*

The site is zoned B1 Neighbourhood Centre under the provisions of the LEP. The proposed development is defined as a "child care centre" by the LEP which is a permissible land use in this zone.

##### *Objectives*

The objectives of the B1 Neighbourhood Centre are as follows:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

##### Officer comment:

The proposed development will provide a child care centre for school aged children for occasional outside of school hours care and therefore will serve the needs of the community in the surrounding neighbourhood.

- To encourage mixed use developments to present an active frontage to the street by locating business, retail and community uses at ground level.

Officer comment:

The proposed development is located on the second floor of an existing neighbourhood centre which incorporates a mix of retail, business and restaurant uses on the ground floor.

- To minimise conflict between land uses within the zone and land uses within adjoining zones.

Officer comment:

The proposed development is generally compliant with the relevant Council LEP and DCP controls, therefore conflict with uses within the zone and surrounding residential zones are minimised.

- To enable other land uses that are complementary to and do not detract from the viability of retail, business and community uses within the zone.

Officer comment:

The proposed child care centre is considered to be complementary to the surrounding established commercial uses, as well as the nearby primary school, by providing a child care facility for school aged children outside of school hours.

*Relevant Clauses*

The DA was assessed against the following relevant clauses of the LEP.

Clause	Requirement	Provided	Compliance
7.5 Child Care Centres	To ensure that the child care centres do not unreasonably impact on the amenity of the adjoining residential development	The proposed development will not result in unreasonable amenity impacts on the adjoining residential areas	Yes
	To ensure that the child care centres do not adversely affect traffic and pedestrian safety due to increased traffic congestion	The OOSH centre proposes a maximum capacity of 21 children, therefore the operation of the centre will not adversely impact the traffic and pedestrian safety in the vicinity of the centre	Yes
	The consent authority must consider whether the land has an area of not less than 1,200m <sup>2</sup>	The site has an area in excess of 1,200m <sup>2</sup> , being approximately 2,238m <sup>2</sup>	Yes
	The consent authority	The site does not adjoin	Yes

Clause	Requirement	Provided	Compliance
	must consider whether the land has a boundary that adjoins an existing or proposed classified road	an existing or proposed classified road thus maintaining safe access and egress for children	

**(a)(ii) The Provisions of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)).**

There is no draft Environmental Planning Instruments applicable to the proposed development.

**(a)(iii) The Provisions of any Development Control Plan**

Camden Development Control Plan 2011 (DCP)

The following is an assessment of the proposed development's compliance with the controls in the DCP. Discussion of any variations of the controls is provided after the compliance table.

Control	Requirement	Provided	Compliance
B1.9 Waste Minimisation and Management – Commercial Developments	A waste management plan (WMP) must be submitted with the DA	A suitable WMP which demonstrates the type and amount of waste to be generated and processed for disposal during demolition, construction and operation has been submitted with the DA. A condition of consent is recommended which requires that waste is processed as per the WMP during demolition, construction and operation	Yes
B1.16 Acoustic Amenity	The development must demonstrate compliance with Council's Environmental Noise Policy	An acoustic report prepared by a suitably qualified consultant has been submitted with the DA. The report assessed the predicted noise levels to be emitted by the proposed OOSH centre and concluded that the noise levels will be compliant with Council's Environmental Noise Policy subject to the provision of a glass acoustic wall located along the perimeter of the outdoor	Yes

Control	Requirement	Provided	Compliance
		play area 2 at a maximum height of 1.8m. The OOSH complies with the requirements of Council's Environmental Noise Policy	
B5.1 Off Street Car Parking Rates and Requirements	The DCP requires 1 car space per employee, plus 1 car space per 6 children. The centre requires 2 staff members and care of 21 children; therefore a total of 6 car spaces are required	When originally approved, the base building required the provision of 24 car spaces, and a total of 25 car parking spaces were provided. The number of parking spaces required for tenancies 5 and 6 equated to 7 spaces (based on a combined floor area of 157.5m <sup>2</sup> ). Based on this, there is no additional parking demand created by the change of use, and sufficient parking is available on site to accommodate the proposed child care centre	Yes
D5.1 Child Care Centres	All childcare facilities must be licensed by the NSW Department of Education and Community Services	A recommended condition of consent requires that the proposed child care centre be licensed with the NSW Department of Education and Community Services prior to the issue of an Occupation Certificate	Yes
	Consideration must be made of the Children and Young Persons (Care and Protection) Act, and Children Services Regulations	The proposed development has been considered against the relevant Acts and Regulations and complies with the requirements of the Children and Young Persons (Care and Protection) Act, and Children Services Regulations	Yes
	Child care centres must be located in general vicinity of schools, employment areas, recreation areas, and services including shops	The subject site is located within close proximity to schools (Mount Annan Christian College, Currans Hill Child Care and Cre-8-five corner Kindergarden), a recreation area (Jack Nash Reserve) and employment generating	Yes

Control	Requirement	Provided	Compliance
		and community services within the neighbourhood centre	
	Child care centres must be located on sites with a minimum lot size of at least 1,200m <sup>2</sup>	The subject site is greater than the minimum 1,200m <sup>2</sup> , being approximately 2,238m <sup>2</sup>	Yes
	Child care centres must not be located on sites fronting or abutting classified roads, in a location where it will cause traffic conflict, on industrial land, on flood affected land, within 100m of transmission lines, telecommunication facilities, restricted and sex premises; within 85m of service stations and gas storage tanks	The subject site is not located in areas prohibited by the DCP	Yes
	Open space to be provided as per the Children's Services Regulations – 7m <sup>2</sup> per child	The centre proposes three external play areas, all of which provide a minimum of 7m <sup>2</sup> per child	Yes
	Parking area and access should be separated for the safe delivery and collection of children	The existing configuration of the centre is separated from the on site parking area and encourages the safe delivery and collection of children	Yes
	Child care centres will need to comply with the requirements of the Building Code of Australia, AS/NZ 2890 and <i>Disability Discrimination Act</i> with respect to access and car parking	The on site car parking area includes two accessible car parking spaces as per the relevant standards. A condition is recommended which requires the proposed facility to comply with the relevant accessibility provisions of the BCA and <i>Disability Discrimination Act</i> . Compliance with the	Yes

ORD01

Control	Requirement	Provided	Compliance
		relevant requirements of the BCA, Australian Standards and the <i>Disability Discrimination Act</i> is a recommended condition of consent	
	Parking to comply with Part B5 of the DCP	As previously assessed, parking has been provided as per the relevant parking rate stipulated by Part B5.1 of the DCP and is fully compliant	Yes
	Hours of operation must be restricted between 7am and 6pm, Monday to Friday; however Council can consider longer hours of operation if it can be demonstrated that no adverse impact on neighbouring properties will occur	The proposed operating hours are 7am to 7pm, Monday to Friday and it is considered that these hours will not result in any adverse impacts on neighbouring properties (see DCP variation 1 below for further detail)	<b>No – DCP Variation 1</b>
	The facility is classed as a 9(b) building, fire safety requirements of the BCA must be achieved	A condition is recommended which requires the proposed facility to comply with the relevant fire safety requirements as per the BCA	Yes
	Kitchen fit outs must be constructed as per the Food Act and Regulations, the Food Standards Code and Council's Food Premises Code	The kitchen's fit out complies with the relevant requirements and this is also reinforced by a recommended condition of consent	Yes
	Child care centres must have access to potable water	The proposed development has access to a potable water supply	Yes
	Noise control measures including a maximum 2.1m high acoustic fence and suitable buffer	An acoustic report prepared by a qualified consultant has been submitted with the DA. The report assessed the predicted	Yes



Control	Requirement	Provided	Compliance
	distances from outdoor play areas and neighbouring residents should be implemented	noise levels to be emitted by the proposed OOSH centre and concluded that the noise levels will be compliant with Council's Environmental Noise Policy subject to the provision of a glass acoustic wall located along the perimeter of the outdoor play area 2 at a maximum height of 1.8m. Conditions of consent have been recommended which require compliance with the submitted acoustic report	

DCP Variation 1 – Child Care Centre Hours of Operation

*DCP Control*

The DCP limits hours of operation from 7am to 6pm, Monday to Friday. The proposed hours of operation are 7am to 7pm.

*Variation Request*

The applicant has requested that Council support a variation to this DCP control on the basis that:

- the one hour extension is not considered to be long trading hours;
- the proposed hours are less than the hours of other tenancies within the building, including the supermarket on the ground floor. The IGA supermarket operates from 10am to 9pm Monday to Sunday, the Pizza restaurant operates from 10am to 10pm Monday to Sunday, the Chinese Restaurant operates from 11am to 10pm Monday to Sunday and the hairdresser operates from 8am to 8pm Monday to Sunday; and
- the extended operation does not result in an adverse impact on the amenity of the area for acoustic reasons.

*Council Staff Assessment*

Council staff have reviewed this variation and recommend that it be supported for the following reasons:

- the one hour extension to the DCP control is considered to be a minor variation and the DCP permits extensions to the control where it can be demonstrated that there is no adverse impact on adjoining properties;
- the documentation submitted with the DA demonstrates that the proposed hours will not adversely impact the acoustic amenity of the area or the adjacent residential development; and

- existing commercial businesses within the neighbourhood centre operate for longer hours, therefore it is considered that this use would not be inconsistent with the locality.

Consequently, it is recommended that Council support this proposed variation to the DCP.

**(a)(iii) The Provision of any Planning Agreement that has been entered into under Section 94F, or any draft Planning Agreement that a developer has offered to enter into under Section 93F**

No relevant agreement exists or has been proposed as part of this DA.

**(a)(iv) The Regulations**

The Regulations prescribe several matters that are addressed in the conditions contained in this report.

**(b) The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

As demonstrated by the above assessment, the proposed development is unlikely to have a significant impact on both the natural and built environments, and the social and economic conditions of the locality.

Traffic Impacts

Traffic impacts of the proposed development have been assessed and it is not considered that there will be any adverse impact on trip movements within Lando Way in that the maximum peak of vehicle trips from 7am to 9am is anticipated to be up to 11 vehicles, and from 4pm to 6pm a maximum of 15 vehicles is anticipated. This has been assessed by Council staff and is deemed to be acceptable. It is also considered that a number of parents will walk their children to the OOSH thus reducing further the anticipated peak trip movements within Lando Way.

Noise Impacts

As aforementioned, the proposed development was accompanied by an acoustic report which stated that compliance with its recommendations will ensure the acoustic amenity of surrounding residential and commercial properties will not be adversely affected. Council staff have assessed the report and agree with the recommendations therein.

**(c) The suitability of the site**

As demonstrated by the above assessment, the site is considered to be suitable for the proposed development.

**(d) Any submissions made in accordance with this Act or the Regulations**

The DA was publicly exhibited for 14 days in accordance with the DCP. The exhibition period was from 18 November 2013 to 2 December 2013. One submission was received (objecting to the proposed development). In addition Council received a

petition from the applicant in support of the application signed by 41 local residents. **A copy of a public exhibition and submissions map is provided with the Business Paper supporting documents.**

The following discussion addresses the issues and concerns raised in the submissions.

1. *The proposed development will utilise car parking in front of the neighbouring "Sam's Take Away Store", not the parking which is allocated to the building.*

Officer comment:

The parking impacts of the proposed development have been assessed as part of the application. The development complies with the relevant car parking rates of the DCP. The OOSH centre requires a total of 6 car parking spaces and a total of 7 spaces have been allocated to Units 5 and 6 during the assessment of the original DA for the parent building. These spaces are located to the rear of Units 5 and 6.

A condition is recommended requiring parents to utilise the existing parking at the rear of the site for drop off and pick up's. This will encourage parents to use the allocated parking spaces. It is noted that sufficient on-site car parking spaces will be provided for this development.

2. *The issue of parents using Sam's Take Away store's parking will result in loss of sales.*

Officer comment:

The economic impact of the proposed OOSH centre on the adjacent Sam's Take Away store is not a consideration under Section 79C of the *EP&A Act*. However it is considered that the nature of the B1 Neighbourhood Centre zone will encourage parents picking up or dropping off children at the OOSH centre to utilise the services available within the zone, and therefore the store may benefit from the operation of the centre, rather than be economically impacted by it.

3. *The 15-minute timed parking zones in Iando Way discriminate against disabled people as they have to use the designated disabled parking at the rear of the IGA store.*

Officer comment:

The issue of the timed on-street parking discriminating against disabled people is a not an issue for this DA in that the timed parking relates to on-street spaces located in front of the IGA store. The subject site has two accessible parking spaces in relation to disabled parking requirements.

4. *We have already lost the undercover area in the park due to underage drinking.*

Officer comment:

The removal of the gazebo is not relevant to the proposed development and is therefore not a matter for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*. The removal of the gazebo was for the safety of the community to discourage underage drinking and loitering.

**(e) The public interest**

The public interest is served through the detailed assessment of this DA under the *Environmental Planning and Assessment Act 1979*, the Environmental Planning and Assessment Regulation 2000, Environmental Planning Instruments, Development Control Plans and policies. Based on the above assessment, the proposed development is consistent with the public interest.

**EXTERNAL REFERRALS**

*Camden Local Area Command (CLAC)*

The DA was referred to the NSW Police (Camden Local Area Command) for assessment and the development was given a ‘low crime risk’ rating. The CLAC also provided comments in relation to surveillance, lighting and access control. **A copy of the Safer by Design Evaluation from the NSW Police is provided as attachment 2 to this report.**

The CLAC raised the issue of the absence of a lift from ground floor to first floor. The DA has been assessed in relation to its ability to comply with the Building Code of Australia (BCA) and Disability (Access to Premises - Buildings) Standards 2010. A number of conditions are recommended to ensure the proposal complies with the relevant BCA and Disability (Access to Premises - Buildings) Standards 2010. A Construction Certificate for the fit out and use can only be released if compliance with the aforementioned is achieved or an acceptable alternative solution is proposed.

A number of additional conditions have been recommended by the CLAC and these include additional fencing along proposed outdoor play area 3 and lighting. A condition is recommended which requires the development to be carried out in accordance with the Police recommendations.

**FINANCIAL IMPLICATIONS**

This matter has no direct financial implications for Council.

**CONCLUSION**

The DA has been assessed in accordance with Section 79C(1) of the *Environmental Planning and Assessment Act 1979* and all relevant instruments, plans and policies. Accordingly, DA 951/2013 is recommended for approval subject to the conditions contained in this report:

**CONDITIONS**

**1.0 - General Requirements**

The following conditions of consent are general conditions applying to the development.

- (1) **Development in Accordance with Plans** – The development is to be in accordance with plans and documents listed below, except as otherwise provided by the conditions of this consent:

Plan/Development No.	Description	Prepared by	Dated
	Statement of	Urbanesque	Sept.

	Environmental Effects	Planning Pty Ltd	2013
DA 365-1 Rev A	Site Plan	Art Made Architectural Pty Ltd	Aug. 2013
DA 365-2 Rev A	Existing First Floor Plan	Art Made Architectural Pty Ltd	Aug. 2013
DA 365-3 Rev B	Proposed First Floor Plan	Art Made Architectural Pty Ltd	Oct. 2013
DA 365-4 Rev A	Elevations	Art Made Architectural Pty Ltd	Aug. 2013
-	Petition of Support (41 signatories)	-	-
-	Waste Management Plan	Art Made Architectural Pty Ltd	29 Aug. 2013
-	Traffic Impact Assessment	Urbanesque Planning Pty Ltd	18 Oct. 2013
5242-1-HR	Environmental Noise Impact Report	Day Design Pty Ltd	18 Oct. 2013

Where there is an inconsistency between the approved plans/documentation and the conditions of this consent, the conditions of this consent override the approved plans/documentation to the extent of the inconsistency.

- (2) **Building Code of Australia** - All works must be carried out in accordance with the requirements of the *Building Code of Australia*.
- (3) **Disability Discrimination Act** – The development must be carried out in accordance with the relevant requirements of the *Disability Discrimination Act*. Compliance with the provisions of this Act is the sole responsibility of the owner/applicant.
- (4) **Signage** – This Development Consent does not consent to the erection or display of business identification or advertising signage. A separate Development Application must be submitted to the Consent Authority for the erection and display of signage, where required.
- (5) **Waste Management Plan** – Construction and ongoing operational waste must be managed in accordance with the provided “Waste Management Plan: Demolition, Construction and Use of Premises” prepared by Art Made Architectural, dated 29 August 2013.
- (6) **Car Parking** – A minimum of 7 car parking spaces must be available for the use of the OOSH centre at all times. These 7 spaces are those located at the rear of Units 5 and 6.
- (7) **Plan of Management** – A plan of management for the operations of the OOSH centre must be prepared prior to the issue of a Construction Certificate. The plan of management must clearly outline the requirements for parents to utilise the existing parking at the rear of the site only for drop off and pick up’s.

## 2.0 - Construction Certificate Requirements

The following conditions of consent must be complied with prior to the issue of a Construction Certificate.

- (1) **Fencing** – Child-proof fencing must be provided to outdoor play areas to restrict access outside of the facility on to public roads and adjoining properties. Uncovered outdoor Play Area 3 must incorporate additional fencing above the existing balustrade to a maximum height of 1.8m. Plans must be amended to reflect the addition and provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.
- (2) **WorkCover** - If gas is to be utilised, the requirements of WorkCover must be sought in relation to the provision of gas for cooking purposes and any other particular requirement they may have for this development.

A written response must be submitted to the Principal Certifying Authority prior to the Construction Certificate being issued.

- (3) **Fire Safety Upgrade** – Pursuant to Clause 94 (1)(b)(i) of the *Environmental Planning and Assessment Regulation 2000*, the existing building is to be upgraded as Camden Council considers that the measures contained in the building are inadequate to protect persons using the building, and to facilitate their egress from the building, in the event of fire.

Compliance with the following Parts of the *Building Code of Australia* is to be achieved in the fire safety upgrade of the existing building:

- (e) Part D1
- (f) Part D2
- (g) Part E1
- (h) Part E2
- (i) Part E4

If an Alternative Solution is proposed to achieve compliance with these Parts of the *Building Code of Australia*, it is to be prepared by a properly qualified and accredited Fire Engineer.

Details on the method of compliance are to be submitted to the certifying authority prior to the issue of a Construction Certificate.

All work required as part of the Fire Safety Upgrade of the existing building is to be completed prior to the issue of an Occupation Certificate.

## 3.0 - Prior To Works Commencing

The following conditions of consent must be complied with prior to any works commencing on the development site.

- (1) **Sydney Water Approval** – Prior to works commencing, the approved development plans must also be approved by Sydney Water.
- (2) **Erection of Signs** – Must be undertaken in accordance with Clause 98A of the *Environmental Planning and Assessment Regulation 2000*.

- (3) **Toilet Facilities** - Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one toilet for every 20 persons employed at the site.

Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or
  - (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
  - (c) be a temporary chemical closet approved under the *Local Government Act 1993*.
- (4) **Notice of Commencement of Work and Appointment of Principal Certifying Authority** – Notice in the manner required by Section 81A of the *Environmental Planning and Assessment Act 1979* and clauses 103 and 104 of the *Environmental Planning and Assessment Regulation 2000* must be lodged with Camden Council at least two (2) days prior to commencing works. The notice must include details relating to any Construction Certificate issued by a certifying authority, the appointed Principal Certifying Authority (PCA), and the nominated ‘principal contractor’ for the building or subdivision works.
- (5) **Construction Certificate Before Work Commences** - This development consent does not allow site works, building or demolition works to commence, nor does it imply that the plans approved as part of the development consent comply with the specific requirements of *Building Code of Australia*. Works must only take place after a Construction Certificate has been issued, and a Principal Certifying Authority (PCA) has been appointed.

#### 4.0 - During Construction

The following conditions of consent must be complied with during the construction phase of the development.

- (1) **Hours of Work** – The hours for all construction and demolition work are restricted to between:
- (a) 7.00am and 6.00pm, Monday to Friday (inclusive);
  - (b) 7.00am to 4.00pm on Saturday (if construction noise is inaudible to adjoining residential properties), otherwise 8.00am to 4.00pm;
  - (c) work on Sunday and Public Holidays is prohibited.
- (2) **Site Management** – To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the construction period, the following practices are to be implemented:
- (a) the delivery of material must only be carried out between the hours of 7.00am and 6.00pm, Monday to Friday, and between 8.00am and 4.00pm on Saturdays;
  - (b) stockpiles of topsoil, sand, aggregate, spoil or other material must be kept clear of any drainage path, easement, natural watercourse, kerb or road surface and must have measures in place to prevent the movement of such material off the site;



- (c) builder's operations such as brick cutting, washing tools, concreting and bricklaying must be confined to the building allotment. All pollutants from these activities must be contained on site and disposed of in an appropriate manner;
  - (d) waste must not be burnt or buried on site, nor should wind-blown rubbish be allowed to leave the site. All waste must be disposed of at an approved Waste Disposal Depot;
  - (e) a waste control container must be located on the development site.
- (3) **Food Codes and Regulations Compliance** - The construction and fit out of the premises or any part thereof, to be used for the manufacture, preparation or storage of food for sale, must comply with Camden Council's Food Premises Code, the *Food Act 2003* and the *Food Regulations 2010* (incorporating the Food Standards Code).
- (4) **Plans** - The premises, fittings and fixtures must be constructed and installed in accordance with the approved plans unless otherwise specified in these conditions of approval.
- (5) **Glass Perimeter Fence** – A glass fence to a maximum height of 1.8m is to be constructed around the perimeter of play area 2, as shown on the "Proposed First Floor Plan" dated October 2013, Sheet No. DA-365-3. The glass fence is to have no gaps and be compliant with the relevant requirements of the BCA.
- (6) **General Purposes Sink** – A suitably sized general purposes cleaning sink is to be provided in the undercover outdoor Play Area 1 for the purposes of cleaning equipment. The sink must not be located in the kitchen area.
- (7) **Wall Finish** - Walls in food preparation, service and scullery areas must be finished with glazed ceramic tiles, stainless steel or laminated plastics adhered directly to the wall to a height of at least 2m above floor level and to the underside of canopy hoods. Walls that are not tiled or otherwise finished must be cement rendered to a smooth even surface and painted with a light coloured washable paint, or sealed with other approved materials.
- (8) **Floor Finish** - Floors in the food preparation areas, sculleries and food storage areas must be constructed of approved materials that are non-slip and impervious, and meet the requirements of Council's Food Premises Code.
- (9) **Coving** - Intersections of the floor with walls and plinths must be coved so that the area can be easily cleaned.
- (10) **Ceilings** - Ceilings in the food preparation areas are to be constructed of a rigid smooth faced, non-absorbent material and could include fibrous plaster, plasterboard, fibrous cement, cement render or other approved material painted with a washable gloss paint of light colour.
- (11) **Drop in Panels** - Drop in panels for ceilings are prohibited over food preparation areas.
- (12) **Hand Wash Basins** - The premises must be provided with a wash basin in, or convenient to:



- (a) each toilet; and
- (b) each kitchen area.

The wash basin must be:

- (a) provided with water at least 40°C from a mixed hot and cold water supply;
  - (b) supplied with liquid soap and an adequate supply of single use towels or other suitable hand drying facilities located adjacent to the hand basins;
  - (c) kept in a clean and sanitary condition and in good repair at all times; and
  - (d) not used for any other purpose other than the washing of hands.
- (13) **Gaps Sealed** - All gaps between shelves and vertical surfaces must be sealed to prevent the accumulation of grease and food particles. Alternatively 25mm clearance is required to allow the area to be cleaned.
- (14) **Fixtures and Fittings** - All benches, fixtures, refrigeration cabinets and cooking appliances must be butted against walls or other equipment. Junctions with vertical surfaces must be sealed to eliminate the accumulation of grease and food particles. Alternatively, clearances are to be provided from vertical surfaces in accordance with Council's Food Premises Code.
- (15) **Closed Cupboards** - Closed cupboards are to be butted against walls or other equipment. Junctions with vertical surfaces must be sealed to eliminate the accumulation of grease and food particles. Cupboards are to be supported on plinths in accordance with Council's Food Premises Code.
- (16) **Shelving** – Shelving in the food preparation areas must be constructed with at least 150mm clearance from the floor. Wall shelves must have at least 25mm clearance from vertical surfaces.
- (17) **Wall Tiles** - The walls behind the benches, sinks, tubs, hand basins, cupboards and similar fittings must be tiled for a height of 450mm with glazed ceramic tiles.
- (18) **Dishwashing Facilities** – A double bowl stainless steel sink is to be provided in the kitchen for the washing of dishes and kitchen equipment.
- (19) **Light Fittings and Fixtures** – Light fittings and fixtures must be enclosed in unbreakable covers.
- (20) **Cooking Appliances** – A suitable new cooktop to a “high domestic standard” or “low commercial standard” must be installed in the kitchen and must be located beneath a ventilation exhaust.
- (21) **Exhaust Ventilation** – A suitable new exhaust ventilation to a “high domestic standard” or “low commercial standard” must be installed over the cooking appliances.
- (22) **Refrigeration Unit** – A suitable new refrigeration unit to a “high domestic standard” or “low commercial standard” must be provided in the kitchen area.

## 5.0 - Prior To Issue Of Occupation Certificate

The following conditions of consent must be complied with prior to the issue of an Occupation Certificate.

- (1) **Occupation Certificate** – An Occupation Certificate must be issued by the Principal Certifying Authority (PCA) prior to occupation or use of the development. In issuing an Occupation Certificate, the PCA must be satisfied that the requirements of Section 109H of the *Environmental Planning and Assessment Act 1979* have been satisfied.

The PCA must submit a copy of the Occupation Certificate to Camden Council (along with the prescribed lodgement fee) within two (2) days from the date of determination and include all relevant documents and certificates that are relied upon in issuing the certificate.

The use or occupation of the approved development must not commence until such time as all conditions of this development consent have been complied with.

- (2) **Fire Safety Certificates** – A Fire Safety Certificate is to be submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*. The Fire Safety Certificate is to certify that each fire safety measure specified in the current fire safety schedule for the building to which it relates:

- (a) has been assessed by a properly qualified person; and
- (b) was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which the certificate is issued.

As soon as practicable after the Final Fire Safety Certificate has been issued, the owner of the building to which it relates:

- (a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of Fire & Rescue New South Wales, and
  - (b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.
- (3) **Registration and Notification** - Proprietor/s of a business are required to register the business with Camden Council and complete a Food Business Notification Form prior to operation.
  - (4) **Department of Education and Community Services** - Compliance with any requirements of the Department of Education and Community Services in relation to this development is required. In this regard, a letter from the Department of Education and Community Services which details the approved number and age of children to be accommodated at the facility and any conditions of operation must be submitted to the Consent Authority (i.e. Camden Council) prior to the Occupation Certificate being issued.

## 6.0 - Operational Conditions

The following conditions of consent are operational conditions applying to the development.

- (1) **Hours of Operation** - The hours of operation for the approved land-use are:

Monday to Friday:	7am to 7pm
Weekends and Public Holidays:	Closed

All vehicle movements, deliveries and any other operations associated with the use of the premises must be restricted to approved hours of operation. Any alteration to these hours will require the prior approval of the Consent Authority.

- (2) **Number of Persons** - The maximum number of children to be cared for at the OOSH centre at any one time must not exceed 21 children and by a maximum of 2 staff members.
- (3) **Age of Children** - The minimum age of children to be cared in the OOSH centre must be of school age, being 5 years to 12 years.
- (4) **Amenity** - The business must be conducted and patrons controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations and residential or business premises.
- (5) **Lighting** - Lighting of the premises must demonstrate compliance with the Australian Standards AS1158 and AS4282.
- (6) **Light Spillage** - The lighting of the premises must be directed so as not to cause nuisance to owners or occupiers of adjoining premises.
- (7) **Plant Noise Restriction** - The level of total continuous noise emanating from operation of all the plant or processes on the site ( $LA_{eq}$ ) (measured for at least 15 minutes) must not exceed the background level by more than 5dB(A) when measured at any point on any residential boundary. The noise levels must also comply with the relevant noise criteria within Council's Environmental Noise Policy.
- (8) **Offensive Noise** - The use and occupation of the premises including all plant and equipment must not give rise to any offensive noise within the meaning of the *Protection of the Environment Operations Act, 1997*.
- (9) **Plan of Management** – The plan of management must be implemented at all times. The plan of management must require staff and parents to utilise the existing parking at the rear of the site.
- (10) **Parking** – Staff and patrons of the OOSH centre must utilise the parking located at the rear of the centre to minimise conflict with surrounding uses.
- (11) **Thermometers** - Any appliance used for the storage of hot and cold food must be provided with a probe thermometer accurate to  $\pm 1^{\circ}\text{C}$  to measure the core temperature of food.

(It is recommended that sterile alcoholic wipes be used to sterilise the probe thermometer between use).

**RECOMMENDED**

That Council approve DA 951/2013 for a fit out and use of Units 5 and 6 as an OOSH Centre (Occasional Outside of School Hours) at 5-9 Iando Way, Currans Hill, subject to the conditions listed above.

ATTACHMENTS

1. Proposed Plans
2. Safer by Design Evaluation - NSW Police Force
3. Submission - *Supporting Document*
4. Petition in Support - *Supporting Document*
5. Public Exhibition and Submissions Map - *Supporting Document*

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## ORDINARY COUNCIL

ORD02

ORD02

**SUBJECT: COMMUNITY MANAGEMENT SCHEME FOR THE ORAN PARK TOWN CENTRE**

**FROM:** Acting Director Governance

**TRIM #:** 14/50138

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### PURPOSE OF REPORT

The purpose of this report is to seek Council acceptance of the Oran Park Town Centre Community Management Governance Structure which consists of:

- (i) the Community Management Statement;
- (ii) the Town Centre Management Statement;
- (iii) the Public Areas Access Management Plan;
- (iv) the necessary resolution required for the classification of land; and
- (v) the necessary resolution required for the exemption from tendering for the Community Management Scheme.

Council has previously resolved to proceed with the Oran Park Town Centre Community Management Scheme. The purpose of this report is to accept the specific documentation which will give rise to the Community Management Scheme and enable it to be registered with Land and Property Information.

It is noted that further work is being undertaken on the finalisation of budgets and the Maintenance Agreement which will set the level of landscaping and maintenance work within the Oran Park Town Centre. This work, along with the appointment of a Council representative to the Community Association and Town Centre Management Committee will be workshopped, with a further report to Council in due course.

### BACKGROUND

On 9 August 2011, Council resolved to *“enter into negotiations for an Oran Park Town Centre governance arrangement that includes the creation of a Community Title Scheme and a Public Areas Accessibility Management Plan”*.

Since then, Council officers have worked with the developers (Oran Park/Greenfields Development Corporation (“GDC”) and Landcom (now known as UrbanGrowth)) to determine a governance arrangement in the form of a Community Management Scheme for the Oran Park Town Centre.

A diagram showing the areas proposed to be governed by the Community Management Scheme is attached at **Attachment 1**.

Following the 2011 Council resolution and the subsequent resolution to relocate the Council Administration Building to Oran Park, a Contract for the sale and purchase of land was entered into between the Council and Oran Park/GDC which also enshrined the requirement to create a Community Management Scheme.

Upon execution of the Contract for the sale and purchase of land dated 10 December 2012 (“the Contract”), a Steering Committee was established to work through the

implementation of the Community Management Scheme. The documentation relating to the Community Management Scheme has been finalised, certified by Council's Solicitor and is now submitted to Council for acceptance, in accordance with the provisions contained in the Contract.

The clauses contained in the Contract state that within 40 business days of receiving the documentation (8 April 2014), Council must accept the documentation by notice in writing; or notify Oran Park/GDC of any matter which Council considers (acting reasonably) to be not acceptable because:

- (i) it is not consistent with the Vendor's Works Package or the Final Plans and Specifications;
- (ii) it imposes restrictions or obligations on the Property which are not imposed on some or all other properties that are subject to the Oran Park Town Centre Community Management Scheme;
- (iii) it imposes restrictions or obligations on the Property which have a material, adverse affect on the Property or the Admin Centre; and/or
- (iv) does not comply with good industry practice;
- (v) is inconsistent with the services information (cl 37 of the Contract);
- (vi) would result in a dedication or dealing including any easement, restriction or positive covenant in favour of a third party that would materially adversely affect the Property;
- (vii) will cause the Property to not be fit for the Admin Centre.

If Council does not provide any notification after the expiry of 40 business days, Council is deemed to have accepted the documentation. If Council was to serve a notice regarding an unacceptable matter, Oran Park/GDC would have to address the matter and serve amended documentation which would activate an additional 40 business days. If Council was to raise a matter as unacceptable from the second set of documentation, the dispute resolution provisions of the Contract would be activated.

It is noted that the steering committee and Council's advisors are satisfied that none of the matters referred to above apply to the documentation served upon Council. Furthermore, Council's legal certification of the documentation is attached (see **Attachment 2**). Bruce Bentley, Council's Solicitor engaged to provide the certification is a partner at J.S. Mueller & Co and a specialist in the law which affects development, management and administration of group title communities.

The suite of documentation which gives rise to the Scheme includes the following documents which are **attached**:

- (i) Community Management Statement ("CMS") (**Attachment 3**);
- (ii) Town Centre Management Statement ("TCMS") (**Attachment 4**);
- (iii) Public Areas Accessibility Management Plan ("PAAMP") (**Attachment 5**).

It is noted that the text highlighted in yellow in each of the documents listed above is detail which is currently unknown until the Scheme is registered (for example Lot and DP numbers) and will be inserted at the earliest possible opportunity. Further, some Schedules attached to the documents are blank and relate to the work being undertaken by Council's Works and Services Division on the appropriate Maintenance Agreement for the Oran Park Town Centre. The agreement will be workshopped with Council in due course. Following Council approval, the Schedules will be updated and are designed to change over time. The omission of this detail at this point in time does not affect Council's adoption of the governance structure for the Scheme, or the registration of the title which ultimately allows for the transfer of land for the Administration Building.

Copies of the previous Council reports relevant to this matter are also attached for Council's reference. Please see **Attachment 6** for a copy of the Ordinary Council Report dated 9 August 2011, and see **Attachment 7** for a copy of the Ordinary Council Report dated 27 November 2012.

A workshop with Councillors on the proposed Community Management Scheme was also held in October 2013 with subsequent questions and answers being circulated via email (see **Attachment 8 in Supporting Documents**).

Ultimately, the adoption of the Community Management Scheme documentation is critical to the eventual transfer of land and new Administration Building, Library and Leisure Centre as illustrated in the Order of Events table on page 9 of this report.

### **Legislative Context**

It is noted that the entire Oran Park Town Centre is subject to the statutory provisions of the *Community Land Development Act 1989*, the *Community Land Management Act 1989* and the *Conveyancing Act 1919*. The legislation is mandatory and immutable, but, within its framework, documents may be drafted to create a more precise and detailed governance structure. With this in mind, the documents listed above have been drafted by Council's Solicitor in such a way as to not conflict with the community management legislation or Council's ability to comply with the *Local Government Act 1993*.

### **MAIN REPORT**

A Community Management Scheme is considered the most effective method of combining private and public land ownership/uses to ensure a high quality, vibrant and seamless public domain accessible by all. A community management scheme is in many ways similar to a strata scheme that governs an apartment development.

A Community Management Scheme offers the following benefits:

- seamless amenity and user experience across the Civic Heart of the Town Centre;
- ensures public access rights across both private and public areas;
- allows for central management of all activities within the Civic Precinct;
- provides a framework for equitable and efficient sharing of operational costs;
- allows for bundling of services such as maintenance, cleaning, insurance and security;
- provides a flexible approach to the creation of new lots; and
- provides design guidelines to ensure a consistent look and feel across the Town Centre (note: the design guidelines cannot be inconsistent with the relevant Development Control Plan for the Oran Park Town Centre).



## GOVERNANCE

The Oran Park Community Management Scheme is divided into three parts and discussed in detail below.

### Part 1 – Community Management Statement

Driven by community management legislation, the CMS manages the overall Scheme, including the common property. It sets the reporting, voting and financial structures and is for the most part a high level governance document.

### Part 2 – Town Centre Management Statement

The TCMS is required to manage the Town Centre within the Community Management Scheme. It sets out the arrangements, rights and obligations between certain lot owners within the Scheme who choose to share benefits and costs for the “Civic Heart” of the Town Centre. Examples may include maintenance, insurance, cleaning, security etc. The TCMS also regulates the PAAMP. The CMS overrides the TCMS if they conflict.

### Part 3 – Public Areas Access Management Plan

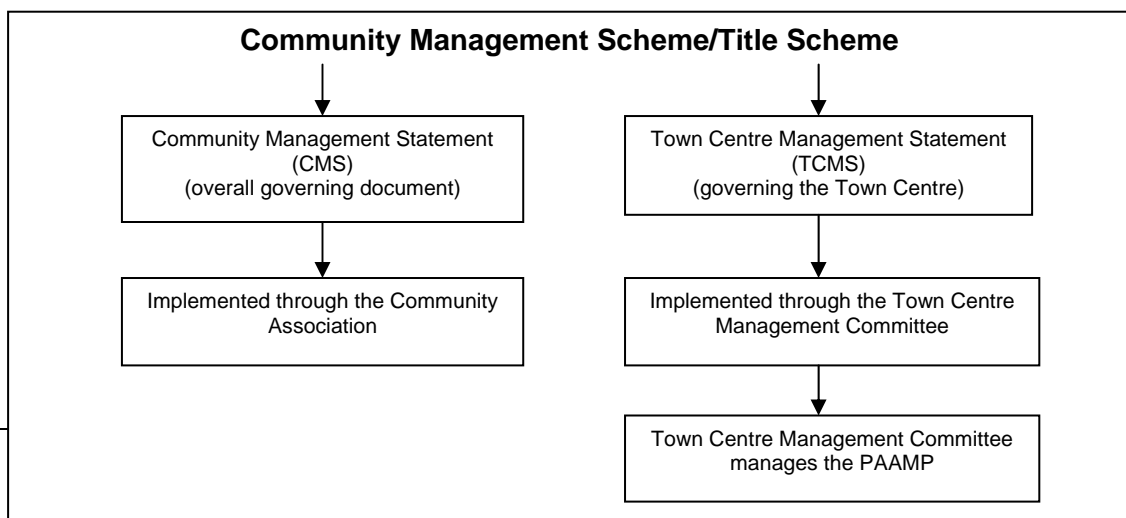
The PAAMP is a user-friendly, non-registrable document that is effectively the “how-to” for people and organisations wishing to secure a licence/approval to undertake activities such as busking, fund raising, fun runs and larger community events such as Australia Day celebrations.

The PAAMP identifies privately owned areas that can be used by the public for the purposes noted above and many others. This document regulates:

- access to publicly accessible areas;
- obligations to clean and maintain publicly accessible areas; and
- event applications and approval processes to ensure safety, equality of access, event security, clean-up and repairs after events.

It is noted that the PAAMP will be a living document and will be amended as the Oran Park Town Centre develops overtime. For example, the area to which the PAAMP will apply will be amended as construction of buildings and areas are completed. The Town Centre Management Committee (of which Council will be a member) will be the responsible entity for managing the PAAMP.

A summary of how the Scheme works is set out below in diagram format:





## HOW DECISIONS ARE MADE

The CMS and TCMS provide for a Community Association and Town Centre Management Committee, both of which Council will be a member of.

### The Community Association

The initial members of the Community Association are:

- Lot 1 – Community Association – owner of the Community Property (just like common property in a home unit strata scheme – this is a requirement of the community management legislation);
- Lot 2 – Tocaroly Superannuation Fund – owner of the existing Oran Park Town Sales Information Centre;
- Lot 3 – Perich Properties Pty Ltd, as trustee for the Perich Property Unit Trust, owner of the Retail Centre;
- Lot 4 – Perich Properties Pty Ltd, as trustee for the Perich Property Unit Trust, owner of the residual land, to be subdivided over time to create additional development lots, precincts or strata schemes;
- Lot 5 – Camden Council (upon transfer) – Administration Building, Library and Leisure Centre;
- Lot 6 – Camden Council (upon transfer) – The Town Park.

Please see **Attachment 1** for a plan illustrating the relevant lots and ownership. As the land will not be transferred into Council's ownership until late 2015, Council will not become a member of the Scheme until late 2015.

All lot owners contribute to the Community Association as required by the community management legislation, based upon a unit entitlement ("UE"), similar to a strata title levy. The UE is used to calculate each proprietor's contributions for levies and value of votes when a poll is called or special resolution is required. The UE is determined by the comparable value of each lot within the Community Management Scheme (by valuation). Council's estimated UE is 11% and will be reviewed at regular intervals as the Oran Park Town Centre fully develops and each time a plan is registered creating a subsidiary body within the Scheme. It is important to note that each revision of the UE is based upon a valuation at that time. Although the UE is fixed by valuation and legislation, the actual budget will be determined by the Community Association, which Council will be a member of.

The Community Association is responsible for the control, maintenance and management of the community property and is regulated via "by-laws", again like a strata scheme. In this case the Oran Park Town Centre Community Association pays for the administration and management of common property (Lot 1 – Town/Market Square), and includes funding contributions for extra landscaping to all Council owned road verges, the Town Park, and the proposed widened pedestrian corridor on Central Avenue.

In terms of voting, the day to day administrative matters require a majority rules vote (over 50%), examples include:

- appointing a managing agent for the Scheme;
- changing address for service of notices; and
- limiting the power of the association executive.

The more critical decisions however require a unanimous vote, examples include:

- creation of easements over community property (s. 35 *Community Land Development Act 1989*);
- distribution of surplus funds (Schedule 1, Cl 17 *Community Land Management Act 1989*); and
- registration of the transfer or lease of community property (ss. 16 & 17, *Community Land Development Act 1989*).

For all matters requiring a unanimous resolution, the matter will not be passed unless Council's representative is in support of it.

It is also noted that should the Council delegate on the Community Association be unsure on a particular matter, the documentation provides for a mechanism for the matter to be deferred and reported to Council for determination. It is noted that the combined notice period and option to defer provides up to 17 business days for Council's consideration of an item. Under this arrangement, Council receives an additional 7 business days over and above the 10 business days granted to the other members.

### **The Town Centre Management Committee**

The Town Centre Management Committee is comprised of Camden Council, Perich Property P/L (Retail Owner) and the Oran Park Community Association (Lot 1 Owner).

The Town Centre Management Committee has the function to arrange the operation, maintenance, renewal and replacement of shared services and the operation and maintenance of the Town Centre facilities. The TCMS is the statement entered into between lot owners who have an integral role in the management of the Town Centre and an obvious stake in ensuring its upkeep. The cost allocation for the Town Centre shared services is calculated on a user pay basis.

The initial TCMS shared costs include extra landscaping, cleaning, streetscape maintenance, traffic management, signage, administration and the Centre Manager's remuneration for the management of the shared services and the PAAMP. In principle, all "shared costs" should not exceed what would be paid on an individual basis, and should generate cost efficiencies.

Until such time that a more detailed budget can be developed, the cost of shared services has been divided among the three members as follows: Camden Council 25%; Retail Lot Owner 40% and the Community Association 35%. This is an interim arrangement and is to be reviewed at the earliest practical opportunity as it relies on real time service usage becoming available.

The voting rights on the Town Centre Management Committee are as follows:

- (i) in relation to a resolution which does not involve a shared service (eg. administrative and non-financial decisions), each member will have one equal vote; and
- (ii) in relation to a resolution regarding a shared service, each member's vote will carry the same weight as the percentage of costs they contribute (for example, if Council contributes 25% of the shared services costs on a user pay basis, it will have a vote weight of 25%).

However, in order to prevent the scenario where the Retail Lot Owner and the Community Association may jointly override Council in a vote, Council has successfully negotiated a unanimous decision for critical items as follows:

- adding new shared services or facilities;
- changing shared services costs; and
- the appointment and remuneration of the Town Centre Manager.

For the purpose of clarity, it is noted that the Town Centre Manager referred to above is intended to be the “Retail Centre Manager” (being the Manager of the retail shopping centre at Oran Park Town Centre) either engaged or employed by the Town Centre Management Committee and who will also be responsible for managing the PAAMP. The appointment of a managing agent under the Community Association refers to a firm or employee engaged to manage the community scheme (similar to a strata management firm). The managing agent of the Community Association may also fulfil the regulatory requirements contained in the TCMS. The voting on the appointment and remuneration of the Town Centre Manager has been determined as a unanimous vote due to the importance of this role and ensuring that the PAAMP is administered in an acceptable manner.

The TCMS is the key to the successful running of the Town Centre and has been drafted in such a way as to support Council’s key areas of engagement and control.

The Town Centre Management Committee is also responsible for managing the PAAMP. The PAAMP is the operational manual for events on privately owned land. The PAAMP is very prescriptive about the types of insurance, quality of emergency procedures and traffic management that event applicants/organisers need to deliver in order to gain an event approval. This extends to items such as additional fees for “after event clean up” and road closures to facilitate an event where necessary. There will also be an annual “agreed events” calendar to assist with the ongoing management of the public areas such as the Town Park. This event calendar allows pre-planning of space and resources while retaining flexibility for one-off or unforeseen events.

Council, as a member of the Town Centre Management Committee will be able to propose an annual calendar of “Council events” to be scheduled throughout the year. The Town Centre Manager will be responsible for the approval of events in accordance with the PAAMP and in conjunction with Council. If a decision on an event is appealed by a member of the community, the Town Centre Management Committee will consider the appeal.

## **WHAT ARE COUNCIL’S FINANCIAL CONTRIBUTIONS?**

Council will be liable under the scheme as an owner under the CMS, and as an owner who also participates in the shared services within the heart of the Town Centre (TCMS). Indicative budgets have been prepared for both entities over the development period as follows:

- Community Management Scheme Owner (governed by the CMS) – based on the estimated Unit Entitlement of 11% (the UE is determined by the comparable value of each lot within the Scheme (by valuation)), preliminary budgets prepared for the Community Management Scheme indicate that Council’s contribution would be in the order of \$30,000 (year 2018) to \$38,000 (year 2030) per annum.
- Town Centre Shared Services (governed by the TCMS) – based upon a 25% share in the currently identified shared services, preliminary budgets prepared for

the Town Centre Shared Services indicate that Council's contribution would be in the order of \$19,000 (year 2018) to \$34,000 (year 2030) per annum.

It is noted that Council will not be liable to make any financial contributions until 2018. Furthermore, the process for determining the budgets each year is in line with Council's budget processes.

Council's contribution to the Community Association is strictly based on unit entitlement and is unable to be reviewed internally. The services and contributions under the TCMS may be reviewed at any time before the TCMS is registered, but thereafter, a review will only take place every 5 years or where the members of the Committee unanimously agree to a review.

Further, in the event that one of the other owners cannot meet its financial obligations to the Scheme, the Community Association can recover costs owed to it much the same way as it recovers all other outstanding debts. In the case of the Community Management Scheme, the capacity to recover debt is even greater. The debt owed is similar to a charge against the property of the defaulting owner – should the property be sold (including by a bank or liquidator), the legislation and TCMS require outstanding debts to be paid at settlement of the sale.

It is noted that these figures are indicative only and further work is required on the Maintenance Agreement which will confirm the scope of works to be completed throughout the Town Centre. The Maintenance Agreement is currently being finalised and will be workshopped with Councillors in due course. The adoption of this Maintenance Agreement will ultimately be a matter for Council determination.

#### **AUDITING AND FINANCIAL INTEGRITY**

At the end of each financial year, the Town Centre Management Committee must have its accounts audited and a financial statement prepared for each of its accounts which will be reported to Council. The appointment of the auditor is determined by the Committee on a majority rules decision.

#### **RISK MANAGEMENT AND INSURANCE**

Upon registration of the Community Management Scheme in late 2014, the Community Association is required to have directors and officers' liability insurance, voluntary workers insurance, property and public liability insurance and damage/building insurance.

The Town Centre Management Committee must arrange for workers compensation (if applicable), members liability insurance and compel the relevant owners to insure any shared services which form part of their lots, including machinery breakdown insurance where appropriate, and secure public liability insurance in relation to the shared services.

The obligation to obtain insurances by both the Community Association and the Town Centre Management Committee is prescribed by the *Community Land Management Act 1989*. It is also noted that insurance is one of the first items to be raised at the inaugural Annual General Meeting of both forums.

Each owner is responsible for insuring their own lot, for example, Council will be responsible for insuring the Administration Centre, Library, Leisure Centre and the

Town Park. Each insurance policy will however note the Community Association and Town Centre Management Committee as interested parties.

**WHAT IS COUNCIL'S ONGOING ROLE IN THE COMMUNITY MANAGEMENT SCHEME?**

Pursuant to the CMS and the TCMS, Council will need to select a representative to serve on the Community Association and the Town Centre Management Committee. Council's representative may be a Councillor or senior member of staff. Council's involvement on these committees does not come into effect until the land is formally transferred into Council's ownership which is expected to be at the end of 2015.

A report will be brought back to Council regarding the appointment of Council representatives to serve on both committees closer to the date of the land transfer to Council.

**ORDER OF EVENTS**

The table below sets out the order of events from approval of the Community Management Scheme through to the eventual transfer of land over to Council's ownership and the completion of the Administration Centre in 2016.

	<b>Event</b>
1	Oran Park/GDC serve the CMS documentation upon Council – Council has 40 working days to respond in accordance with relevant legislation and clause 48 of the Contract for sale and purchase of land
2	Adoption of CMS documentation by Council
3	Oran Park/GDC lodge Community Plan of Subdivision to create lots (with Vendors Development Application) to Council
4	Council determination of Community Plan of Subdivision (with Vendors Development Application)
5	Oran Park/GDC lodge the CMS documentation and s.88B Instrument with Land and Property for registration
6	Oran Park/GDC to undertake vendors works in accordance with the Contract
7	Oran Park/GDC to provide Council with access to Lot 5 (the Administration Building site) early 2015 via an Access Deed
8	Transfer documents for the transfer of Lot 5 and the Town Park from Oran Park/GDC to Council registered with Land and Property Information
9	Certificate of Title for Lot 5 and Town Park transferred to Council and Council becomes an active member of the Scheme
10	Completion of the Administration Building
11	Completion of the Library (delivered by Oran Park/GDC)
12	Completion of the Leisure Centre (delivered by Oran Park/GDC)

This table above illustrates that each step is intrinsically linked to the next and that the ultimate delivery of the Administration Building, Library and Leisure Centre hinges upon Council's approval and adoption of the Community Management Scheme governance structure.

As set out in the table above, the delivery of the Administration Building will commence prior to the land being formally transferred into Council's ownership. This arrangement is simply facilitated by a straight forward Access Deed between Council and Oran Park/GDC.

### **LAND CLASSIFICATION**

The land in the Oran Park Town Centre which will be transferred into Council's ownership is Lot 5 (the site for the Administration Building, Library and Leisure Centre) and Lot 6 (the Town Park).

In accordance with the provisions of the *Local Government Act 1993*, before Council acquires land, or within 3 months after it acquires it, Council may resolve that the land be classified as community land or operational land (s. 31). Any land acquired by Council that is not classified, is at the end of the period of three months, taken to have been classified as community land.

Council's Solicitor has advised that Lot 5 (the site for the Administration Building, Library and Community Resource Centre and Leisure Centre) is best served by being classified as operational land given the intended use by Council and the greater flexibility that operational land offers.

It is also recommended by Council's Solicitor that Lot 6 (the Town Park) should be classified as operational land as it gives Council the maximum flexibility it requires to participate within the governance regime established by the CMS, TCMS and the PAAMP. Although there is no prohibition on land classified as community land under the *Local Government Act 1993* participating in a Community Management Scheme, it is highly recommended that the land participating in the Scheme be classified as operational land for the following reasons:

- operational land classification will allow Council to use one set of governance arrangements for all Council owned lots within the Oran Park Town Centre;
- it would provide Council with the capacity to participate seamlessly in integrated events across the Town Centre managed through the PAAMP;
- the use of the PAAMP would relieve Council of the need to prepare a Plan of Management for the Town Park, while retaining the flexibility required to serve the community's need for the Park as the Oran Park community and Town Centre grows; and
- Council would benefit from the management of the Town Park (on a day to day basis) by the Town Centre Manager (in conjunction with Council).

If classified as operational land, Council would retain flexibility over all land it owns within the Scheme and could participate wholeheartedly. In particular it would provide a greater degree of both control and flexibility over the use and evolution of the Town Park in a very dynamic environment.

Accordingly, it is recommended that Council place the proposed operational land classification of the Town Park (Lot 6) and the Administration site (Lot 5) on public



exhibition in accordance with the requirements of the *Local Government Act 1993*, with a further report to Council upon completion of the exhibition period.

### **TENDERING EXEMPTION**

It is recommended by Council's Solicitor that Council resolve to exempt itself from the requirements of section 55 (the tendering requirements) of the *Local Government Act 1993* for all procurement and tendering matters relating to goods and services for the Community Management Scheme. There is a provision in the *Local Government Act 1993* that enables Council to apply for an exemption from the tendering requirements where, "because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders".

Under the TCMS, Council may perform a service or provide facilities within the Oran Park Town Centre. As such, it has been recommended by Council's Solicitor that Council pass a resolution to exempt itself from section 55(1)(d) as a safeguard, on the basis that open tendering to a party outside the governance regime would be impractical and take control and responsibility for the provision of services away from Council when Council has obligations and duties under the governance regime.

For example, as a member of the Community Association and Town Centre Management Committee it would be impractical to have tendering responsibilities under the Local Government Act when no other member has this requirement.

In doing so, it is noted that although Council would be exempt from the tendering requirements contained in section 55 of the *Local Government Act 1993*, the community management governance structure allows for a robust method of procurement – for example, two written quotes must be submitted to the Community Association for any item over \$10,000 in order to ensure a transparent and accountable process.

### **FINANCIAL IMPLICATIONS**

While indicative figures for the cost of the CMS and TCMS have been developed, the final cost cannot be determined until Council has a formal Maintenance Agreement in place, which is yet to be workshopped and presented to Council in the future.

### **CONCLUSION**

The purpose of this report is to adopt the governance structure of the Community Management Scheme which consists of the CMS, TCMS and PAAMP. It is noted that work is being completed on the Maintenance Agreement and this will be workshopped with Councillors before a further report is brought back to Council. Furthermore, a Council representative to the Committee Association and Town Centre Management Committee will be determined closer to the land transfer date.

The above documentation has been rigorously reviewed by Council's independent solicitor who has certified that Council's interests are protected.

Council at its Ordinary Meeting of 9 August 2011 determined that a Community Management Scheme was the most appropriate governance arrangement for the Oran Park Town Centre. Furthermore, if Council was of a mind to remove itself from the

Scheme, this would potentially expose Council to significant implications (please see **Attachment 9 in Supporting Documents**).

The adoption of the governance structure of the Scheme is integral to having the lots created and the eventual land transfer and delivery of the new Administration Building, Library and Leisure Centre. Council is required to respond to the documentation within 40 business days, namely, by 6 June 2014.

Ultimately the Community Management Scheme is a titling structure that will ensure the successful ongoing operation of both public and private spaces at Oran Park for the future. It will ensure that ongoing community use of those spaces is both protected and maintained at a high standard. Council's participation in the Scheme also acts as an insurance policy to ensure the interests of the wider community are represented.

### **RECOMMENDED**

**That Council:**

- i. **accept the Community Management Scheme documentation (namely, the Community Management Statement, Town Centre Management Statement and Public Areas Access Management Plan) further to clause 48 of the land sale contract and Council's resolution of 9 August 2011;**
- ii. **note that the Maintenance Agreement will be workshopped with Councillors and a further report will be provided in due course;**
- iii. **note that the appointment of Council representatives to the Committee Association and the Town Centre Management Committee will form the subject of a further report to Council;**
- iv. **place the proposed operational land classification of the Town Park (Lot 6) and Lot 5 (Administration Building, Library and Leisure Centre site) of the Oran Park Town Centre on public exhibition for a period of not less than 28 days, with a further report to Council upon completion of the exhibition period;**
- v. **determines pursuant to s.55(3)(i) of the *Local Government Act 1993* that a satisfactory result will not be achieved by inviting tenders relating to goods and services within the Oran Park Town Centre Community Management Scheme on the basis that open tendering to a party outside the governance regime would be impractical and would take control and responsibility for the provision of services away from Council when Council has collateral non-transferable obligations and duties under the governance regime; and**
- vi. **delegate and authorise the General Manager and Mayor the ability to sign all necessary documents (and affix the Common Seal of Council if required) on behalf of Council relating to the Community Management Scheme, land sale contract and the transfer of the Town Park (Lot 6) and Lot 5 of the Oran Park Town Centre into Council's ownership.**



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## ATTACHMENTS

1. CMS Area and Membership
2. Legal Certification
3. Community Management Statement
4. Town Centre Management Statement
5. Public Areas Accessibility Management Plan
6. Council Report of 9 August 2011
7. Council Report of 27 November 2012
8. Councillor Questions and Answers - *Supporting Document*
9. Legal Advice on Scheme Participation - *Supporting Document*

ORD02

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## ORDINARY COUNCIL

**ORD03****SUBJECT: 2013/14 - 2016/17 REVISED DELIVERY PROGRAM AND 2014/15 DRAFT OPERATIONAL PLAN (BUDGET)****FROM:** Acting Director Governance**TRIM #:** 14/26095

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### PURPOSE OF REPORT

The purpose of this report is to inform Council that the Revised 2013/14 – 2016/17 Delivery Program and Draft 2014/15 Operational Plan (Budget) are now in a position to be formally considered by Council and, if endorsed, placed on public exhibition.

### BACKGROUND

Council's Integrated Planning and Reporting Package was adopted on the 25 June 2013. The package included the following key documents:

1. Community Strategic Plan – Camden 2040,
2. Resource Strategy (comprising a Long Term Financial Plan, Asset Management Plans and a Workforce Plan),
3. 2013/14 – 2016/17 Delivery Program,
4. 2013/14 Operational Plan (including the 2013/14 Budget).

The Local Government Amendment (Planning and Reporting) Act, 2009 states that any major variations to the adopted Delivery Program must be publicly exhibited for a period of 28 days (minimum).

As part of the 2014/15 annual budget process, there have been a number of recommended inclusions to the 2014/15 budget over and above what was included in the Adopted 2013/14 – 2016/17 Delivery Program. For these reasons, it is appropriate that Council publicly exhibit the relevant documents for a period of 28 days.

**A copy of the Revised Delivery Program and 2014/15 Operational Plan (Budget) were distributed to Councillors under separate cover 24 April 2014.**

### INTEGRATED PLANNING & REPORTING

The current Integrated Planning and Reporting Package has now been in place for approximately 12 months.

At the core of the Integrated Planning and Reporting Package is the establishment of strong links between the 4 key component documents to demonstrate that what Council does is driven in the main by community priorities (from Camden 2040) and that sufficient resources have been allocated to these programs and activities so that service outcomes can be delivered on time, in a sustainable manner.

Council and the community should be able to see a strong connection between strategy, resourcing needs, service delivery and ultimately monitoring and review. The focus during the development and review of the Integrated Planning and Reporting

Package has been on making these links as clear as possible and ensuring alignment of resourcing strategies and programs in an affordable way.

The Integrated Planning and Reporting process is considered important for a number of reasons, including;

- enabling the community to have a greater say in the direction of their community,
- creating more informed discussion in the community on priorities and an understanding of the resources required to successfully achieve these priorities,
- providing the Council with a greater mandate for its decision making,
- ensuring service delivery can focus on agreed community priorities,
- taking a long term sustainable view of the cost and implications of delivery of agreed service levels so that the 'big picture' is clear over time,
- enabling an informed debate on priorities and options where services or programs are not sustainable, and
- ensuring progress is regularly measured and reported.

**REVISED DELIVERY PROGRAM**

Council's Delivery Program and Operational Plan outlines 30 Local Services and the supporting programs and activities that Council proposes to undertake over a 4 year period to help achieve the aspirations espoused in Camden 2040. This document details the range of services Council delivers, the primary activities involved in delivering those services, the timeframe in which those activities will be delivered and the manner in which success will be measured.

There are a number of changes which have been made to the Adopted Delivery Program. These changes are largely a result of Council's ability to allocate additional funding to a range of workforce, operational and capital funding requirements.

The primary changes to the Delivery Program that were adopted in June 2013 are as follows:

Delivery Program Changes	Cost	Expected Delivery	Funding
<b>Workforce Funding</b>			
Forward Funding Staffing & Additional Staffing	\$1,144,800	2014-15	Additional 26 staffing positions in 2014/15 (Recurrent Funding)
<b>Operational Funding</b>			
Camden Town Centre Studies	\$100,000	2014-15	Non-recurrent funding included within the 2014/15 Budget
Economic Development (Including Business Alliance)	\$75,000	2014-15	Recurrent funding included within the 2014/15 Budget
Biannual Sponsorship Program	\$56,000	2014-15	Recurrent funding included within the 2014/15 Budget
Works Depot Development - Feasibility Study	\$50,000	2014-15	Non-recurrent funding included within the 2014/15 Budget

Delivery Program Changes (Continued)	Cost	Expected Delivery	Funding
BEP Wetlands Study / Improvements	\$50,000	2014-15	Non-recurrent funding included within the 2014/15 Budget
Various Studies	\$25,000	2014-15	Recurrent funding included within the 2014/15 Budget
<b>Capital Funding</b>			
PCYC Building Construction - Council Contribution	\$4,107,400	2014-15	Funded through Section 94 Cash Reserves and State Grant
Stage 1 - Camden Cemetery Improvements	\$600,000	2014-15	Funded through the Camden Cemetery Reserve
Annual Footpath Construction Program	\$300,000	2014-15	Funded from the 2014/15 budget surplus (Recurrent).
New Playground Sites (Location to be determined)	\$183,400	2014-15	Funded from the 2014/15 budget surplus.
Parks & Garden Depot Relocation	\$150,000	2014-15	Brought forward from the 2015/16 budget
Rosevale Reserve (Narellan) Dog Off-Leash Area	\$70,000	2014-15	Funded from the 2014/15 budget surplus.
Camden Museum – Air conditioning & Storage	\$20,000	2014-15	Funded from the 2014/15 budget surplus.
Bus Shelter Bin Purchases	\$20,000	2014-15	Funded from the 2014/15 budget surplus.
Commence Stage 1 - Narellan Sporting Complex	\$2,816,000	2015-16	Funded through Section 94 Cash Reserves
Commence Stage 1 - Camden Town Centre Upgrade	\$1,754,000	2015-16	Asset Renewal Reserve (\$759K) and Town Centre Reserve (\$995K)
Construct Outdoor Multi-Purpose Youth Facility (Location to be determined)	\$650,000	2015-16	Funded from the 2014/15 (\$50k) and 2015/16 (\$600k) budget surplus.
Mt Annan Leisure Centre Stage 2	\$8,691,600	2016-17	Funded through Section 94 Cash Reserves
Camden Carpark Construction	\$3,600,000	2016-17	Funded through Section 94 Cash Reserves

It should be noted that the major capital projects proposed within this Revised Delivery Program will be the subject of future reports to Council for endorsement of scope, location and any variation to funding.

## 2014/15 OPERATIONAL PLAN (BUDGET)

The 2014/15 Operational Plan provides the financial resources for Council to continue to deliver the services, programs and activities outlined within the Delivery Program. In reviewing the 2014/15 Operational Plan and Budget, Council has prudently considered both the needs of the community and long term financial sustainability of the organisation.

A review of the 2014/15 Operational Plan identified a budget surplus of \$2,544,200. The proposed allocation of the budget surplus is shown in the following table:

<b>2014/15 Budget Surplus</b>	
Draft Budget Surplus	<b>\$2,544,200</b>
<b>Surplus Allocation</b>	
1 - Additional Workforce Positions (Net)	\$1,144,800
2 - Additional Operational Projects (Net)	\$356,000
3 - Additional Capital Works (Net)	\$793,400
4 - Proposed Reserve Transfers	\$250,000
<b>2014/15 Balanced Budget Position</b>	<b>\$0</b>

### 1 - Additional Workforce Positions

A total of 26 additional positions have been endorsed for inclusion in the 2014/15 budget. These positions are considered high priority positions and are consistent with Council's adopted workforce plan. The positions will assist in areas where services are under pressure to keep pace with the demands of urban development and represent a combination of leadership, technical and operational staff.

The number of additional positions proposed to be created as part of the 2014/15 budget is significantly higher than previously included in the 2013/14 budget. The additional positions are a combination of new positions, those proposed in 2014/15 and positions brought forward from 2015/16. The increase in staffing will allow Council to deliver expected service levels to a growing LGA.

### 2 – Additional Operational Projects

In addition to the funds allocated in the 2013/14 – 2016/17 Delivery Program, Council has endorsed the following additional operational projects for inclusion in the 2014/15 budget.

<b>Additional Operational Projects</b>	
Camden Town Centre Studies	\$100,000
Economic Development Program	\$75,000
Biannual Sponsorship Program	\$56,000
Works Depot Feasibility Study	\$50,000
BEP Wetlands Study / Improvements	\$50,000
Waste Management Service Review	\$40,000
Minor Operational Funding under \$15,000	\$44,000
Less: Reserve Funding Available	(\$59,000)
<b>Total – Operational Funding Requests</b>	<b>\$356,000</b>

### 3 - Capital Works Projects

In addition to the capital works projects approved as part of the 2013/14 – 2016/17 Delivery Program, Council has endorsed the following additional capital projects for inclusion in the 2014/15 budget.

<b>Additional Capital Works Projects</b>	
Camden Cemetery Works (Stage One)	\$600,000
Footpath & Cycleway Construction Program	\$300,000
New Playground Sites (Location/s to be determined)	\$183,400
Proposed Parks & Garden Depot Relocation	\$150,000
Outdoor Multi-Purpose Youth Facility (Design)	\$50,000
Camden Museum – Air Conditioning / Storage	\$20,000
Rosevale Reserve – Dog Off-Leash Area	\$70,000
Bus Shelter Bin Purchases	\$20,000
Less: Reserve Funding Available	(\$600,000)
<b>Total – Additional Capital Works Projects</b>	<b>\$793,400</b>

### 4 – Proposed Reserve Transfers

In addition to the reserve transfers approved as part of the 2013/14 – 2016/17 Delivery Program, the following reserve transfers are proposed to be made as part of the 2014/15 budget.

<b>Proposed Reserve Transfers</b>	
Asset Renewal Reserve – Transfer to Reserve	\$150,000
Technology Improvements Reserve – Transfer to Reserve	\$100,000
<b>Total – Proposed Reserve Transfers</b>	<b>\$250,000</b>

### 2014/15 OPERATIONAL PLAN HIGHLIGHTS

In summary, the draft 2014/15 Operational Plan is as follows:

<b>Draft Budget</b>	<b>2014/15</b>
Operating Expenditure	\$87,317,900
Capital Expenditure	\$68,753,600
<b>Gross Expenditure Budget</b>	<b>\$156,071,500</b>
Less Non Cash Items:	
Works In Kind Land & Infrastructure	\$38,019,000
Non Cash Depreciation Expense	\$16,041,700
Transfer to Cash Reserves	\$12,894,900
<b>Net Cash Expenditure Budget</b>	<b>\$89,115,900</b>

### Rate Income

Council was advised in December 2013 that IPART had determined an allowable increase in rating income for 2014/15 of 2.30%. Rate estimates included within Council's Revenue Policy have been prepared on the basis of a 2.30% rate increase.

The impact on the average residential assessment is approximately \$24.90 per year (48c per week)

Council has not made an application for a rate increase above the allowable increase of 2.30% for the 2014/15 financial year.

Council will continue to levy properties that receive a stormwater service with the Stormwater Management Levy. No change is proposed to the levy amount, which is \$20 per annum for land categorised as residential.

### Land Valuations

Rating revenues raised in the 2014/15 financial year will be based on the updated land valuations determined by the Valuer General's Department at a base date of 1 July 2013.

Land Valuations are issued by the Office of the New South Wales Valuer General and are determined under the Valuation of Land Act 1916. The Valuer General is responsible for providing fair and consistent land values for rating and taxing purposes. Council has no control over the land valuations issued on properties within the LGA.

Land Values within the LGA have increased by \$429 million.

A summary of the changes in land valuations is provided in the table below:

2014/15 Rate Year	2010 Land Value	2013 Land Value	Increase
Residential	\$6,021,722,710	\$6,386,909,440	\$365,186,730
Business	\$992,332,050	\$994,488,220	\$2,156,170
Farmland (Ordinary)	\$380,888,590	\$425,222,700	\$44,334,110
Farmland (Intensive)	\$19,128,000	\$20,841,000	\$1,713,000
Mixed Development	\$7,503,000	\$7,799,000	\$296,000
<b>Sub-Total</b>	<b>\$7,421,574,350</b>	<b>\$7,835,260,360</b>	<b>\$413,686,010</b>
Non Rateable	\$432,606,030	\$447,506,598	\$14,900,568
<b>Total</b>	<b>\$7,854,180,380</b>	<b>\$8,282,766,958</b>	<b>\$428,586,578</b>

### Domestic Waste Charges

It is proposed to increase domestic waste charges by 5.00%. The impact on the average 120 litre service is approximately \$15 per year (29c per week). This increase is required to recover the cost of providing the service and funding Council's waste plant replacement program.

The list of proposed charges applicable to waste services can be found in Council's Fees and Charges schedule for the 2014/15 financial year.

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### Fees and Charges

Proposed fees and charges for 2014/15 have generally been increased by 5.00% with the exception of fees which are set by regulation, are prepared on a cost recovery basis or where Council provides the service in a competitive market.

Council's Fees and Charges schedule for the 2014/15 financial year will be part of the documentation placed on exhibition for public comment.

### Investment Income

Council has an adopted investment policy which outlines the manner in which Council may invest funds, the risk profile considerations, and the types of institutions and products which it may invest in.

Interest projections for 2014/15 have been prepared on the basis of generating a return on investment of 3.50%. This is less than the previously expected rate forecast of 4.90% which was used as part of the 2014/15 budget. Council is currently achieving a return on investments portfolio of approx. 4.06% (March 2014).

### Loan Borrowings

Historically Council has borrowed \$1.6 million annually to part-fund its road renewal program (road reconstruction). Council reviewed this practice in developing the 2013/14 budget and Long Term Financial Plan.

As a result of this review, Council (as part of the 2013/14 budget) approved a debt reduction strategy, which will gradually reduce the reliance on recurrent loan borrowings to part-fund the road reconstructions program. This strategy will result in the \$1.6 million recurrent loan borrowing being phased out by 2021/22.

The loan borrowing for the purpose of road reconstruction for 2014/15 is \$2,250,000 which is a combination of the 2014/15 and 2015/16 loan borrowing requirements (please refer to the section below on the Local Infrastructure Renewal Scheme).

### Local Infrastructure Renewal Scheme (Round 3)

The Local Infrastructure Renewal Scheme was introduced by the NSW State Government where Councils could apply for interest-subsidised loans for works which supported investment in ageing infrastructure or enable infrastructure for new housing development.

Council was previously successful in securing a \$2 million interest-subsidised loan under Round 2 of the scheme. This loan was included as part of the continuation of the Community Infrastructure Renewal Program. In September 2013, the NSW State Government announced a further round (Round 3) of funding which was available under the Local Infrastructure Renewal Scheme.

In December 2013, Council approved its application under Round 3 of the scheme. As outlined within Council's application, Council intends undertaking infrastructure works valued at \$4.7 million over the next two years. This is in addition to the works identified within the Community Infrastructure Renewal Program.



A summary of the works program is as follows:

Local Infrastructure Renewal Scheme (Round 3)		
2014/15 Road Reconstruction	\$1,955,300	Various Roads within LGA
2015/16 Road Reconstruction	\$2,014,000	Various Roads within LGA
Camden Town Centre	\$759,500	Asset Renewal
<b>Total Value of Works</b>	<b>\$4,728,800</b>	
<b>Funded by:</b>		
LIRS subsidised Loan	\$2,250,000	As per adopted Loans Program
Asset Renewal Reserve	\$759,500	Cash balance of Reserve
General Fund	\$1,719,300	As per adopted Budget
<b>Total Funding</b>	<b>\$4,728,800</b>	

The program will be funded through a range of sources including loan borrowings, the asset renewal reserve and general rate income. Loan borrowings for road reconstruction will not be required in 2015/16 if Council is successful in its application under Round 3 of the LIRS scheme.

If Council is successful in its application under this scheme, it will save approximately \$382,500 over the life of the loan in interest payments. This report will recommend that Council approve the transfer of the savings to the Asset Renewal Reserve over the life of the loan.

#### Capital Expenditure Program

The Capital Works Program for 2014/15 is \$60,866,700. A breakdown of this program is shown in the following table:

Local Service	2014/15
Road / Transport Infrastructure	\$15,770,200
Drainage Infrastructure	\$19,749,200
Waste Management	\$1,940,600
Parks & Playgrounds	\$14,623,500
Community Facilities	\$2,787,900
Recreational Facilities	\$51,500
Public Libraries	\$254,300
Central Administration Building	\$4,732,700
Governance & IT	\$956,800
	<b>\$60,866,700</b>
<b>Funded By</b>	
Works In Kind Agreements	\$38,019,000
Section 94 Funds (Cash Reserves)	\$7,941,300
Waste Management Reserve	\$1,919,300
External Grants	\$409,100
Central Admin Building Reserve	\$4,732,700
Community Infrast. Renewal Program	\$1,780,500
Internal Reserves	\$1,367,300
General Fund	\$4,697,500
	<b>\$60,866,700</b>

Oran Park Administration Building

In December 2013, Council was presented with a revised scope of the Oran Park Administration Building. The change in scope was primarily due to an increase in floorspace required in the first stage of construction and an increase in the car parking spaces provided.

Based on the revised scope, it is estimated that stage one of this project will cost approximately \$35.6 million, with the funding provided through a mix of loan borrowings, internal reserves and land sales. It is expected that Council will need to borrow approximately \$20.6 million to fund the building.

The debt servicing cost associated with the construction of a new central administration building has been factored into Council's Long Term Financial Plan, however the debt servicing will not have an impact on Council's budget until 2016/17.

Council has considered the impact of borrowing for a new central administration building on its debt service ratio and is satisfied that the level of debt is within the recommended levels for a developing Council.

**INTERNAL RESERVES**

The following table details transfers from internal reserves within the 2014/15 Operational Plan which require Council's approval.

<b>Proposed Reserve Transfers</b>	<b>Amount</b>	<b>Reason</b>
<b>Transfer to Reserves</b>		
Election Reserve	\$73,800	Annual allocation required to fund the 2016 Local Government election.
Cemetery Reserve	\$138,700	Income from the sale of cemetery plots is restricted for future site development and/or upgrades.
Plant Replacement Reserve	\$665,100	This annual transfer is required to ensure Council has sufficient funds to replace its plant in accordance with the proposed replacement program.
Working Funds Reserve	\$165,500	In reviewing the 2014/15 Operational Plan, Council identified a deficit position for 2015/16 and 2016/17 of \$165,500. It is proposed to transfer this amount to the working funds reserve to balance the budget position in 2015/16 and 2016/17.
Employee Entitlements Reserve	\$635,700	This annual transfer is required to ensure Council has sufficient funds in reserve to fund future employee leave entitlement payments.
Technology Improvements Reserve	\$100,000	The 2014/15 Operational Plan proposes the creation of a Technology Reserve (as detailed in this report).
Asset Renewal Reserve	\$150,000	It is proposed to increase the balance of the Asset Renewal Reserve by \$150,000. This will fund future asset renewal works in accordance with Council's Asset Management Plans.

Proposed Reserve Transfers	Amount	Reason
<b>Transfer from Reserve</b>		
Camden Town Centre Reserve	(\$50,000)	Funds are required to continue to review and update the plans and strategies relating to the Camden Town Centre.
Cemetery Reserve	(\$600,000)	Funds are required to commence stage one of the Cemetery works program.
Plant Replacement Reserve	(\$594,800)	This transfer is required to fund those plant items which have been identified for replacement in the 2014/15 financial year.
Working Funds Reserve	(\$1,079,600)	Savings have been identified in the 2013/14 budget as a result of staff vacancies and the deletion of a new drainage truck from the plant purchase program. These savings will be transferred to the working funds reserve as part of the March Quarterly Review, and then used to fund the 2014/15 budget.
Administration Building Reserve	(\$4,732,700)	This transfer is required to fund ongoing design costs, approval costs and the commencement of construction during the 2014/15 financial year.

This report will recommend that Council approve the above internal reserve transfers.

Note: The restriction of the expected interest savings from the Local Infrastructure Renewal Scheme (Round 3) to the Asset Renewal Reserve is not shown in the table above as Council does not expect to receive its first subsidy payment until the 2015/16 financial year.

Creation of New Reserve - Technology Improvements Reserve

The 2014/15 Operational Plan proposes the creation of a Technology Improvements Reserve. The transfer to this reserve for 2014/15 is \$100,000. It is proposed that this will be a recurrent allocation within Council’s Long Term Financial Plan.

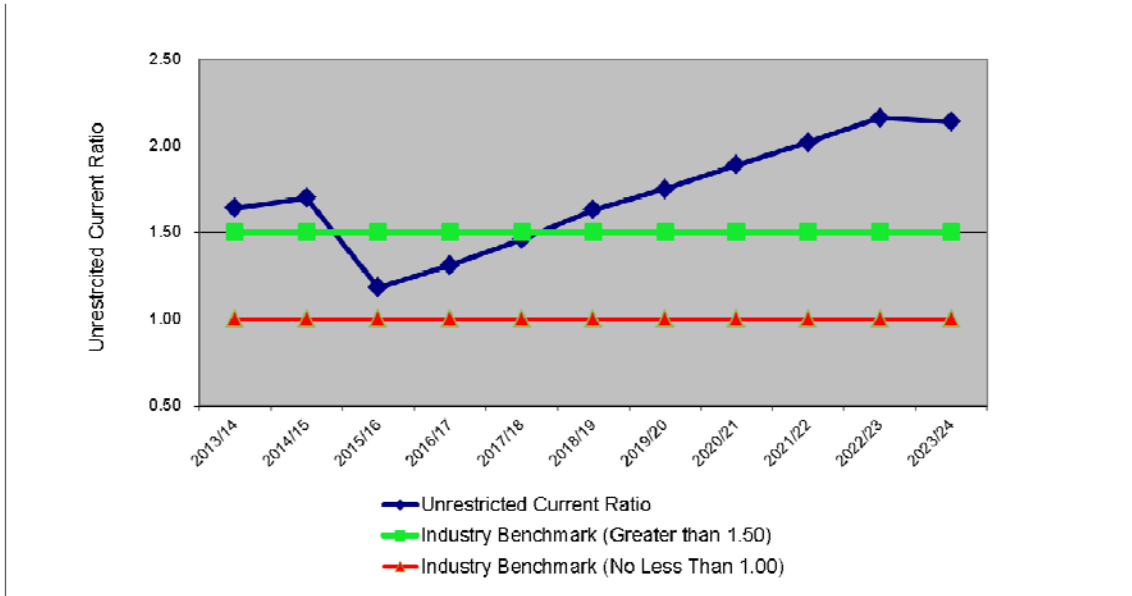
Council has identified the need for technology improvements as a means of enhancing the way our community may do business with Council and to also create efficiencies in the way we deliver services both internally and externally.

**LONG TERM FINANCIAL PLAN AND FINANCIAL SUSTAINABILITY**

In conjunction with reviewing the 2014/15 Operational Plan, Council has updated its Long Term Financial Plan. Provided below is a summary of the financial ratios which are used to assess Council’s long term financial sustainability.

Unrestricted Current Ratio

The unrestricted current ratio measures Council's ability to fund short term financial obligations such as loans, payroll and leave entitlements (measures liquidity).



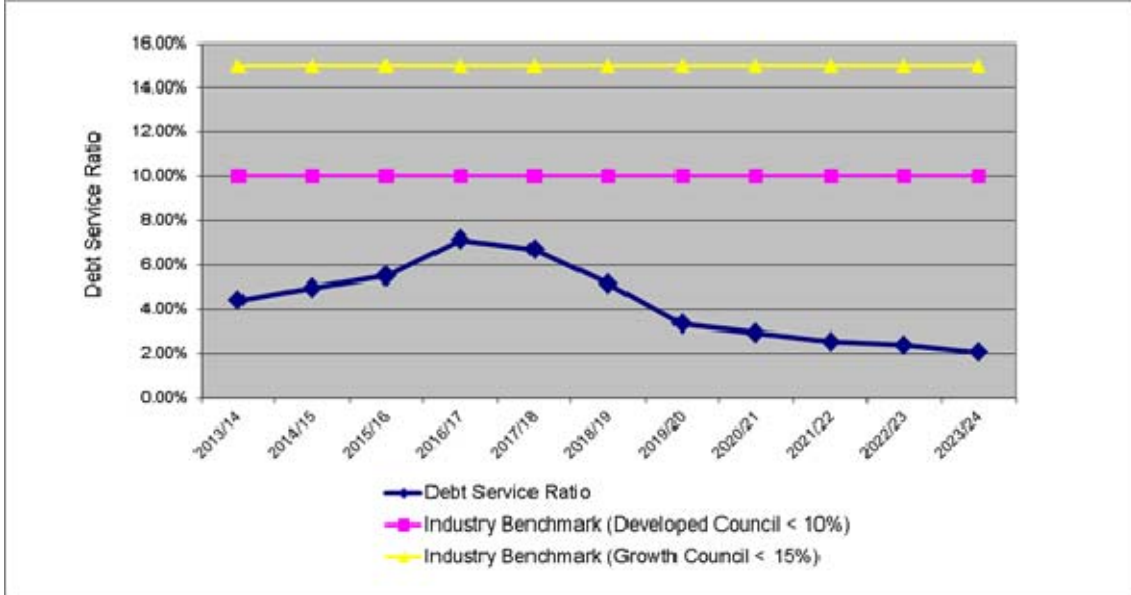
Over the next 2 years Council will commit to a number of essential capital projects that will drawdown on Council's cash reserves, the impact will reduce the amount of unrestricted cash Council has available for use. While the indicator falls below TCORPS industry benchmark of 1:1.50 in 2015/16 a combination of reducing liabilities and transfers to reserve see this indicator improving over a short period of time, being equal to the industry benchmark by 2017/18. This also indicates that Council continues to be financially sustainable.

The use of reserve funds does not impact Council's ability to deliver existing services or service levels. Council's Long Term Financial Plan (LTFP) remains funded and balanced over life of the plan. Council's Capital Works Reserve will remain over \$1 million providing a contingency for emergency funding.

Reserves are essentially created to hold funds for a future purpose, in the 2015/16 Council will deliver a much needed new Central Administration Building that will serve our community for years to come. The use of reserve funds is completely justified and will ultimately reduce Council's reliance on long-term debt.

### Debt Service Ratio

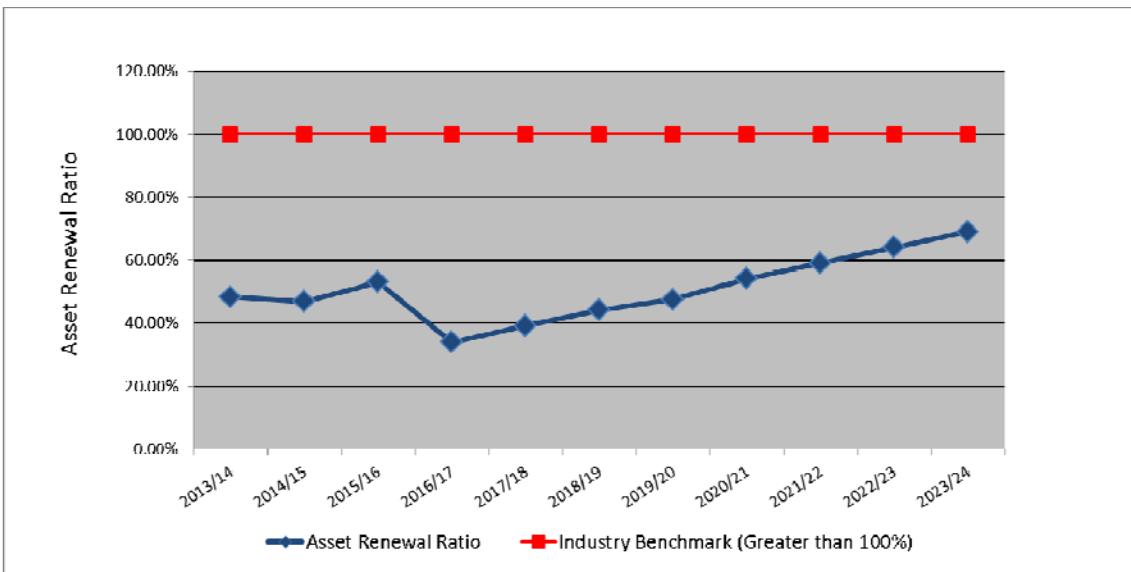
The Debt Service Ratio measures what percentage of Council's revenue is being used to service debt.



Council's capacity to service debt remains strong. The borrowing for the new central administration building has already been factored into Council's LTFP peaking in 2016/17 but still well within the industry benchmark of below 15%. Council's capacity to service debt improves even further in future years as our budget capacity grows over the next 10 years.

### Asset Renewal Ratio

The Asset Renewal Ratio measures the rate at which Council's assets are being renewed against the rate at which they are depreciating (consumed).



This ratio is still below the industry benchmark of 100%. Council continues to address this problem over the long-term through innovative funding mechanisms. This includes

the creation of an asset renewal reserve, the continuation of the Community Infrastructure Renewal Program and applications under Rounds 2 and 3 of the Local Infrastructure Renewal Scheme (Round 3 application is still pending).

Council will also undertake a review of the condition of all assets within the LGA over the next 12-18 months which will provide critical information about our assets base. This information will also provide Council with a better understanding of what long-term funding might be required to improve this ratio.

### **PUBLIC EXHIBITION & FEEDBACK**

Public exhibition will commence Thursday 15 May and conclude Wednesday 11 June 2014 (inclusive).

The 2013/14 – 2016/17 Revised Delivery Program and 2014/15 Draft Operational Plan (Budget) will be advertised in a local newspaper. These documents will also be available at Council's Customer Service Centres (Narellan and Camden), the Camden and Narellan Libraries and will be published on Council's website throughout the course of the exhibition period.

Submissions and/or comments received from residents or community groups will be reported back to Council as part of the adoption of the Revised Delivery Program and 2014/15 Operational Plan (budget).

### **CONCLUSION**

The 2013/14 – 2016/17 Revised Delivery Program & 2014/15 Draft Operational Plan (Budget) is now in a position to be presented to Council and, if approved, be placed on public exhibition for a period of 28 days.

The revised Delivery Program and 2014/15 Operational Plan (budget) maintains existing services and service levels, provides additional staffing to ensure Council is able to service its growing population and addresses much needed infrastructure to be delivered over the next 2-3 years.

### **RECOMMENDED**

**That Council adopt, for public exhibition purposes,:**

- i. the Revised 2013/14 - 2016/17 Delivery Program;**
- ii. the Draft 2014/15 Operational Plan (Budget);**
- iii. the 2014/15 Draft Revenue Policy and Pricing Policy, including Draft Fees and Charges and a continuation of the Stormwater Management Levy;**
- iv. the Minister's Allowable limit of a 2.30% rate increase to apply to the 2014/15 rating year;**
- v. the proposed borrowing of \$2,250,000 being Council's 2014/15 and 2015/16 Loan Borrowing Program which is subject to a successful outcome of Council's application under Round 3 of the Local Infrastructure Renewal Scheme.**

- vi. that if successful the interest savings from the Local Infrastructure Renewal Scheme (Round 3), commencing in 2015/16 be restricted to the Asset Renewal Reserve.
- vii. the following proposed reserve transfers;

Proposed Reserve Transfers	Amount
<b>Transfer to Reserves</b>	
Election Reserve	\$73,800
Cemetery Reserve	\$138,700
Plant Replacement Reserve	\$665,100
Working Funds Reserve	\$165,500
Employee Entitlements Reserve	\$635,700
Technology Improvements Reserve	\$100,000
Asset Renewal Reserve	\$150,000
<b>Transfer from Reserve</b>	
Camden Town Centre Reserve	(\$50,000)
Cemetery Reserve	(\$600,000)
Plant Replacement Reserve	(\$594,800)
Working Funds Reserve	(\$1,079,600)
Administration Building Reserve	(\$4,732,700)

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## ORDINARY COUNCIL

ORD04

**SUBJECT: LOCAL GOVERNMENT NSW - REQUEST FOR LEGAL ASSISTANCE -  
CANTERBURY CITY COUNCIL**

**FROM:** Acting Director Governance

**TRIM #:** 14/53766

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### PURPOSE OF REPORT

Council is in receipt of a request from Local Government NSW to provide a voluntary contribution of \$365.77 GST inclusive, to contribute to the cost of legal expenses incurred by Canterbury City Council in relation to recent Supreme Court and NSW Court of Appeal proceedings (see **Attachment 1**).

The purpose of this report is to seek Council approval to provide financial assistance to Canterbury City Council for legal costs incurred in an appeal relating to an easement over community land.

### MAIN REPORT

The request for a voluntary contribution to legal expenses relates to costs incurred by Canterbury City Council in NSW Supreme Court proceedings (*Saad v City of Canterbury* [2012] NSWSC 389) and Court of Appeal proceedings (*City of Canterbury v Saad* [2013] SWCA 251).

#### **Facts of the case**

In the Canterbury City Council case, the owner of a property which was landlocked, sought an easement over an adjoining parcel of Council owned community land. Having regard to the restrictions imposed on the use and management of community land (sections 46 and 47) of the *Local Government Act 1993*, Canterbury City Council stated that it was not empowered to grant an easement over community land.

The owner of the property purchased the land knowing that it was landlocked and where the relevant LEP prevented the construction of a dwelling-house unless "adequate vehicular access" was provided to the land.

Relying on section 88K of the *Conveyancing Act 1919*, the owner of the property was successful in both the Supreme Court and the NSW Court of Appeal proceedings in obtaining the easement over the community land. Section 88K enables a court to create an easement if the easement is reasonably necessary for the effective use and development of other land that will have the benefit of the easement.

Sections 46 and 47 of the *Local Government Act 1993* provide for stringent restrictions over community land in order to preserve the public interest of the land.

In this case, the courts held that in the particular and unusual circumstances of the case, which included minimal impact on the public land, and the zoning of the landlocked lot was suitable as residential, the public interest would not be compromised by the court imposing an easement.



## Ability to approve the voluntary contribution

In accordance with section 356 of the *Local Government Act 1993*, a Council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.

### FINANCIAL IMPLICATIONS

There is adequate funding in Council's legal expense account to cover the voluntary contribution of \$365.77, GST inclusive.

### CONCLUSION

This case has potential ramifications for all Councils across NSW in the management of Council owned community land. It has become apparent that there is a conflict between the community land provisions of the *Local Government Act 1993* and section 88K of the *Conveyancing Act 1919*.

Canterbury City Council has argued that, if allowed to stand, the decision will lower the bar for people seeking easements over community land and will undermine Council's ability to protect public land from private benefit.

This case has a direct impact on the interpretation of sections 46 and 47 of the *Local Government Act 1993* and has set a precedent for land dealings over community land.

Canterbury City Council has incurred significant legal costs as a result of complying with the provisions of the *Local Government Act 1993* and this ruling now impacts upon all Councils within NSW who are bound by the same provisions.

### RECOMMENDED

**That Council make a voluntary contribution in the amount of \$365.77 GST inclusive and that such payment be funded from Council's legal expense account.**

### ATTACHMENTS

1. Local Government NSW Request for Approval of Legal Assistance Canterbury City Council

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## ORDINARY COUNCIL

**ORD05****SUBJECT: TENDER FOR CONSULTANCY SERVICES FOR WORK HEALTH AND SAFETY MANAGEMENT SYSTEM****FROM:** Acting Director Governance**TRIM #:** 14/59162

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### PURPOSE OF REPORT

To request Council rescind the previous resolution to appoint The Brief Group as recommended to Council on 10<sup>th</sup> December 2013 to undertake Consultancy Services for the Work Health and Safety Management System.

To provide details of the tenders received for Tender T012/2014 Consultancy Services for the Work Health and Safety Management System and to recommend that Council accept the tender submitted by Recovery Partners.

### BACKGROUND

A report was submitted to Council on 10 December 2013 (ORD344/13) regarding the Tender for Consultancy Services for Work Health and Safety Management System T04/201.

It was resolved that Council appoint The Brief Group as the preferred Tenderer. Subsequent to this resolution, Council was advised by the Brief Group on 17 December 2013 that the company had been taken over by Deloitte Touche Tohmatsu Limited (Deloitte). In a further letter on 20 December 2013, Deloitte requested amendments to the contract.

Council sought legal advice as to whether the Tender could be awarded to Deloitte. The advice received was that Deloitte could not rely on the terms of The Brief Group's Tender as the conditions of the contract do not permit the transfer of the contract. Specifically Clause 12 provides in part 'this engagement is personal and cannot be assigned, transferred or sub-contracted'.

In addition Deloitte had not submitted a conforming tender and Council would have been prohibited from reviewing any subsequent tender after the closing date. Councillors were advised of the delay in appointment in the Councillor Update 7<sup>th</sup> February 2014.

Deloitte were advised on 11 February 2014 that Council was unable to award the Tender and would be re-advertising.

All previous Tenderers were advised on 21 February 2014 that Council would be re-advertising the Tender.

Despite the delays associated with Council being unable to engage a Consultant, work has continued on the further development of the WHS Management System. This has included Safe Work Procedures, standardised documentation, and increased focus on incident reporting and injury management.

## MAIN REPORT

### **Invitation to Tender**

The tender for Consultancy Services for the Work Health and Safety System was advertised on the NSW e-tendering website from 19 February to 13 March 2014, in the Macarthur Advertiser on 26 February and 5 March 2014 and the Sydney Morning Herald on 25 February 2014 and 4 March 2014.

Tenders opened on 19 February 2014 and closed on 13 March 2014. Tenderers were asked to provide information on their fee proposal, methodology and understanding of the project, provide a program with key milestones, details of their organisation as well as information regarding relevant experience and references.

### **Scope of Works**

The consultant will be required to work in partnership with Council's Corporate Safety Team to implement a systematic approach to further develop and improve Council's WHSMS. This will include;

- Reviewing current workplace, health and safety practices, policies and procedures
- Identifying and prioritising areas for further development and improvement
- Developing an action plan to address identified priorities, including identification of resources and agreed milestones
- Working with the Corporate Safety Team to meet agreed milestones
- Providing expert advice and guidance on the development and implementation of WHSMS components

### **Project Outcomes**

- Fully functional and integrated WHSMS
- Culture of commitment and compliance
- Legislative compliance

### **Tender Submissions**

A total of 49 tenders were received and are listed below.

The Brief Group did not re submit a tender, however 22 companies re-tendered.

<b>Tenderer</b>
Active Occupational Health & Safety Health Services
AI Group
Aussafe Consulting
Australasian Safety Services Pty Ltd
Australian OHS Risk Management (ARMS)
Australian Workplace Management
BDV Compliance Solutions
Business Basics Australia Pty Ltd
Compliance Occupational Health & Safety
Emergency Planning Solutions
Executive Project Management
Exis Pty Ltd
Framework Group

Grant Training and Safety Services
Guide Rely
Hibbs Associated Pty Ltd
InMotion Rehab
Integration Solutions Management Pty Ltd
JTA Risk Management Pty Ltd
KNJ Consultants
Konkt
M.A.C.S.S Group
MCJ Appointments
National Safety Council of Australia
Noel Arnold and Associates
NSW Public Works
Occupational Health Professionals
OSHEM Solutions Pty Ltd
Pegasus
Performance Drivers Pty Ltd
Prensa Pty Ltd
Progressive Risk Management Pty Ltd
QRMC Risk Management
Recovery Partners
Recovre
Reliance Consultant Services
Risk Management Intercontinental Pty Ltd
Risk Safe Consulting
Safegroup Pty Ltd
Safety and Enviro Foot Print
Safety Australia Pty Ltd
Safety Services Australia Pty Ltd
Safety Works Group Pty Ltd
Skillvance Associates Pty Ltd
Square Link Pty Ltd
SRC Solutions Pty Ltd
Strategic Project Management Services
TMS Consulting
WSP

**Tender Evaluation**

The tender process is intended to appoint a consultant with proven capacity and experience in similar scale projects as well as providing good value and quality services to Council.

The tenders that have been submitted to Council have been assessed based upon the selection criteria:

- a) Schedule of Rates;

*And the following non-price factors*

- b) Demonstrated relevant experience, capacity and technical ability to carry out the work under the Contract. Previous experience in similar local government projects will be considered highly;
- c) Methodology & understanding of the project objectives; and

d) Conformity with the request for tender.

A tender evaluation panel was established and the submissions were assessed on price and non-price factors as agreed by the evaluation panel. Price was given weighting of 40 % and non-price factors a weighting of 60 % as the experience and the tenderer's ability to complete the work was considered a higher priority than price alone.

The level of applicants was of a very high calibre and offered a wide breadth of expertise.

The panel members all agreed that the tender by Recovery Partners represented the best value to Council. Recovery Partners has demonstrated a proven track record in delivering projects of a similar scale and nature. Recovery Partners has provided the most competitive tender overall in terms of price & non-price factors, whilst also meeting all requirements of Council's tender documentation. Past clients were contacted and gave positive feedback for Recovery Partners. **A copy of the evaluation spread sheet is attached in Supporting Documents.**

A Tender Evaluation Plan is supplied in **Supporting Documents**. Please note this information is Commercial in Confidence.

This plan contains the details of the highest rated tenders as a result of a panel review process.

### **Relevant Legislation**

The tender has been conducted in accordance with the Local Government Act 1993, the Local Government Regulations (2005) and Council's Purchasing and Procurement Policy.

### **FINANCIAL IMPLICATIONS**

Council has sufficient funds currently allocated to this project in the 2013/14 and 2014/15 Employee & Community Relations budget to proceed with the proposed contract.

Recovery Partners fee is lower than the previously recommended Tender and was consistent with the price submitted by Recovery Partners previously.

### **CONCLUSION**

The appointment of Recovery Partners will assist in ensuring Council meets both legislative compliance as well as improving Council's ongoing commitment to the provision of workplace health and safety which is of paramount importance.

### **RECOMMENDED**

#### **That Council:**

- i. rescind previous recommendation to appoint The Brief Group minute number ORD344/13 for the reasons set out in the report above;**
- ii. appoint Recovery Partners to undertake consultancy services to further develop & implement a WHSMS based upon the terms and conditions set**

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**out in their tenders and Tender Brief T12/2014; and**

- iii. authorise the relevant documentation to be completed under Council's Power of Attorney, granted on 27 August 2013, Minute Number ORD215/3**

ATTACHMENTS

1. Copy of WHS Tender Evaluation Sheet- Report May 2014 - *Supporting Document*

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## ORDINARY COUNCIL

ORD06

ORD06

**SUBJECT: CLOSURE OF THE MEETING TO THE PUBLIC**  
**FROM:** Acting Director Governance  
**TRIM #:** 14/59331

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In accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005, in the opinion of the General Manager, the following business is of a kind as referred to in Section 10A(2) of the Act and should be dealt with in a part of the meeting closed to the media and public.

- Review of Organisational Structure

Council may, by resolution, allow members of the public to make representations as to whether the meeting should be closed before any part of the meeting is closed to the public. A representation by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded. That period would be limited to four minutes, in line with Council's Public Address Policy.

The meeting will only be closed during discussion of the matters directly the subject of the report and no other matters will be discussed in the closed section of the meeting.

Members of the public will be readmitted to the meeting immediately after the closed section is completed and if the Council passes a resolution during that part of the meeting that is closed to the public, the Chairperson will make the resolution public as soon as practicable after that closed part of the meeting has ended.

### **RECOMMENDED**

**That:**

- i. the meeting be now closed to the media and public to discuss a report concerning the review of the organisational structure, in accordance with the provisions of section 10A(2)(a) of the *Local Government Act 1993*; and**
- ii. any objections or submissions as to the closure of the meeting be now heard and be limited to a period of four minutes.**