



**Liverpool City Council  
Public Inquiry**

**Primary Findings  
and  
Interim Report**

March 2004

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# The context of the public Inquiry into Liverpool City Council

## Background

On November 5 2004 a Public Inquiry, convened pursuant to Section 740 of the Local Government Act 1993 (the Act), was announced into Liverpool City Council.

Section 740 of the Act empowers the Governor or the Minister to appoint a person as Commissioner, to hold a Public Inquiry and to report to the Governor or the Minister, relevantly, with respect to:

Any matter relating to the carrying out of the provisions of the Act or any other act conferring or imposing functions on a council, and

*Any act or omission of a member of a council, any employee of a council or any person elected or appointed by any office or position under the Act or any other act imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the act concerned, or to the office or position held by the member, employee or person under the act concerned, or to the functions of that office or position.*

The Act incorporates certain powers, which are given to commissioners, under the Royal Commissions Act 1923.

## Terms of Reference

In announcing the Inquiry, the Minister for Local Government, the Honourable Tony Kelly MLC outlined its terms of reference.

These terms established the parameters for the Inquiry.

The Terms of Reference provided for the conduct of a wide-ranging inquiry into the affairs of the council, involving the conduct of the Councillors as the Elected Body, and also of the council staff and council's operations, as comprising the Corporate Body.

The Terms of Reference are set out below:

*To inquire, report and make any appropriate recommendations regarding Liverpool City Council.*

*The Inquiry will have particular regard but is not limited to the following:*

1. *whether the council has exercised prudent financial management regarding the development and management of infrastructure projects such as those within the Woodward Park precinct (the “Oasis” project);*
2. *whether the council exercised appropriate openness and transparency in its decision making for approving and undertaking major infrastructure projects;*
3. *whether the council properly considered what impact major infrastructure projects would have on the ongoing ability of council to provide services to the community;*
4. *Council’s process of appointment and management of senior staff; and*

*Any other matter that warrants mention, particularly where it may impact upon the effective administration of the area and/or the working relationships between the council, councillors and its administration.*

In light of the directions embodied in the Terms of Reference, the Inquiry has directed itself to matters, which it regards as falling within the Terms of Reference, involving both the Elected Body and the Corporate Body.

### **The Concerns underlying the Inquiry**

In announcing the Inquiry, the Minister for Local Government, the Honourable Tony Kelly MLC ascribed the reasons for convening the Inquiry as:

*Independent advice has confirmed the State Government’s concerns regarding Liverpool City Council’s decision making on the viability of the arena.*

*The State Government has raised concerns with Liverpool City Council over a number of issues associated with the development of the Woodward Park precinct.*

*In particular the Department was concerned with the council’s financial exposure in relation to the arena development.*

The Minister emphasised:

*The State Government has no particular view on the project. However, we are concerned that decisions that involve a long-term financial commitment should be made in an informed and practical manner.*

*There has been considerable community controversy regarding the development and the significant losses incurred already by the council.*

*If the council decides to proceed with the arena there is a real chance that this will expose the council to considerable financial risk.*

Therefore a full and open inquiry into Liverpool City Council's handling of the development of Woodward Park and other infrastructure developments is required.

### **Prudent Financial Management – Council's Charter**

Section 8 of the Local government Act sets out council's charter. This charter contains a set of principles intended to guide councils in the manner in which they carry out their functions.

While the principles contained in the charter are not exclusive, councils are required to act in a manner that is not inconsistent with the principles contained in its charter.

The Charter provides that a council is:

- to exercise community leadership
- to provide appropriate services and facilities and to ensure that the services and facilities are managed efficiently and effectively
- to have regard to the long term and cumulative effects of its decisions
- to facilitate the involvement of councillors, the community, staff and others in the development, improvement and co-ordination of local government
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible.

### **The Role of the Councillors**

The Local Government Act provides, in section 223, that the role of the councillors, as the governing body, is to direct and control the affairs of the council in accordance with the Act.

Section 223 further elaborates their role, as a member of the governing body to be:

- to direct and control the affairs of the council in accordance with this Act
- to participate in the optimum allocation of the council's resources for the benefit of the area
- to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions
- to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

## The Scope of the Inquiry

At the commencement of the Public Hearings the Inquiry emphasised:

*This inquiry is not a trial of individuals, nor of corporations.*

*The Commissioner wishes to make clear, at this early stage, that this Inquiry is seeking to direct itself to governance issues affecting the council.*

*It is not seeking to form views regarding processes adopted by other individuals or bodies, nor to review or to form a view on the worth or otherwise of advice provided to the council.*

*It will give emphasis to the processes of the council, both by the elected body, represented by the Councillors, and the corporate body, headed by the General Manager.*

*This inquiry is not a trial of the virtues or otherwise of any project proposed in association with efforts to re-develop Woodward Park or of any other infrastructure project.*

*Over the period following the adoption of the Woodward Park Master Plan a number of proposals were put forward for its re-development or for other infrastructure projects.*

*The Terms of Reference do not call for the Inquiry to form any opinion regarding the virtue or otherwise of any particular proposal.*

Again, at the commencement of the Public Hearings the themes that the Inquiry intended to pursue were advised as:

- The prudence of the financial management of the council
- The openness and transparency of council's decision-making processes, including:
  - the information available and the consultation that occurred within council
  - the information provided to the community – its transparency and timeliness generally
  - more specifically, the information regarding the corporate and other legal entities used, and the agreements that were entered into, including the Memorandum of Understanding and the heads of Agreement.
  - how the council dealt with the professional advice given to it.

The importance of the prudence of the council's financial management is emphasised by payments made in the period from December 2001 to June 2002, when the council made an initial payment of \$3 million and three subsequent payments, each of \$4 million under agreements relating to the re-development of Woodward Park.

Other substantial payments were also made.

Under the terms of the settlement reached with the Bulldogs, the council may be liable to facilitate further substantial payments.

The Inquiry emphasised the effect of payments such as these have had, or may have on council's ability to provide services to the community.

Reference 1 of the Terms of Reference emphasises infrastructure projects within the Woodward Park precinct, importantly, it does not solely refer to Woodward Park precinct. The Inquiry has emphasised, but not solely directly itself to infrastructure projects such as those within the Woodward Park precinct.

Similarly, the Inquiry has not limited itself to the Oasis Project and has sought and considered evidence regarding infrastructure projects which the council has been involved in. In doing so, the Inquiry has considered the impact that earlier decisions may have on the ongoing ability of council to provide services to the community, as outlined in reference 3.

While they may not be within the ambit of this report, the Inquiry has had regard to all matters falling within the Terms of Reference.

## **A Chronology of Events**

In order to give an insight into the processes affecting Woodward Park and of the Inquiry generally, it is necessary to briefly outline the timeframe of relevant events.

- |      |   |
|------|---|
| 1988 | Council resolved to investigate commercial re-development of the old pool site at Woodward Park   |
| 1992 | Council adopted a Master Plan for Woodward Park & Whitlam Centre  |
| 1994 | A new Aquatic Centre was opened at Woodward Park  |
| 1995 | A new Local Environment Plan was adopted for Woodward Park<br>Council resolved to give the Slammers support to join the NBL   |
| 1996 | Failed BOOT Schemes associated with the Sydney Olympic bid<br>Bulldogs showed interest in Woodward Park   |
| 1997 | Bulldogs made a formal offer to develop Woodward Park<br>Slammers obtained entry into the NBL<br>Council reviewed options to re-develop the Whitlam Centre<br>Stardome Proposal emerged |

- 1999 Bulldogs acquired the Old Pool site  
Bulldogs entered into a MOU for construction of an Arena on Woodward Park
- 2000 Bulldogs negotiated the Oasis proposal
- 2001 Commercial Agreement for the Oasis Project entered into  
Early Construction Agreement for the Oasis Project entered into  
Works commenced on the Arena
- 2002 Work stopped on the Arena  
Council contributed \$15m to the Oasis Project  
Bulldogs salary cap breaches became known  
ICAC inquiry was held  
Council commenced to negotiate to end the Commercial Agreement
- 2003 Council negotiated the MOU with Macquarie – Liverpool 2020  
Council negotiated a settlement with Bulldogs  
Council met with Department of Local Government over concerns regarding the Oasis Project and Liverpool 2020  
Public Inquiry announced.

### **The Woodward Park Precinct**

Much of the Inquiry's attention was directed to Woodward Park and to the infrastructure proposals intended to be constructed on this park, and in other areas that became functionally linked to the proposals for Woodward Park (see below). In this report the park and these other areas are called the Woodward Park Precinct

Woodward Park is a piece of council land that is adjacent to the council chambers. Memorial Avenue, Copeland Street and Hoxton Park Road bound it.

It contained the Whitlam Centre, the old pool site, and Hillier Oval.

Some of the land within the park was freehold title, owned by the council and some was Crown land. The council appears to have been appointed the trustee of some, if not all of the Crown land.

### **Other Relevant Precincts**

Under the Oasis Project and Liverpool 2020 council-owned land within the Liverpool CBD and the TAPPS land were committed to development for commercial and residential uses.

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The Inquiry has considered proposals affecting these lands as part of its inquiry.

Similarly, the Inquiry has considered other areas and other projects, including the Casula Powerhouse as part of its consideration of other infrastructure projects.

### **The Legal Entities**

The chronology, indicates that there have been a number of proposals that have come before the council for re-development of Woodward Park.

There has been much publicity regarding various entities intended to be used as a vehicle for the construction of infrastructure and facilities.

Before proceeding further, it is important to restate what was indicated at the commencement of the Public Hearings, that the Inquiry did not regard itself as able to enquire into the operation, functions or governance of legal entities with whom the council contracted or those that the council entered into agreements with, or had understandings with.

The involvement of the council with various bodies, for example the Bulldogs Football Club, the Macquarie Bank and others was the primary interest to this Inquiry. Matters involving their internal governance were only considered where it had a direct impact on council's dealings.

The Inquiry's role was not to conduct an investigation into the internal affairs of the football club or the bank.

### **Council's Processes in Appointing and Managing Staff**

During the period that the Inquiry focussed on, a number of staff were appointed by the council. More recently a large number of staff, particularly those holding senior positions left the council.

Few, if any, of the current senior staff have worked with the council for an extensive period.

Similarly, a number of staff were appointed to positions during the period when the council was actively involved in its attempts to re-develop the Woodward Park land.

The Terms of Reference direct the Inquiry to have particular regard to council's process of appointment and management of senior staff.

Many current and former staff gave evidence at the Public Hearings. Additionally former staff provided written submissions.

### **Other Matters falling within the Terms of Reference**

The Terms of Reference make explicit that the Inquiry should have particular regard to 4 particular themes. Each of these has been referred to previously, either directly or in a paraphrased form.

The Inquiry is empowered to have regard to any other matter that warrants mention.

Such matters are emphasized in circumstances where they may impact either:

- on the effective administration of the area, and/or
- the working relationships between the council, the Councillors and the administration.

It is anticipated that subsequent reports will emphasise other matters arising from this part.

### **The Departmental Involvement**

Problems affecting the Oasis Development arose in 2002 when disclosures were made of payments to persons or companies associated with the Bulldogs.

Subsequently, the council entered into agreements permitting the Bulldogs to withdraw from the Commercial Agreement and settling various claims. At this time the council entered into the MOU facilitating Liverpool 2020 with Macquarie Bank.

Issues affecting the council's entry into the Oasis Development and Liverpool 2020 became the subject of concern for the Department of Local Government and these concerns in turn reflected in the Minister's determination to convene this Inquiry.

The Inquiry has had regard to the advice given by the council to the Department of Local Government and, in turn, to advice given by the Department.

## **Conducting the Inquiry**

In order to provide an insight of the processes which have been undertaken by the Inquiry, in order that it form a view, whether the council exercised prudent financial management regarding the development and management of infrastructure projects such as those within the Woodward Park precinct and, whether the council exercised appropriate openness and transparency in its decision-making for approving and undertaking major infrastructure projects; as required by the Terms of Reference, the following the procedures undertaken by the Inquiry were adopted.

### **(i) Public Notices**

Following the announcement of the Inquiry, notices calling upon the public to provide written submissions to the Inquiry, were published in Sydney daily newspapers and in local newspapers circulating within the council area.

This call for written Submissions was subsequently re-iterated when notices were published advising the dates of the Public Hearings.

### **(ii) Direct Approaches to the Council for Information**

In early December the Inquiry requested that the council provide certain information and documents including:

- Agreements entered into between the council and various entities for the intended re-development of Woodward Park, particularly those relating to the “Oasis Development”.
- Advice given to the council by its various advisers;
- Press releases issued by the council;
- Probity, feasibility and other governance advices provided to the council;
- Copies of Reports to and Minutes of council’s meetings;
- Council correspondence

### **(iii) Letters Addressed to:**

The Inquiry wrote to:

- The Mayor and each of the Councillors
- The General Manager, Mr. McCully
- The former General Manager, Mr. Carr
- Members of council’s Executive Staff
- Former members of council’s Executive Staff
- Members of Parliament and former Councillors

advising them of the Inquiry, its terms of reference and inviting them to make a Submission.

The Inquiry also wrote to:

- The NSW Ombudsman
- The Independent Commission Against Corruption
- The Department of Local Government
- Department of Gaming & Racing
- The Department of Lands

seeking information from them.

#### (iv) The Inquiry's website

Immediately following the appointment of the Commissioner, the Inquiry established its own website.

The website contained a précis setting out the Terms of Reference and an Information Paper providing information about the Inquiry and setting out the intended processes which the Inquiry proposed to undertake.

Subsequently details regarding the Public Hearings and the list of speakers for each of the daily hearings was added.

#### (v) The Written Submissions

An Information Package, to assist the preparation of submissions, was prepared by the Inquiry.

A copy of the Information Package, in a downloadable format, was made available on the Inquiry's website. Additionally, arrangements were made with the council for copies of the Information Package to be available at the Council Chambers and at council's library. The council made copies of the Information Package available for this purpose.

Ultimately more than 55 Submissions were received.

### **The Approach taken by the Inquiry**

The Terms of Reference called upon the Inquiry to obtain an overview of matters pertaining to the governance of the council, and to form an opinion on the governance matters raised in the Terms of Reference.

In so doing, the Inquiry was directed to inquire into certain matters associated with the conduct of the Elected Body.

The Inquiry whilst directed to inquire into specific matters was not called upon to consider the merits or otherwise of any proposal.

In the opening address of the Public Hearings the Inquiry's approach was clearly defined, and the relevant parts of the transcript are set out below:

*In light of the issues raised by the terms of reference I have agreed to allow a number of people to make submissions and appear before the inquiry to talk about specific issues.*

*I emphasise that this Inquiry is not called upon to reassess an individual's case, accordingly, I will consider submissions and evidence from the point of view of the terms of reference.*

*I have made this decision because if I exclude people from having their submissions published where they appear to fall within the terms of reference, or to refuse to allow them to appear, there will be some concern that the inquiry may be less than open.*

*However, I repeat, I will curtail evidence where it falls outside the terms of reference.*

In conducting the Inquiry, and in particular the Public Hearings, the Inquiry sought to obtain an understanding of council's processes underlying and an insight into the developments contemplated by the various proposals.

The Inquiry has reviewed various reports and advices provided by Council's advisers. In doing so, the Inquiry has limited its review to obtaining a sufficiency of information upon which it is satisfied that a conclusion can be safely drawn regarding the actions of the Council. It has not sought to form a view on the correctness or otherwise of such reports and advices.

## **Publication of Submissions**

The Inquiry emphasized its role as a Public Inquiry.

It sought, as far as possible, to obtain the public's views of the matters raised in the Terms of Reference.

This was emphasised on a number of ways, in the information sheet, the notices calling for submissions and advising the dates of the public hearings, at the commencement of, and during the Public Hearings conducted by the Inquiry.

The Terms of Reference, amongst other things, directed an Inquiry into whether the elected representatives adopted appropriate governance procedures in their dealings.

In order to undertake the Inquiry required by the Terms of Reference, it was appropriate to seek involvement of the public, particularly when considering whether the council exercised appropriate openness and transparency in its decision-making.

Copies of submissions were made available for public viewing at the offices of the Inquiry and at council's chambers.

### **Censorship of Submissions**

The Inquiry relied on earlier advice regarding the general application of defamation law to matters contained in submissions. The advice indicated that matters would generally not be considered defamatory, if contained in Submissions falling within the Terms of Reference of the Inquiry.

The nature of this advice was incorporated into the Information Package.

Discretion was exercised as to whether to make a Submission publicly available.

In light of the advice that had been provided to the Inquiry, notwithstanding the Inquiry's view that Submissions should be publicly available, it was felt appropriate in certain instances to refrain from providing copies of certain Submissions.

A policy was adopted to consider whether a Submission should be censored or not be published, and each Submission was reviewed according to this policy.

While the Inquiry had considered whether partial exclusion of information such as identifying details was appropriate. It was felt inappropriate to exercise this discretion, rather it was considered preferable not to make available some of the submissions.

### **The View**

In order to acquaint itself with the properties directly or likely to be involved in its consideration on 17 December 2003 the Inquiry attended the council area to conduct a review.

The Inquiry viewed:

- Woodward Park
- The Whitlam Centre
- Council's Administrative facilities at Woodward Park and in the Liverpool CBD
- The Old Pool Site

- The CBD lands referred to in the Oasis Project and Liverpool 2020, comprising:
  - The Bathurst Street carpark
  - The Northerumberland Street carpark
  - The Warren Service way
  
- The TAPPs land
- Other infrastructure sites, including:
  - The Casula Powerhouse
  - The Liverpool Library
  - The buslink
  - Sites being considered for council’s new Administrative Centre
  - The Collingwod House land
  - The Green Valley Community Centre
  - The Miller PCYC
  - The Casula Library and Community Centre
  - The Wattlegrove Youth Centre
  - The Cecil Hills Child Care Centre
  - The Greenway Park Community Centre
  
- Existing and new urban release areas, including:
  - Pleasure Point
  - Voyager Point
  - Cecil Hills
  - Abbotsbury
  - Sadleir

## **Public Hearings**

The Inquiry made arrangements to conduct Public Hearings in 42 sessions.

The Public Hearings were held at the Masonic Centre in Sydney.

The Public Hearings commenced on December 16 2003 and concluded on 1 March 2004.

In all, 60 different speakers in 42 hearing sessions attended and spoke, some on more than one occasion.

Speakers included:

- **The Mayor and Councillors**
- **Council’s current and former General Manager**
- **Past and present senior members of council’s staff**

- **Council’s professional advisers and consultants**
- **Representatives from the various proponents, including the Bulldogs, Macquarie Bank and Stardome**
- **A former Councillor and member of Parliament**
- **Members of the public**

The Public Hearings were conducted on an informal basis. The procedures, which were adopted, sought to ensure that the Inquiry proceeded in a simple and expeditious manner, whilst at the same time, recognising the rights of the people involved.

The approach taken by the Inquiry at the Public Hearings was to put questions to the speakers on the themes being pursued by it. This approach was underlain by the premise that the Inquiry had reviewed the Submissions made by the various speakers before they were called, and was aware of the issues that they had raised.

In adopting this approach, the Inquiry sought to obtain clarification or further detail of matters, which it thought appropriate, whether the particular matters had been specifically raised in the Submission, or not.

It was felt that this approach would enable the Inquiry to make more efficient use of the limited time available to it at the Public Hearings.

Through the adoption of this course, the Inquiry heard from a greater number of speakers than it could otherwise have heard from, if each speaker were simply allowed to read from, and expand on their written Submission.

Most importantly, it allowed the Inquiry to direct itself to, and focus on, the issues it regarded as important to its Inquiry.

This approach differed from the approaches which had been taken by previous Inquiries convened under Section 740 of the Act.

### **Right of Reply**

The Terms of Reference call upon the Commissioner to inquire, report and provide recommendations to the Minister on the governance of the council. At all times it was open to the Inquiry to make a recommendation that the Governor declare all civic offices to be vacant.

Such a recommendation, if made, and if acted upon, could result in the appointment of an Administrator or a fresh council election.

Whilst the Inquiry would only be making comments, findings or recommendations, these might be taken up by the Minister or by the Governor and given effect to.

Given this, the Inquiry regarded itself as having a duty to act fairly in accordance with the principles of administrative law. The Inquiry sought to conduct its proceedings in a manner, which afforded natural justice to the Councillors, council's staff and to members of the public.

Time was set-aside on the last day of the Public Hearings for council, Councillors and members of the public to reply to matters, which had been raised during the Public Hearings.

Council, Councillors and members of the public were afforded an additional opportunity to make further written Submissions in reply within one week from the conclusion of the Public Hearings.

### **Natural Justice**

The powers available to the Inquiry included the power to recommend the dismissal of the Elected Body. In light of this power it was imperative that procedures were adopted to ensure that the principles of natural justice be observed.

Whilst not wishing to detail the entirety of the approaches taken to ensure this outcome, it is appropriate to highlight some of the major aspects embodied in the manner in which the Inquiry was conducted.

Included in the procedures adopted were:

- The majority of Submissions which were received by the Inquiry were made available for public viewing at the Inquiry's offices or at council's chambers.
- Details which were thought to be inappropriate, were deleted from other Submissions.

This approach provided opportunity to others to comment on or correct statements made in the Submissions.

Other procedures included:

- Providing copies of documents to advisers, witnesses and to the council and seeking comment or clarification
- Conducting the hearings in public.

- Allowing members of the public, with leave of the Commissioner, to put questions to speakers.
- A right of reply, both orally at the conclusion of the Hearings, and subsequently in writing.

### **Post Hearing Procedures**

The Inquiry has adopted a view that where issues required further clarification following the conclusion of the Public Hearings it should seek appropriate evidence.

The Inquiry has sought further evidence from the council and from various witnesses.

There may be matters raised in the interim report (Part 2 of this report) about which individuals or bodies may wish to make further representations to the Inquiry.

### **Reports**

This report has been prepared for two purposes.

First, the Inquiry is conscious that elections to form a new Liverpool City Council are due to take place on March 27, and it is in the public interest to inform the community of the progress of the Inquiry.

Part 1 of this report provides the context for the Inquiry (Section 1 of Part 1) and then focuses on various matters concerned with the current situation of the council in March 2004, and the options for managing its situation into the future. Part 1 does not consider the events and decisions that have led to the council's current situation.

Section 2 of Part 1 provides a set of findings concerning the current situation of the council. Section 3 of Part 1 makes two recommendations in the light of these findings.

Second, the first of the Terms of Reference is specifically concerned with the Woodward Park Precinct and projects related to that Precinct. The second of the Terms of Reference relates to the openness and transparency of the council's decision-making processes, and the infrastructure projects related to the Woodward Park Precinct have been closely examined in this context. It is apparent, from both oral and written submissions to the Inquiry, that there is a great deal of concern with matters related to the Woodward Park Precinct.

An interim report on some of these matters constitutes Part 2. Such matters concern the complex array of factors that have influenced the various stages and changes associated with the Woodward Park Precinct. These represent some of the events and decisions that have led to the council's current situation.

Part 2 is really a summary of work in progress. It presents prima facie evidence concerning certain aspects of the history and arrangements of the Woodward Park Precinct. It does not reach any conclusions, and it makes no recommendations.

The Inquiry has not had sufficient time to analyse the complete body of evidence related to the Woodward Park Precinct that has been presented to the Inquiry. It has not had sufficient time to treat all the evidence associated with the third through to the fifth of the Terms of Reference.

After this Report has been submitted, the Inquiry will proceed to put together a second Report containing the full evidence and findings, and any further recommendations.

Beyond that, a third Report will be prepared examining the issues of commercial agreements and public private partnerships in the case of Liverpool City Council, and extending the analysis to develop more broadly the role of public private partnerships and other arrangements in the local government context.

## **Acknowledgments**

The Inquiry would like to take the opportunity to express its thanks to the following persons who have assisted in the conduct of the Inquiry:

Anina Johnson, from the Crown Solicitor's Office, who worked closely with the Inquiry, providing expert legal advice on a broad range of matters. She attended the Public Hearings and assisted with the questioning of the speakers. She helped with the analysis of material, and with the writing and editing of this Report. Her assistance was vital. She has overseen the general approach of the Inquiry, and she has been instrumental in the production of this Report.

Angus Broad, who served as Assistant to the Commissioner during the Inquiry. He handled relationships with the council and the public and press. He helped in analysing and evaluating the Submissions. He assisted with the censoring of Submissions. He attended the Public Hearings and assisted with the questioning of the speakers. He assisted with the compilation of the Report. He worked on the Inquiry from its inception; without his assistance the Inquiry and the Report could never have been completed.

Peter Vincent, who has served as Assistant to the Commissioner during the Inquiry. He worked on the Inquiry from the beginning through to the publication of this Report. He brought the financial expertise to the work of the Inquiry, assisting with questioning of speakers, evaluation of submissions, and a number of special investigations.

Jemima Mowbray, who has served as the administrative officer to the Inquiry. Ms. Mowbray has successfully managed the detailed day-to-day organisation of the workings of the Inquiry. She also provided the resource base that organised the reception and processing of Submissions, arranged speakers for the Public Hearings, stored and recorded the large quantity of material additional to the Submissions, and has assisted with the production of this Report.

Deborah Prosser has worked as an administrative assistant to the Inquiry. She has played a strong role in arranging the detail of the Public Hearings, as well as record keeping, report writing, and the organisation of the material analysed by the Inquiry.

Thanks are also offered to the council, both the elected representatives and the staff. Their cooperation and provision of material has been extremely helpful.

There are also a number of other people who provided valuable input and support, and their assistance is also recognised.

## Dictionary

So far as possible the following definitions contained in the Act, and other Acts and sources which have been referred to, have been followed

<b>The Act</b>	The Local Government Act 1993
<b>The EP&amp;A Act</b>	Environmental Planning and Assessment Act 1979
<b>The Council</b>	Liverpool City Council
<b>The Elected Body</b>	The Councillors
<b>The Corporate Body</b>	The General Manager and staff of the council, or where appropriate the functions carried out by the council
<b>The Mayor</b>	Councillor Paciullo
<b>The General Manager</b>	Council's current or former General Manager
<b>Mr McCully</b>	Council's current General Manager
<b>Mr Carr</b>	Council's former General Manager
<b>Mr McIntyre</b>	Mr G McIntyre – a representative of the Bulldogs
<b>Mr Moss</b>	Mr W Moss – a representative of Macquarie Bank
<b>Mr Wright</b>	Mr P Wright – a representative of Macquarie Bank
<b>Mr Constantinidis</b>	Mr A Constantinidis – a representative of Stardome and the Bulldogs
<b>The Bulldogs</b>	a collective reference to the Canterbury Bankstown Rugby League Football Club, the Bulldogs Football Club and the Bulldogs Rugby League Football Club
<b>Macquarie</b>	The Macquarie Bank
<b>Stardome</b>	Stardome Corporation Pty Ltd
<b>The Foundation</b>	The Bulldogs Sports & Community Foundation Ltd
<b>ODC</b>	Oasis Development Corporation Pty Ltd a company formed to project manage the developments under the Oasis Project
<b>Liverpool Arena</b>	Liverpool Arena Pty Ltd a company formed to project manage the development of The Arena under the Oasis Project

<b>Prestige</b>	Prestige Development Pty Ltd, a company formed to project manage the developments under the Oasis Project
<b>The Commercial Agreement or CA</b>	the agreement facilitating the oasis Project dated 12 February 2001
<b>The Early Construction Agreement or ECA</b>	the agreement that brought forward the construction of the Arena dated 3 September 2001
<b>The Macquarie MOU</b>	means the Memorandum of Understanding entered into with Macquarie on 14 April 2003
<b>The Oasis Project Or Oasis</b>	The name given to the proposals for development entered into in 2001 with the Bulldogs and the Macquarie Bank
<b>Liverpool 2020</b>	the name given to the proposals for development entered into in the MOU with the Macquarie Bank in 2003
<b>The Stardome Project</b>	the name given to the proposals for development entered into in the Heads of Agreement with Stardome Corporation Pty Ltd
<b>PPP</b>	Public Private Partnership – an arrangement between, relevantly, the council and a private entity
<b>MOU</b>	Memorandum of Understanding
<b>BOOT scheme</b>	a scheme under which an entity would Build Own Operate and Transfer a facility
<b>BTO Scheme</b>	a scheme under which an entity would Build Transfer and Operate a facility
<b>The Arena</b>	The multi-purpose arena proposed in different forms under the Stardome, Oasis and Liverpool 2020 Projects
<b>The CBD Lands</b>	Council owned properties within the Liverpool CBD, being council's car parks in Bathurst Street, Northumberland Street and the Warren Serviceway
<b>The TAPPS land</b>	An acronym for Tip and Paciullo Park, being land adjacent to Woodward Park bounded by Hoxton Park Road, Calabro Avenue and Rose Street

<b>The Old Swimming Pool Site</b>	and adjacent to Woodward Park being the proposed club/hotel site, sold to the Bulldogs
<b>The Whitlam Centre</b>	An existing multi-use facility built on Woodward Park
<b>The Palms Resort</b>	the name given by the Bulldogs to their proposed club/hotel
<b>The DLAWC Land</b>	Part of Woodward Park owned by the State of NSW
<b>The Slammers</b>	the Western Sydney Slammers basketball team who were later renamed the Razorbacks
<b>The Razorbacks</b>	the Western Sydney Razorbacks – the name adopted by the Western Sydney Slammers basketball team following its entry into the NBL
<b>The NBL</b>	the National Basketball League
<b>PWC</b>	Price Waterhouse Coopers – council’s auditors and commercial advisers
<b>Mr Redman</b>	an employee of PWC who provided commercial advice
<b>Mr Banisevic</b>	an employee of PWC who provided financial advice
<b>Ernst &amp; Young</b>	provider of probity advice to the council on the Commercial Agreement
<b>Murray Douglas &amp; Associates</b>	provider of probity advice on the Early Construction Agreement
<b>Abbot Tout or Mr Boland</b>	provider of legal advice to the council, relevantly regarding the Commercial Agreement and Early Construction Agreement
<b>Marsdens or Mr Marsden</b>	provider of general legal advice to the council
<b>Atanaskovic Hartnel or Mr Evers</b>	provider of legal advice to the Foundation or to the council on the settlement with the Bulldogs and on the Macquarie MOU
<b>Maddocks</b>	provider of legal advice to the council over possible breaches of law by persons associated with ODC.



# Findings

**1. There are too many uncertainties about the current and future status Liverpool City Council's arrangements with its commercial partners to have confidence in the capacity of its governing body to resolve outstanding issues, and to establish a sound foundation for the future prosperity of the council.**

1. In 2001 the council entered into agreements to facilitate the Oasis project. It was suggested that the value of this proposal was in the order of \$700 million to \$1,000 million.
2. In July/August 2002 council became aware of serious governance concerns affecting the Oasis Project.
3. Thereafter council embarked upon a series of tasks intended to ascertain the extent to which it was exposed to financial and other risks and moved to resolve its position with the Bulldogs and Macquarie Bank.
4. In April/May 2003 the council resolved its differences with the Bulldogs and agreed to facilitate a substantial payment to the Bulldogs.
5. Collateral to this, the council entered into the Macquarie MOU to work in a partnership to establish a project known as Liverpool 2020
6. Liverpool 2020 anticipates development of the nature previously proposed in the Oasis project.
7. The Inquiry has heard:
  - i) Conflicting evidence regarding whether the current Macquarie MOU is legally binding
  - ii) Evidence that if the Macquarie MOU is legally binding, it may control development for decades into the future.
  - iii) Conflicting evidence regarding the urgency to commence works on Liverpool 2020.
  - iv) Conflicting evidence of the community benefits that would flow from Liverpool 2020.
  - v) Evidence that inadequate planning procedures were in place prior to entry into the Oasis Project. These inadequacies will have compromised council's ability to consider the appropriateness of the development particularly affecting the CBD and TAPPs land from a planning perspective.

- vi) Evidence suggests that council has conflicting and inadequate information about the commercial and financial viability of Liverpool 2020.
- i) Clause 11.12 of the Macquarie MOU; T. Wright 28 January p.55; T. Paciullo 19 January p.61; T. Evers 27 January p.83; T. Marsden 18 February p.51-52; T. Waller 21 January p.16.
  - ii) T. Douglas 30 January p.30, 51; T. Marsden 18 February p.54.
  - iii) T. Wright 28 January p. 46-48.
  - iv) T. Pacullio 19 January p.8-9; T. Waller 21 January p. 3-4; T. Byrne 30 January p.82-83; T. Murray 30 January p. 76; T. Rogers 5 February p.49-50; T. Wilson 26 February p.64 - 65;
  - v) T. Turrisi 29 January p.60,-61 71-75; Commercial Agreement cls. 13 - 16 and annexures E - H; Macquarie MOU schedule 5; S. reply from B Carr 9 March p. 14
  - vi) T. Wright 28 January p.47 and 23 February p.43-45; T. Lamond 29 January p.89; Letter to GM from Atanaskovic Hartnell 11 April 2003 p.3; T. Douglas 30 January p.33- 35.

Council now needs to move forward to resolve issues affecting Liverpool 2020 and its other infrastructure needs.

Liverpool City Council is left with a number of uncertainties about the status of its current relationships with Macquarie Bank and other bodies, and a clear understanding of what the outcomes for the council might be in the future.

The elected representatives have a broad range of experience. Some Councillors have served on council for as long as 17 years. The Mayor was a prominent Minister in the NSW State Government. A number of the Councillors have had long experience in business in the private sector. It might be expected that with such a broad range of experience they would be able to manage the problems arising from the scale and complexity of the commercial arrangements of Liverpool City Council. The evidence presented to the Inquiry shows that the collective experience of the Elected Representatives has not been enough to avoid the problems and uncertainties that now face the council, nor overcome them.

**2. If the elected representatives currently serving on council do not have the experience and skills to resolve the problems facing the council, it is extremely unlikely that a newly elected council could solve those problems.**

1. The range of local government and other experience in a newly elected council might not compare to that of the current governing body. Even if it did match the current range of experience, or surpass it, a newly elected council would take a long time to come to grips with the current situation of the council, and devise policies and actions that would ensure that council's assets and resources would be used in the best interests of the community into the future.

2. The Inquiry has found many layers of complexity within the current commercial arrangements, and it is clear that the understanding of these issues is not strong within the community. In fact, it is clear that resolution of the many issues extant would best be achieved by the temporary installation of a person with strong skills and experience to take over the role of the governing body until such time as the range of unresolved issues are settled.
3. An alternative approach would be to elect a new council and rely on the skills of the staff to resolve the issues. This is not a practical solution for a number of reasons. For staff to perform such a function, it would have to begin to make policy decisions on various matters. The separation of powers between the Elected Representatives and the Body Corporate in the Act would not allow that. Unless there was a wholesale addition to staff numbers it would be impossible for the current staff to take on the responsibilities of resolving the various issues that face the council and perform their other duties. There must be a concern whether the council could attract suitably skilled additional staff in the short-term. The current General Manager, a person of great experience and skills, was put into his current position, with the support of the Director-General of Local Government, to assist in resolving the issues that face the council. Despite his efforts, and those of a very skilled and dedicated staff, the issues remain.



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## Recommendations

- 1. That all civic offices in relation to Liverpool City Council be declared vacant.**
- 2. That an appropriately qualified and experienced Administrator be appointed to deal immediately with matters affecting the council.**

PART

INTRODUCTION

2

## Part 2 Introduction

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## Part 2 Introduction

This part provides an interim report focused on the first two of the five Terms of Reference of the Inquiry. It is provided because of the high profile that the infrastructure projects within the Woodward Park precinct have had throughout the Inquiry. The majority of the written submissions, and much of the discussions in the Public Hearings concerned these issues.

The intention of providing an interim report is to inform on the progress of the Inquiry to this point. Further information concerning the issues raised in this report continues to come before the Inquiry, and not all of this information has been fully assessed. Consequently, the report produces no findings, nor does it make any recommendations.

The interim report is concerned with prima facie evidence that suggests that there was:

1. A failure of the governing body to exercise prudent financial management in relation to the infrastructure projects in the Woodward Park precinct.
2. A failure to sufficiently inform the Elected Representatives, the primary decision-makers, of the complexities of the commercial arrangements.
3. A failure by the Elected Representatives to perform their duties, as defined by the Act, and as expected by the community.
4. A failure by the council to be open and transparent in its dealings with the public on matters related to the infrastructure projects in the Woodward Park precinct.
5. A failure by the council to evaluate sufficiently the risks associated with entering into the commercial arrangements of the Woodward Park precinct infrastructure projects.

PART

SECTION 1

2

## Assessment of whether the council exercised prudent financial management

## CONTENTS

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- 1. Prima facie evidence of a failure of the council to exercise prudent financial management in relation to the Woodward Park and associated infrastructure projects**
- 1.1 Overview of the expenditure by council on the Woodward Park and associated infrastructure projects and the outcomes of the Arena project**
- 1.2 The structure of the Commercial Agreement**
- 1.3 The Early Construction Agreement**
- 1.4 The Foundation**
- 1.5 Failure to act on breaches**
- 1.6 Settlement**
- 1.7 The Macquarie Memorandum of Understanding**

## Assessment of whether the council exercised prudent financial management

### 1. **Prima facie evidence of a failure of the council to exercise prudent financial management in relation to the Woodward Park and associated infrastructure projects**

Evidence reviewed by the Inquiry to this point suggests that in many areas the council failed to exercise prudent financial management in relation to the infrastructure projects associated with the Woodward Park Precinct. The main areas of concern relate to:

- The Arena project
- The Commercial Agreement
- The Early Construction Agreement
- The creation and operation of the Bulldogs Sport and Community Foundation Ltd.
- Lack of action in relation to various breaches of agreements
- The settlement reached with the Bulldogs
- The Memorandum of Understanding with Macquarie Bank

#### 1.1 **Overview of the expenditure by council on the Woodward Park and associated infrastructure projects and the outcomes of the Arena project**

1.1.2 According to the evidence available to the Inquiry the first full accounting of the expenditure made by council on the Woodward Park Precinct was not made until November 2003. This work was undertaken by the Manager of Financial Services of the council (Mr. Stalley). Since the council had not adopted a financial system of reporting that accounted for staff time and costs spent on the projects, the information understates the total costs to council of the projects. Table 1 provides a summary of the information. The accuracy of the information was confirmed by a survey of council records made by an officer assisting the Inquiry.

**Table 1****Summary of Expenditure on Woodward Park and associated infrastructure projects November 2003**

Whitlam extensions–Kann Finch	1998	\$332,051	
Sub-total			\$332,051
Stardome	1997/98	\$169,285	
	1998/99	265,577	
Sub-total			\$434,862
Oasis	1999/00	\$228,021	
	2000/01	671,974	
	2001/02	714,009	
(Foundation)	2001/02	15,000,000	
	2002/03	575,497	
	2003/04	96,646	
Sub-total			\$17,286,147
Oasis ICAC Inquiry	2002/03	\$228,352	
(Recovered from insurance)	2003/04	-77,067	
Sub-total			\$151,285
Other Liverpool 2020			\$554,138
Total			\$18,758,483

These figures do not include any value for staff costs incurred on the project.

Source: Memo from Manager of Financial Services to Councillors 10 November 2003.

- 1.1.3** The total amount of money expended to November 2003 can be considered in two parts. 80% of the expenditure (\$15 million) passed through the Foundation, with the intention of supplying funds for the construction of a basketball stadium, called the Arena. Of the remainder a significant amount related to fees for legal, accounting, architectural, technical and other professional advice connected to the various projects that the council considered.
- 1.1.4** In a complex set of corporate arrangements, the Foundation was intended to be responsible for the series of projects that were anticipated under the scheme generally referred to as the Oasis project. The Commercial Agreement (1.3) formally brought the Bulldogs, Macquarie Bank and the council together as a consortium for the Oasis Project. Because there was no overall business plan for Oasis, and because the financial modelling behind the project has never been revealed, there are no data that genuinely indicate the scale of the project. Various, the evidence before the Inquiry suggests that the total value of all the Oasis projects was between \$700 million and \$1,000 million. The Foundation (1.5) was established as the body that would have the management of the Oasis Project. For each new project, within Oasis, a new vehicle was to be created to oversee the development of that particular infrastructure. Each of these new entities were to be created by the Foundation and remain under its umbrella. In the case of the basketball Arena, the first of the projects attempted (1.4), an entity called the Liverpool Arena Pty. Ltd. was created. The Foundation created

another organisation that was to be responsible for the construction of the several projects that were part of the vision of the Oasis project. This organisation was called the Oasis Development Corporation Pty. Ltd.

- 1.1.5** Over the history of planning for the basketball stadium, and within the different schemes that were proposed, the estimated costs multiplied as the concepts took on different forms. In evidence it was suggested that the end-cost of the Arena might have been as high as \$69 million, a considerable growth over the \$4.1 million first estimate of reconstructing the existing Whitlam Centre to provide seating and other facilities for the possible entry of a local team into the NBL competition. The evidence before the Inquiry varies on the cost of the structure that was proposed under the Early Construction Agreement (1.4). What is clear is that the council would contribute \$22.25 million of that cost. The council, in four payments made in 2001–2002, put \$15 million into the Foundation. The bulk of that money came out of the council's Section 94 contributions fund (Section 94 funds are those collected by council from developers in order to provide new infrastructure, generally to support new facilities for the community that might be needed because of the impact of a development).

T. Lamond 29 January p 36–38; T. Douglas 30 January p 15; T. McCully 4 February p 40–41. T. McIntyre 1 March p. 40–44; PWC S. in reply 10 March p.2.

- 1.1.6** Work on the construction of the Arena commenced in January early 2002. By mid-year 2002 work had stopped and has never been recommenced. Practically all of the \$15 million provided by the council has been expended. The expenditure capitalised back to Liverpool Arena has been written down to nil. Liverpool Arena is shown on the books of the Foundation as having nil assets. The only physical evidence of expenditure on the Arena is a concrete slab, and some footings, and a car parking area alongside the council headquarters. The slab is estimated to have a value of \$2.7 million. That value only has meaning if the slab and footings become part of the scaled-down Arena now planned for the future. It is not clear from the evidence currently before the Inquiry whether the slab is to fully provide the base of the proposed Arena. If it were to be so used, the cost of the slab in respect of the new Arena would be excessive. When work commenced on the Arena in 2002 the building needed a substantial base because it was designed to accommodate an ice-skating facility as well as the basketball facilities and other features. The revised plan for the proposed Arena is a greatly modified version of the 2002 design. There is, however, no guarantee that the modified Arena will ever be built. If that were to be the case it is possible that the slab, rather than having a value of \$2.7 million, would represent a substantial further cost to council. If the Arena did not go ahead the council may have to pay the cost of its removal. The Inquiry has not been able to obtain an estimate of the value of the car park built with Foundation (ie. council) funds. At the most

optimistic level, however, the total value of the slab, footings and the car park would not reach over \$3 million.

T. Stalley 22 January p 78–79; T. Douglas 30 January p 15; T. Poole 5 February p 44; T. Merchant 25 February p 13–14; **Letter** to Inquiry from GM McCully 16 February 2004.

**1.1.7** Council faces other on-going costs connected with Arena. The \$22.25 million, which the council believed would be its total expenditure on the Arena, was made up of the \$15 million placed in the Foundation, and a further \$7.25 million in borrowings. The carrying cost of the \$7,250,000 loan drawn down in June 2002 has not been included in Table 1.2 above. The carrying cost equates to approximately \$14,500 per year, or \$21,750 to the end of December 2003. Although there were serious issues arising about the future of the Arena project when the council drew down the loan, it proceeded with it, merely adding to the unproductive flow of council money that has been associated with the Arena project. The loan funds were not required to be drawn down at that time and the funds are still held by council. The explanation given for drawing the loan down, before it was required to be paid to the Foundation, was that it would have an effect on council's working capital position at the end of the financial year, and that councils are compared in relation to their working capital, along with other Key Performance Indicators. This seems to be a poor justification for adding even further to the outflow of funds generated by the Oasis venture.

T. Stalley 22 January p 75–77.

**1.1.7** There are other future liabilities for the council associated with the Arena, and with the Oasis project. The council expects to recover a further \$40,000 of legal fees from directors insurance relating to the ICAC inquiry. The council still has guaranteed payment of debts incurred by the Foundation. As at 31 December 2003 total assets of the foundation were \$1,066,753, with total liabilities of \$1,165,000 including an amount of \$1,150,000 payable to the Bulldogs Leagues Club under the terms of the settlement. An outstanding claim exists against the foundation by steel contractor Profab Industries Pty Limited for an amount of approximately \$700,000. If construction of the arena does not proceed, the foundation will be required to make good the site. A preliminary estimate of the cost of this exercise is \$1,800,000.

The worst-case scenario of the above would be a further liability to council of approximately \$2,558,000

T. Merchant 25 February p 13–14; council and Foundation financial data.

**1.1.8** Investigations by officers of the Inquiry have demonstrated that the bulk of the \$15 million was expended on architectural and construction and design reports, contracts for work to be done (some of which have been settled since work was

suspended), and various work that has been done since construction stopped in putting in place a new Arena design. There have been allegations that the payment terms of some contracts were favourable to certain firms, and that the tendering processes adopted by ODC were not above suspicion. These allegations have been strenuously denied. There is also evidence suggesting that payments to officials of ODC and to football players were either too large or were inappropriate. These matters may fall outside the Terms of Reference. The Inquiry has no interest in the operations of ODC per se. It does have a strong interest in assessing the prudence of the financial management of the council. Insofar as the council allowed others to take control over finance that the council provided, and allowed others to have control over projects in which council had interests that vitally affected its future, the matter of how the council money was used is of significance. Such issues are to be pursued further in the second report of the Inquiry.

T. Stalley 22 January p 63; T. McIntyre 28 January p. 102–103; T. Douglas 30 January p 13; T. McCully 4 February p 39–41; T. Merchant 25 February p 15–17.

## **1.2 The structure of the Commercial Agreement**

**1.2.1** On 12 February 2001, the Bulldogs Sports and Community Foundation Ltd, the Bulldogs Leagues Club Ltd, the Bulldogs Rugby League Club, Liverpool City Council and Macquarie Bank Ltd entered into a Commercial Agreement. The objective of the Agreement was to establish Woodward Park as a world class sporting, entertainment, cultural, educational and recreation precinct. This was to be done by constructing a covered sports Arena (for \$33 million), a Waterpark (for \$10 million) and a Stadium with a seating capacity for at least 35,000 people (for \$100 million, or the actual cost of construction). The Agreement is a complex one, but some of the key elements of are summarised below.

**1.2.2** The funding for the construction of these facilities was to come from two sources. First, residential and commercial developments were to be constructed by the Foundation on land at Bathurst Street, Northumberland Street and the TAPPS land. In addition, new council chambers and commercial facilities were to be constructed on the Warren Serviceway land in the Liverpool CBD. These lands were owned by council. It was expected that these developments would generate profits that the Foundation could then use to construct the Arena, Waterpark and Stadium. Second, council was to provide a total of \$22.25 million towards the cost of the construction of the Arena. The Leagues Club was to provide a grant of \$10.75 million. The Leagues Club also agreed to underwrite any shortfall in the cost of constructing the Waterpark (up to \$10 million) and the Stadium (up to \$50 million).

1.2.3 It was anticipated that the developments would be undertaken in the following order: the CBD developments (Bathurst St, Northumberland St and the Warren Serviceway), the Woodward Park residential developments, the Arena, Waterpark, Village, TAPPS land residential, TAPPS land commercial, Stadium, carparking and if there were still surplus funds available, the Stadium would be improved.

1.2.4 The role of the council included providing the lands, its contributions to the Arena, undertake its planning and consent obligations and commissioning traffic studies. The Leagues Club's obligations included providing management and operational expertise to the Foundation, providing its funding and providing the Razorbacks basketball team and Rhinos ice hockey team. The Bulldogs were to help administer and manage the Foundation and provide the Bulldogs Rugby League team. Macquarie Bank's role included arranging project funding, providing development management and other skills and expertise, helping administer and manage the Foundation, arranging for the provision of trustee services for funds to be applied towards the construction of the Stadium and other Infrastructure and providing loan facilities to council, if requested. Finally, the Foundation was to carry out the developments, maintain and manage the facilities and encourage or promote sport and other charitable or community purposes.

**Commercial Agreement** cls.2.1, 4, 16.1 to 16.4, 16.9.2, 17.1, 18 and 19.1.

1.2.5 It was anticipated that the Arena, Waterpark and Stadium would be constructed within 10 years of the last condition precedent being satisfied. The Inquiry, however, heard evidence that for a project of this magnitude, a 30 year timetable was a more realistic framework for completion. There was evidence before the Inquiry that in the course of such a long agreement it is almost certain that the parties would have some form of dispute. When entering into agreements that have a long life ahead of them, the evidence was that the documents need to be very robust and must document the parties' agreement on potential problems as well as being able to withstand contingencies. As a result, the documents need to be prepared by a very astute legal and financial team, who are relying on substantial financial information. The Inquiry has heard evidence that the Commercial Agreement did not contain sufficient detail for it to be an effective foundation document for such an ambitious project.

T. Douglas 30 January p.30-31, T. Lamond 29 January p.41 - 43, T. McCully 4 February p.5 -6.

1.2.6 Although Macquarie Bank had apparently prepared a financial model of the viability of the project, a copy of this model was not provided to council. In terms of the council, only the former General Manager and the council auditor (but not its commercial adviser) were given a briefing on the model by Macquarie Bank.

There is a conflict in the evidence as to the extent to which council staff and their advisers sought and were refused greater access to the model. It appears that the assumptions underlying the model were not explained to council. The outcomes predicted by any model will vary depending upon the parameters used in the model. The former General Manager recommended to council that it was appropriate that council rely on Macquarie Bank's integrity as a corporate citizen and assume that its project assessment undertaken with the Bulldogs was commercially sound and achievable.

1.2.7 Apparently, Macquarie Bank declined to provide the model to council, in part because it considered it important that council satisfy itself that the Oasis project was viable. Mr Moss from Macquarie Bank suggested that council had the information to allow it to create such a model. There is no evidence before the Inquiry that council or its advisers considered the possibility of developing their own financial model. There is strong evidence that the council lacked any internal capacity to do this. In fact, it would appear that the council's understanding was that Macquarie Bank was part of the consortium specifically to provide expertise, such as financial modelling. The evidence of Mr Moss suggested that after reviewing the Woodward Park project, following one or more presentations to them provided by the Bulldogs, the Bank was of a mind that the project could only be viable if a cash flow could be generated by developing land beyond Woodward Park. The fact that the council owned land that might be developed then made it a lynchpin in the viability of the whole project. The scheme to extend the original Woodward Park project to include council-owned properties beyond Woodward Park was apparently revealed at a meeting between the Bulldogs and Macquarie Bank, at which there were no council representatives. When council was approached about supplying land to the scheme it appears that it became a willing contributor. Its willingness appears to have been based on its faith in Macquarie Bank's financial modelling, although it was only given a review of that modelling, and was given no opportunity to take it away and analyse its implications for the council.

1.2.8 The absence of any financial model was highlighted in the commercial advice provided by Price Waterhouse Coopers and the probity advice of Ernst & Young. Price Waterhouse Coopers noted that they had not been requested to review the viability of the Project as they had not been provided with the information from the Proponents to enable that assessment. Price Waterhouse Coopers concluded that support for the Project was warranted but said that there remained a commercial risk that the ultimate project would not be completed. It is unclear whether the former General Manager or any other member of council staff considered the issue of whether council could proceed without advice on the viability of the project, or whether this issue was ever raised with them by Price Waterhouse Coopers.

1.2.9 There was compelling evidence before the Inquiry from a number of experienced participants in commercial matters that council ought not to have entered into the Commercial Agreement without either obtaining a copy of the Macquarie Bank financial model or undertaking its own financial modelling.

T. Moss 23 February p.12–14; T. Carr 2 February p.72 and 3 February p.10, 18; T. Redman 27 January 28,29, 48; **Report** GM to council 5 February 2001 p.17; T. Beuk 17 February p.47, 48; T. Douglas 30 January p.31, 48; T. McCully 4 February p.10, 11; S. reply PWC 10 March 2004 p.5.

1.2.10 Council did not have a business plan for any of the developments to be undertaken pursuant to the Commercial Agreement. The State government recognised the need and required council to produce a sound business case. The Department of Local Government also sought information about aspects of the Agreement that council entered into. Council was entering into an open-ended agreement, whereby it was obliged to support developments which could generate losses rather than profits.

1.2.11 The Inquiry has heard evidence that raises the very real possibility that parts of the Oasis Project would produce losses. The Urbis Report suggests that the Bathurst Street development was likely to result in a \$10 million loss rather than a profit, while the report of Mr Lonie raises serious doubts about the ability of the Arena to cover its own costs, leaving council liable to subsidise its running costs for an indeterminate period. The merits of these reports can be debated, but they do demonstrate that council ought not to have assumed that each aspect of the project was viable and profit generating. There is also evidence that the Elected Representatives were not given copies of the Urbis Report, or even that its existence was made known to them.

1.2.12 The evidence before the Inquiry suggested that as the Commercial Agreement did not allow the council to pull out of those elements which were found not to be economic, then some form of financial planning ought to have been undertaken. The riskier aspects of the project, such as the Arena and the CBD developments should have been the subject of a reasonably detailed business plan. The same applies to the TAPPs land and the Waterpark. They might have been considered less risky, although real risks were associated with these developments. Evidence suggests that the experience of councils with facilities such as the Waterpark was that it was difficult to make a profit on their operations. The TAPPs land was the site of an old landfill site. There were, and are, likely to be substantial costs associated with drainage and toxicity problems on the site.

**Report** to Foundation by Urbis February 2003 p.38, 41; **Report** to Council by Stephen Lonie 16 October 2003 p.13–14, 16; **Letter** to Brian Carr from C Gellatly Premier's Department dated 29 January 2002; T. McCully 4 February p.5–7.

**1.2.13** Section 55 of the Act provides that a council must invite tenders before entering into contracts, unless the exception provided for in s.55(3) applies:

*“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”*

Inviting tenders is generally recognised as serving two purposes. First, it is a good way of ensuring that council gets value for money from the contracts that it enters into. Second, it provides a level of transparency and accountability for council’s spending. There were a number of issues arising out of the Commercial Agreement which could have been subject to market testing, including, the fee structure, the financing arrangements and the best vehicle(s) for undertaking the project.

**1.2.14** Council did not undertake any market testing prior to entering into the Commercial Agreement. The rationale for recommending that the components of the Oasis development not be tendered was that there had previously (1992) been a call for expressions of interest for the development of Woodward Park and no positive responses had been received. It was also suggested that the idea of the development of Woodward Park had been in the public domain for some time and that no other developers or financiers had expressed interest in undertaking the development. This analysis was fundamentally flawed because, the idea of developing the CBD and TAPPS lands to fund the Woodward Park developments only emerged after Macquarie Bank became involved in the project. The opportunity to develop commercial and residential areas, and to earn fees while doing so, changed the whole complexion of the development of Woodward Park.

**Letter** to Bill Rock from John Boland re Woodward Park **Commercial Agreement** dated 26 July 2000; **T. Moss** 23 February p. 6–8; **Minutes** Council Meeting 31 August 2001 p.2; **Minutes** Council Meeting 5 February 2001, p. 3.

**1.2.15** Council appears to have taken a very fluid approach to the meaning of “extenuating circumstances” provided for in s.55(3). It seems that the former General Manager and the Councillors viewed s.55(3) as a convenient means of sidestepping council’s tendering obligations, if that suited them. Certainly, if a project was complicated or difficult, then council seemed to think this was a sufficient justification under s.55(3) to avoid the need to tender. Council’s legal advice was that it was not unreasonable for council to conclude that there were extenuating circumstances justifying a decision not to call for tenders in entering into the Commercial Agreement, but that any resolution would have to be carefully drafted to ensure that the relevant requirements of s.55(3) were met. This appears to support the view that council had already resolved that tendering

was too difficult or slow and that arrangements should be made to avoid this obligation.

- 1.2.16** PWC's advice to council in relation to the Commercial Agreement was that council could not be sure that this was the best offer available to it, without market testing, but that to market test would risk losing the proponents and delay the development of the facilities. The fact remains that by declining to call for tenders for any part of the Oasis project, council failed to ensure that the proponents were offering it the highest and best use of the Woodward Park precinct.

PWC Final **Report**, 25 January 2001, p 14; **T. Lamond** 29 January p.27; **T. Wright** 28 January p.43-44; **T. McCully** 4 February p.15-18.

- 1.2.17** Market testing has another aspect. The developments that were proposed as part of the Commercial Agreement were novel ones for Liverpool. Yet, the council did not obtain any market testing of any aspects of those developments to see whether there was a market for the products being developed.

**T. McCully** 4 February p.6,7, 9-10, 14.

- 1.2.18** Council was obliged under the Commercial Agreement to obtain ownership of a small parcel of land between Woodward Park and the council chambers for construction of the Arena. Council entered into negotiations with the Department of Land and Water Conservation to purchase this land and the Department approved the acquisition at full market value.

- 1.2.19** In addition, no valuation of the land had been agreed upon. Council estimated the value of the Panhandle land at \$1.5 million. However, the DLWC estimated that the market value of the total Woodward Park Crown land at \$12.3 million. The cost of the Panhandle land would not be definitively known until the time of transfer and any increases on the estimate would have had a considerable impact on council's budget. Finally, the Commercial Agreement allowed the Foundation the right to veto the terms on which council proposed to acquire the land. Council was therefore committing itself to another open-ended obligation, with the risk that its financial liability might increase and/or it might not be able to meet that obligation.

- 1.2.20** There has also been a suggestion that council may encounter difficulties in using the TAPPS land for redevelopment, because of the way in which it was zoned.

**Report** GM to Council 5 February 2001 p.29; "Woodward Park (Crown Land) Issues Paper" by John Milicic, Property Strategist to Mitchell Morley 19 September 2003 p.1; **T. Marsden** 18 February p.40.

### 1.3 The Early Construction Agreement

1.3.1 The Commercial Agreement contained at least four disparate controls that might have otherwise reduced the risk to be borne by the council under the Oasis Project:

- the Arena construction would have awaited the CBD developments and have benefited from the surpluses generated
- this delay would give time for adequate planning, pricing and contracting measures to have been put in place for construction of the Arena
- the delay would have given the council the opportunity to complete its negotiations over the Crown land, to cost the land, to secure funding for its purchase and to acquire the land,
- through Macquarie Bank's influence, an appropriate governance regime over the Foundation and ODC may have been put in place before the council was called on to contribute its funds.

1.3.2 The Early Construction Agreement appears to have been driven by a misconceived sense of urgency, based on a perceived need to build an arena for the Razorbacks. The suggestion of the need for urgency does not appear to have come from the Razorbacks but may have come from the Bulldogs or from the Mayor and/or Mr Carr.

T. Paciullo 19 January p.45; T. Looby 23 February p.70; T. McIntyre 1 March p 5–9.

1.3.3 The Early Construction Agreement anticipated that the council and the Bulldogs would contribute \$22.25m and \$10.75m respectively to the cost of construction of the Arena. Council's contribution was to be paid by prescribed instalments commencing on 1 September 2001. Conversely, the Bulldog's contribution was conditional and would depend on council meeting the conditions precedent under the Commercial Agreement. The funding anticipated a construction cost of \$33m. Evidence suggests that alterations to the Arena design had occurred and that its costs may have blown out substantially by this time. Evidence suggests that provision for construction costs exceeding \$33m was not considered although they had been highlighted by PWC in their report. Under the Commercial Agreement council had already lost control of the Arena development to the Foundation. The evidence suggests that the council entered into the Early Construction Agreement without knowing or considering the likely costs of constructing the Arena.

**Early Construction Agreement** cls.11 and 9; **Report** Price Waterhouse Coopers 28 August 2001 p.3; **Report** to Council Meeting 31 August 2001; Application for modification of approval for the Arena – Council Meeting 27 August 2001; **Commercial Agreement** cl.4.

1.3.4 The evidence suggests that the council had not heeded the concerns raised by Macquarie Bank. The Early Construction Agreement did not return any control over the developments to the council, nor provide controls over the issues that had been raised by Macquarie Bank.

1.3.5 Evidence suggests that both the Mayor and Mr Carr were told of Macquarie Bank's concerns over remuneration being sought by Mr McIntyre and Mr Constantinidis and other contracting issues. There are other suggestions that the Bulldog's had voiced concerns to the council over Macquarie Bank. There was clear evidence that the fabric holding the consortium was fraying badly. Nonetheless, the council decided to push forward with the construction of the Arena. It appears that this decision may have been one of the causes of Macquarie Bank's decision to withdraw from active involvement in the project at this time.

T. Moss 23 February p.24 eT. seq., p.38; T. McIntyre 1 March p.20, 24–33.

1.3.6 Importantly, the conditions precedent in the Commercial Agreement required council to have:

- acquired the Crown land,
- adopted the Master Plan for Woodward Park,
- given the lands status to permit development and
- have facilitated zonings appropriate to the developments

Not all of these conditions had been put in place when the council entered into the Early Construction Agreement.

These failures appear to have placed the council in a position where it bore the risks solely. The council subsequently paid \$15m to an entity if had no control over, relying on those controlling the Foundation to protect council's interests.

**Commercial Agreement** cl.31; **Early Construction Agreement** cl.9; T. Carr 2 February p.80.

## 1.4 The Foundation

1.4.1 The Foundation was to carry out the developments of the Oasis Project, albeit, through subservient vehicles. It had powers to determine the order of construction for the various parts of the project. Its tax-free status, charitable objects and joint governance were touted as securing the aims of the project.

The Bulldogs had incorporated the Foundation prior to unveiling the project. Beneath the Foundation were other vehicles, including ODC, which was to undertake project management. Persons associated with the Bulldogs also controlled other vehicles, including Liverpool Arena, Prestige and the Foundation.

Evidence suggests that council's failure to ensure its representation on the Foundation was fundamental to the losses sustained by it, leaving it in a position in which it could be exploited. The evidence also suggests that this failure equally applied to the other vehicles.

Oasis Vision Plan; **Commercial Agreement** Cl 4.1; T. Paciullo 20 January p.54, 88 T. McIntyre 1 March p.50–52; T. Stalley 22 January p.54, 56, 57, 80 T Boland 27 January p.65.

1.4.2 Council appears to have anticipated that it would appoint directors to the Foundation when it first considered its involvement in the Oasis Project. Ultimately, the council chose not to appoint directors to the Foundation.

While the Mayor, Mr Carr and Councillors suggested that the determination not to appoint directors was based on legal advice, this does not appear to be supported by the evidence.

T. Paciullo 19 January p.39 and 20 January p.84,93; T. Carr 2 February p.31 and 3 February p.38 T. Boland 27 January p.64,67; **Letter** Abbott Tout 11 September 2000, 10 October 2000.

1.4.3 Evidence suggests that council's decision not to be represented on the Foundation was underlain by concerns that representation would lead to a conflict of interest arising from council's role as a consent authority.

1.4.4 Given council's role as a party to the Commercial Agreement and Early Construction Agreement and its ownership of the Project Lands, it is likely that the conflict already existed. If the conditions precedent relating to planning had been undertaken as proposed in the Commercial Agreement, the potential planning conflicts might have been reduced. Given that conflicts of interest were probably present, council's decision not to be represented appears to have been based on incorrect assumptions.

Council's decision not to be represented on the Foundation appears to have been compounded by the complexity of the underlying project structure, particularly ODC, which was effectively controlled by Mr McIntyre and Mr Constantinidis.

Evidence suggests the council had received separate and numerous warnings of the character and the intentions of these persons. ODC controlled the contracts under which developments would occur; as such it controlled the purse strings. Council appears to have ignored the risks associated with unsupervised use of development funds by ODC. The failure to obtain representation left the council on an unequal footing.

T. Paciullo 20 January 04 P114 T. Marsden 18 February p4; T. Moss 23 February p.30; T. Stalley 22 January p.56 T. Boland 27 January p.66.

- 1.4.5 The council retained a right to carry out audits of the various trust accounts to be established under the Commercial Agreement. This right represented an important safeguard, as the council had chosen not to be represented on the Foundation. Evidence suggests that the council was complacent and did not exercise its right to audit the Foundation until it was too late.

**Commercial Agreement** cls.14.13, 16.13 and 21.10; T. Paciullo 19 January p.55 T. Stalley 22 January p.61.

- 1.4.6 Similarly, the evidence suggests that the council was also complacent by not requiring appointment of its representatives to ODC. ODC had the primary role in the construction contracts. It both let contracts and authorised payments. Payment requests were made by ODC to the Foundation, the Foundation made payments in accordance with these requests. Two of its three directors, Mr G McIntyre and Mr D McIntyre, were also directors of the Foundation. Evidence suggests that Mr G McIntyre and his son exercised virtually total control over the project.

## 1.5 Failure to act on breaches

**1.5.1** In the lead up to the Commercial Agreement the inability of PWC to undertake a high level of assessment of the reasonableness of the Macquarie financial model and its conclusions was highlighted by both PWC and Ernst & Young. Evidence suggests that there was an underlying agreement that this model would be provided to the council.

**1.5.2** The council appears to have disregarded this breach when entering into the Commercial Agreement. The Inquiry has heard evidence that the financial model was never subsequently provided. Evidence suggesting that the provision of financial modelling was fundamental to a project such as the Oasis Project.

T. Paciullo 19 January p.74; T. Carr 3 February p.18; T. Moss 23 February p.12, 14; T. McCully 4 February p.6–12.

**1.5.3** Under the Commercial Agreement, Macquarie was to help administer the Foundation and to provide trustee services for the provision of infrastructuring, including the Arena.

Notwithstanding these requirements, Macquarie failed to assist the administration of the Foundation by appointing directors.

**Commercial Agreement** cl.4.5; T. Moss 23 February p.34.

**1.5.4** In August 2002 revelations regarding player payments by the Bulldogs became public. Eventually it became clear that some of these payments had been made from funds provided to ODC by the Foundation. The council subsequently moved to obtain representation on the Foundation and to obtain an audit of both the Foundation and ODC. While PWC did not conduct an audit, it reported a number of issues affecting the governance of the Foundation and ODC and payments derived from funds provided by the council.

**Letter** Price Waterhouse Coopers 6 November 2002.

**1.5.5** In September 2002 the Foundation enlisted the assistance of Mr Evers. The council was then in the throes of securing the formal appointment of its representatives on the Foundation. Importantly, at this time its representative did not have control of the Foundation. Evidence suggests that Mr Evers was not called upon to advise whether any party was in breach of its obligations. Separately the council sought advice from Marsdens and Maddocks. Subsequently Maddocks reported possible causes of action available to the Foundation and ODC. At this stage council was negotiating to remove the Bulldogs from the project. Evidence exists that council anticipated that it would take over control of ODC as part of the settlement.

Separately, Mr Marsden had been retained by the council. Evidence was given that Mr Marsden had given advice suggesting breaches by Macquarie and the Bulldogs.

**1.5.6** It is not for this Inquiry to determine whether the breaches spoken of by the Councillors and Mr Carr constituted actionable breaches of the Agreements or of understandings. The evidence suggests that having formed a view that breaches had occurred, the Mayor, Councillors and Mr Carr did not:

- seek advice whether such breaches were actionable
- take a view, at least so far as Macquarie was concerned, that the council should have no further dealings with them.
- put in place steps that would ensure no recurrence of the same or other breaches.

Conversely, so far as Macquarie was concerned, council:

- continued to deal with them
- placed its faith in Macquarie as its partner in Liverpool 2020.

**Letter** Maddocks 16 December 2002; **T. Evers** 27 January p.76–77; **T. Marsden** 18 February p.45; **T. Carr** 3 February p.29, 34; **T. Paciullo** 20 January p.13

**1.5.6** Evidence suggests that the council ignored what it regarded as, if not breaches, at least failure on the part of its partners to perform their obligations, because of a perceived need to complete the Arena and to restore the public's faith in council. It also appears to have ignored the legal advices that it received and determined to follow a course culminating in the Macquarie MOU and its settlement with the Bulldogs, at further cost and probable risk to the council.

**T. Marsden** 18 February p.45–46; **T. Paciullo** 19 January p.55–58; **T. Carr** 3 February p.26, 34. **T. Stalley** 22 January p 56–58; **T. Merchant** 25 February p 32–33.

## **1.6 Settlement**

**1.6.1** In August 2002 the salary cap issues arose. By October, evidence suggests that council had ascertained what remained of the money it had advanced, to whom payments had been made and the nature of major contracts such as the ADCO contract. Evidence suggests that the Mayor, and Councillors, Mr Carr and senior staff regarded the Bulldogs as having breached the contract. Likewise evidence suggests that the Mayor, Councillors, Mr Carr and senior staff regarded Macquarie Bank's failure to provide its financial model as a breach of its obligations. Conversely, they regarded council as not having breached its obligations.

- 1.6.2** Given these circumstances it is surprising that council resolved to pay further money to the Bulldogs, to take over a Bulldog's commitment to pay money to Macquarie Bank and then to enter into a substantive agreement, Liverpool 2020, with Macquarie Bank.
- T. Paciullo 19 January p.55, 56, 57, 74, 75, 76, 86, 87, 20 and 20 January p.48; T. Carr 3 February 29–34; T. Waller 21 January p.18; T. Stalley 22 January p. 91–92; T. Merchant 25 February p 18–20 T. McCully 4 February p. 37.
- 1.6.3** While Councillors may have had concerns they do not appear to have voiced them.
- T. Paciullo 19 January p.87; T. Waller 21 January p71–72.
- 1.6.4** The evidence suggests that the Mayor and Councillors failed to explore alternatives to settlement, limiting the retainer of legal advisers to obtaining a settlement. This, despite evidence suggesting that alternatives should be sought and that there was prima-facie evidence of actionable breaches.
- T. Evers 27 January 76–80; T. Marsden 18 February 46–51; **Letter** Maddocks 16 December 2002; **Letter** from Atanaskovic Hartnell (Evers) 17 March 2003 p 5.
- 1.6.5** The evidence suggests that the perceived need to settle blinded the view of the Mayor, Councillors and Mr Carr. This perception appears to have been driven by the provision of an Arena for the Razorbacks, and the infrastructure anticipated by Oasis. Similarly the settlement may also have been driven by a perceived need to provide good news to the council's constituents and demonstrate that the Oasis project was going ahead.
- T. Marsden 18 February 46–51; **Press** releases; 16 April 03, 13 May 03.
- 1.6.6** The settlement with the Bulldogs requires council to pay \$1.15M or more in December 2004. The settlement left the Foundation liable to pay other construction costs, further depleting the sum that might be available for construction of the Arena. Additionally, the council may be liable to pay the Bulldogs termination payment of \$600,000 to Macquarie.
- Deed** of Releases; **Deed** of Transfer and Indemnity; T. Marsden 18 February p 46–47; T. Evers 27 January p. 81, 88.
- 1.6.7** The evidence suggests that the settlements and council's entry into the Macquarie MOU were imprudent. Council appears to be left with an obligation to provide further money to facilitate further payments by the Foundation and incomplete concrete footings of little, if any utility.

## 1.7 The Macquarie Memorandum of Understanding

1.7.1 On 14 April 2003, Macquarie Bank and the council entered into a Memorandum of Understanding in relation to Liverpool 2020. Liverpool 2020 is the new brand name for the revised development proposal for Liverpool. The revised development proposal includes the Arena, the CBD lands, the TAPPS land, new Council Chambers and the Waterpark. The stadium is also included, subject to business case considerations. Liverpool 2020 is therefore effectively the same as the Oasis vision, except that it does not include the Bulldogs developments.

1.7.2 Under the Macquarie MOU, council appointed Macquarie as the exclusive adviser and arranger for Liverpool 2020. This role includes Macquarie advising council in relation to the structure of a development vehicle, the delivery of the project and the scoping and structuring of each of the projects. Council and Macquarie will establish a PPP entity which will carry out the each part of the project or award an outside developer the right to carry out the project. It is foreshadowed that government and community bodies might have some involvement in the PPP Entity structure.

1.7.3 Under the Macquarie MOU, the parties agreed to negotiate arrangements which would grant the PPP Entity long-term rights to undertake the various developments and grant Macquarie the role of advisor, arranger and development manager for the duration of the development. Macquarie's fees are to be negotiated having regard to industry benchmarks. Council will provide the lands, including Crown lands in accordance with the development program agreed to by the parties, provide contributions to the Arena project, capped at \$22.25 million, provide a contribution towards infrastructure and associated facilities as agreed to, and ensure that surpluses from the project are retained for further developments. Macquarie is not taking any equity in Liverpool 2020 or sharing the risks of the project.

Clauses 2 – 4, ch. 1, 2, 3 of the Macquarie MOU.

1.7.4 The MOU was negotiated in circumstances where council was recovering from two significant setbacks to its vision for Woodward Park (the salary cap scandal and the ICAC inquiry) and wanted to get things moving with the Arena. Drafts of the MOU were circulated to and considered by council on 4 March 2003 and amendments were suggested. Council resolved to enter into the MOU on 18 March 2003, subject to certain amendments. These amendments were approved by a committee of council and council voted on the final draft on about 11 April.

1.7.5 Again, there appears to have been considerable pressure on council to reach an agreement. The key time pressures were said to be the need to complete the Arena in time for the Razorbacks basketball season of 2004/5 (ie 18 months away). This required having the development documents finalised, and initial drawdown in place before the end of the financial year. The evidence suggests however, that the drive to complete the Arena also had a lot to do with avoiding the embarrassment of the idle concrete footings and the need for council to deliver on its promises. In addition, the Bulldogs were pressing for their settlement to be in place by the council meeting on 28 April and the signature of an MOU between Macquarie and the council was expected to increase the likelihood of achieving such a settlement.

1.7.6 The evidence suggests that rushing into the MOU was unwise. First, it appears to have been unrealistic to expect that work on the Arena could start in under 6 months, given that it needed to be redesigned, documented, tendered and the question of Macquarie's fees resolved. More importantly, the MOU was again a complex agreement and more than one Councillor felt that the rush towards an agreement hampered their ability to understand it. It was also an agreement that clearly signed council up to a long-term commitment of land and funds in circumstances where the last such commitment had fallen over in a spectacular way only a few months previously. In those circumstances, the rush to enter into another complex agreement without fully understanding it, suggests that council did not learn any lessons from the failure of its earlier agreements with the Bulldogs.

T. Waller 21 January p.15, 38 – 42; T. Carr 3 February p.26–27; T. Evers 27 January p.79–80, 89; T. Paciullo 20 January p.48–49; T. Carr 3 February p.24–26; **Letter** to General Manager from Atanaskovic Hartnell 11 April 2003 p 3, 4; T. Harrington 21 January p.91

1.7.7 The Macquarie MOU provides for the construction of the same developments as those proposed under the Commercial Agreement, without any contribution being made towards those developments by the Bulldogs. Again, the success of the MOU will depend up the surpluses that can be generated from the CBD and TAPPS land developments. The aim is that these projects will generate enough money to fund the Arena and a Waterpark and perhaps a stadium. Ownership of the Arena at least will rest with council. Therefore, council faced the same financial risks that it did when entering into the Commercial Agreement.

Clause 2(b)(iv) of the Macquarie MOU

**1.7.8** Although council had obtained a detailed commercial review of the Commercial Agreement and the Early Construction Agreement, no commercial review was undertaken before council entered into the Macquarie MOU. It appears from the evidence that the Inquiry has heard that no thought was given to the need to undertake a commercial review of Macquarie's proposal. The need for some kind of detailed review of the MOU was highlighted by the differing views heard by the Inquiry about how the projects would be built under the MOU. It appears that Macquarie is now of the view that the Waterpark will certainly be constructed, while it is unlikely that the Stadium will be constructed. The Arena may be built, if it can be financially viable. The Councillors' view (which differs from that of some council staff) appears to be the Arena will be built.

T. Wright 28 January p.47 and 23 February p.43–45; T. Lamond 29 January p.89.

**1.7.9** For the reasons discussed at 1.2, prior to entering into the Macquarie MOU, council needed to undertake its own financial modelling, business planning and market testing. Council needed to find out whether the CBD and TAPPS land developments would generate the surpluses envisaged and whether the Arena and the Waterpark would pay their own way. Although Councillor Waller raised concerns about the impact of the proposed development program on the council's budget, she was advised that this could not be considered until after the MOU was signed, because it was only at that point that a detailed financial analysis would be undertaken. Presumably, Macquarie Bank had relied on and perhaps updated, its earlier financial modelling before entering into the MOU. There is no evidence before the Inquiry, however, as to whether council raised the possibility of obtaining more detailed access to Macquarie's financial model to assist council in understanding the financial implications of this new deal.

Letter to GM from Atanaskovic Hartnell 11 April 2003 p.3; T. Douglas 30 January p.33 – 35

**1.7.10** One of the key concerns now being expressed by council staff about the Macquarie MOU is that it requires council to provide council's lands and certain areas of Crown land to the PPP Entity when required. Council cannot now develop any of these parcels of land without first obtaining Macquarie's approval, or breaching the MOU. Importantly, there is no time limit on this obligation. Council has effectively relinquished control over these properties for an indefinite period.

T. Douglas 30 January p.30, 51; T. Marsden 18 February p.54.

**1.7.11** There was some evidence before the Inquiry that under the MOU, Macquarie will require council to continue developing the lands set aside by the MOU, even if council has already constructed those projects that it considers important and does not wish to develop further lands. There is also some doubt about whether council can choose to expend any surpluses on projects outside those outlined in the MOU. So, for example, if surpluses have been generated from the development of Northumberland St and council prefers to use those surpluses to extend the Casula Powerhouse, rather than build the Waterpark, there is some doubt about whether it would be able to do so. The lack of clarity in the arrangements entails the risk that council has relinquished control of both its land and its power to make decisions about what to do with the surpluses generated by the development of that land.

T. Wright 28 January p.58–59 and 23 February p.46; T. McCully 4 February p.44; T. Douglas 30 January p.34.

**1.7.12** Under clause 8 of the Macquarie MOU, council has agreed that the \$600,000 break fee which was payable by the Bulldogs to Macquarie Bank, and which will be carried by the PPP entity as a project cost. Any project costs must be paid for before the projects produce surpluses or profits. Surpluses or profits can be used by council for further developments. The net effect of this clause is that council will pay for Macquarie agreeing to release the Bulldogs from the Commercial Agreement.

Clause 8 of the Macquarie MOU: T. McCully 4 February p.41; T. Marsden 18 February p.46–47; T. Evers 27 January p.81, 88.

**1.7.13** There seems to have been some confusion about whether the MOU was legally binding on the council. Memorandums of Understanding are often used instead of a legally binding contract. However, clause 11.12 of the MOU provides that it contains valid and binding obligations on all parties. Macquarie Bank clearly understands that the document is binding. Other speakers were less confident of this conclusion. Apparently at the time of signing the agreement, the Mayor understood that it was not legally binding although other Councillors had a different view. It is incredible to think that Councillors would contemplate entering into an agreement when they were unsure about whether they were agreeing to a binding commitment.

Clause 11.12 of the Macquarie MOU; T. Wright 28 January p.55; T. Paciullo 19 January p.61; T. Evers 27 January p.83; T. Marsden 18 February p.51–52; T. Waller 21 January p.16

#### 1.7.14

Schedule 3 of the Macquarie MOU provides that council's contribution for the Arena project was to be capped at \$22.25 million. This appears to have been a significant selling point for the Councillors, who seem to have formed the view that having put forward this money, the council would be guaranteed an Arena. The capping of council's contribution raises two further issues. First, does the \$22.25 million include the \$15 million already spent by council. The answer to this question appears to be "yes". This leaves the question of how the remainder of the Arena will be financed. The exact price of the Arena is unknown, although one estimate put it at about \$47 – \$50 million. The council only has an obligation to pay a further \$7.25 million towards the construction of the Arena. Given that this \$7.25 million will not be sufficient to construct the Arena, it appears the remaining funds will have to come from the generation of surpluses from the other developments, or from loans. Thus, the construction of the Arena is actually contingent on sufficient surpluses being generated. If surpluses are not generated and council still wishes to have the Arena constructed, other funding options may need to be explored.

Schedule 3 of the Macquarie MOU; T. Paciullo 19 January p.72 and 20 January p.40; T. Waller 21 January p.7, 19; T. Harrington 21 January p.90, 91; T. Bowman 17 February p.17; T. Wright 28 January p.56–57 and 23 February p.55; T. Stalley 22 January p.77–78

PART

SECTION 2

# 2

## Assessing the information base of the council decision-makers

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## Assessing the information base of the Council decision-makers

### 2. **Prima facie evidence of the failure of Mr Carr and the Mayor to inform council decision makers**

The evidence before the Inquiry was that in the six years since the council began to seriously explore the possibility of developing part of Woodward Park, the information provided to Councillors has been limited in a number of ways. Each Councillor is a member of the governing body of council and has responsibilities under section 232 of the Act to direct and control the affairs of council. Without adequate information, Councillors could not effectively exercise their functions under the Act and were largely reduced to rubber-stamping the recommendations put in front of them.

It was also alleged in the course of the Inquiry that Councillors did not have sufficient opportunity to contact Mr Carr. At this stage, the balance of the evidence does not support this allegation.

The failures suggested by the evidence

- Mr Carr and the Mayor were delegated the responsibility to negotiate on matters in relation to Woodward Park on behalf of the council and failed to fulfil this responsibility adequately.
- Mr Carr failed to ensure that council received timely and balanced reports from council staff in relation to the Woodward Park development.
- The Councillors' access to the reports of external advisers was so limited that in many instances they were effectively deprived of the advice contained in those reports
- Councillors from different political camps were treated differently with some Councillors having privileged access to information about the Oasis development and council matters generally.

## 2.1 Roles and delegation of GM and Mayor

2.1.1 Section 226 of the Act defines the role of the Mayor. When there is a necessity the Mayor has the power to take over the policy-making functions of the governing body of the council. The Mayor presides at meetings of the council. The Mayor also has to carry out civic and ceremonial duties. Additionally, the Act empowers the Mayor to perform such other functions of the council as the council determines.

The General Manager, under Section 335 of the Act, is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without delay, of decisions of council.

Section 377 of the Act states that:

*A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council*

Section 377 then lists some 20 functions of council that may not be delegated. These generally relate to money (fixing fees, borrowings, expenditure), and to planning, approvals and land reclassification.

2.1.2 On 22 September 1997, council delegated the authority to negotiate on matters in relation to Woodward Park to the Mayor and Mr Carr. This gave Mr Carr and the Mayor access to information that was not available to other Councillors. Implicitly included in this delegation was a responsibility to fully consider this additional information and report back to the Councillors about the progress of the negotiations. Since most of the matters being negotiated related to financial matters that would affect the council, and to land and planning matters, the restrictions on delegation of functions placed a burden on the Mayor and the General Manager to report back to the governing body in a full and timely fashion on any matters related to financial, and land/planning issues. The ultimate authority concerning such matters always lay with the governing body, despite the delegation.

**Minutes** Council Meeting 22 September 1997; **T. Paciullo** 1 March p.78-79; **T. Harrington** 21 January p.94; **T. Anthony** 16 February p.42; **T. Waller** 21 January p.7; **T. Carr** 2 February, p.14, 53; **Minutes** Council Meeting 5 February 2001 p.4.

**2.1.3** The Mayor appears to have seen his role in the delegations as largely limited to keeping the parties to the project together. He appears to have been driven by the need to bring the negotiations to a successful end, and in so doing to keep alive the vision he had for the Woodward Park Precinct. He freely acknowledged in his evidence that he didn't have any particular expertise in the kinds of commercial arrangements which were being negotiated for the development of Woodward Park. He relied heavily on the advice presented to him. He also said that he did not have enough time to read all of that advice. Yet, he did not consider relinquishing the delegation. The evidence suggests that the Mayor did not assume the responsibilities that were delegated to him, but nor did he relinquish his delegation.

**2.1.4** The Mayor did not think that it was his responsibility to comprehensively inform Councillors about issues to do with the Oasis project as they arose. This might be seen as a natural outcome of being party to negotiations that stretched over many months, were complex, and it would seem sometimes acrimonious. Nonetheless, under Section 377 of the Act, the Mayor was simply a delegate of the governing body whose powers over financial matters and land and planning matters were not diminished by the delegation. Rather than find ways of keeping the Elected Representatives suitably informed during the journey of the negotiations, the Mayor appears to have merely answered questions of the Councillors when he could. In taking this approach, the Mayor failed to recognise that it would be difficult for Councillors to ask useful questions when they are not aware of the critical issues that were arising in the course of the project. Given the pattern of caucus voting within the council, the likelihood is that most of such questioning and answering occurred within the caucus rather than within the meetings of the governing body.

T. Paciullo 20 January p.93-94, 108, and 1 March p.75-76.

**2.1.5** Mr Carr saw himself as primarily responsible for implementing the policy decisions of the council. He largely shouldered the burden of the Oasis project in the lead up to the Commercial Agreement and continued to assume much of that responsibility, even after the appointment of a major strategic projects manager in November 2001. Given the other responsibilities of his position, he must have found it difficult to accommodate all of his duties, although he vigorously argues that he was involved across-the-board on all council issues.

T. Johnston 24 February p. 44-45; T. Carr 2 February p.66 and 02 February p.3, 16, 17 and 26 February p.6-7.

**2.1.6** Mr Carr seems to have formed the view that his primary responsibility was to keep the Mayor informed of the progress of the Oasis project. He felt that it was unnecessary to report back to council until there was something concrete and worthwhile for council to consider. As a consequence, it appears that council was not regularly advised of the progress being made towards the negotiation of the Commercial Agreement. Council received little or no information about this major project from the time that it gave in principle endorsement in July 2000 until just prior to the meeting on 5 February 2001 at which council agreed to enter into the agreement. Council therefore lost the opportunity to be aware of, and guide, the negotiating processes.

T. Marsden 18 February p.25, 27 and 25 February p.44; T. Carr 02 February p.14, 25, and 03 February p.59.

## **2.2 Quality and balance of internal reporting**

**2.2.1** The evidence of the Councillors was that they relied heavily on the information provided to them by Mr Carr in his reports, circulated as part of the business papers for a council meeting. The Councillors' recollection was that these reports only referred to the positive aspects of the Oasis project and not the risks. Councillors appear to have assumed at the time that there were few risks to the project. The Inquiry's assessment of the reports is that they appeared to be selling the Oasis vision to Councillors rather than providing a balanced assessment of the contractual undertakings that council was considering. Key issues were glossed over or not identified at all. These issues included the lack of a business plan or financial model for the Oasis project, the fact that council money was to be paid into an organisation that had no council members on the board (the Foundation), and the risks identified by council's independent consultants. Similarly, the report for the meeting of August 31 2001 failed to mention that Macquarie Bank had no active role in the project. This pattern continued after the council gained control of the Foundation in late 2002. It appears that at least one report prepared by the council staff in their capacity as directors of the Foundation was not provided to council at the request of Mr Carr. Reportedly, Mr Carr was only prepared to go to council once a solution had been found.

**2.2.2** In addition, Councillors gave evidence that when they approached Mr Carr to raise concerns about the project, they were simply reassured that everything was fine. In this way, the decision-making body of council was denied the opportunity to make an informed decision about whether to enter into the Oasis or the Liverpool 2020 project. The governing body appears to have been reduced to a rubber stamp.

**2.2.3** The evidence suggests that this kind of unbalanced reporting was a long-standing practice. In 1997 reporting to council about the competing merits of the Whitlam Centre expansion and the Stardome project was heavily skewed in favour of the Stardome project, and it appears that council staff were told not to pursue or report to council on this viable alternative.

Council Business papers for 5 February 2001 meeting, p.15, 17, 27; Council Business papers for 31 August 2001 meeting; T. Carr 03 February p.56, 57, 65; T. Waller 21 January p.21, 27, 44, 47, 64; **Letter** to The Office of the Commissioner from Wendy Waller dated 3 March 2004; T. Anthony 16 February p.31, 33, 35, 38; T. Ritchie 29 January p.12; T. Paciullo 19 January p.24, 104–105 and 20 January p.23, 95; T. Douglas 30 January p.10 T. Glavich 16 February p. 13, 17, 23–24, 114–115; T. Pascale 16 February p. 57–58, 64, 68; T. Gauci 16 February p. 83–84, 92; T. Karnib 16 February p. 101; T. Bowman 17 February p. 3–4, 8, 9, 13.

## **2.3 Access and opportunity to consider external reports**

**2.3.1** Council spent a great deal of money and effort obtaining expert advice from external consultants on the very complex arrangements that council was entering into. However, the Councillors' opportunity to properly consider this advice was so limited that they it is inconceivable that any Councillor would have had sufficient time to properly consider the reports. The evidence of most Councillors was that they would have liked more time to consider the reports.

**2.3.2** On some occasions, reports were tabled five or ten minutes before the council meeting started and Councillors read the reports before or during the meeting. Sometimes, Councillors asked for and were granted extra time to finish reading these reports. On other occasions, the reports would be referred to in the business papers prepared for a council meeting and would be available for inspection in Mr Carr's office. An arrangement could be made with Mr Carr to view (but not to copy) these reports, after signing a memo undertaking to keep the reports confidential. Given that the business papers were circulated about 3 days before the extraordinary meetings and that the majority of Councillors work full-time, this type of arrangement did not allow Councillors satisfactory access to the reports. Finally, it is almost certain that some useful reports were never made available to Councillors, although they were provided to Mr Carr, council's advisers and even other parties to the agreements. In defending the limited access to reports, Mr Carr emphasised that the authors of the report were almost always available at council meetings to answer questions and clarify issues of concern. This is not an adequate alternative. How could Councillors be expected to ask constructive questions about the weaknesses or gaps in a report, unless they had read it? In addition, the Early Construction Agreement is impossible to understand without a copy of the Commercial Agreement, and the Commercial Agreement was not available to Councillors when reviewing the Early Construction Agreement. The Inquiry has heard evidence that even people with experience in commercial arrangements who had all of the relevant documents in

front of them, had difficulty understanding the Commercial Agreement and to an extent the Early Commercial Agreement. Effectively, the regime of confidentiality deprived Councillors of the opportunity to properly understand the arrangements that they were agreeing to.

**Memo** to All Councillors from Brian Carr dated 14 August 2001 re Woodward Park; **T.** Carr 26 February p.11–13; **T.** Waller 21 January p.14 – 15, 23; **T.** Harrington 21 January p.86–87, 94 and 22 January p.7; **T.** Carr 3 February p. 39, 43–44; **T.** Glavich 16 February p. 5–6; **T.** Anthony 16 February p. 31, 36; **T.** Dobell-Brown 16 February p. 47; **T.** Pascale 16 February p. 61; **T.** Gauci 16 February p. 78–79; **T.** Bowman 17 February p. 3–4; **T.** Beuk 17 February p. 45–46; **S.** Harrington p.11; **Memo** to Harrington from Brian Carr dated 26 May 2003; Letter to Carr from Cecilia Anthony re Oasis/Liverpool 2020 dated 12 May 2003; **T.** Douglas 30 January p.50, 51; **Letter** to Office of the Commissioner from Mitchell Morley plus attachments dated 10 February 2004.

**2.3.3** Mr Carr appears to have adopted the view that any document associated with the Oasis project was to be treated confidentially, regardless of whether they came from council staff, council’s own advisers or the project proponents. Strangely, Mr Carr seems to have assumed that there all documents that arrived at council marked confidential should be treated confidentially, and that there was a certain obligation to council’s own advisers to treat their reports in this way. No consideration was given to the question of the damage that would flow from the public release of the reports.

**2.3.4** In fact, as Mr Carr acknowledged in his evidence, council as the owner of those reports was entitled to decide whether it wished to keep the reports confidential or not. The Inquiry also heard persuasive evidence that this level of confidentiality was unnecessary. Indeed, Mr McCully’s evidence was that in 17 years as general manager of another council, which also undertook a significant commercial development, he only made confidential reports to council on two occasions. There appears to be no considered basis for this rigid regime of confidentiality, which in turn stifled Councillor’s ability to effectively participate in a decision worth millions of dollars.

**T.** Carr 3 February p.68, 69; **T.** Paciullo 1 March p.83; **T.** McCully 4 February p.24

**2.3.5** Speakers suggested that the procedure of signing for reports had been adopted after council asked Mr Carr to prevent the regular media leaks. However, none of the witnesses was able to say when council passed a resolution on this issue and nor has the council has been able to identify the resolution. Regardless, it is clear that Mr Carr took the view that all documents relating to the Oasis project were confidential and therefore should not be made freely available to Councillors. Even when Councillors specifically asked for copies of extra information about the Oasis project, they were refused access to this information. It is an extraordinary idea that the decision-making body of council should not have free and ready access to all of the documents held by council.

T. Carr 2 February p.44 and 3 February p.60, 63, 69; **Letter** to The Office of the Commissioner from Gary McCully dated 16 February 2004.

**2.3.6** There was evidence that Mr Carr and/or Mr Heapy hinted to two key council staff that they need not attend particular council meetings, although the Oasis project was on the agenda for those meetings. Mr Carr and Mr Heapy denied that this was the case, but the fact remains that both employees thought that they were being asked not to attend these meetings. The staff members' explanation was that they had found evidence, or formed views, about the Oasis project that was contrary to the generally optimistic tone of the reports that went to the governing body.

T. Carr 3 February p.75, 76; T. Heapy 24 February p.25; T. Harrington 22 January p.36; **Letter** to Garry Payne from Colin Harrington dated 1 July 2003; T. Douglas 30 January p.27, T. Stalley 22 January p.96.

## **2.4 Information about Oasis budget**

**2.4.1** From 1997 onwards, council spent about \$3.9 million on services related the Woodward Park development (see Part 1 Section 1). This sum did not include the cost of time spent on the project by council staff. Apparently at the request of Councillor Waller, the money spent on the Woodward Park development was accounted for under a separate cost centre created in the general ledger. This line item was included in the quarterly budget reports and the reports to the Finance Panel. The Finance Panel was chaired by Councillor Waller and could be attended by any Councillor. Minutes of the Finance Panel meetings show that many of the Councillors regularly attended those meetings.

**2.4.2** Surprisingly, the consistent evidence of the Councillors was that they were not aware of how much money had been spent by council on the Woodward Park development. Councillor Waller originally gave evidence that money spent on Woodward Park would show up in a budget review process, although in a later submission she retreated from this. It would seem from the evidence available to the Inquiry that Councillors did have access to some information about the (incomplete) internal costs of the Oasis project, but simply did not look at it.

**2.4.3** The payment of \$15 million into the Oasis development was recorded in the quarterly reports to council and in the finance committee reports. Many of the Councillors said that they were not aware that these payments had been made and it appears that these payments were not specifically brought to council's attention.

**2.4.4** The lack of information available to council about the activities of the Foundation during its control by the Bulldogs meant that the first time that detailed information on the expenditure on Woodward Park was brought to council's attention was in November 2002, when the Commercial Agreement with the Bulldogs and Macquarie Bank had begun to unravel.

T. Waller 21 January p.53 (says 2003, but think must be mistake), 57, 60–61; T. Stalley 22 January p.61; T. Gauci 16 February p.87, T. Bowman 17 February p.20; T. Glavich 16 February p.24–25; **Minutes** of Finance Panel Meetings and associated reports.

## **2.5 Access to GM**

**2.5.1** There was a suggestion made to the Inquiry that Mr Carr was not available when Councillors wanted to see him. Mr Carr denied this allegation. None of the Councillors in written or oral submissions to the Inquiry complained that they had limited access to Mr Carr. Indeed, several Councillors said that they made appointments with Mr Carr or called him to get more information about different aspects of the Oasis project.

T. Mardsen 18 February 2004 p.29 and 25 February p.42; T. Beuk 17 February p.45–46; T. Bowman 17 February p.3–4; T. Harrington 21 January 86–87; T. Karnib 16 February p.94–95; T. Pascale 16 February p.61–62; T. Carr 2 February p.5.

## **2.6 Special briefings and differential treatment of different Councillors**

**2.6.1** The evidence suggests that certain Councillors had early access to some information. The Labor caucus received briefings from Mr Carr and some of the proponents of the Oasis deal. It is not clear from the evidence whether Labor Councillors also received copies of the external advisers reports at their caucus meetings and so had an extra opportunity to review them. When meetings were held outside of council, such as the meeting with Macquarie Bank representatives at Mr Bosnjak's house, not all of the Councillors were invited. These kinds of discriminatory practices undermined the decision-making role of those Councillors who were excluded. The Councillors and staff who cooperated in giving certain Councillors privileged access seem to have disregarded the fact that under section 232 of the Act each Councillor has a decision-making responsibility as a member of the governing body of council.

**2.6.2** It appears very likely that the strength of the Labor caucus, which comprised the majority of the council (7 members out of 11), meant that the independent Councillors were excluded from the council's committees. The Liberal Councillors were given an opportunity to sit on some committees, apparently through an agreement with the Mayor. Although these committees had no decision-making role, this practice again excluded the independent Councillors from additional opportunities to have input into and receive information about council's affairs.

T. Paciullo 20 January p.25; T. Waller 21 January p.10, 30 – 33; T. Carr 26 February p.6–7; T. Anthony 16 February p.33, 38; T. Bowman 17 February p.6; T. Bosnjak 17 February p.30–31; T. Moss 23 February p.6; T. Pascale 16 February p.73–74; T. Glavich 16 February p.8 – 10; T. Harrington 21 January p.31 and 22 January p.45–46, 47; S. Harrington no.13 p.1, 10; T. Dobell-Brown 16 February p.46.

## **2.7 Blind faith in the experts**

**2.7.1** There is no doubt that the path to the development of Woodward Park was a difficult one and that at times, the negotiations with the various proponents, Stardome, Grocon, the Bulldogs and Macquarie Bank, were demanding. Mr Carr, and to an extent the Mayor, however, seem to have formed the view that there was no point informing council about the progress of those negotiations and that they should only report back to council once a final agreement had been settled and approved by council's external advisers. Councillors were then put in a position where they had to quickly come to grips with some very complex agreements which had been endorsed by Mr Carr and his very experienced external advisers. The tenor of the reports was that this was the best outcome that the negotiators had been able to obtain for council. The evidence suggests that Councillors relied blindly on the endorsement provided by these advisers. The majority of Councillors did not attempt to delay council's decision about the agreements or ask that additional risk management measures be explored. In essence, Councillors seem to have considered the arrangements brokered on their behalf as a *fait accompli* and blindly accepted the experts' advice that the deal was sound.

T. Carr 3 February p.59, 66; T. Redman 27 January p.37; T. Paciullo 19 January p.64–65, 74, 87, 90, 110 and 20 January p. 7, 9, 11, 20, 96, 98 and 1 March p.76 – 78; T. Douglas 30 January p.50, T. Beuk 17 February p.54; T. Gauci 16 February p.84, 91; T. Pascale 16 February p.58.



PART

SECTION 3

# 2

## Duties of the elected representatives

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## Duties of the elected representatives

### 3. **Prima facie evidence of a failure of Councillors to meet their responsibilities when dealing with matters related to the Woodward Park and associated projects**

The role of a Councillor is defined in Section 232 of the Local Government Act (1993). The Act states that as a member of the governing body of the council, a Councillor must direct and control the affairs of the council in accordance with the Act. Further, a Councillor is to participate in the optimum allocation of the council's resources for the benefit of the area, and to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions. In addition, the Act enjoins a Councillor to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

Additionally, the Act requires a Councillor, as an elected person, to represent the interests of the residents and ratepayers; to provide leadership and guidance to the community; and to facilitate communication between the community and the council.

These are significant responsibilities. There is prima facie evidence that the elected representatives, as a body, have failed to live up to these responsibilities in relation to the project management of Woodward Park and associated areas.

#### **The failures suggested by the prima facie evidence**

- There has been a failure to review, consider and understand material that would enable proper consideration to be given to the professional advice, and other information, available to the council
- There has been a willingness by some Councillors to rely almost entirely on the advice of the General Manager, rather than attempt to consider the information themselves
- There has been an unnecessary rush to make decisions rather than to take time to contemplate the full evidence available
- There was a failure of Councillors to take control of the decision-making processes

- The caucus system led some Councillors consistently to vote in favour of various aspects of the projects on Woodward Park and associated areas, when their judgement suggested that they should have opposed them
- Many Councillors failed to attempt to analyse information, but rather relied on the advice of others in blind faith.

### **3.1 Review, consideration and understanding of advice by the Elected Representatives**

**3.1.1** Each of the Elected Representatives, when appearing at the Public Hearings, was asked whether they had seen various key documents related to the feasibility of the Woodward Park Precinct schemes, and to the signing of crucial agreements binding the council to arrangements with outside bodies. The majority of the Councillors claimed to have seen many of the documents. Some Councillors suggested that they had not seen some of the reports.

T. Waller 21 January p.14-16, 20-21, 45, 49, 51, 53, 67; T. Harrington 22 January p. 3-4, 12; T. Anthony 16 February p. 29-30, 36, 41; T. Gauci 16 February p. 83;

**3.1.2** Evidence before the Inquiry shows that the former General Manager instituted a system whereby many of the key reports providing advice were only available to Councillors in his office, and by appointment. Elected Representatives are only engaged in the work of the council part-time. It was difficult for them to find the time to fit in with the General Manager's system, and it is clear that many of them did not take the time to study the reports.

T. Waller 21 January p.23; T. Harrington 21 January p.86-87; T. Carr 3 February p. 39, 43-44; T. Glavich 16 February p. 5-6; T. Anthony 16 February p. 31; T. Dobell-Brown 16 February p. 47; Pascale 16 February p. 61; T. Gauci 16 February p. 78-79; T. Bowman 17 February p. 3-4; T. Beuk 17 February p. 45-46; S. Harrington no. 13 p. 11.

**3.1.3** Each Councillor, when appearing at the Public Inquiry, was questioned about the time spent studying the reports that he or she had seen. It is clear that at least half of the Councillors did not read the reports in depth. It appears that the Councillors then voted on matters that were connected to advice contained in the reports.

T. Paciullo 19 January p.74, 91, 92; T. Waller 21 January p. 9; T. Glavich 16 February p.3-4, 16; T. Pascale 16 February p. 72; T. Gauci 16 February p.80-81; T. Bowman 17 February p. 2-5,16

**3.1.4** At the Public Hearings each Councillor was questioned about his or her level of understanding of the advice presented in various reports. The majority of Councillors confessed to having some problems in understanding the often technical, complex and large reports that they saw. It appears that many Councillors voted on matters that they did not fully understand; matters that would have long-term implications for the infrastructure and resources of Liverpool City Council.

T. Harrington 21 January p.88; T. Glavich 16 February p.13, 21-22; T. Anthony 16 February p.31-32; T. Pascale 16 February p. 58, 70-71; T. Gauci 16 February p.78, 90; T. Karnib 16 February p. 96; T. Bowman 17 February p. 10-11; T. Beuk 17 February p. 60

## **3.2 Reliance on the General Manager**

**3.2.1** A number of Councillors took the view that it was the responsibility of the former General Manager to read and interpret the advice contained in the reports, and then to pass on his own advice to the Councillors. This may be seen as a dangerous abdication of the Councillors' own responsibilities. In many cases Councillors have confessed to being satisfied with reading only the former General Manager's précis or the executive summary of advice, rather than feeling it was necessary to read the whole advice.

T. Paciullo 19 January p. 104-105; T. Paciullo 20 January p.23, 95; T. Waller 21 January p.21; T. Glavich 16 February p. 13, 17, 23-24, 114-115; T. Anthony 16 February p. 31, 33; T. Pascale 16 February p. 57-58, 64; T. Gauci 16 February p. 83-84, 92; T. Karnib 16 February p. 101; T. Bowman 17 February p. 3-4, 8, 9, 13.

**3.2.2** When questioned at the Public Hearings about various unsatisfactory outcomes resulting from arrangements with outside bodies made by the council, and approved by the Councillors, a stock response of some Councillors was that the former General Manager was to blame. It might be said that these Councillors have failed to recognise their own responsibilities as the policy-making arm of the council.

T. Paciullo 20 January p. 77; T. Waller 21 January p. 44, 47; T. Glavich 16 February p. 6-7; T. Anthony 16 February p. 35; T. Pascale 16 February p. 61, 66-67, 71; T. Karnib 16 February p. 103; T. Bowman 17 February p.7.

## **3.3 The pace of decision-making related to the Woodward Park and related projects**

**3.3.1** Quite frequently advice that was critical, if Councillors were to be properly advised before reaching a decision, arrived only a few days before a council meeting, and in some cases on the very afternoon of a meeting. Even when reports arrived days before a meeting, they were sometimes not placed in the hands of the Councillors until just before the meeting started, or during the

course of the meeting. Too much of the critical information seemed to be buried under an unnecessary cloak of secrecy. Certain material issued to Councillors at council meetings was numbered, and the copies had to be returned to the former General Manager at the end of the meeting. None of this allowed the Councillors the time to digest or understand the material before having to vote. These tactics appear to have stopped Councillors from gaining ownership of the information, and hence ownership of the decision-making process.

**T. Pacullio** 20 January p. 39; **T. Waller** 21 January p. 11-13; **T. Harrington** 21 January p. 85, 87-88; **T. Carr** 3 February p. 47; **T. Glavich** 16 February p. 18; **T. Anthony** 16 February p. 31, 43; **T. Dobell-Brown** 16 February p. 49, 51; **T. Pascale** 16 February p. 58, 63; **T. Gauci** 16 February p. 79; **T. Karnib** 16 February p. 97-98, 102; **T. Bowman** 17 February p. 5; **Advice** Walker Douglas 27 August 2001; **Advice** PwC 28 August 2001; **Advice** Abbot Tout 29 August 2001; **Minutes** of Council Meeting 31 August 2001.

**3.3.2** Some of the processes adopted by the council appear to have been specifically instituted to prevent Councillors from having adequate opportunity to read and analyse material. Ironically, the advice and reports were commissioned by the council itself to enable the Councillors to make informed decisions. In various ways, the system of distribution adopted made it extremely difficult for Councillors to access the material. Even if the material were accessible, the pace at which the council dealt with it negated the prospect of sensible debate in the Chamber. Some of the haste appears to have been politically inspired: the Mayor and the former General Manager appeared to have become so beguiled by the dream of Woodward Park developments that they were intent on pushing arrangements ahead almost at any cost. Some of the haste appears to have been generated by the perceived needs of the Razorback basketball team, and the NBL. Some of the haste appears to be a result of the pressure applied by Mr McIntyre representing the Bulldogs, who were partners in the Commercial Agreement with the council and Macquarie Bank.

In general, the extraordinary level of haste connected to the council's decision-making probably subverted the whole process of sound decision-making.

**T. Waller** 21 January p. 16-17, 21-22, 38-39; **T. Harrington** 21 January p. 91-93; **T. Harrington** 22 January p. 11; **T. Carr** 3 February p. 60-61; **T. Anthony** 16 February p. 34-35; **T. Pascale** 16 February p. 66; **T. Looby** 23 February p. 70, 73-74.

**3.3.3** Councillors Harrington and Dobell-Brown on a number of occasions attempted to get adjournments on certain matters to allow the Elected Representatives sufficient time to read the relevant material and to make considered judgements on how they should vote. Such attempts to make the decision-making time-frames more sensible were regularly rejected.

**T. Pacullio** 19 January p. 99; **T. Harrington** 21 January p. 92; **T. Anthony** 16 February p. 43, 44; **T. Pascale** 16 February p. 59-60, 63; **S. Harrington** no.13 p. 4; **Minutes** Council Meeting 5 February 2001 p. 4; **Minutes** Council Meeting 31 August 2001 p. 3; **Minutes** Council Meeting 12 May 2003 p. 3

### 3.4 Failure of the Councillors to take control of the decision-making processes

**3.4.1** As the key policy-making body of the council, the Elected Representatives had to ensure that the advice and information they received was disseminated to each of the Elected Representatives according to due process. There is no evidence of the majority of Councillors insisting that council should adopt processes that would enable the Elected Representatives to receive information and advice in a more timely fashion. This can be seen to amount to gross negligence, and/or acquiescence of Councillors in bad processes.

T. Glavich 16 February p. 2-3; T. Anthony 16 February p. 30; T. Dobell-Brown 16 February p. 49; T. Bowman 17 February p.11.

**3.4.2** When gaps in the information were revealed, there is little evidence to suggest that the majority of Councillors made any strong efforts to insist on their being provided with further explanation. This might be a result of the very restricted access Councillors had to much of the material, and the very limited time they had to read and digest advice. It would be difficult for Councillors, who had not read a report, to know that the advice within the report needed further expansion or clarification. There is some evidence that critical budget material was not made available to all Councillors, and efforts were made to rectify this only at a late stage in the history of Woodward Park Precinct arrangements. Unfortunately, the information reached the Councillors long after damage had been done to the council.

T. Pacullio 19 January p. 52; T. Pacullio 20 January p. 20; T. Waller 21 January p. 27; T. Harrington 21 January p. 92; T. Glavich 16 February p. 22-23; T. Anthony 16 February p. 30-31, 38; T. Dobell-Brown 16 February p. 49; T. Pascale 16 February p. 64, 66, 72-73; T. Gauci 16 February p.88-89; T. Marsden 18 February p. 11-12.

**3.4.3** The evidence suggests that the majority of Councillors themselves were complicit in making much of the vital information and advice of the commissioned reports difficult to access. There appears to have been a much greater emphasis on stopping the Elected Representatives from accessing material, than on ensuring that they had the information needed to make good judgements. Such attitudes arose out of a conviction held by the former General Manager, the Mayor, and some Councillors, that there was a danger that commercial-in-confidence information might be leaked to the general community. It is a moot point whether much of the material commissioned by the council from its advisers could really be classified as representing commercial-in-confidence information. Further, long after information that might have once been classed as commercial-in-confidence could legitimately be so designated, it was still withheld from the Elected Representatives.

T. Anthony 16 February p. 42; T. Carr 26 February p. 11-16; Memo from Carr to Councillors 14 August 2001.

**3.4.4** In evidence at the Public Hearings, the former General Manager argued that on several occasions expert advisers were present at council meetings, and that Councillors had the opportunity to question them on their reports. The reality appears to be that some Councillors had not read the reports before the meetings at which they were supposed to seek further information. As well, other Councillors may only have read a summary of the report, sometimes prepared by the former General Manager or a council officer, thus removing further the capacity of a Councillor to ask relevant questions of the adviser. In many cases, reports about which the Elected Representatives were meant to be seeking further information were only given to the Councillors minutes before they were called to ask questions. In some instances there is evidence that advisers were allowed to present their findings instead of being questioned by Councillors about their findings. There is some evidence that advisers, who might be seen to have an interest in influencing Councillors to take certain lines of action, were allowed to remain whilst the Councillors voted on the matters.

T. Waller 21 January p. 11; T. Karnib 16 February p. 106; T. Beuk 17 February p. 51; T. Marsden 18 February p. 11-12.

**3.4.5** Besides the evidence that advisers were allowed on occasions to remain when advice was being debated or voted upon, there is also evidence that prospective commercial partners had substantial access to the delegated authorities handling the negotiations of the council. It appears that the body of the Councillors, not engaged in the negotiations, were not fully informed of the outcomes of such meetings. There is also evidence that some of the Councillors were selectively informed of what was happening with negotiations, and with advice and information.

T. Anthony 16 February p. 38; T. Bosnjak 17 February p.30-31; T. Marsden 18 February p. 49-51, 61; S. Harrington no.13 p.11.

## **3.5 The caucus problem**

**3.5.1** ALP Councillors held 7 of the eleven representative places on council. In every significant vote at a council meeting related to the Woodward Park the ALP Councillors voted as a block. On almost every such occasion they were joined by the 2 Liberal Party representatives. There is strong evidence that some of the ALP representatives had reservations about aspects of the Woodward Park arrangements, or wished to obtain more information about some issues. Such Councillors voted as a block in the Chamber. These Councillors were a minority in the caucus, and ALP rules dictated that they must vote according to the wishes of the caucus majority.

**3.5.2** Given that on some occasions the advice related to a particular issue was not available until the start of a council meeting (ie. until after the caucus meeting) it is difficult to know how a caucus voting pattern could be established. The evidence given by the ALP Councillors at the Public Hearings did not really clarify what happened in such instances. Nonetheless, the voting records show that all the ALP Councillors voted as a block on important Woodward Park issues, whether the relevant information had been debated in caucus or not.

**3.5.3** Following the ICAC Inquiry into Rockdale Council, the ALP modified its rules about caucus voting behaviour to permit Councillors to have a free vote on Development Application matters. Rule H. 1 (d) states that Labor Councillors can only caucus on Party policy, council estimates, finance and rates, staff matters, town planning, the election of Mayor, President, Chairpersons and Deputies, and members of Standing Committees and other representative bodies. The nature of the commercial agreements that were made by Liverpool City Council with various bodies effectively locked the council into ensuring certain development outcomes for certain parcels of land. De facto such agreements, therefore, might have been regarded in the same light as development application voting, and it could be argued that Labor Councillors might have exercised a free vote. They didn't, and so some Councillors voted against their own judgement, and in a fashion that does not appear to accord with their responsibilities under Section 232 of the Act. Evidence is available that shows that some Labor Councillors did seek clarification from the ALP about their freedom to vote on the Macquarie Bank MOU. The responses to their queries, however, are broad in nature and not clear-cut. It may be surmised that those Councillors read the replies and decided to opt for a cautious approach rather than risk breaking the caucus rules.

T. Pacullio 20 January p. 25-26; T. Waller 21 January p. 8-12, 15, 22-38; T. Harrington 22 January p. 47; T. Glavich 16 February p. 9-10; T. Anthony 16 February p. 28-30, 32-33, 35, 40-44; T. Dobell-Brown 16 February p. 46; T. Gauci 16 February p. 79-82; T. Karnib 16 February p. 99-100, 107; T. Bowman 17 February p. 6-7; **Minutes** Council Meeting 5 February 2001; **Minutes** Council Meeting 31 August 2001; **Minutes** Council Meeting 12 May 2003. Email correspondence between Cecilia Anthony and ALP 22 January 2003, 10 February 2003, 17 March 2003; **Letter** to Mark Arbib from Tony Beuk re Local Government Caucusing dated 12 May 2003.

## **3.6 Blind faith and decision-making of Councillors**

**3.6.1** The Act specifies a rigid separation of the roles and responsibilities of the Elected Representatives and the Body Corporate. In this separation the Elected Representatives clearly have the responsibility for policy-making and decision-making in relation to policies. The evidence strongly suggests that a number of the Councillors ceded their effective roles to the former General Manager. In many ways the General Manager was driving the processes that shaped the Woodward Park arrangements, deciding the when and where of what advice and

information the Councillors would receive. Effectively such processes appear to have determined the decisions that Councillors made to achieve the goals set by the Mayor and the General Manager. It appears that some Councillors had a blind faith in the processes and advice of the Mayor and the former General Manager. In this, such Councillors appear to have failed to fulfil their roles as defined by the Act.

T. Pacullio 19 January p. 74; T. Glavich 16 February p. 6, 24; T. Pascale 16 February p. 58, 65-66; T. Gauci 16 February p. 90-92; T. Karnib 16 February p. 101.

**3.6.2** The evidence suggests that many Councillors did not feel confident in their ability to make judgements on complex issues of law or commerce, and relied totally on what experts might advise. Quite apart from the fact that much of the experts' advice was not read by some Councillors, there is a strong sense in the evidence that Councillors placed a blind trust in the advisers they hired, and that this blinded them to the possible need to seek further advice.

T. Pacullio 19 January p. 90, 98, 110; T. Pacullio 20 January p. 19-23; T. Pascale 16 February p. 68; T. Gauci 16 February p. 84-85; T. Beuk 17 February p. 54.

**3.6.3** The evidence suggests that some of the Councillors were captive to the reputations and experience of the parties with whom they were attempting to build commercial relationships. Some Councillors were willing to follow their commercial partners rather than deal with them on an even footing. Some Councillors appear to have been in thrall to the size and commercial might and experience of the outside bodies. They were willing to believe that projects would inevitably succeed simply because these parties were involved. They appear to have been befuddled by the grandeur of the vision, and what it might achieve for Liverpool. They appear to have forgotten that their role was to ensure that community resources were protected, and they as far as possible, guaranteed that community benefits were ensured. These Councillors were willing to cede their own authority, and open the council to uncovered risks, because they placed a blind trust in their partners, a trust that sadly for the council was not to be honoured.

T. Pacullio 19 January p. 57; T. Pacullio 20 January p. 89-91; T. Bowman 17 February p. 11-12; T. Beuk 17 February p. 52-53; T. Marsden 18 February p. 4-5.

PART

SECTION 4

2

The transparency and openness  
to the public of Liverpool City  
Council's decision-making processes  
in relation to Woodward Park  
Precinct projects

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- 4. Aspects of council's dealings with the public**
- 4.1 Public access to council meetings at Liverpool City Council dealing with matters related to Woodward Park Precinct**
- 4.2 The capacity of the community to have input into considerations about the structure of the Woodward Park Precinct projects**
- 4.3 Information that is publicly available under the Act**

# The transparency and openness to the public of Liverpool City Council's decision-making processes in relation to Woodward Park Precinct projects

## 4. Aspects of council's dealings with the public

- Concerns have been expressed about the levels of public access to council meetings
- Concerns have been expressed about the level of public participation in the Woodward Park and associated projects
- Concerns have been expressed about the lack of information given to the public about the structure and cost of Woodward Park and associated projects.

### Council meetings and the Act

Chapter 4 of the Act is designed to answer the question: how can the community influence what a council does? In answering the question, the Act emphasizes the general entitlement of the public to attend meetings. Section 10 states:

*(1a) everyone is entitled to attend a meeting of the council and those of its committees of which all members are councillors, and*

*(1b) a council must ensure that all meetings of the council and of such committees are open to the public.*

Section 9 of the Act contains the following clauses:

*(1) A council must give notice to the public of the times and places of its meetings and meetings of those of its committees of which all the members are councillors.*

*(2) A council and each such committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the agenda and the associated business papers (such as correspondence and reports) for the meeting.*

*(2a) In the case of a meeting whose agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public:*

*(a) The agenda of the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item), and*

- (b) The requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.*
- (3) The copies are to be available to the public as nearly as possible to the time they are available to councillors.*
- (4) The copies are to be available free of charge.*

Section 10 (A) defines when parts of a meeting can be closed to the public.

The first four parts of Section 10 (A) relevantly state:

- (1) A council, or a committee of the council of which all members are councillors, may close to the public so much of its meeting as comprises:
  - (a) the discussion of any of the matters listed in subclause (2), or*
  - (b) the receipt or discussion of any of the information so listed.**
- (2) The matters and information are the following:
  - (a) personnel matters concerning particular individuals,*
  - (b) the personal hardship of any resident or ratepayer,*
  - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,*
  - (d) commercial information of a confidential nature that would, if disclosed:
    - (i) prejudice the commercial position of the person who supplied it, or*
    - (ii) confer a commercial advantage on a competitor of the council, or*
    - (iii) reveal a trade secret.***

Section 10B (4) states:

For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

- (a) a person misinterpret or misunderstand the discussion, or*
- (b) the discussion of a matter may:
  - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or*
  - (ii) cause a loss of confidence in the council or committee.**

Section 366 (Chapter 12) of the Act outlines a process for calling an extraordinary meeting of council.

*If the mayor receives a request in writing signed by at least 2 councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable but in any event within 14 days after the receipt of the request.*

Regarding notice of meetings, the Act states in Section 367:

*(1) The general manager of a council must send to each councillor, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting.*

*(2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency.*

#### **4.1 Public access to council meetings at Liverpool City Council dealing with matters related to Woodward Park Precinct**

**4.1.1** Council meetings at which key decisions related to Woodward Park were made appear to have been closed to the public as a general rule. The reason given for the closure was, repeatedly, that commercial-in-confidence matters were to be discussed. The evidence reviewed to this point suggests that by closing the meetings, the public may have been denied the opportunity to be informed about the Woodward Park Precinct proposals, and the commercial arrangements associated with them. Since there was no tendering associated with the commercial arrangements that council was entering into, it is difficult to see how the information could have conferred a commercial advantage on a person (or body) with whom the council was conducting, or proposed to conduct, business (Section 10A of the Act). The arrangements were freely referred to as being partnerships. It is difficult to understand how the information would prejudice the commercial position of the person (or body) that supplied it (Section 10A of the Act). It was not possible for the information to confer a commercial advantage on a competitor of the council, because there was none (Section 10A of the Act). The information can hardly be seen to hold trade secrets (Section 10A of the Act). Thus, the various reasons that are provided in the Act to justify holding closed meetings do not seem to have applied. It is difficult to find the harm that might have been done to the council, or to any other party, had the information been presented at an open meeting of council. The main effect of operating in closed sessions appears to be the prevention of the community gaining an understanding of what benefits and costs were related to the commitments that the Elected Representatives were making.

T. Pacullio 20 January p. 33-38; T. Harrington 22 January p. 22-23; T. Byrne 30 January p. 80-81; T. Carr 2 February p. 45-46, 48-49; T. McCully 4 February p. 24-26; T. Rogers 5 February p. 49-55; S. Harrington no.13 p. 10-12; **Minutes** Council Meeting 31 August 2001; **Minutes** Council Meeting 12 May 2003.

**4.1.2** There is evidence that the concern with keeping information about Woodward Park Precinct arrangements secret from the public became obsessive with some councillors and staff. This may have been against both the intention and the practice of Section 10 of the Act. Some material, like the detail of important agreements such as the Commercial Agreement with the Bulldogs and Macquarie Bank 2001 and the Memorandum of Understanding with Macquarie Bank 2003, appears never to have been revealed to the public. The evidence before the Inquiry has not explained to date the damage that might have ensued to any party if information had been made available to the public at particular points of negotiations. The evidence before the Inquiry has not, as yet, produced any convincing reason why information on various matters has not been made available to Councillors after agreements have been signed. The restrictions placed on the dissemination of information might also have been designed to prevent any embarrassment to the council or any reduction in community confidence in the council, in contravention of Section 10B (4) of the Act.

T. Harrington 21 January p. 85-88; T. Harrington 22 January p. 22-23; T. Carr 2 February p. 45-46; T. Carr 3 February p. 71-74; T. Carr 26 February p.12-16; S. Harrington no.13 p. 10-12

**4.1.3** Council, at times, appears to have used extraordinary meetings to an extraordinary extent. The use of extraordinary meetings has been defended in terms of the need for Councillors to have time to debate the complex issues that related to the Woodward Park Precinct arrangements unencumbered by the detailed matters considered at ordinary meetings. This reasoning is, of itself, extraordinary. Since the Councillors were often given very limited access to information, and very little time to read and digest information prior to the extraordinary meetings, the possibility of informed debate on the complex issues put before the extraordinary meetings must have been very limited. The process of holding extraordinary meetings, however, when associated with the closure of meetings, appears to have offered the community little chance of being informed, let alone being involved in the work of the council. By removing the business of the Woodward Park Precinct from the ordinary cycle of council business, and placing it behind further barriers, the council effectively prevented the community from having a proper understanding of the largest, and most costly, project ever undertaken by the council.

T. Harrington 21 January p. 95-98; T. Harrington 22 January p. 10; T. Byrne 30 January p.83-84; T. Carr 2 February p. 47-48; T. Carr 3 February p. 60-61; S. Harrington no.13 p. 10-12

**4.1.4** The former General Manager has argued that the public did not have to be notified of extraordinary meetings. There is nothing in the Act that signifies there is any change of processes of notification of extraordinary meetings compared to ordinary meetings. If council's ordinary procedure was to place advertisements about ordinary meetings in the newspapers, it might be anticipated that the same procedure should be followed for extraordinary meetings. The only change to time limits on notification of meetings in the Act refers to emergencies, and there is no way that the extraordinary meetings called by the council could be seen to have been a response to an emergency. The General Manager's interpretation of the Act is debateable. Quite apart from that, the use of extraordinary, and to the public unnotified, meetings was fundamentally counter-productive. The February 5 2001 council meeting was a good illustration of this. The stated purpose of that extraordinary meeting was to provide the public with the first complete explanation of the detail of the Oasis project. Notification of the meeting was not placed in the local newspapers (as was the custom with ordinary meetings). There is some evidence that footballers and basketballers from Bulldogs' teams were notified, and attended the meeting. It is almost certain that some of the sportsmen were not residents of the Liverpool area. It would appear that the lack of notification of that meeting was a deliberate ploy to avoid having the general public in attendance at a meeting supposedly designed to inform them of the Oasis project. It seems obvious that invitations extended to non-residents was a deliberate political ploy to assist the ratification of the Oasis scheme that night, minimising any opposition voices to the proposals.

T. Harrington 21 January p. 95-98; T. Harrington 22 January p. 10; T. Byrne 30 January p.83-84; T. Carr 2 February p. 47-48; T. Carr 3 February p. 60-61; S. Harrington no.13 p. 10-12.

## **4.2 The capacity of the community to have input into considerations about the structure of the Woodward Park Precinct projects**

**4.2.1** The calling of extraordinary meetings and the closure of certain meetings suggest that the council had little interest in engaging the community in debate over the merits or otherwise of the Oasis concepts. As background, it seems that the majority bloc of the elected representatives believed that they had won a mandate in the 1999 election to carry the Woodward Park developments forward. It would appear that the main opposition in the 1999 elections came from a group opposed to the building of a club and hotel complex on private land owned by the Bulldogs. The Woodward Park and associated developments connected to the Oasis scheme were to be constructed on land owned by the council and the Crown. Although the Bulldogs, and Macquarie Bank, were to be formally linked with the Woodward Park Precinct projects in 2001, no such arrangements

between the three parties had been made in September 1999, the time of the elections. Around that time the council had entered into a short lived MOU with the Bulldogs and other parties. It would appear that the council might have turned the electoral issues of 1999 (public opposition to a private development) into an excuse for not engaging the public on the very different issues related to the Oasis proposals.

T. Pacullio 1 March p. 75-76; T. McIntyre 1 March p. 5.

**4.2.2** The impression that the council was unwilling to engage the community in determining the Woodward Park Precinct outcomes was reinforced by the secrecy surrounding the critical February 5 2001 meeting (4.3.4). This has been described as the first public presentation of the detail of the Oasis project. The public were not notified of the meeting, but a number of non-residents were (4.3.4). Compounding the sense that the community were not to have any input or any means of expressing its opinion, the council in closed session proceeded that same evening to agree to sign the Commercial Agreement with the Bulldogs and Macquarie Bank. In this way it cut off any chance of real community involvement into the future.

T. Harrington 21 January p. 98-100; T. McCully 4 February p. 52; T. Carr 3 February p. 60-61; **Minutes** Council Meeting Minutes Feb 5 2001.

**4.2.3** There appears to have been no attempt by the council to gauge community sentiment about the Woodward Park arrangements through surveys or any other method. Instead, it has been suggested that a survey commissioned by the Bulldogs was satisfactory evidence of support. Only the results, and not the form of the survey, have been made available to the Inquiry. Regardless of the scientific merit (or lack thereof) of the survey, the fact that a body outside of the council commissioned it means that it has little value in revealing the community's feelings about the council's involvement in the Oasis project (as apart from the worth of the project itself). Some confusion in the public arena seems to have existed between the public and private aspects of the Woodward Park developments. It is alleged that the council did not act to remove the confusion.

T. Pacullio 20 January p. 31-34; T. Carr 2 February p. 50-52; T. Rogers 5 February p. 51-53; S. Rogers no. 09 S. East Liverpool Progress Association no. 19; S. Harrington no.13 p. 10

**4.2.4** There was no attempt by the council to create a vehicle for public involvement in the Woodward Park Precinct development. The council, in fact, had an apparently successful model of community engagement with the Casula Powerhouse Board, and its various committees that are responsible for capital raising, management plans, business plans and the like. The evidence is that the Woodward Park Precinct projects did not succeed in producing business plans or

financial modelling that were available for public scrutiny. It would appear that no consideration was ever given by the council to examine operational structures such as those used for the Casula Powerhouse.

T. Gouriotis 19 February p 19-20.

- 4.2.5** There appears to have been little in the way of engagement by the council with the stakeholders of Woodward Park, such as the bodies who were already operating either sporting or community facilities there. Some former users allege that they were not adequately compensated for their financial losses, and that their removal from Woodward Park constituted a serious loss of a social amenity of the community.

T. Stevens 25 February p 75-81; S. East Liverpool Progress Association no. 19; S. Stevens no. 50.

- 4.2.6** Precinct committees, which had been set up by Mayor Latham in the early part of the 1990s, have been abolished and replaced by community forums. There have been various objections to the change. It is alleged that the change was designed to curtail opposition to proposals such as Oasis, that was voiced through the committees. It is also alleged that the forums, catering for larger geographic sectors of the council area and officiated over by council officers, have prohibited the community from having an effective voice in community affairs.

T. Pacullio 20 January p. 35-36; T. Byrne 30 January p. 88-89; T. Rogers 5 February p. 49-50; T. Medway 26 February p. 50-52; S. East Liverpool Progress Association no. 19.

- 4.2.7** There are also allegations that the council changed the rules governing the ability of members of the public to address council meetings to restrict opposition voices to such proposals as the Oasis project.

T. Rogers 5 February p. 51-53; S. East Liverpool Progress Association no. 19.

## **4.3 Information that is publicly available under the Act**

- 4.3.1** Section 12 (1) of the Act lists 29 different documents that council is obliged to make available for inspection free of charge. The documents include various reports, registers, agendas and business papers, codes, development applications, local policies concerning approvals and orders, records of approvals, building certificates and the like, and plans of management for community land.

Section 12 (6) states:

The council must allow inspection of its other documents free of charge unless, in the case of a particular document, it is satisfied that allowing inspection of the document would, on balance, be contrary to the public interest.

Section 12 (8) states:

For the purpose of determining whether allowing inspection of a document would be contrary to the public interest, it is irrelevant that the inspection of the document may:

- (a) cause embarrassment to the council or councillors or to employees of the council, or*
- (b) cause a loss of confidence in the council, or*
- (c) cause a person to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.*

Section 12A states that if the General Manager or any other member of staff of the council decides that access to a document or other information held by the council should not be given to the public or a councillor, the person concerned must provide the council with written reasons for the restriction. Further, the reasons must be publicly available, and the restriction must be reviewed within 3 months, and each subsequent 3 months.

**4.3.2** It is clear that the Act compels the council to make available to the public a very large range of information, and that the council must have very serious reasons for restricting information. The purpose of the Act is to make the operations of the council as open and transparent as possible. Members of the community and some Elected Representatives have suggested that the council may not have followed either the letter or the spirit of the Act in restricting access to quite large quantities of information related to the Oasis project.

T. Harrington 21 January p. 98; T. Harrington 22 January p. 22-23; T. Carr 2 February p. 57-58; T. Wright 26 February p. 37-38; S. Harrington no. 13 p 10-12; S. East Liverpool Progress Association no. 19.

**4.3.3** The Inquiry has inspected material that was presented to the public providing information on the Oasis project in the form of a flyer, a video, and a number of press releases. This information is almost entirely promotional and does not provide a view of the project that takes into account various risks and the possibility of negative outcomes. The tone of the press releases is political, a fact that was acknowledged by the Mayor during the Public Hearings. They appear to be designed specifically to avoid any political embarrassment to the council, or reduce public confidence in the council (contrary to the stipulations of Section 12 (8) of the Act). The Mayor specifically stated the press releases were to counter negativity in the community about the projects.

T. Pacullio 20 January p. 28-30, 63-68; T. Carr 2 February p. 49-50; Council Promotional Brochure.

**4.3.4** The council, at different times, has employed the services of a public relations firm and a media monitoring firm during the development and the implementation of the Woodward Park Precinct projects. The use of such firms leads to an impression that the council was aiming to “sell” the Oasis concept to the community, rather than inform the community about it.

T. Pacullio 20 January p. 62-63; Council Press Releases (provided by council) S. Harrington no. 13 p 9-12.

**4.3.5** Such information that was eventually passed on to the public, whether promotional or not, was generally made available after the council had voted on matters related to the information. The community had the outcomes of council’s deliberations made known to it. The community was effectively blocked from playing a role in shaping any of the outcomes of the decision-making that related to the Woodward Park Precinct. It appears that the council was not concerned to engage with the community in examining the merits of the Woodward Park Precinct arrangements. Rather, it took great pains to avoid entering into public debate of, and public input into, its decision-making on Woodward Park.

T. Carr 2 February p. 45-46; T. Pacullio 1 March p. 81-82; Council Press Releases.

**4.3.6** Evidence, in both oral and written submissions to the Inquiry, from members of the public suggested that council made little or no effort to use its standard points of contact with the community (such as the forums) to pass on information regarding the Woodward Park Precinct projects. Consequently the council did not, and could not, use the forums or any other points of regular connection with the community to engage it in assessing the projects.

T. Wright 23 February p. 40; T. Medway 26 February p. 50-51; S. East Liverpool Progress Association no. 19.

**4.3.7** In various ways the council communicated to the community that the Oasis project would be achieved without any expenditure of ratepayers money. There is a difficulty in deciding if that proposition referred to ratepayers’ money in the literal sense of the funds collected from the community through rates and charges. Since the council’s program for placing funds into the Foundation, so that the Arena could be built, consisted of proceeds of a land sale, Section 94 funds, and borrowed capital it might be argued that the proposition was valid. Seen more broadly, the land sold was a community asset, the Section 94 funds relate to the provision of infrastructure across the council area, and the repayments on the borrowed money would be repaid out of council funds (even if theoretically they might eventually be covered out of profits). In this light the promise to the community that the Arena and other

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projects would be built without employing ratepayers' funds, was at least glib, and in practice was simply wrong. By suggesting that no ratepayers money would be expended, the council did not to have spell out the realities and the risks associated with the funding procedures it used.

T. Pacullio 20 January p. 28-30, 63-68; T. Murray 30 January p. 75-76; T. Wright 23 February p. 39-40; Council Promotional Brochure.

**4.3.8** Liverpool is one of the fastest growing areas in New South Wales. Liverpool has a relatively youthful population, some significant social problems, and a diverse ethnic base. Communications that enable the entire population to know, understand, and be engaged with the practical decisions of the council, might be expected to be a central goal of the council. In matters as complex, and as redefining, as those associated with the Oasis project it might have been expected that the council would have been very careful to find ways to reach and inform its large and differentiated community. The evidence to this point suggests that the council took great pains to do the opposite in relation to the Woodward Park proposals.

T. Murray 30 January p. 79; T. Karnib 16 February p. 109-111.

PART

SECTION 5

2

## Council's evaluation of risk in relation to the Woodward Park and associated projects

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## Council's evaluation of risk in relation to the Woodward Park and associated projects

### 5. **Prima facie evidence suggests a failure by the council and the Councillors to evaluate the risks posed by the various proposals**

Various agreements entered into by the council brought risks affecting the council.

This part looks at the risks posed by the various projects, council's identification of them, and the processes that the council adopted to overcome, minimise or mitigate them. In many circumstances pursuing the project carried with it one or more elements of risk.

Council brought to the projects:

- Woodward Park and other land
- Financial contributions
- Planning processes
- An ability to exercise control over the developments
- Development approval processes

Council expected from the projects a major set of new infrastructure elements that would provide substantial facilities to the community, and which would lift the profile of Liverpool. Council had expectations that it could achieve these outcomes with a slight net gain in terms of the value of its resources used versus the value of the new resources. Council had an expectation that it could achieve its desired outcomes without any substantial costs to council.

#### 5.1 **Land and financial risks and planning problems**

5.1.1 The Inquiry has identified 5 separate and definable risks present in Oasis and Liverpool 2020 and to a lesser extent in the earlier proposals. They affected:

- the land that the council brought to the bargain
- the cash and financial contributions that the council was to provide
- the integrity of council's planning processes
- the control that the council was to have over the developments that were proceeding under the agreements
- the independence and integrity of the council as a consent authority exercising its powers under the EP&A Act

### 5.1.2

Following the adoption of the Master Plan for Woodward Park the council embarked upon a series of endeavours aimed at giving effect to the plan. The Stardome, Oasis and Liverpool 2020 projects each anticipated, or anticipate, that the council will make available land owned or controlled by it within the Woodward Park Precinct. Additionally, the Oasis Project and Liverpool 2020 anticipated, or anticipate, that the council will make available the CBD and the TAPPs Lands for re-development.

Various projects anticipated, whether in whole or in part, that the council would transfer the lands contributed by it whether by way of ultimate sale, lease or transfer to a development vehicle. Not all land that the council was putting into these various bargains was owned by it. While the council controlled certain land within Woodward Park, the Crown also owned significant areas of Woodward Park.

Under the Oasis Project and under Liverpool 2020, council contracted the disposition of Woodward Park, the CBD lands and the TAPP's land to a third party. Council appears to have looked at the value of the assets being transferred, although there are questions to be resolved about whether its processes were adequate. Council appears not to have considered even these processes before entering into the Macquarie Bank MOU.

The Oasis Project and Liverpool 2020 require that the council obtain ownership of this land in order that these projects be able to proceed. The Commercial Agreement contained conditions precedent requiring transfer of ownership to the council. The Macquarie MOU recognises the need to obtain ownership of this land and requires that Macquarie be involved in negotiations to obtain it. Both the Oasis Project and Liverpool 2020 require that the council contribute the Bathurst Street, Northumberland Street, Warren Serviceway properties and the TAPPs land to the projects.

The risk that the council ran in relation to these arrangements was threefold:

- It might sell the land at a value below its real value in the market-place
- It might not be able to purchase property that it did not own (Crown land) or it might underestimate the cost of purchasing such property
- It might assign land in the ownership of the community, or the right to develop such land, to a body outside of the council.

There were various negative outcomes associated with these risks. The first is the reduction in council's assets through undervaluing the land. The second is either the inability of the council to fulfil its commercial obligations, or the risk of fulfilling them at a higher than estimated cost. The third is the effective forfeiting of the community's control over its assets, and the possible reduction of amenity and social value of the land to the community. The evidence presented so far to the Inquiry is that the council ran these risks without either adequately understanding them, or without adequately taking steps to minimise them.

**Gerton Valuation** 28 August 2000; **T. McIntyre** 28 January p.87; **T. McIntyre** 1 March p. 34–35.

**5.1.3** In several of the arrangements that council entered into with outside bodies there were significant financial responsibilities taken on behalf of the council. The most obvious was the taking on the payment of \$22.25 million associated with the building of the Arena. The council appears not to have understood the enormous risk associated with passing over of the effective control of that money to a body over which it had no real control. In a broader sense, across the sweep of arrangements associated with Woodward Park that were entered into over many years, the council did not seem to realise that in any substantial commercial project those involved could lose money as well as make it.

In the early part of the 1990s the council expended considerable sums of money on new infrastructure, and that expenditure was blamed for deterioration in the council's financial position to the point that it had an operating deficit of \$15.9 million, and had been placed on the Department of Local Government's financial watch-list. The new council elected in 1995 addressed the council's financial position, and through a range of measures improved its financial position. Liverpool is a fast-growing area and so needs new infrastructure. The experience of the early 1990s perhaps illustrated the difficulties of meeting the infrastructure challenges relying almost wholly on the council's own resources. The building of partnerships with commercial organisations in the private sector may well have appealed to the council as a risk-averting strategy when it began to pursue its vision for the Woodward Park projects. As the history of the past seven years has shown, public-private commercial arrangements hold their own kinds of risks. The evidence suggests that council never undertook sufficiently robust risk-management surveys to understand the nature of those risks.

**T. Carr** 2 February p 61–63; **T. Carr** 3 February p 80–83.

#### 5.1.4

The EP&A Act invests councils with the substantial planning powers to be exercised within their area. This power is exercised by the adoption of planning instruments and policies by councils. It is a central tenet of local government that an appropriate, rigid and transparent town-planning regime be in place. Fundamental to this is a principle that planning should not proceed on an ad hoc basis. Adoption of instruments and policies generally takes place after proposals are considered and the public and other stakeholders, such as Government departments are given the right to comment. Councils undertake a consultation process within their local communities, with plans generally adopted after an exhibition and consultation process. Engagement of the local community is central to this process.

In 1988 the council resolved to adopt a plan for the re-vitalisation of Woodward Park. In December 1992 the Master Plan was adopted which anticipated extension to the Whitlam Centre to enlarge its uses, the upgrading of facilities in Woodward Park, the re-development of the pool site as a club/hotel and the upgrading of playing fields. Subsequently, a Local Environment Plan was adopted for the park, following a consultation process.

The Oasis Project called upon the council to facilitate development of commercial and residential development on the CBD and TAPPs land. It required that the council make available 80,000m<sup>2</sup> within the CDB for commercial/residential development, and more if required.

The evidence suggests that at the time that the Commercial Agreement was entered into, council had not adopted a planning scheme operating within the CDB. The current planning policy (DC 30) anticipated developments not exceeding 4 storeys in height, no pre-planning had taken place regarding the nature of, and intensity of, the development being contemplated under the Commercial Agreement, and it was not until after the Commercial Agreement had been entered into that any planning consideration was undertaken. Similarly, the evidence suggests that no pre-planning of the TAPPs Land had taken place prior to the Commercial Agreement. The council appears to have been content to adopt a plan provided by its partners, the Bulldogs and Macquarie. The council does not appear to have undertaken the consultation process anticipated by the plan.

Neither the Commercial Agreement nor the Macquarie Bank MOU appear to detail the development proposed on the CBD or TAPPs lands, nor identify the nature, mix or density of any proposed development. Under the Commercial Agreement the council could be called upon to facilitate greater intensity in the CDB developments and the Foundation could require that the council consider a re-zoning application at a rate of 25 dwellings per hectare. These requirements may have risked the independence of council's planning powers.

T. Turrisi 5 February p.74; **Commercial Agreement** cls. 13 – 16 and annexures E – H; Macquarie MOU schedule 5; S. reply from Carr 9 March p. 14; Oasis Masterplan p.54.

**5.1.5** In all projects that are being considered in this part, the council was bringing both land and a financial contribution to the bargain. Under the Oasis Project and Liverpool 2020 the council was and is called upon to join in the developments through a separate controlling vehicle. Evidence presented in the Public Hearings suggested that it is fundamental to the entry into such projects that the council maintain control of the development.

The council appears to have ignored the need for it to have at least some measure of control over the vehicle controlling the developments. The council appears to have not considered, or understood, the risks associated with the each of the variety of ways that commercial arrangements may be made with private sector bodies. The evidence suggests that instead of trying to measure and understand these particular risks the council placed its faith on its associates to “do the right thing”.

The **Commercial Agreement** cls.14–17 and annexures E–H; Macquarie MOU schedule 5; T. McCully 4 February p. 10, 14, 17, 44; T. Carr 2 February p.80, 3 February p.57; T. Paciullo 20 January p.57, 89–92

**5.1.6** Under the Oasis Project and Liverpool 2020 the council has been, and will be, called on to consider the various development applications associated with the proposals. The council will be required to give consideration under various principles enunciated in the EP&A Act. The council is bound to exercise its functions and discretions independently and appropriately. In doing so the council must be neither biased, nor perceived as biased. In not appointing Directors to the Foundation the council showed that it was aware of the risks of losing its independence and integrity as a consent authority. But, in the case of the Foundation, it was a muddled understanding. In the prospective projects of the Liverpool 2020 there is no sign that council has adequately separated its role as consent authority, or recognised the risks attached to not separating its role.

It was suggested by the Councillors and the former General Manager that the IHAP process is sufficient to deal with what are effectively development applications being made by the council under the projects. The projects are likely to give rise to conflicts of interest on the part of the council, as the council had a particular interest in the development applications and their outcome, as they affect its land, and the outcomes obtained directly affect the financial and physical ability to carry out the developments. The Inquiry received evidence of concerns over the council’s role as consent authority having been raised with the former General Manager.

**Letter** from Department of Public Works and Services 4 September 2000; T. Johnston 24 February p.41 et. seq.

## **5.2 Evidence suggests that the Councillors failed either to identify some of the risks associated with the proposals, and/or failed to fully and adequately identify others.**

**5.2.1** Evidence suggests that before entering into the Commercial Agreement council received legal advice on Commercial Agreement, the use of section 94 funds, and tendering considerations; and further advice on the financial implications and business risks posed. The report given to the council meeting of February 5 2001, provided an analysis of the monetary risk associated with the Oasis Project, but it did not explore all the risks faced by the council. The former General Manager appears to have satisfied himself that the financial risk to the council was negligible. The Councillors appear likewise to have satisfied themselves that the financial risk to the council was negligible. The evidence suggests that the Councillors, having satisfied themselves that the council could enter into the Commercial Agreement and that the agreement contained the best bargain it could obtain, they resolved to enter into it, without regard to the risks associated with the venture.

**Report** to Meeting 5 February 2001; **T. Waller** 21 January p 43, 57–59; **T. Anthony** 16 February p 37–39; **T. Beuk** 17 February p 46–47; **T. Bowman** 17 February p.16; **T. Gauci** 16 February p.85; **T. Glavich** 16 February p.13; **T. Pascale** 16 February p.72.

**5.2.2** When council put an end to the Commercial Agreement, through its settlement with the Bulldogs, it took legal advice only. The evidence suggests that it then did not obtain commercial or probity advice on the MOU prior to entering into it. Council appears only to have considered the commercial risks that might arise in the event that it did not enter into the MOU. Evidence also suggests that Council's consideration of risk at this time was directed towards its dealings with the Bulldogs and the risks that a failure to settle those issues may bring on the council.

**T. Waller** 21 February p.41; **T. Evers** 27 January p 82–83; **T. Marsden** 18 February p 44–47, 51–55; **T. Marsden** 25 February p 53, 94–96; Minutes of Meeting 18 March 2003.

## **5.3 Evidence suggests that council ignored and continued to ignore non-financial risks**

**5.3.1** The Oasis development was substantially different from that envisaged by the 1992 Master Plan. The Commercial Agreement required the Bulldogs to prepare and lodge a master plan for the proposals with the council. Under the Commercial Agreement (Sections 5.2.1 and 5.2.2), the council agreed to review and consider the Master Plan and, if it was accepted by council, to adopt a Development Control Plan with all due expedition; and facilitate implementation of the approved Master Plan including, without limitation, using its best endeavours to seek the varying of any existing Local Environment Plans which are inconsistent with the approved Master Plan.

**Commercial Agreement** cl.5.

**5.3.2** While the Commercial Agreement expressly acknowledges that the council's powers in dealing with the Master Plan were not derogated, limited, fettered or restricted, the evidence suggests that no pre-planning appears to have been undertaken to determine whether the proposals were appropriate. Little if any consideration was given by council to planning matters or to any legal constraints (other than those affecting title to the land) posed by the proposed developments.

T. Turissi 29 January p.74.

**5.3.3** Council had adopted a DCP (DCP30) affecting the CBD in the mid-eighties. Evidence shows that the council worked, from the mid-1990s, on developing a new vision for the CBD. It does not appear, however, to have gone through the process of adopting a planning instrument, or general policy for development in the CBD, before entering into various commercial agreements that would affect the CBD.

T. Turissi 29 January p.60, 61.

**5.3.4** The Commercial Agreement provided for construction of restaurants, commercial and residential facilities on three CBD sites that the council owned. Council as planning authority was called upon by the Agreement to make provision for:

- a minimum of 80,000m<sup>2</sup> of associated commercial and/or residential facilities,
- additional associated commercial and/or residential facilities sufficient in area to be sold by the Foundation and to be adequate to fund the construction of the new Council Chambers and the commercial and/or residential facilities,
- the provision of new Council Chambers of 8,000m<sup>2</sup> or up to 10,000m<sup>2</sup>.

The Commercial Agreement also required that council accept and process an application to rezone the Project Lands so as to permit the Project Lands at an average of 25 dwellings per hectare.

**Commercial Agreement** cls. 6.8, 14.2(a), (b) and (c).

**5.3.5** It was acknowledged that the Woodward Park, CBD and TAPP's land proposals raised planning issues. Evidence suggests that council's Senior Planner was not consulted on the CBD proposals until after the Commercial Agreement had been entered into.

T. Turissi 29 January p.71, 72, 74 and 75.

5.3.6 Other evidence suggested that it was not appropriate for the council to have entered into the Commercial Agreement, unless or until: the level of development had been determined, the potential for the levels of development had been assessed, community consultation had been undertaken, and development consents were in place.

T. Johnston 24 February p.49 and 51.

## 5.4 Evidence suggests that council did not consider the risk that proponents would not keep their bargain

5.4.1 Evidence has been given that enquiries were made into the financial worth of Mr Hanna and his company. Despite concerns raised over the financial worth of Mr Hanna and his company, the council proceeded to back the Hanna Stardome proposal over the Whitlam Centre alternative by approving its DA. Eventually, Mr. Hanna's firm failed to build the basketball stadium because it had failed to find a financial backer for the project. By then the council had effectively removed the much cheaper alternative of the Whitlam Centre from its considerations. Effectively, the council's apparent willingness to trust the first commercial organisation to come to it with developed ideas for Woodward Park had set it on a course where commercial partners appeared to be accepted as the only way forward.

T. Marsden 18 February p.4 et. seq. p.30.

5.4.2 The evidence of the Mayor and Councillors gives a clear impression that the governing body believed that the Oasis Project brought together the council, the Bulldogs and Macquarie Bank on a trust basis. The evidence of the Mayor and Councillors also suggests that they regarded the Bulldogs and especially Macquarie Bank as honourable. The Report to council's meeting on February 5 2001 emphasised the prior commitment of the Bulldogs, their pulling power, and the bona-fide nature of their efforts. The Report emphasised that Macquarie Bank financial planning and funding capabilities were seen as critical to the success of the project. When reporting the financial model developed by Macquarie Bank, the report presented to council glossed over Macquarie's refusal to provide the model.

T. Paciullo 19 January p 43, 57; T. Paciullo 20 January p 50-51, 90-91; T. Waller 21 January p. 46-48; 71-72; T. Paciullo 1 March p 71; T. Glavich 16 February p 15; T. Bowman 17 February p 8; T. Beuk 17 February p 51; **Report** to Council 5 February 2001 p.17.

**5.4.3** The report to council on the Early Construction Agreement does not mention: Macquarie Bank's withdrawal as a party; the concerns raised by Mr Moss regarding the refusal of the Bulldogs to enter into fixed price construction contracts and personal concerns over the integrity of Mr McIntyre and Mr Constantinidis; concerns raised by Mr McIntyre over Macquarie proposals affecting ODC and Macquarie Bank's continuing failure to provide its financial model. Following Macquarie Bank's refusal to provide trustee services under the Commercial Agreement, signals of concern should have been made in reports to council. They were not.

**Report** to Meeting 26 November 2001 p.2.

**5.4.4** Following the revelations of the Bulldogs' salary cap breaches the council entered into the Macquarie Bank MOU. Evidence suggests that no regard was had to the earlier perceived breaches of the Commercial Agreement by Macquarie Bank.

T. Paciullo 19 January p 60–61, 84; T. Paciullo 20 January p 47–49, 90–91 114–115 T. Waller 21 January p. 18, 71–72;

## **5.5 Advice and acceptance of advice by council**

**5.5.1** Before entering into the Commercial Agreement and the Early Construction Agreement relating to the Oasis Project, the council had sought probity advice, commercial and legal advice on the Agreement. Earlier, specialist advice had been received from the Department of Public Works and Services suggesting that more rigorous advice be taken. Earlier still, the council had resolved to adopt a rigorous approach. It intended: to ensure the appropriateness and ability of council to contribute to the Arena; the status and validity of proposals affecting land, the efficacy of relocating existing community facilities and Council Chambers, concessions of any council fees and charges, and the commercial arrangements and overall commercial viability, and tax status, of the proposal. The evidence suggests that the council did not adhere to its earlier resolution.

Advice Price Waterhouse Coopers 25 January 2001.

## **5.6 The appointment of Directors to the Foundation**

**5.6.1** Under the Commercial Agreement the Foundation was to have the principal role as owner, developer and manager of the facilities. The council was required to transfer the project lands to it. Much of the Inquiry's attention has centred on the council's decision not to appoint directors to the Foundation. It had been proposed that the council, Macquarie and the Bulldogs each be represented on the Board.

**Report** to Council 6 July 2000 p.5

**5.6.2** Evidence was given suggesting that the council was given legal advice that it should not be represented on the Foundation due to a conflict in interest. Documents received by the Inquiry suggest that this view is incorrect. In September 2000 Council's legal advisers had written suggesting that the council should be represented on the Foundation as it would enable the council to direct the use of the Foundation's assets. Subsequently Abbott Tout addressed concerns that council's involvement on the Foundation would fetter its duties as planner and consent authority under the EP&A Act, concluding that there were no impediments to the council having direction on the Foundation. Notwithstanding this, evidence suggest that the Mayor and Mr Carr formed a view that they had been advised that the council should not be represented on the Foundation until all planning and development consents were in place.

**5.6.3** No evidence has been given to the Inquiry of council ever receiving advice that it would be risking a conflict of interest if it were to have Directors on the Foundation at the same time that it was receiving development applications from the Foundation. Mr. McIntyre of the Bulldogs suggested that the advice to the council had come from the two solicitors assisting the council (Abbott Tout) and the Bulldogs (Clayton Utz). The evidence is clear that the advice did not come from Abbott Tout.

T. Paciullo 19 January p 39–41; T. Paciullo 20 January p 84–85, 89–90; T. Carr 3 February p 31–33; T. Carr 2 February p 38–40; T. Marsden 18 February p 41; T. Marsden 25 February p 59–60; T. Carr 26 February p 24–25; **Letters** Abbott Tout 11 September 2000 and 10 October 2000.

**5.6.4** Council's failure to ensure its representation on the Foundation gave rise to a substantial risk, ensuring that council had no control over the body performing the principal role in the project.

## **5.7 Failure to take identified risks into account**

**5.7.1** Prior to council's entry into the Commercial Agreement PWC reported that there remained a commercial risk that the project would not be completed.

**Report** 25 January 2001.

A number of reasons were put forward to support this view: council's need to acquire ownership of all of the project lands; matters affecting the status of the Foundation; the proposed Bulldog's club obtaining the gaming machine and hotel licence; and the need to protect council's asset contribution.

It must be noted that in the same report PWC appeared to be generally positive about the project.

The council appears to have ignored the risks that were notified by PWC when entering into the Commercial Agreement, and continued to ignore them when disagreements between the Bulldogs and Macquarie Bank surfaced.

**5.7.2** The Oasis Project depended upon the development and sale of residential and commercial developments over the CBD properties and the TAPPs land to provide the major funding of the project. The Bulldogs were to contribute \$10.75M. The council was to contribute land, \$10.25M for the construction of the Arena and \$12M towards infrastructure. Macquarie Bank had no obligation to contribute funds.

**5.7.3** The council did not know the details of the proposed developments on the CBD properties and the TAPPs land. The financial viability of the project, and hence the ability to generate the funds needed to construct the infrastructure facilities, was contained in a financial model that had been developed by the Macquarie Bank.

**5.7.4** At the time that the council entered into the Commercial Agreement, Macquarie Bank had refused to provide the model to the council or PWC. It also refused to supply the model to Ernst & Young, who prepared the probity report for the council.

**Report** Ernst & Young 31 January 2001 p.3; **T.** Redman 27 January p.29.

**5.7.5** The council never obtained the financial model and entered into the Commercial Agreement, the Early Construction Agreement and the Macquarie MOU without knowing the extent of the developments anticipated by the financial model or the viability thereof.

**T.** Paciullo 19 January p.74; **T.** Carr 2 February p 72; **T.** Carr 3 February p 17–19.

## **5.8 Capacity to understand risks**

**5.8.1** The Inquiry explored the Councillor's understanding of the Commercial Agreement and Early Construction Agreement and the Macquarie Bank MOU. The Inquiry was left with a prima facie view that they did not have a strong understanding of what the various agreements proposed, nor did they have a strong understanding of the risks that each agreement brought with it.

**T.** Bowman 17 February p15, 16; **T.** Dobell–Brown 16 February p.53, 54; **T.** Gauci 16 February p.85; **T.** Glavich 16 February p.13, 15; **T.** Karnib 16 February p.100, 103; **T.** Pascale 16 February p.71.

**5.8.2** Labor Councillors implied that they had relied on the Mayor and that he had a good understanding of the proposals. To the contrary, the Mayor gave evidence that he had not involved himself in the detail of the Agreements. One Councillor gave evidence that he had not even attempted to read the Macquarie Bank MOU.

T. Anthony 16 February p.42; T. Gauci 16 February p.84; T. Paciullo 19 January p.73, 81; T. Pascale 16 February p.72

**5.8.3** The Inquiry also explored the review of the expert reports by the Mayor and Councillors. The ability of the Mayor and Councillors adequately to review these was hampered by their lateness and the restrictions on access to ensure their confidentiality.

**Memo** to All Councillors from Brian Carr dated 14 August 2001 re Woodward Park; T. Carr 26 February p.11–13; T. Waller 21 January p.14 – 15, 23; T. Harrington 21 January p.86–87, 94 and 22 January p.7; T. Carr 3 February p. 39, 43–44; T. Glavich 16 February p. 5–6; T. Anthony 16 February p. 31, 36; T. Dobell-Brown 16 February p. 47; T. Pascale 16 February p. 61; T. Gauci 16 February p. 78–79; T. Bowman 17 February p. 3–4; T. Beuk 17 February p. 45–46; S. Harrington p.11; **Memo** to Harrington from Brian Carr dated 26 May 2003; **Letter** to Carr from Cecilia Anthony re Oasis/Liverpool 2020 dated 12 May 2003; T. Douglas 30 January p.50, 51; **Letter** to Office of the Commissioner from Mitchell Morley plus attachments dated 10 February 2004.

**5.8.4** The difficulties of accessing the reports, and having enough time to absorb their contents, were largely of the Councillors' making. They, as the governing body, had the power to control these aspects. The reports were often complex and technical. It is not surprising to find that the evidence suggests that many Councillors struggled with the complexity and technicalities, when they actually read them. The Mayor and some Councillors admitted to having problems with understanding all of the issues that the reports raised. It was in this environment that agreements, with long-term implications for council, were signed. The risks associated with the proposals cannot have been fully understood if the advice, commissioned by the council, was not understood.

## **5.9 The Role of the Arena Trust Account**

**5.9.1** Under the Commercial Agreement the proceeds from developments carried out by the Foundation were to be held on trust to provide contributions towards the cost of the Arena and the Stadium and other infrastructure. Macquarie Bank was to arrange for the provision of trustee services for those funds, if requested.

The Councillors appear to have been satisfied that if Macquarie Bank provided these services the funds within these accounts would be safe.

**Commercial Agreement** cl.4.5.

**5.9.2** When the Early Construction Agreement was entered into Macquarie Bank refused to provide the trustee service. An alternative was put forward under which a solicitor from each of the firms representing the Bulldogs and the council would act as “bare trustees”. The role of the solicitors as trustees was only to act as a signatory to the account, being bound by directions given by the Directors of the Foundation. Essentially the trustees did not have the power to scrutinise the cheques or transfers they signed except to ensure that they had the signatures of 3 Directors of the Foundation. Since the council had chosen not to appoint any Directors of its own to the Foundation, and since Macquarie Bank had withdrawn, this meant that representatives of the Bulldogs had total control over the funds that were processed through the trust.

**Letter** Macquarie 5 November 2001; **Council Report** 16 November 2001 p.5; Letter and attachment Abbott Tout 14 November 2001 p.6, 7; **T. Boland** 27 January p.71, 72.

**5.9.3** The evidence of the Councillors suggests that they understood the role of the trustees was to approve and ensure the correctness of the payments out of the Foundation accounts. The evidence suggests that the Councillors should have made enquiries about the true nature of the trust. Their apparent failure to understand what the role of the trustees was to be, when added to council’s failure to secure representation as Directors, placed the council, and the \$15 million it had lodged with the Foundation, at significant risk.

**T. Paciullo** 19 January p.40; **T. Gauci** 16 February p.89; **T. Glavich** 16 February p.116; **T. Douglas** 30 January p.13.

## **5.10 Pursuing the “Dream” and forgetting the risks**

**5.10.1** In April 2000 the council received the Oasis Vision from the Bulldogs. On 10 July 2000 Council met to consider whether it would give in principle support for the Oasis Project. At this time Council had sold the Pool Site and had received the Bulldog’s development application for the club/hotel complex on Woodward Park.

**5.10.2** The evidence contrasts the kind of reports presented to the council about the time that it was considering accepting the Bulldog’s vision, and after it had accepted it. The former reports were factual and unemotional, and contrast starkly with later reports to the council. Later reports suggest that the council, or at least the General Manager, Mayor and the majority of the Councillors had become involved in the “Vision” or perhaps more correctly the “Dream”.

If council were to manage the risks attached to the “Dream” it had to adopt a cautious, considered, and detailed approach to each and every aspect of the arrangements.

**Report** to Council by Hubble 6 July 2000.

5.10.3 Evidence suggests that council's bond to its "Dream" directly affected its independence, assessment, consideration and bargaining position in its dealings with the various proponents.

Support for this view can be drawn from:

- An overview of the evidence of the Mayor whose evidence was tinged with successive references to the need to provide and support the Slammers/Razorbacks and of the "Vision" involved in the Oasis and Liverpool 2020 projects.
- An overview of the evidence of Mr Carr who again refers to "Council's Vision for its residents". Again his evidence emphasises council's perceived need to achieve a settlement with the Bulldogs so that it could proceed with construction of the amended form of the Arena under the Macquarie Bank MOU.
- Council's desire to enter into the Early Construction Agreement to secure the construction of the Arena.
- Councillor Waller's evidence that in her view the relationship with the Slammers (Razorbacks) was a driving force in the Mayor's mind behind the Stardome and Oasis project.
- The perceived need to provide a playing arena for the Razorbacks and the attendant need for the council to make its decisions to facilitate this was a recurrent theme in evidence provided by the Mayor, the Councillors, Mr Carr and former and current council staff.
- Reports to Council meetings became emotionally charged and slanted towards the attainment of the Oasis project goals.
- Reports, subsequent to the salary cap revelation spoke of the need to enter into the Macquarie MOU to avoid construction delays.

T. Waller 21 January p.39; **Reports** to Meetings 5 February 2001, 31 August 2001 and 26 August 2002; **Meeting** 18 March 2003 p.5; **Report** p.2, 4; **Letter** Eyers 18 February 2003 p.3; Meeting PPP Committee 8 May 2003 p.4.

5.10.4 The importance that the council placed on obtaining a national sporting project, and its achievement through the provision of an Arena, may be gleaned from the inclusion of a performance criteria in Mr Carr's contract requiring that positive outcomes be achieved in the Oasis Project.

Contract of Employment Carr March 2000 Schedule A.

Given the indications of an emotional bond between the Mayor and Mr Carr and the Oasis Project referred to earlier in this part, this is further suggestive of both a pursuit and a requirement to pursue the “Dream” of providing an Arena to secure the Razorbacks and facilities to service the Bulldogs.

## 5.11 Finding a level playing field: the problem of council’s bargaining position

5.11.1 Given the events that occurred in the Oasis Project, particularly the use of council’s funds that had been paid to the Foundation, the ability of the council to have obtained positions that secured its outcomes and/or mitigated its risks under both the Oasis and Liverpool 2020 projects, became a focus of the Inquiry.

5.11.2 Four discrete issues are raised:

- Whether council’s ability to bargain was equal to the other party/parties.
- Whether council fettered its ability to bargain equally.
- Whether the other party/parties regarded the council’s position as equal to theirs.
- Whether the Mayor and Mr Carr as council’s representatives regarded the council as having an equal bargaining position.

5.11.3 The Inquiry heard evidence suggesting that it was necessary for the council to have marshalled an “A” Class team within council in drafting and developing such agreements. The point was that both of the commercial interests with whom council was negotiating had large and skilled teams of people with considerable experience of such negotiations. Council appears to have entered the negotiations naively believing that it could rely on just a few people internally to handle the challenges of the negotiations.

T. Lamond 29 January p.42.

5.11.4 Besides having inadequate resources to negotiate compared to its potential commercial partners, there is evidence that the council followed, rather than led, as the Oasis “Dream” grew. As the scale of the projects grew in concept, the council appeared not to have attempted to understand that its own risks grew accordingly.

**Report** to Council by GM 26 April 2000; **Report** to Council by Hubble 6 July 2000 p. 5; **Report** to Council by GM 5 February 2001; T. McIntyre 1 March p. 33–55; T. Constantinidis 17 February p. 94–96  
T. Moss 23 February p. 5–6.

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**5.11.5** The Inquiry also heard evidence that suggested that, despite what the council was bringing to the bargain, the other parties did not regard the council as being in an equal bargaining position. Instead, the other two parties appear to have held substantial meetings together that mapped out various aspects of the arrangements. There is a suggestion in the evidence that the council was assumed to be something of a minor party in receiving the outcomes of these negotiations for consideration, rather than being a party to their creation.

T. Constantinidis 17 February p.94; Statement of McIntyre re Constantinidis para.17.

**5.11.6** The Mayor, Councillors and Mr Carr gave conflicting evidence as to whether they regarded the council as having an equal bargaining position. Importantly, the Mayor and Mr Carr appeared to think the council was equal.

T. Paciullo 20 January p.114; T. Carr 2 February p.81 and 3 February p.18.

