

July 9 2017 - 8:00AM

Asbestos queries for Blue Mountains Council

- B.C Lewis

[Local News](#)



...

SafeWork NSW has directed Blue Mountains City Council to develop a council-wide asbestos management plan, just as asbestos is being cleaned up at council-owned community facilities in recent weeks.

It follows the temporary closure of the Warrimoo Citizens Hall and a BMX club storeroom at Lawson oval last month while “asbestos containing material” was removed.

The information was revealed after council staff and other concerned citizens, who asked to remain anonymous, contacted the *Gazette*.

A spokesman for SafeWork NSW, which investigates work, health and safety incidents in NSW, confirmed the management plan had been put in place and a Blue Mountains Council spokeswoman said they were getting “ongoing advice and assistance from SafeWork NSW”.

“Following an inspection by SafeWork NSW, council has been tasked with creating an asbestos management plan. We have engaged an independent third-party specialist to assist us and we are working closely with SafeWork NSW in this process,” the spokeswoman said.

The council spokeswoman admitted “council officers did temporarily close Warrimoo Citizens Hall on 26 June, while asbestos containing material was removed by a licenced contractor and routine maintenance work conducted. This hall was reopened following the receipt of a clearance inspection by a licenced assessor on 30 June”.

“Asbestos containing material was removed from the BMX Club store room [at Lawson oval] and the room was reopened following the receipt of a clearance inspection by a licenced assessor on 30 June”.

The spokeswoman said council was “always working to improve the overall management of asbestos in council-owned facilities and in the workplace”.

“The health and wellbeing of our community and our workers is paramount and we take the matter of asbestos seriously. As a result, council has implemented a number of asbestos related wellbeing and awareness initiatives as part of our wellness program for staff”.

“Council has a corporate asbestos register – which is a single point of reference for information about potential asbestos containing material in our buildings built before December 2003,” she added.



The SafeWork NSW spokesman said an asbestos register and management plan is not required for a workplace if the building that was constructed after December 31, 2003, or no asbestos has been identified in the workplace.

The register must record any asbestos that has been identified or is assumed to be present at the workplace, record the date when the asbestos was identified, record the location, type and condition of the asbestos and be maintained to ensure up-to-date information.

The management plan must be reviewed at least every five years or when requested by a health and safety representative or when asbestos is removed, disturbed, sealed or enclosed, or when changes to a control measure are made or when the plan is no longer adequate.

“Council deals with reports of asbestos on a regular basis, both dumped asbestos and within council buildings,” the council spokeswoman added.

Do you know more? Contact bclewis@fairfaxmedia.com.au

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November 7 2017 - 1:55PM

Blue Mountains Council battles asbestos dramas at Springwood depot

- B.C Lewis

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Thirty three Blue Mountains Council vehicles were black banned by the union last Tuesday after concerns were raised by workers at the Lawson and Springwood council depots that they had been contaminated by asbestos. Council was forced to hire additional vehicles and a private asbestos testing group Airsafe was called in to investigate.

While the trucks, excavators and bobcats were back on the road by Friday, having been given the all clear, some 10 staff have now formally lodged grievances against council, through the United Services Union, after concerns about alleged exposure to asbestos at the Lawson council depot site in Park Street.

The union and the workers have asked for an independent inquiry into the matter and will have a meeting with council about the matter next week.

The action allegedly relates to the removal of asbestos material late last year from the Mechanics Institute carpark at Lawson. The material was allegedly transported to a stockpile site in Lawson's industrial area. One source told the *Gazette* the material had also allegedly been used for training exercises for younger council workers, who were lifting it in and out of vehicles.

That source told the *Gazette* "staff are going to their doctors and getting tests done ... it's an ongoing issue, it's only because the union stepped in that they [council] made an Asbestos Management Plan".

A confidential council document from May this year, leaked to the *Gazette* revealed there were asbestos issues in 19 council-owned buildings. Council responded at the time by explaining staff safety was paramount, they had recently become aware of gaps in their system and the Asbestos Containing Material [ACM] was being managed appropriately.

United Services Union acting general secretary Steve Donley said it was a "serious problem".

A council spokeswoman confirmed the fleet vehicles were removed from service "as a precautionary measure" and tested, cleared and returned to service within 48 hours.

"Our focus is now on the remediation of the Lawson site," she said.

"No contaminated material has been removed from the Lawson site. As a precautionary measure, the non contaminated material removed from the Lawson site has been tested, returning a negative result," she added.

...

The union put in formal notices to council in the last week about "contaminated material" and gaps in communication between management and workers. They had also contacted SafeWork NSW and an inspector had interviewed staff.

The union told the *Gazette* Airsafe told council to close down the Lawson depot site. It was now closed but the union wanted to know how long council knew about problems at the site before informing the workers.

"We haven't been able to verify the timelines," Mr Donley said.

"There's a lot of people who are very upset about it and of course I am too. If council did know about [Lawson stockpile], that's the biggest problem," Mr Donley said. The union claims that "at least two of the [five] mounds in Lawson had contaminated material."

He added absestos was "a long term problem" and health problems might not show up for 10 years.

Greens Councillor Kerry Brown said she would be raising the matter at next week's council. "I'm as upset as everyone else".

"This is a warning that we still have some serious work to do on asbestos and risk management. I will be putting a notice of motion to council. The law requires council's strategic planning to include proactive and effective management of risks to staff and the community," she said.

The Lawson site is closed while the investigation takes place. Airsafe general manager Simon Gorham said the company was "bound by confidentiality" and would not comment on results of the testing or other work completed for council.

To see other stories go to:




- [Council told to develop asbestos plan](#)
- [Asbestos in 19 council buildings report](#)

The council spokeswoman's full statement is as follows:

"In response to your enquiry regarding the management of asbestos containing material at the Council's depot in Park St Lawson, I can advise the following:

- Council is guided by its Asbestos Management Plan, as well as advice provided by SafeWork NSW and fully accredited independent experts, in its ongoing management of asbestos in Council-owned buildings and facilities. The Asbestos Management Plan was developed in close consultation with SafeWork, an independent specialist and a large number of Council staff. The Asbestos Management Plan is endorsed by SafeWork NSW.
- Council has worked to improve the overall management of asbestos in Council-owned facilities as a priority in recent months.
- Council is currently investigating the presence of asbestos containing material in some of the stockpiles located on the Council-managed depot in Park St Lawson.
- The source of the material was the vacant land adjacent to the Lawson Mechanics Institute, on which the new carpark was recently constructed. Not from the Lawson Mechanics Institute building upgrade.
- The BMCC site in Park St Lawson is closed while the investigation takes place.
- No contaminated material has been removed from the Lawson site. As a precautionary measure, the non-contaminated material removed from the Lawson site has been tested, returning a negative result.
- 33 fleet vehicles were removed from service on Tuesday 31 October for testing as a precautionary measure. These vehicles were tested and cleared and returned to service within 48 hours.
- This investigation is part of Council's ongoing management of asbestos in accordance with its policy and procedures and in consultation with SafeWork NSW.
- Council has engaged the services of an independent expert to assist with the investigation.
- Relevant staff have been informed and Councillors have been briefed on this matter.
- Council is progressing the investigation with SafeWork NSW and relevant union.

- Council is taking a precautionary approach to the investigation in the interest of public and workplace health and safety. The safety, health and wellbeing of our community and our employees are paramount and we take the matter of asbestos management seriously.
- Our focus is now on the remediation of the Lawson site.
- Council is not aware of a Councillor Notice of Motion on the subject of asbestos management at the Lawson site.
- With reference to the comment from your previous story in July 2017, Council stands by its statement. Council has addressed all immediate actions identified in the Centium report to address gaps in the Asbestos Register documentation and to minimise/eliminate the risk of exposure to asbestos containing material by way of appropriate detection, remediation or and removal in those locations requiring such action. Council acted in a timely and appropriate manner to the satisfaction of SafeWork and an independent, expert consultant.
- The need to identify and manage asbestos containing material is a challenge faced by Councils across NSW. As matters of potential asbestos containing material are progressively raised, Council will continue to respond appropriately in accordance with its Asbestos Management Plan and procedures and take the necessary steps to address the issue and to minimise risks as a matter of urgency.”

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Steven Nicholson

From: Steven Nicholson
Sent: Thursday, 9 November 2017 11:05 AM
To: michael.tooma@clydeco.com
Subject: Investigation and Report

Matter: 143922
Saved: -1
Timer: 0



We refer to our telephone conversation this morning.

We confirm we act for Blue Mountains City Council.

Our client needs a person to independently investigate recent asbestos related incidents. The matter is urgent.

Could you please confirm your firm can act and provide your costs disclosure and terms of engagement.

Thanks for your assistance.

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Kind regards

Steven Nicholson

McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road Springwood NSW 2777
 Telephone +61 2 4751 1055
 FAX +61 2 4751 5668
 E-mail : snicholson@mcpheekelshaw.com.au

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Michael Tooma

Resume

Qualifications**1997****Bachelor of Commerce**

Macquarie University

Sydney, Australia

1997**Bachelor of Laws (Hons)**

Macquarie University

Sydney, Australia

1998**Graduate Diploma of Legal Practice**

College of Law

Sydney, Australia

2000**Master of Laws (Commercial Law)**

University of New South Wales

Sydney, Australia

Academic Appointments

2009-2012

Adjunct Professor

Edith Cowan University

Perth, Australia

2000-current

Senior Visiting Fellow

University of New South Wales

Sydney Australia

Visiting Roles

2016

Auckland University

New Zealand

2016

Sydney University

Australia

2013-2016

Honorary Fellow

Australian Catholic University

Government appointments

January 2014-August 2017

Ministerial Advisory Panel on Safety Legislation Reform

Department of Mines and Petroleum, Western Australia

Work History

2016- present

Partner and Global Head of Health and Safety

Clyde & Co

August 2018-present

Managing Partner

Clyde & Co

2002-2016

Partner (2004-2016)

Norton Rose Fulbright

Held various leadership roles including:

- Head of Health and Safety Practice, Asia Pacific
- Head of Regulatory and Investigations, Asia Pacific,
- Head of Government Practice, Australia
- Member of the Management Committee - Australia

2000-2002

Associate

Andersen Legal

1999-2000

Product Manager

CCH

1998-1999

Lawyer

John Burrell & Associates

Publications

Books

1. **Tooma, M.** (2019), Safety Security Health and Environment Law, 3rd edition, Federation Press, 2019
2. **Tooma, M.** (2019), Michael Tooma on Working at Heights, CCH, 2019
3. **Tooma, M.** (2019), Michael Tooma on Managing Contractor Safety, CCH, 2019
4. **Cosman, M., Tooma, M., Butler, A., Marriott, C., and Schmidt-Cleave, R.**, (2019), Safeguard Health and Safety Handbook 2019, Thomson Reuters New Zealand, 2019
5. **Tooma, M.** (2017), **Tooma's Annotated Work Health and Safety Act, 2nd Edition**, 2017, Thomson Reuters (Australia)
6. **Tooma, M.** (2017), Due Diligence: Duty of Officers, 2nd Edition, 2017, CCH
7. **Tooma, M.** (2017), Due Diligence: Incident Notification, Management and Investigation, 2nd Edition, 2017, CCH
8. **Tooma, M.** (2017), Due Diligence: Horizontal and Vertical Consultation, 2nd Edition, CCH, 2017
9. **Tooma, M.** (2017), Due Diligence: Worker Rights and Duties, 2nd edition, 2017, CCH
10. **Tooma, M.** (2017), Due Diligence: Dealing with Regulators, 2nd Edition, 2017, CCH
11. **Tooma, M.** (2017), Due Diligence: Duty of Persons Conducting a Business or Undertaking, 2nd Edition, 2017, CCH
12. **Cosman, M., Tooma, M., Butler, A., Marriott, C., and Schmidt-Cleave, R.**, (2017), Safeguard Health and Safety Handbook 2019, Thomson Reuters New Zealand, 2017
13. **Tooma, M.** (2016), Tooma's Annotated Health and Safety at Work Act 2015 (NZ), 2016, Thomson Reuters (NZ)
14. **Tooma, M.** (2014), Due Diligence: Persons Conducting a Business or Undertaking, 2014, CCH
15. **Tooma, M.** (2013), Due Diligence: Dealing with Regulators, 2013, CCH
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19. **Tooma, M.** (2012), Due Diligence: Incident Notification Management and Investigation, 2012, CCH
20. **Tooma, M.** (2012), **Tooma's Annotated Work Health and Safety Act 2011**, 2012,

Thomson Reuters

21. **Johnstone, R. and Tooma, M.** (2012), Work Health & Safety Regulation in Australia 2012, Federation Press
22. **Tooma, M.** (2011), Safety Security Health and Environment Law, 2011, Federation Press
23. **Sherriff, B, and Tooma, M.** (2010), Understanding the Model Work Health and Safety Act, 2010, CCH
24. **Tooma, M.** (2009), Tooma's Annotated Occupational Health and Safety Act 2000: NSW, 3rd ed, 2009, Thomson Reuters
25. **Tooma, M.** (2008), Safety Security Health and Environment Law, 2008, Federation Press
26. **Tooma, M.** (2005), Tooma's Annotated Occupational Health and Safety Act 2004: Victoria, 2005, Thomson Reuters
27. **Phillips, J and Tooma, M.** (2004), Law of Unfair Contracts, 2004, Thomson Reuters
28. **Tooma, M.** (2004), Tooma's Annotated Occupational Health and Safety Act 2000: NSW, 2nd ed, 2004, Thomson Reuters
29. **Tooma, M.** (2001), Tooma's Annotated Occupational Health and Safety Act 2000: NSW, 2001, Thomson Reuters
30. **Rizzo, R and Tooma, M.,** (1998), Hands on Guide: OHS Legal Guide, 1998, CCH

Book chapters

"Corporate manslaughter: an international perspective", 2014 Forlin G and Smail L. (eds), (2014), *Corporate Liability: Work Related Deaths and Criminal Prosecutions*, 3rd ed., Bloomsbury

Professional directory rankings

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Chambers and Partners

Health and Safety

Band 1 – 2019

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‘the pre-eminent safety lawyer’. A client comments: ‘he’s very knowledgeable, commercial and very good at responding, especially in a high pressure situation where commercial discussions are involved’.

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Asia Pacific Legal 500

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Leading individual 2019

“Practice head Michael Tooma is ‘without peer’ and highly commercial”

Leading individual ranking in APL 500 held for a number of years.



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Our Ref: TC:JB:143922

Your Ref:

9 November 2017

Mr Robert Greenwood
 General Manager
 Blue Mountains City Council
 Locked Bag 1005
 KATOOMBA NSW 2780

Dear Mr Greenwood,

**Asbestos Management – Lawson Depot
 Possible Independent Investigation**

We refer to our first letter of today's date.

As instructed, we have made contact with Mr Michael Tooma of Clyde & Co, to ascertain his availability to conduct the investigation that we have recommended.

Mr Tooma and Clyde & Co are now conducting a conflict of interest check, to ensure that there are no existing relationships which would prevent their acceptance of our instructions. Mr Tooma considers that this is unlikely.

We anticipate that Mr Tooma will forward to us tomorrow (Friday) Terms of Engagement in relation to the investigation. We will review those Terms and forward them to you with our recommendations.

Yours faithfully
 McPhee Kelshaw

Trevor Cork

SOLICITORS
McPHEE
KELSHAW
CONVEYANCERS

PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
 TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
 STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip. Law SAB
 CRAIG COCKBURN B.Com., LL.B.
 ANN SCHIRALE B.A., LL.B. Acc. Spec. (Family Law)
 AMANDA MALINOWSKY B.A. LL.B. Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hons)

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From: Tooma, Michael [<mailto:Michael.Tooma@clydeco.com>]
Sent: Thursday, 9 November 2017 12:41 PM
To: Steven Nicholson <steven@mcphookelshaw.com.au>
Cc: Bochenek, Lucy <Lucy.Bochenek@clydeco.com>
Subject: Re: Investigation and Report

Steven

I can confirm there are no conflicts.

We will send through our letter of engagement (will your firm be the client or will it be Blue Mountains City Council?).

In the meantime please send through any relevant background material.

Regards

Michael Tooma
Partner
Clyde & Co
+61410633858

On 9 Nov 2017, at 8:07 am, Steven Nicholson <steven@mcphookelshaw.com.au> wrote:

We refer to our telephone conversation this morning.

We confirm we act for Blue Mountains City Council.

Our client needs a person to independently investigate recent asbestos related incidents. The matter is urgent.

Could you please confirm your firm can act and provide your costs disclosure and terms of engagement.

Thanks for your assistance.

<image001.jpg>

Steven Nicholson

From: Steven Nicholson
Sent: Thursday, 9 November 2017 3:19 PM
To: Tooma, Michael
Subject: RE: Investigation and Report

Saved: 0
Timer: 0

The client will be our firm.

From: Tooma, Michael [mailto:Michael.Tooma@clydeco.com]
Sent: Thursday, 9 November 2017 12:41 PM
To: Steven Nicholson <steven@mcphookelshaw.com.au>
Cc: Bochenek, Lucy <Lucy.Bochenek@clydeco.com>
Subject: Re: Investigation and Report

Steven

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We will send through our letter of engagement (will your firm be the client or will it be Blue Mountains City Council?).

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Regards

Michael Tooma
Partner
Clyde & Co
+61410633858

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Thanks for your assistance.

<image001.jpg>

Kind regards

Steven Nicholson

McPhee Kelshaw Solicitors and Conveyancers
170 Macquarie Road Springwood NSW 2777
Telephone +61 2 4751 1055
FAX +61 2 4751 5668
E-mail : snicholson@mcpheekelshaw.com.au

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Jess Badman

From: Sahyoun, Sarah <Sarah.Sahyoun@clydeco.com> on behalf of Tooma, Michael <Michael.Tooma@clydeco.com>
Sent: Thursday, 9 November 2017 5:34 PM
To: Trevor Cork; Steven Nicholson
Cc: Bochenek, Lucy
Subject: Privileged & Confidential - Engagement Letter - McPhee Kelshaw Solicitors and Conveyancers
Attachments: Engagement Letter - McPhee Kelshaw Solicitors and Conveyancers (T Cork)pdf
Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Blue Category

Dear Trevor

Please see **attached** our revised Engagement Letter.

Regards

Michael Tooma
 Partner | Clyde & Co
 Direct Dial: +61 2 9210 4578 | Mobile: +61 457 087 952

CLYDE&CO

Level 15 | 333 George Street | Sydney NSW 2000 | Australia
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Mr Trevor Cork
 McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road
 Springwood NSW 2777

By Email: tcork@mcpheekelshaw.com.au

Date:
 9 November 2017

Dear Trevor,

Engagement Letter: Blue Mountains City Council – Asbestos Investigation

Thank you for your instructions.

I set out in this letter and the annexed Terms of Business the basis on which Clyde & Co would be pleased to act for you. Please read them through carefully.

1 Scope of work

We have been instructed by your firm, who are acting on behalf Blue Mountains City Council, to conduct an independent investigation into recent asbestos related incidents involving the Blue Mountains City Council.

2 Our client

We will be acting for McPhee Kelshaw Solicitors and Conveyancers. We do not act for anyone other than our named clients, and we do not accept duties to anyone else in respect of our work. In particular, where our named client is a company we do not act for or accept duties to any other group company, and we do not act for or owe duties to any officer, director or employee of an entity or business unless he or she is our named client. Solicitors do, however, owe duties to the Court and other authorities which may on occasion override their duties to their clients.

We understand that our principal point of contact will be Trevor Cork.

940003/688 3352127.1

3 **Our team**

I am a Partner in the Regulatory & Investigations Department and will be responsible for the delivery of the firm's work for you. I will be assisted on a day to day basis by Lucy Bochenek, Special Counsel.

It may be necessary to involve other lawyers in order to ensure that the work is adequately resourced. We will always try to discuss this with you in advance, but occasionally it may be necessary to introduce other lawyers without consulting you with a view to ensuring that very urgent deadlines are met or absences by team members are adequately covered. We may also assign tasks to more junior colleagues where it is cost-effective to do so.

4 **Our charges**

Our fees will be based on the amount of work carried out. We charge principally (but not exclusively) according to the time we spend on your matter and by reference to the hourly rates of those involved. Our rates will be proportionately charged in six minute increments. The hourly rates currently applicable are:

Name	Status and department	Rate
Michael Tooma	Partner	\$700.00 per hour
Lucy Bochenek	Special Counsel	\$580.00 per hour

We may incur disbursements (being money which we pay or are liable to pay to others on your behalf). Disbursements may include search fees, court filing fees, expert fees, witness expenses, reasonable local travel expenses, transcript expenses and barrister's expenses. If it is necessary to incur substantial disbursements we may ask you to pay them to us in advance. Where you instruct us to brief a barrister or other expert and they provide a disclosure and costs agreement we will provide this to you.

GST will also be charged to you where applicable on fees, disbursements and expenses.

Clause 6 of our Terms of Business contains further information about our charges.

A full list of Clyde & Co hourly rates is set out in Schedule 1.

We estimate the likely amount of our total legal costs will be \$25,000.00 (excluding GST)

This is only an estimate and is not binding on us. It is not a quote. The actual fees and disbursements will vary depending on the circumstances, and the total costs may exceed the estimate. While the estimate is based on present information and instructions and our current understanding from you as to what services are required, our costs may exceed the estimate if further information becomes available or circumstances change which affect these matters. In this event we will provide you with a revised estimate as soon as practicable. Where there is a significant change in your matter then as far as possible we will advise the impact of the change on the legal costs.

Some of the variables which may affect and change the costs estimate include:

- (a) the number and duration of telephone calls or other communications;
- (b) your prompt and efficient response to requests for information or instructions;
- (c) whether your instructions are varied;

- (d) whether documents have to be revised in light of varied instructions;
- (e) the lawyer or other persons with whom we deal and the level of co-operation of the lawyer's clients and other persons involved;
- (f) changes in the law; and
- (g) the complexity or uncertainty concerning legal issues affecting your matter.

We anticipate that the legal costs will include the following: postage, reasonable local travel expenses and government fees, but other fees and disbursements may be incurred.

I will be the responsible partner in relation to your bills. Please contact me to discuss any queries or other issues you may have in relation to billing or legal costs. Schedule 2 to this letter contains detailed information regarding avenues open to you in the event of disputed legal costs and the time limits that apply. Please note that New South Wales law applies to legal costs in this matter.

5 **Billing**

We will deliver interim bills on a monthly basis unless activity on the case justifies billing at more or less frequent intervals.

We ask that you pay bills within one month of receipt. We therefore ask that you raise any questions about bills with us promptly. If payment is not made when due, we reserve the right to suspend activity on the file and to charge interest on the balance outstanding from the due date.

Clause 9 of our Terms of Business contains further information about billing.

6 **Payment on account of charges**

We may ask you to make payments on account of future charges (including disbursements).

7 **Limitation of Liability**

Clause 16 of our Terms of Business contains important restrictions on our liability to you, which we ask you to review carefully. Your contract will be with Clyde & Co, which will have sole responsibility for all work carried out.

8 **Client identity procedures**

In accordance with anti-money laundering legislation, we are required to obtain specific information and evidence to verify your identity. If adequate information and evidence is not forthcoming we may be unable to act for you. Clause 12 of our Terms of Business contains more information about our obligations and procedures in this respect.

9 **Conflicts of interest**

Clyde & Co adheres to the conflict and confidentiality rules which apply in New South Wales. To the extent that there are matters which are not covered by the local ethical rules and guidelines, Clyde & Co will adhere to those of the Solicitors Regulation Authority of England and Wales. Clause 13 of our Terms of Business contains important information regarding our approach to managing conflicts and confidentiality, which we ask you to review carefully.

10 **Our service**

If you have any queries or concerns, please do not hesitate to contact me. If this does not resolve the matter to your satisfaction, or you would prefer to speak to someone else, please feel free to refer the matter to the Firm's Client Care Partner, our Managing Partner, Dean Carrigan on +61 (02) 9210 4400. Further details of our procedures in this respect are set out in our Terms of Business.

11 **Terms of Business**

The Terms of Business accompanying this letter contain further information about the basis on which Clyde & Co will act for you. In the event of a conflict between the Terms of Business and what is set out in this letter, this letter will prevail. The Terms of Business, as updated from time to time, will apply to any future matter on which you instruct us.

If you have not read the Terms of Business and Disclosure in Schedule 2 to this letter, we encourage you to take the opportunity to review these now as they set out further information for you. In particular we draw your attention to clause 16.1 in the Terms of Business covering our limitation of liability.

This letter and the Terms of Business and the Schedule of Rates constitute an offer to enter into a costs agreement as defined in the Terms of Business. You may accept the offer in writing by signing and returning a copy of this letter to me, but if you do not, your continued instructions to us will constitute your acceptance of the offer.

We would be happy to discuss the contents of this letter and the Terms of Business with you to ensure that you understand and consent to the proposed course of conduct of your matter and the proposed costs.

Please let us know if you would like to clarify or further discuss any of these matters with us.

We look forward to working with you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'pp Clyde & Co', is written over the typed name.

Michael Tooma
Partner
Clyde & Co

I confirm acceptance of the terms in this letter and the accompanying Terms of Business (August 2016 Edition).

Signed

Date.....

Schedule 1 – Clyde & Co hourly rates as at 1 July 2017 (rates remain unchanged from 2016 rates)

Position	Hourly Rate (excluding GST)
Senior Partner	\$700.00
Partner	\$640.00
Special Counsel	\$580.00
Senior Associate 5+ to 8+	\$565.00
Senior Associate +4	\$540.00
Senior Associate +3	\$510.00
Senior Associate +2	\$485.00
Senior Associate +1	\$465.00
Associate +4	\$425.00
Associate +3	\$390.00
Associate +2	\$350.00
Associate +1	\$350.00
Graduate	\$350.00
Paralegal	\$220.00

Schedule 2 – Our disclosure obligations under the Legal Profession Uniform Law (NSW)

We are required under the Legal Profession Uniform Law (NSW) to disclose the following to you:

1 Basis for legal costs

- 1.1 You acknowledge that the fees chargeable under the terms of this Agreement will in most cases be more than would be chargeable in the absence of this Agreement. The reason for that is that in the absence of this Agreement a court scale applies to the legal services described in the engagement letter. The court scale may limit the number of hours that can be charged by the law practice for some services, and in some cases, may provide that certain work may not be chargeable at all. Further, a court scale applies different hourly rates for different services. Under this Agreement the amount that will be charged to you will in most cases be more than the scale because the law practice may charge a flat hourly rate for all work undertaken whether it is complex or not.
- 1.2 If our professional fees are likely to be more than \$3,000 (before GST and disbursements are added) we will provide you with a full disclosure of costs in writing. We will inform you if anything happens that significantly changes our estimate(s).

2 Bills and interest

- 2.1 Each bill must be paid within one month of receipt. Thereafter, we are entitled to charge interest on any outstanding amount of the bill at a rate equal to the Cash Rate Target percentage rate specified by the Reserve Bank of Australia, at the date the bill is issued, increased by 2 percentage points, but not exceeding the maximum rate that may otherwise be prescribed, or be applicable, under section 195 of the Uniform Law and rule 75 of the Legal Profession Uniform General Rules 2015 (General Rules). We will not charge interest on a bill given to you more than 6 months after completion of your matter, except in limited circumstances as allowed under section 195 of the Uniform Law.

3 Your rights

- 3.1 You are entitled to:
- (a) negotiate a costs agreement with us (please refer to the engagement letter);
 - (b) negotiate the method of billing (eg task based or time based);
 - (c) request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
 - (d) be notified of any substantial change to the matters disclosed in this document or the engagement letter as soon as reasonably practicable after we are aware of the change;
 - (e) accept or reject any offer we make for an interstate costs law to apply to your matter;
 - (f) notify us that you require an interstate costs law to apply to your matter; and
 - (g) receive, on making a reasonable request:
 - (i) A written report of the progress of your matter; and
 - (ii) A written report of the costs incurred to date or since the last bill.

- 3.2 If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us only if:
- (a) when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill, and
 - (b) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.
- 3.3 Please note that we may charge a reasonable amount for a written report as to the progress of your matter. There is no charge for a report in respect of costs or for the preparation of an itemised bill.
- 3.4 Nothing in these terms affects your rights under the Australian Consumer Law.
- 4 Action available if costs disputed**
- 4.1 If you have any concerns about our legal costs, please do not hesitate to contact *Michael Tooma* on 9210 4578.
- 4.2 We hope that we would be able to resolve any dispute over our costs by agreement. However, if this is not possible, the following steps are open to you, you may lodge a complaint concerning a consumer matter with the office of the Legal Services Commissioner (NSW Commissioner) or such other designated local regulatory authority as may be designated from time to time under the Uniform Law. Consumer matters include a costs dispute under s269 of the Uniform Law, but relief from the NSW Commissioner in relation to a consumer matter is not available to commercial or government clients as defined in the Uniform Law.
- 4.3 There are time and cost limits for disputing your legal bill.
- 4.4 **Time limits:** In most cases, you have 60 days from the date of the bill to dispute those costs. If you have requested an itemised bill, then you have 30 days after the date of that bill to dispute those costs. The NSW Commissioner may accept a costs dispute up to four months outside these timeframes, if you can prove there was a good reason for the delay (you need to include a statement giving your reasons for delay with your complaint form or letter), and we have not sued you for the costs.
- 4.5 **Cost limits:** The NSW Commissioner can deal with complaints about legal (including any barrister's costs) of up to \$100,000 in respect of any one matter (indexed) or, where the total amount is greater than \$100,000 in respect of any one matter, but the amount in dispute is limited to under \$10,000 (indexed) including disbursements, but excluding interest and GST. The Commissioner will deal with the costs dispute in the same manner as a consumer matter.
- 4.6 The NSW Commissioner may order the parties to mediate pursuant to section 288 of the Uniform Law. At any stage you may wholly or partly withdraw your complaint, in which case no further action will be taken by the NSW Commissioner to the extent the complaint is withdrawn. If mediation fails in relation to a consumer matter, the NSW Commissioner may investigate the complaint further and proceed to a determination of the matter.
- 4.7 If the costs dispute is not resolved, the NSW Commissioner may make a binding determination as to the amount of legal costs payable by having regard to what is fair and

reasonable in the circumstances where the amount in dispute is less than \$10,000 (indexed).

- 4.8 The NSW Commissioner may close the matter without any determination being made if, for example, the facts in the matter should be determined by a Court or Tribunal, or if a party refuses to participate in good faith in the dispute resolution process.
- 4.9 If costs dispute is not resolved and the total amount of legal costs still in dispute is equal to or more than \$10,000 (indexed) OR the total amount of legal costs still in dispute is less than \$10,000 (indexed) and the NSW Commissioner notified the parties in writing that it is unable to resolve the dispute, the NSW Commissioner may give the parties the right to refer the matter to the Civil and Administrative Tribunal of New South Wales (NCAT) for determination (where amount in dispute is under \$25,000) or to the Costs Court of the Supreme Court of New South Wales for assessment (where the amount in dispute is greater than \$25,000). Legal costs may not be the subject of a costs assessment except where the NSW Commissioner notifies the parties of their entitlement to apply for a costs assessment or the Commissioner arranges for a costs assessment under s284(1) of the Uniform Law.
- 4.10 For further information, please refer to the website of the Office of the Legal Services Commissioner at www.olsc.nsw.gov.au under the heading "Complaints".

5 Law and jurisdiction

- 5.1 The contract between you and us in respect of our engagement, and any non-contractual obligations arising out of or in connection with such engagement, will be governed by and construed in accordance with the law of New South Wales.
- 5.2 In circumstances where our legal services will be provided wholly or primarily in another jurisdiction or your matter has a substantial connection with another jurisdiction, you may:
 - (a) enter into an agreement with us under the corresponding law of the other jurisdiction for the corresponding provisions of the corresponding law to apply; or
 - (b) notify us within the time allowed under the corresponding law that you require the provisions of the corresponding law to apply to your matter.
- 5.3 All legal costs are subject to the law of New South Wales.

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

1 Definitions and Interpretation

In these Terms of Business and any associated engagement letter:

1.1 unless the context otherwise requires:

references to **you** and **your** are to the client entity instructing us and named in the engagement letter;

references to **we**, **us**, **our**, **Clyde & Co**, **Clyde & Co Australia**, **Firm** and the like are to the Australian unincorporated legal practice of Clyde & Co, as described in 2.1;

references to **Partner** or **Partners** are to a partner or partners in Clyde & Co;

Client Care Partner means Clyde & Co's client care partner as identified in the engagement letter or as otherwise notified to you from time to time;

References to **Clyde & Co LLP** are to Clyde & Co LLP, a limited liability partnership registered in England and Wales with registration number OC326539 whose registered office is at The St. Botolph Building, 138 Houndsditch, London, EC3A 7AR;

Clyde & Co Entity means Clyde & Co LLP or any entity (including any partnership, company, limited liability partnership or other body corporate or unincorporate) established or practising in any jurisdiction and authorised by Clyde & Co LLP to include in its name 'Clyde & Co' or 'Beaumont & Son' or to describe itself as 'in association with' Clyde & Co LLP;

Clyde & Co Person means any partner, member, officer, employee or consultant of Clyde & Co or of any other Clyde & Co Entity;

Services means the provision of legal services by an Australian legal practitioner and no other service unless you are otherwise informed in writing;

Supervising Partner means the Partner responsible for the Clyde & Co team working with you on our engagement;

Uniform Law has the meaning given in section 4 of the Legal Profession Uniform Law Application Act 2014 (NSW);

1.2 the term **partner**, **partners**, **Partner** or **Partners** is used to refer to a partner of Clyde & Co, or (where applicable) a person with equivalent status or an employee or consultant with equivalent standing and qualifications in another Clyde & Co Entity;

1.3 words importing the singular include the plural and vice versa, words importing a gender include all genders and words importing persons include

bodies corporate, unincorporated associations and partnerships;

1.4 any reference to **persons**, includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, governmental or state agencies, foundations and trusts (in each case whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);

1.5 a reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute;

1.6 any reference to a statute, statutory provision, subordinate legislation, code or guideline (**legislation**) is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation; and

1.7 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

2 Clyde & Co

2.1 In Australia Clyde & Co practises as an unincorporated legal practice Clyde & Co Australia trading as Clyde & Co, ABN 72 157 316 912, which has its main place of business at Level 30, 420 George Street, Sydney NSW 2000, Australia (Tel. +61 2 9210 4400. Fax. +61 2 9210 4599) and is regulated by the Law Society of New South Wales.

2.2 A list of the partners of Clyde & Co is open to inspection at its registered office at Level 30, 420 George Street, Sydney, NSW 2000.

3 Terms of Business

3.1 These Terms of Business relate to engagements undertaken by Clyde & Co in New South Wales.

3.2 These Terms of Business, together with any engagement letter and schedule of rates, set out the terms and conditions upon which we agree to be engaged by you, to the exclusion of all other terms that you or we may purport to apply in connection with our engagement (unless otherwise agreed in writing between you and us).

4 Respective responsibilities

4.1 We aim to offer you a friendly and efficient service. We will exercise reasonable skill, care and diligence in carrying out your instructions.

4.2 Our advice will be limited to Australian law and,

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

unless otherwise agreed between you and us, we will not supply you with advice on the laws of any other jurisdiction.

4.3 We do not represent or owe a duty to any of your parent, companies, subsidiaries, affiliates, officers, directors or employees, each of whom will (unless otherwise agreed by us) be deemed to have separate interests from you with respect to this, and any future, engagement.

4.4 Our role is to act as legal adviser; it is not part of our role to advise on commercial, financial or business issues. In particular, we do not advise on the commercial or financial viability or merits of transactions, or the business risks that may be associated with them.

4.5 Unless specifically agreed as part of our engagement, we will not advise on tax-related issues.

4.6 You agree that during the course of our engagement you will:

- (a) give us clear and prompt instructions and keep us informed of developments in your matter;
- (b) co-operate with us to progress your matter;
- (c) not ask us to work in an improper or unreasonable way, as solicitors we are officers of the Court and as such we owe duties to the Court that are, at all times, paramount to the duties we owe to our clients; and
- (d) safeguard documents which are likely to be required and provide promptly all relevant information and documents, including all information and documents that we request, in connection with your matter.

5 Costs agreement

5.1 This document contains information as to your rights and the terms of engagement on which, in addition to those in the accompanying engagement letter, we will provide the legal services described in the engagement letter (the "Work").

5.2 When you accept our offer to enter into a costs agreement you will retain us to do the Work on the terms set out in these Terms of Business and the engagement letter which, together, will constitute a costs agreement ("Agreement") for the purposes of Part 4.3 of the Uniform Law, insofar as the Uniform Law applies to you.

5.3 The Uniform Law does not apply to the provision of any non-legal services which we may provide.

6 Fees and disbursements

6.1 Our fees are primarily calculated on the basis of hourly fee rates, which vary according to the

seniority and experience of those concerned. Details of our current rates have been advised to you separately. However, if you would like confirmation, please do not hesitate to contact us.

6.2 Our hourly rates will normally be reviewed annually. Details of any revision of our rates while we are acting for you will be supplied to you. In addition, rates charged in respect of individual lawyers may change as they increase in seniority.

6.3 In the case of overseas clients, where our fees are paid subject to any deduction or withholding in respect of tax in any non-Australian jurisdiction, we reserve the right to charge you an additional amount which will, after any deduction or withholding has been made, leave us with the same amount we would have received in the absence of any such deduction or withholding.

6.4 We reserve the right to charge you for any losses incurred on foreign currency disbursements as a result of changes in the exchange rates between the date of our rendering our invoice and its date of payment.

6.5 Where we act for more than one client in relation to a matter you agree that each client will, unless otherwise agreed by us, be jointly and severally liable for our charges.

7 Goods and Services Tax (GST)

7.1 All costs and disbursements disclosed in or payable under or in connection with this Agreement, which are expressed to be inclusive of GST, include the amount of GST payable unless this Agreement does not include GST or GST is not payable on the supply of our services or a disbursement. If an amount does not include GST and the amount is Consideration for a Taxable Supply, the GST payable will be added when the amounts payable for our services and disbursements are calculated and billed in a Tax Invoice.

7.2 We will provide you with a Tax Invoice when and as required by the GST Law.

7.3 The GST indicated in our Tax Invoice will be payable by you in the same manner and at the same time as the costs and disbursements to which it relates are payable.

7.4 The above references to GST; GST Law; Tax Invoice; Consideration and Taxable Supply have the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 and GST Law includes applicable rulings issued by the Commissioner of Taxation.

8 Payments on account

8.1 We may ask you for payments on account of fees

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and/or disbursements in both contentious and non-contentious matters from time to time—and it is a condition of our acceptance of your instructions that you agree to make such payments. It should be clearly understood that the total of our fees and disbursements in the matter may amount to more than the payments on account requested from you.

- 8.2 Any money received on your behalf by Clyde & Co will be paid into a Clyde & Co trust account operated by Clyde & Co in New South Wales. This trust account is subject to supervision by the Law Society of New South Wales and is maintained in accordance with section 137 of the Legal Profession Uniform Law (NSW). In all cases, any monies on account will be paid into a non-interest-bearing Clyde & Co trust account until used for disbursements or until delivery to you of a bill. If at any time you would like confirmation of the monies remaining on account, please let us know. If you do not pay promptly any request for money on account, we reserve the right to decline to act further.

9 Bills

- 9.1 If you wish to set a limit on fees and disbursements to be incurred or on the length of time which may elapse before we render a bill to you, please let us know by writing to the Supervising Partner for your matter.
- 9.2 Unless otherwise agreed in writing, we have the right to render interim bills at monthly intervals or other periodic intervals which we regard as appropriate in the circumstances of any particular case. You consent to receiving a bill sent electronically to you.
- 9.3 Any money received on your behalf will be held in our trust account.
- 9.4 You authorise us to deduct from monies we hold on trust sums we invoice you pursuant to this agreement including disbursements and fees payable to service providers such as expert witnesses. From time to time we may ask you to top up the amount held in trust against costs. If we receive any money on your behalf from any third party you expressly authorise us to deduct from such trust monies received in one matter sufficient to cover bills rendered in respect of any other matter in which we may act on your behalf.
- 9.5 If arrangements are made for a third party to pay any of our fees or disbursements and GST, you remain responsible for the payment of any charges to the extent that the third party does not pay our bill in full. This includes any case in which we have been instructed by your insurers to represent you under a policy of insurance.

- 9.6 We reserve the right to recover additional costs if the total amount of legal costs specified in an itemised bill exceeds the amount previously specified in a lump sum bill for the same matter if:

- (a) we informed you when we gave you the lump sum bill that the amount in the itemised bill might be higher than the lump sum bill; and
- (b) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.

10 Costs

- 10.1 Under sections 178 and 187(2) of the Uniform Law, we will be entitled to commence legal proceedings to recover legal costs from you if:

- (a) we have provided you with a bill which complies with the requirements under the Uniform Law and General Rules; and
- (b) any costs dispute relating to the legal costs has been closed or resolved by the designated local regulatory authority; or
- (c) 30 days has elapsed after you are given the bill or when you received an itemised bill after making a request for one.

11 Estimates of fees and disbursements

- 11.1 We are always happy to provide estimates of fees and disbursements upon request, where possible. However, it is important to remember that it may not be possible to predict the exact amount of work which will be required and that the stance adopted by opponents, or other parties to a transaction, can significantly affect matters.

- 11.2 We do not give oral estimates and any estimate given must be in writing and signed by a Partner. Estimates are given only as a guide and should not be regarded as a firm quotation, unless this is agreed in writing.

- 11.3 Estimates are given exclusive of GST.

12 Anti-money laundering and Counter terrorist financing (CTF)

- 12.1 We are required by anti-money laundering and CTF legislation to verify your identity and we can accept instructions only on the basis that you can properly identify yourself (and any persons whom you represent) to us. We take our obligations seriously to protect both us and our clients and so, if we do not receive sufficient evidence of identity, within a reasonable time of our request, we may have to stop acting for you. In that event, you will be charged for work done up to the time we stop acting. Our verification of identity may include the use of electronic verification services and/or require

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you to provide us with original documents, which we will copy for our records. We may in the course of the matter, need to ask you for additional information and/or evidence to satisfy our continuing obligations under the legislation.

12.2 Under the anti-money laundering and CTF legislation, we may also need to raise enquiries as to the source of client assets and the source of funds to be used with each engagement.

12.3 We reserve the right to decline the receipt of sums of money in cash. In addition, we will not accept funds from any source unless that source is one which has previously been identified to our satisfaction and from which we have agreed to accept funds. If this is not the case, the funds will be dealt with in accordance with applicable law and regulation. In the event that we are unable to accept funds from the source in question, you will remain responsible for the payment of our fees, disbursements and GST and the discharge of any other liabilities which the funds were intended to meet.

13 Confidentiality and conflicts

13.1 The rules of professional conduct under which we practise impose requirements upon us regarding conflict between the duties we owe to different clients in relation to the same or related matters and regarding preservation of our clients' confidences.

13.2 The legal knowledge and experience of Clyde & Co Entities derives from their ability to act for many clients at any one time, and we wish to retain this ability for the benefit of all our clients. It is therefore likely that some of our other clients will operate in the same industry or sector as you and that some may have, or develop, commercial interests adverse to you.

13.3 We adhere to the conflict and confidentiality rules which apply in New South Wales. To the extent that there are matters which are not covered by the local ethical rules and guidelines, we will adhere to those of the Solicitors Regulation Authority of England and Wales. These rules preclude us from acting for one client against another in respect of the same or related matters but permit us to act for one client against another (including in litigation and other dispute resolution work) if the matters are unrelated and provided that we take appropriate steps to protect the confidentiality of information that we hold for either client. We are not obliged to disclose to you our representation of clients who may have interests adverse to yours on unrelated matters. By the same token, we will not without your consent disclose to other clients our representation of you.

13.4 Similar rules apply in most countries where Clyde & Co Entities operate, but not in the United States, where lawyers are generally precluded from acting for one client adversely to another client in any matter unless all relevant clients consent. So as to provide certainty, you agree that:

(a) any issue regarding our ability to represent you in this matter, including any disclosure requirements we may have to you, will be determined by the rules of New South Wales or the Solicitors Regulation Authority of England and Wales, if necessary; and

(b) if any issue should be raised in this or any other jurisdiction as to whether our representing you in this matter should preclude any Clyde & Co Entity from acting against you in another matter it will be determined by reference to the rules of New South Wales or the Solicitors Regulation Authority of England and Wales, if necessary, and not by reference to the rules of professional conduct of any other jurisdiction.

13.5 We will take appropriate steps to preserve your confidential information both during an engagement and after its completion, and it is agreed that we may use internal information barriers for this purpose. We owe the same obligation to other clients and you agree that we will not be required, and you will not expect us to divulge to you confidential information held for other clients. If, while representing you, we learn that your interests are adverse to another client or potential client of Clyde & Co (or another Clyde & Co Entity), we may (in accordance with our professional rules) approach you to seek your agreement to our continuing to act on terms satisfactory to all concerned. In some circumstances, however, our professional rules may require that we cease to act.

13.6 Our confidentiality obligations are subject to certain exceptions, including where disclosure is required by law, regulation or an order of the court. An example is the legislation on money laundering and terrorist financing

13.7 We reserve the right to use external agencies for photocopying, printing, translation and typing services, subject to appropriate safeguards to maintain confidentiality. Please let us know if you do not wish us to do so in any particular case. There may be occasions when it is desirable to outsource other activities, but we will advise you before doing so.

13.8 External firms or organisations may conduct audit or quality checks on our practice for legal or regulatory purposes. These external firms or organisations are required to maintain confidentiality in relation to your files.

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14 Ceasing to act

- 14.1 If you wish to terminate our engagement at any time (either generally or in respect of any particular matter or aspect of a matter), please notify the Supervising Partner and, if we so request, confirm the position in writing. No period of notice is necessary.
- 14.2 We reserve the right for good reason and upon reasonable notice to terminate our engagement, including if:
- (a) you fail to comply with your responsibilities under Clause 4 of these Terms of Business;
 - (b) our continuing to act would be impractical, unethical or contravene legal or regulatory requirements; or
 - (c) you commit an act of bankruptcy or insolvency or if an external administrator is appointed to conduct the affairs of your business or company.
- 14.3 We also reserve the right to suspend our work if you do not pay promptly any request for money on account or do not pay a bill within the due period.
- 14.4 Any termination by us will be confirmed to you in writing, if requested.
- 14.5 In certain circumstances, we may be required by law or regulation to suspend or terminate our engagement without giving any period of notice or reasons.
- 14.6 On termination of our engagement, we will submit a bill to you to cover work done and disbursements incurred in respect of the period up to the date of termination, and necessarily incurred afterwards as part of the orderly termination of our engagement.
- 14.7 For contentious matters, if we are on the record at court as acting for you in any proceedings, the consent of the court may be required before we can be removed from the record and, to that extent, your right to terminate our engagement may be restricted.
- 14.8 Unless otherwise terminated, our engagement will end when our work on the matter is completed and our final statement of account is rendered.
- 14.9 Clauses 6, 9, 10, 13.6, 14.6 to 14.9 (inclusive), 15, 16, 17, 18, 19, 20, 22, and 23.3 to 32 (inclusive) will survive termination of our engagement as will any other provision of our engagement which, by its nature, is intended to survive such termination.

15 Files and documents

- 15.1 We may have the right to keep your papers, documents or other property which are in our possession until you have paid all the money that is due to us. This right will continue after the

termination of our engagement.

- 15.2 We will retain all papers and documents (except for any papers and documents to which you are entitled and which you ask to be returned to you) electronically or in storage for a reasonable period, being at least seven years from the end of the instructions on the matter concerned, on the understanding that we have your authority to destroy them at any time after this period, if appropriate. If you wish papers and documents to be retained for a longer period, then please contact us to make specific arrangements.
- 15.3 Subject to there being no money owing to us for our fees and disbursements, we will return to you on request papers and documents to which you are entitled. Where you request papers and documents to be sent to you or another person, we are entitled to make a reasonable charge for handling costs, photocopying costs and delivery.
- 15.4 Without affecting any lien to which we are otherwise entitled at law over funds, papers and other property of yours:
- (a) we will be entitled to retain by way of lien any funds, property or papers of yours, which are from time to time in our possession or control, until all costs, disbursements, interest and other moneys due to the firm have been paid; and
 - (b) our lien will continue notwithstanding that we cease to act for you.
- 15.5 We may disseminate documents arising from client matters to our staff on internal databases or intranets (which are confidential to the Firm); please let us know if you do not wish us to do so in any particular case.

16 Liability

- 16.1 Our liability to you under or in connection with our engagement, above the compulsory minimum level of professional indemnity cover set by our professional rules from time to time, will not exceed A\$10 million. This limit will apply to any and all causes of action against us in respect of or arising from or in any way connected with our engagement by you. Where you instruct us on future matters, this Clause 16.1 will also apply to each such future matter but with a fresh limit, as above.
- 16.2 Where instructions on any matter are from multiple clients, a single limit will apply to be shared by all such clients.
- 16.3 If you would like us to have a higher limit for any particular matter, please contact us to discuss this.
- 16.4 Without prejudice to Clause 18 and save as provided in Clause 20, your relationship will be

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

solely with Clyde & Co, and Clyde & Co will have sole legal liability for the work done for you and for any act or omission in the course of that work. No Clyde & Co Person will have any personal legal liability for that work, whether in contract, tort (including negligence) or otherwise. In particular, the fact that a Clyde & Co Person signs in his or her own name any letter, email or other document in the course of carrying out that work will not mean that he or she is assuming any personal legal liability separate to that of Clyde & Co.

16.5 You agree that any claim brought in respect of a matter upon which we are instructed will be made against Clyde & Co and not against any Clyde & Co Person or any other Clyde & Co Entity.

16.6 However, in the unlikely situation that a court of competent jurisdiction allows you to make a claim, in respect of a matter upon which we are instructed, against Clyde & Co and/or any other Clyde & Co Entity and/or any Clyde & Co Person, you agree that the restrictions and limitations of liability set out in Clause 16.1 (or as may otherwise be agreed in writing between you and us pursuant to Clause 16.3) and Clause 17 will apply as if Clyde & Co, all other Clyde & Co Entities and all Clyde & Co Persons against whom a claim is made were a single entity. Accordingly, you will not be entitled to recover any more than the aggregate capped amount set out in Clause 16.1 (or as may otherwise be agreed in writing between you and us pursuant to Clause 16.3) from the combined resources (including applicable Insurance) of Clyde & Co, all other Clyde & Co Entities and all Clyde & Co Persons.

16.7 These Terms of Business will only apply to exclude or limit any liability to the extent permitted by law.

17 Contribution claims

17.1 Our liability to you will be limited to that proportion of any loss or damage you may suffer as is just and equitable, having regard to the extent of your own responsibility for the loss and damage and that of any other person who may also be liable to you in respect of it.

17.2 In considering whether other persons may be liable to you, no account is to be taken of any inability on your part to enforce remedies against another person by reason of causes of action against that person becoming time-barred, or the person's lack of means or the person's reliance on exclusions or limitations of liability.

17.3 Nothing in this Clause 17 will increase our liability beyond that set out in Clause 16.

18 Use of Clyde & Co Entities

18.1 There may be occasions when we consider it to be

in your interests that we refer all or some of your instructions under or in connection with our engagement to another Clyde & Co Entity; for example, in another jurisdiction. You agree that, in these circumstances, we are authorised by you to obtain advice and services from, and to disclose all relevant information to, that other Clyde & Co Entity.

18.2 Each time we obtain advice and services for you from another Clyde and Co Entity, we will do so, and you agree that we will do so, on the basis that:

(a) we, and not such (or any) other Clyde & Co Entity, are responsible for such advice and services and for the performance of the contract with you;

(b) without prejudice to Clause 16.6, no such other Clyde & Co Entity will have any responsibility or liability whatsoever to you or anyone else as regards such advice and/or services, whether or not provided by us or such other Clyde & Co Entity; and

(c) you will not make or seek to make, or procure or seek to procure that any other person makes, any claim in relation to any such advice given, or service provided, against any Clyde & Co Entity (other than us).

19 Responsibility to third parties

19.1 The advice we give is intended for your sole benefit in respect of the particular work you instruct us to do; it is not intended to be used or relied upon by others, or for a different purpose. Accordingly, you should not disclose our advice to others without our consent or rely on it in connection with any other matter.

19.2 Save where imposed by law, we do not accept any responsibilities to any third parties in relation to the matter on which we are instructed by you. To the extent that the law nonetheless imposes on us such responsibility to any third parties, our liability to them will be limited in accordance with Clauses 16, 17 and 18, and a single limit as set out in Clause 16 will be shared between such third parties and you.

20 Correspondent lawyers, counsel, etc.

20.1 Where we consider it to be an effective way of dealing with a matter, we will instruct counsel or engage correspondent lawyers, experts or others on your behalf. We will, however, consult you before instructing or engaging any such persons. We will not be responsible for the advice given, services provided by, or default of, counsel, correspondent lawyers, experts or others instructed by us on your behalf, but we will use reasonable care in selecting them. You will be responsible for the fees and expenses of any such persons instructed or engaged.

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

20.2 Clause 20.1 does not apply to the appointment or engagement by us of another Clyde & Co Entity; any such appointment or engagement will be dealt with in accordance with Clause 18.

20.3 If we intend to engage another law practice (law firm or barrister) on your behalf, we will disclose to you the matters under s174(1) of the Uniform Law in relation to that law practice prior to engaging that law practice. This will not apply where we cease to act on your behalf.

21 Privacy

21.1 In the course of our dealings, you may disclose to us, and we may collect, personal information that is subject to privacy regulation. We will use that personal information for the purpose of providing our services to you. If you do not provide such personal information, we may not be able to provide our services to you.

21.2 For this purpose and any other purposes for which information is provided to us, the personal information may be shared with other Clyde & Co Entities both here and overseas and with other organisations or persons engaged by us in connection with the provision of our services to you.

21.3 Other purposes for which we may use the personal information provided to us include complying with legal and regulatory requirements; to carry out credit checks, to detect, investigate and prevent fraud and to trace debtors; to update and enhance client records; for internal analysis and research; to send you or your employees by email or other permitted means (such as post or phone) publications, event information and marketing communications about our legal products and services which we think may be of interest to you or your employees. You and your employees can tell us at any time if you/they would prefer not to receive such information; and to help detect, prevent or deal with crime and unsavoury behaviour.

21.4 Further details of our commitment to you in respect of how we handle your personal information are set out in our privacy policy, a current copy of which can be found on our website at: www.clydeco.com.

22 Disclosure to Australian revenue services

22.1 In certain circumstances legislation may require us to disclose details of transactions to the Australian revenue services including the Australian Taxation Office, where these may result in a tax advantage. If we consider that such a requirement arises we will inform you, and you agree to provide us with such information and assistance as may be necessary to enable us to meet our obligations in this regard within the time frame imposed by law.

While we will aim to secure your consent to such disclosure, we may be required to make disclosure whether you consent or not and neither we nor any other Clyde & Co Entity or any Clyde & Co Person will be responsible for any loss (including additional tax, interest or penalties) which may arise by reason of our having done so.

23 Electronic communications

23.1 During the course of this matter, we may wish to communicate electronically with one another. The electronic transmission of information cannot be guaranteed to be secure or error-free, as it will be transmitted over a public network, and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or otherwise be adversely affected or unsafe to use.

23.2 We and you each agree to use reasonable procedures to check for the most recently known viruses before sending information electronically, but we each recognise that such procedures cannot be a guarantee that transmissions will be virus-free.

23.3 We will each be responsible for protecting our own interests in relation to electronic communications. Neither you or we (nor any other Clyde & Co Entity or any Clyde & Co Person) will be liable to the other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any damage or loss arising from or in connection with the electronic communication of information between us.

24 Future instructions

Unless we both agree otherwise, and subject to our then current hourly rates, these Terms of Business will apply to any future instructions that you are kind enough to give us.

25 Complaints procedure

25.1 If at any time you have any queries or concerns on any aspect of a matter (including a bill) then please do not hesitate to contact the Supervising Partner. If this does not resolve the matter to your satisfaction, or you would prefer not to speak to the Supervising Partner, then please feel free to contact our Client Care Partner. We will try to address any problem quickly and operate an internal complaints handling system to help us resolve the matter between ourselves. Details of our procedure for handling complaints are available from our Client Care Partner on request.

26 Intellectual property

Unless otherwise expressly agreed in writing, we own the rights in the work product that we produce in providing services to you. Subject to payment of our fees for services provided, we grant to you a

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

non-exclusive, royalty free and perpetual licence to use the work product for the purposes for which we produced it for you. This licence does not allow you to give the work product to third parties to use for their benefit unless we have specifically agreed to this in writing.

27 Publicity

27.1 Where we have advised on a transaction (and subject to our duty of confidentiality) we may inform legal and trade journals about the transaction which we have completed, and may also use details of the transaction for our own marketing. Please let us know if you do not wish us to do so in any particular case.

27.2 If it is proposed that any public announcement be made by you or others in respect of a transaction upon which we have acted for you, we would generally be pleased to permit reference to Clyde & Co and its role, subject to our prior approval of the text.

28 Equality and diversity

Clyde & Co has formal procedures in place to ensure equal opportunities. We view diversity as critical to the international nature of our business and have created a working environment where people from different backgrounds can thrive. We are committed to treating all prospective and existing partners, employees, clients and third parties equally and without regard to gender, marital status, ethnic origin, age, disability, sexual orientation or religious belief. Our Equality and Diversity Policy is available on request.

29 Severability

If at any time any provision of these Terms of Business or any engagement letter is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of these Terms of Business or any engagement letter, or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of these Terms of Business or any engagement letter.

30 Entire agreement

These Terms of Business and the terms of any engagement letter (together with any other terms agreed in writing between you and us in connection with our engagement) constitute the entire agreement and understanding between you and us in relation to our engagement and supersede all previous negotiations, agreements and commitments with respect to that engagement.

31 Rights and remedies

31.1 The rights and remedies available to us by virtue of these Terms of Business are without prejudice to any other rights or remedies available to us.

31.2 Any failure by us to exercise or delay by us in exercising a right or remedy provided by these Terms of Business or by law does not constitute a waiver of the right or remedy, or a waiver of other rights or remedies.

32 Law and jurisdiction

32.1 The contract between you and us in respect of our engagement, and any non-contractual obligations arising out of or in connection with such engagement, will be governed by and construed in accordance with the law of New South Wales unless we have agreed that a corresponding law (within the meaning of the Act) will apply.

32.2 In circumstances where our legal services will be provided wholly or primarily in another jurisdiction or your matter has a substantial connection with another jurisdiction, you may:

- (a) enter into an agreement with us under the corresponding law of the other jurisdiction for the corresponding provisions of the corresponding law to apply; or
- (b) notify us within the time allowed under the corresponding law that you require the provisions of the corresponding law to apply to your matter.



Mayoral Minute MM3 Ordinary Meeting

Venue: Administrative Headquarters
Civic Place
Katoomba

Meeting: 7.30pm 14 November, 2017



ORDINARY MEETING

14 NOVEMBER 2017

AGENDA

ITEM NO.	PAGE	SUBJECT	COMMENTS
		<u>MINUTE BY MAYOR</u>	
MM3	4	Confidential Business Paper - Independent Review into Asbestos Allegations	

ITEM NO: MM3

SUBJECT: CONFIDENTIAL BUSINESS PAPER – INDEPENDENT REVIEW INTO
ASBESTOS ALLEGATIONS

FILE NO: 17/234925

Recommendations:

1. *That Item SMM3 in the Business Paper be deferred for consideration until all other business of this meeting has been concluded; and*
2. *That the Council close part of the Council Meeting for consideration of Item SMM3 in the Confidential Business Paper - Independent Review into Asbestos Allegations pursuant to the provisions of Section 10A(2)(g) of the Local Government Act 1993, as the report contains and discussion is likely to involve:*

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Mayoral Minute

This matter has been listed in the Confidential Business Paper because consideration of the matter will involve discussion that would best take place in a meeting which has been closed to the public in accordance with the provisions of Section 10A of the Local Government Act 1993.

The matter to be dealt with relates to Independent Review into Asbestos Allegations and involves discussion of advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Section 10A of the Act requires that any proposal to close part of a meeting to the public be notified in the agenda, and a resolution to close part of a meeting to the public be passed setting out reasons for doing so.

In this case, the reason for closing that part of the meeting to consider Item MM3 in the Confidential Business Paper is that the report includes, and discussion is likely to involve advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Rosemary Dillon

Mayoral Minute MM3 Confidential Meeting

Venue: **Administrative Headquarters
Civic Place
Katoomba**

Meeting: **7.30pm 14 November, 2017**



CONFIDENTIAL MEETING

14 NOVEMBER 2017

AGENDA

ITEM NO.	PAGE	SUBJECT	COMMENTS
		<u>MINUTE BY MAYOR</u>	
MM3	4	Independent Review into Asbestos Allegations	

ITEM NO: MM3
SUBJECT: INDEPENDENT REVIEW INTO ASBESTOS ALLEGATIONS

FILE NO: F10394 - 17/234925

This report is considered confidential under Section 10A of the Local Government Act 1993 g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Delivery Program Link

*Principal Activity: Civic Leadership
Service: Governance and Risk*

Recommendations:

- 1. That the Council notes over recent days very serious allegations have been made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council;*
 - 2. That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations;*
 - 3. That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;*
 - 4. That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;*
 - 5. That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;*
 - 6. That the Council notes that the Office of Local Government (OLG) has been made aware of the allegations made in the media; and*
 - 7. That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government, notifying him of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.*
-

Mayoral Minute**Reason for report**

Over recent days very serious allegations have been made against the Council in relation to the management of sites affected by asbestos. Some allegations have asserted breaches of the law. Other allegations have asserted criminal conduct. These allegations require swift and independent review.

This report seeks to establish the process and terms of reference for the referral of allegations made in the media and by the United Services Union, in relation to asbestos management.

Background

The Council has been working with Safe Work NSW on all active asbestos management matters. On 22 May 2017, SafeWork NSW issued an Improvement Notice which instigated the establishment of the Asbestos Management Team in June 2017 and the series of actions that followed as initiated by the Asbestos Management Team, in close consultation with SafeWork NSW.

The Council will maintain open communication with the relevant agencies during the process. Initial contact has been made with the Office of Local Government (OLG).

The process to be undertaken by Council

In order to achieve independence from Council and Council officers during the review, and to ensure that all legal issues, including potential liability issues, are addressed, this report proposes that that Council engage the Council's solicitor, Trevor Cork of McPhee Kelshaw, to manage the referral and investigation.

An independent and appropriately experienced reviewer will be appointed to conduct the investigation.

The Council will ensure open and transparent communication with relevant agencies throughout the process. In the first instance the Council will write to Mr Tim Hurst, Acting Chief Executive, Office of Local Government notifying him of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.

The Council's investigation will be comprehensive and thorough. The Council intends to make no further comment about the recent allegations until the investigation is completed.

ATTACHMENTS/ENCLOSURES

1	TERMS OF REFERENCE - WORK, HEALTH & SAFETY / ASBESTOS ISSUES		Attachment
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TERMS OF REFERENCE**FIRST INVESTIGATION****WORK, HEALTH & SAFETY / ASBESTOS ISSUES****Lawson Car Park and Lawson Depot**

1. What information was available to the Council concerning the possible presence of asbestos within the proposed Lawson car park, prior to the commencement of work on the car park?
2. To whom was that information made available?
3. What assessment of the site at 283 Great Western Highway, Lawson was undertaken by or on behalf of the Council before work commenced on the construction of the car park commenced?
4. When in the course of this work did any Council employees or subcontractors engaged in the work become aware of the presence of asbestos within the construction site? When and by what means (if at all) was this information reported to the team leaders or managers supervising or responsible for the car park work?
5. What action was taken by the Council when asbestos was discovered within the construction site?
6. When and in what circumstances did the Council decide to move the asbestos contaminated material from the construction site to the depot at Park Street, Lawson?
7. Where was the asbestos contaminated material placed within the Park Street depot?
8. What action, if any, was taken to:
 - (a) segregate the asbestos contaminated material from other material within the Park Street depot; or
 - (b) to cover the asbestos contaminated material within the Park Street depot?
9. Was access to the Park Street depot restricted after the asbestos contaminated material was deposited at that depot?
10. If so, how was access to the Park Street depot restricted?
11. Which Council staff were authorised to allow access to the Park Street depot after the asbestos contaminated material was taken to that depot?
12. Was any asbestos contaminated material (originating in the Lawson car park) removed from the Park Street depot? If so, when was that material removed and to which places was the material taken?
13. Has the material referred to in 12. been tested and, if so, with what results?
14. Were any Council employees directed to work within the Park Street depot either:

- (a) to remove asbestos contaminated material from that depot; or
 - (b) to carry out training or other work using the asbestos contaminated material?
15. Have members of the public been able to gain access to the Park Street depot, and to the asbestos contaminated material within the depot, since that material was stored at the depot?
 16. Is Our Lady of the Nativity Primary School located in such proximity to the Lawson depot that children or staff at the school are at risk because of the presence of asbestos contaminated material held at the depot?
 17. When did the responsible members of the Council's Executive Leadership Team become aware that there was a stockpile of asbestos contaminated material at Lawson depot?
 18. What action was taken by the Council to manage the asbestos contaminated material at the Lawson Depot once its presence was known to the responsible members of the Executive Leadership Team?

Blackheath Site

1. When did the Council become aware that fragments of asbestos contaminated material were present within the boundaries of the former Blackheath Tip (Blackheath site)?
2. Did the Council direct either Council staff or independent tradespeople to work on the Blackheath site, without disclosing that bonded asbestos fragments may be present within the areas in which work was to be undertaken or without those workers being aware of this possibility? If so, when and in what circumstances?
3. What steps did the Council take after becoming aware of the presence within the site of fragments of asbestos contaminated material?
4. Have asbestos contaminated materials been escaping or "*leaking*" from the Blackheath site "*for years*" with the full knowledge of the Council?
5. Did the Council "*turn*" or promote the Blackheath site to members of the public as a recreation area? When did the Council take this action?

Solitary Restaurant Building

1. Was the Council aware in 2013 that the Solitary Restaurant building contained asbestos?
2. In or about 2013 (or at any time since 2013) were Council staff directed to carry out repair or maintenance work at the Solitary Restaurant? If so, what was the nature of the work?

3. Were any Council employees, who were directed to carry out work within Solitary Restaurant, informed that the building contained asbestos? Did the work involve any part of the building or any materials containing asbestos?

Threats of Dismissal

1. Were any Council staff threatened with dismissal or other disciplinary action if they reported the Council's alleged failure to manage asbestos (or any action by the Council in breach of the law)?
2. If so, when and by whom on behalf of the Council and to which employees were such threats made?
3. Were any employees (who considered that they had been threatened with dismissal if they reported asbestos management issues) interviewed by the then General Manager and assured that their employment was not at risk? If so, when did that interview or those interviews take place and who was present?

SafeWork NSW

1. When did SafeWork NSW first communicate with the Council in relation to asbestos management and asbestos risks, either in relation to the Springwood Works Depot (Springwood site) or in relation to any other matter?
2. Was SafeWork NSW satisfied with the way in which the Council managed asbestos risks at the Springwood depot, at that time?
3. Did the Council appropriately work in consultation with SafeWork in its management of sites at which asbestos was known or suspected to be present?
4. Did the Council appropriately communicate with SafeWork in relation to the preparation, completion and adoption of the Council's Asbestos Management Plan?

Asbestos Management Plan

1. When did the Council begin the preparation of its Asbestos Management Plan?
2. Was work on the Asbestos Management Plan undertaken only after communications were received from the United Services Union (USU) in relation to either the Council's Asbestos Register or the Council's Asbestos Management Plan? If so, when did the USU make contact with the Council in relation to these issues?
3. When and in what circumstances did the Council complete the preparation of its Asbestos Management Plan?

Other Documents

1. What other procedures, plans or practices have been adopted by the Council in the period from 1 May 2017 to 14 November 2017 to date to manage risks associated with working with asbestos?

2. How are such processes, procedures or practices communicated to Council staff who may work on buildings or at sites at which asbestos is present?
3. Is this communication process adequate to ensure that relevant information is provided to staff working on such buildings or sites?

Work Health and Safety

1. Is there a WHS Committee at the Council?
2. If so, does a review of that Committee's meeting Minutes show that possible exposure to asbestos was raised as an issue for Council employees?
3. What actions have been taken to address the issues in relation to the risks of exposure to asbestos that have been raised in the Committee's Minutes (if applicable)?



Mayoral Minute MM4 Ordinary Meeting

Venue: Administrative Headquarters
Civic Place
Katoomba

Meeting: 7.30pm 14 November, 2017



ORDINARY MEETING

14 NOVEMBER 2017

AGENDA

ITEM NO.	PAGE	SUBJECT	COMMENTS
		<u>MINUTE BY MAYOR</u>	
MM4	4	Confidential Business Paper - Independent Review into Publicly Made Allegations - Staff Appointments	

ITEM NO: MM4

SUBJECT: CONFIDENTIAL BUSINESS PAPER – INDEPENDENT REVIEW INTO
PUBLICLY MADE ALLEGATIONS - STAFF APPOINTMENTS

FILE NO: 17/234931

Recommendations:

1. *That Item MM4 in the Business Paper be deferred for consideration until all other business of this meeting has been concluded; and*
2. *That the Council close part of the Council Meeting for consideration of Item MM4 in the Confidential Business Paper - Independent Review into Publicly Made Allegations - Staff Appointments pursuant to the provisions of Section 10A(2)(g) of the Local Government Act 1993, as the report contains and discussion is likely to involve:*

(g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

Mayoral Minute

This matter has been listed in the Confidential Business Paper because consideration of the matter will involve discussion that would best take place in a meeting which has been closed to the public in accordance with the provisions of Section 10A of the Local Government Act 1993.

The matter to be dealt with relates to Independent Review into Publicly Made Allegations - Staff Appointments and involves discussion of advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Section 10A of the Act requires that any proposal to close part of a meeting to the public be notified in the agenda, and a resolution to close part of a meeting to the public be passed setting out reasons for doing so.

In this case, the reason for closing that part of the meeting to consider Item MM4 in the Confidential Business Paper is that the report includes, and discussion is likely to involve advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

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BLUE MOUNTAINS CITY COUNCIL

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Minutes of the Ordinary Meeting of Council of the City of Blue Mountains, held in the Chambers on Tuesday, 14 November 2017, commencing at 7.30pm.

* * * * *

There were present:

The Mayor (Councillor Greenhill) in the Chair, and Councillors Bowling, Brown, Christie, Fell, Foenander, Hoare, Hollywood, McGregor, Myles, Schreiber, Van der Kley.

* * * * *

In attendance:

General Manager; A/Director City Services; Director City & Community Outcomes; Director Development & Customer Services; A/Group Manager, People & Systems, Group Manager Integrated Planning and Finance; Executive Officer; A/Chief Financial Officer: Manager Community & Economic; Manager Development & Planning Services; Manager Development & Planning Services; Manager Building & Compliance; Communications Officer; Coordinator Corporate Marketing; Team Development & Events Coordinator; Program Leader Innovation & Change; Meeting & Councillor Support Officer; Technical Services Officer; Senior Environmental Ranger; Ranger; Ranger.

* * * * *

Prayer/Reflection:

The Prayer/Reflection was read by the Mayor, as was the acknowledgement of the traditional owners, the Darug and Gundungurra people.

* * * * *

Apologies

A MOTION was MOVED by Councillors

Nil

* * * * *

MINUTE NO. 372

Confirmation of Minutes - Ordinary Meeting - 17 October 2017

A MOTION was MOVED by Councillors Fell and Van der Kley:

That the Minutes of the Ordinary Meeting of 17 October 2017 be confirmed.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	

Fell
 Myles
 Hollywood
 Van der Kley
 McGregor
 Bowling
 Brown
 Foenander
 Hoare
 Schreiber

* * * * *

MINUTE NO. 410

Procedural - Procedural Motion

A MOTION was MOVED by Councillors Brown and Hoare:

That the Council endorses the Mayoral Minutes MM1, MM2, MM3 and MM4 are not confidential and that the Council does not enter Confidential Session.

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

For
 Councillors Brown
 Hoare

Against
 Councillors Greenhill
 Christie
 Fell
 Myles
 Hollywood
 Van der Kley
 McGregor
 Bowling
 Foenander
 Schreiber

* * * * *

MINUTE NO. 411

Procedural – Move into Confidential Session

A MOTION was MOVED by Councillors Van der Kley and Hollywood

1. **That the Meeting move into a Confidential Session;**
2. **That pursuant to the provisions of Section 10A(2) (a) of the Local Government Act 1993, as the report contains and discussion is likely to involve:**
 - (a) Personal matters concerning particular individuals (other than councillors);**
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

3. That the correspondence and reports relevant to the subject business be withheld from access to the media and public as required by section 11(2) of the Local Government Act 1993; and
4. That the Council endorses that the Councillors are to return their confidential reports at the conclusion of the confidential session.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	Brown
	Fell	Hoare
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Foenander	
	Schreiber	

* * * * *

MINUTE NO. 412

MM1. 17/233129. Confidential Business Paper - Appointment of the Acting General Manager

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

1. That the Council appoints Rosemary Dillon as the Acting General Manager, with this appointment being effective from Friday 17 November 2017 and until the appointment of the General Manager; and
2. That the Council provides the position of Acting General Manager with the full delegations of the position of General Manager.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 413**MM2. 17/234620. Confidential Business Paper - General Manager Recruitment Update**

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

1. That the Council endorses the actions taken to date by the General Manager Recruitment & Selection Panel, including the postponing of the process;
2. That the Council delegates authority to the Mayor to reconvene the General Manager Recruitment & Selection Panel and recommence the General Manager Recruitment & Selection Panel process at an appropriate time; and
3. That, noting the resolution of the Council of 25 July 2017, the Council receives a report from the General Manager Recruitment & Selection Panel on the outcome of the negotiation and commencement date as soon as practicable.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For	Against
Councillors	Councillors
Greenhill	Brown
Christie	
Fell	
Myles	
Hollywood	
Van der Kley	
McGregor	
Bowling	
Foenander	
Hoare	
Schreiber	

* * * * *

MINUTE NO. 414**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Van der Kley and Fell:

That the Council notes that the General Manager leave the chambers and that the Acting General Manager takes the position for MM3 – Confidential Business Paper – Independent Review into Asbestos Allegations and MM4 – Confidential Business Paper – Independent Review into Publicly Made Allegations – Staff Appointments.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Christie	
Fell	
Myles	

Hollywood
 Van der Kley
 McGregor
 Bowling
 Brown
 Foenander
 Hoare
 Schreiber

* * * * *

MINUTE NO. 415

MM3. 17/234925. Confidential Business Paper - Independent Review into Asbestos Allegations

A MOTION was MOVED by Councillors Greenhill and Schreiber:

1. That the Council notes over recent days very serious allegations have been made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council;
2. That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations and any further related matters that the Council solicitor and independent investigator deem merit further investigation;
3. That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;
4. That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;
5. That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;
6. That the Council notes that the Office of Local Government (OLG) has been made aware of the allegations made in the media; and
7. That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government, notifying him of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Christie	
Fell	
Myles	
Hollywood	
Van der Kley	
McGregor	
Bowling	

Brown
Foenander
Hoare
Schreiber

* * * * *

MINUTE NO. 416

MM4. 17/234931. Confidential Business Paper - Independent Review into Publicly Made Allegations - Staff Appointments

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

1. That the Council notes over recent days very serious allegations have been made against the Council and against individual Council officers in relation to the recruitment of staff and consultants;
2. That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations any further related matters that the Council solicitor and independent investigator deem merit further investigation;
3. That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;
4. That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;
5. That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;
6. That the Council notes that the Office of Local Government (OLG) and the Independent Commission Against Corruption (ICAC) have been made aware of the allegations made in the media; and
7. That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government and The Hon Peter Hall QC, Chief Commissioner, Independent Commission against Corruption, notifying them of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Christie	
Fell	
Myles	
Hollywood	
Van der Kley	
McGregor	
Bowling	
Brown	
Foenander	
Hoare	

Schreiber

* * * * *

MINUTE NO. 417

Procedural – Return to Public Meeting

A MOTION was MOVED by Councillors Christie and Bowling:

That the Meeting be reopened to the Public.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 418

30. 17/227924. Work Health and Safety (WHS) Policies

A MOTION was MOVED by Councillors Brown and Hoare:

1. That the Council notes that:

- a) its properties, many of which are old and do not meet current building standards, present a range of risks to staff, contractors, tenants and the community that need to be managed including, the need for appropriate training of council staff in the management of WHS risks which include, but are not limited to, asbestos, old electrical wiring, confined spaces, falls from height, trip hazards;
- b) the Local Government Act requires Council's integrated planning and reporting framework to 'manage risks to the local community or area or to the council effectively and proactively.' (LGA 8C(h); and
- c) there is a statutory obligation to have an Asbestos Management Plan and Register; and

Ramona Priestly

From: Scarlet Reid <sreid@mccullough.com.au>
Sent: Wednesday, 15 November 2017 11:28 AM
To: Trevor Cork
Subject: Contact Details & Profiles
Attachments: SAR Profile - Investigations 15.11.17.pdf; Nathan Roberts - Local Government.pdf
Categories: Blue Category

Dear Trevor

It was great to speak to you earlier today.

We would be very pleased to assist you with the investigation we discussed. Please find **attached** short profiles for me and Nathan Roberts, the Senior Associate who I suggested would work with me on this matter.

Do not hesitate to let me know if you require any further information.

Kind regards
Scarlet

Scarlet Reid**Partner**

T +61 2 8241 5688 | **M** +61 416 147 544
E sreid@mccullough.com.au

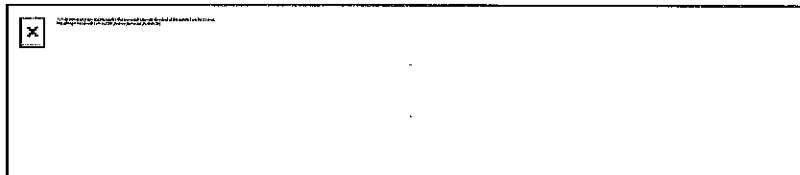
McCullough Robertson

Lawyers

Level 32 MLC Centre, 19 Martin Place, Sydney NSW 2000

Brisbane Sydney Melbourne Newcastle

www.mccullough.com.au

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Scarlet Reid
Partner

T +61 2 8241 5688 | **M** +61 416 147 544
E sreid@mccullough.com.au

A highly experienced employment and safety lawyer, Scarlet works closely with her clients on the full range of workplace issues.

Scarlet acts for both private and public sector clients and has particular experience advising Government clients on sensitive employment law matters.

Scarlet's experience in working with her Government clients gives her an in-depth knowledge of the unique environment in which Government clients operate and she understands the political and commercial objectives that Government agencies are tasked with delivering.

Government Workplace Investigation Experience

Scarlet's experience includes:

- conducting an investigation for Liverpool City Council in relation to allegations of inappropriate workplace behaviour, including sexual harassment and bullying;
- acting for the Council of the City of Sydney in relation to a investigation by SafeWork under the WHS Act following complaints of bullying and harassment by a large group of workers;
- acting for Rockdale City Council in an investigation into alleged public interest disclosure (PID) claims made by a senior employee;
- conducting an investigation for a Commonwealth Government agency into allegations of favoritism and fraud in connection with the procurement of contractors.

Qualifications

- LLB
- LLM
- Certificate IV in Government Investigations

Admissions

- Solicitor – Supreme Court of New South Wales
- Solicitor – Supreme Court of Queensland
- Solicitor – Supreme Court of Victoria
- Solicitor – High Court of Australia

Memberships

- Member – NSW Law Society

Recognition and publications

- Expert in Occupational Health & Safety Law since 2014 and in Labour and Employment Law since 2016 – *Best Lawyers Australia*
- 'Up and coming' Outstanding Young Lawyer in Employment – *Chambers Asia-Pacific*, 2015 and 2016
- Recommended Lawyer in Employment Law – *The Legal 500 Asia-Pacific*, 2015 and 2017
- Sydney Occupational Health & Safety Law "Lawyer of the Year" 2016 – *Best Lawyers Australia*



Nathan Roberts Senior Associate

T +61 2 8241 5694
M +61 402 773 008
E nroberts@mccullough.com.au

Nathan is an experienced employment, administrative and safety lawyer. Nathan has particular experience acting for public sector clients and is an experienced litigator.

Nathan acts for a wide range of clients including a number of local government authorities and State and Commonwealth government agencies. He regularly advises on sensitive government matters.

Nathan regularly advises clients in relation to employment and industrial issues including workplace incidents, workplace investigations, contracts and terminations of employment, workplace discrimination and harassment, privacy and reviewable decisions of government. As well as advising clients in these areas, Nathan also acts for clients in related litigation in various state and federal courts and tribunals.

Government Workplace Investigations Experience

Nathan's relevant experience includes:

- conducting an investigation on behalf of a Local Health District into serious allegations of bullying and harassment
- conducting an investigation for Liverpool City Council in relation to allegations of inappropriate workplace behaviour, including sexual harassment and bullying

- acting for a large Commonwealth Authority in relation to misconduct allegations against a senior executive made by a self-described "whistle-blower"
- conducting a complex investigation for a large mine operator, with the assistance of Australian and international mining experts, in relation to a fatal underground incident

Qualifications

- Bachelor of Laws (Hons) – Macquarie University
- Bachelor of Commerce (Economics) – Macquarie University
- Certificate IV in Government (Investigations)

Admissions

- Solicitor – High Court of Australia
- Solicitor – Supreme Court of NSW

Memberships

- Member – Law Society of NSW

Scarlet Reid
Curriculum Vitae

October 2017 – Present	Partner, McCullough Robertson Employment Relations & Safety
July 2011 – October 2017	Partner, Henry Davis York Workplace Relations & Safety
July 2009 – July 2011	Special Counsel, Henry Davis York Workplace Relations & Safety
April 2007 – July 2009	Special Counsel, Deacons Safety Team
August 2001 – April 2007 (See absence in 2005 below)	Associate & Senior Associate Baker & McKenzie Employment Group
2005	Macquarie Bank Senior In-House Employment Lawyer
July 1999 – August 2001	Prosecutor / Senior Prosecutor WorkCover Authority of NSW
July 1997 – July 1999	Belbridge Hague Solicitors
1997	Admitted as a Solicitor to Supreme Court of NSW

Ramona Priestly

From: Tooma, Michael [Michael.Tooma@clydeco.com]
Sent: Friday, 15 December 2017 1:17 PM
To: Trevor Cork
Cc: Titterton, Alena; Bochenek, Lucy
Subject: Privileged & Confidential - BMCC Asbestos Investigation - Draft Action Plan and Timetable
Attachments: 15.12.2017 - Action Plan for Independent Asbestos Investigation - Draft for McPhee Kelshaw Comments.DOCX

Categories: Green Category, Blue Category
Matter: 143988
Saved: -1

Dear Trevor

Further to our discussion, please find **attached** some draft thoughts on how the process might work. Given the timeframes, I will co-opt my partner Alena Titterton to assist with this. She is copied in on this email.

Regards

Michael

Michael Tooma
 Partner | Clyde & Co
 Direct Dial: +61 2 9210 4578 | Mobile: +61 457 087 952

CLYDE&CO

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Privileged & Confidential

**INDEPENDENT INVESTIGATION INTO ASBESTOS MANAGEMENT AT BLUE MOUNTAINS CITY
COUNCIL**

ACTION PLAN (DRAFT FOR DISCUSSION)

15 DECEMBER 2017

Background

Clyde & Co has been engaged by McPhee Kelshaw on behalf of the Blue Mountains City Council (BMCC) to conduct an independent investigation into a number of matters relating to asbestos management at the Council (**Asbestos Investigation**).

The Asbestos Investigation team is led by partner Michael Tooma.

We were provided with the original Terms of Reference for the Asbestos Investigation on 16 November 2017.

We were provided with the initial tranche of documents relevant to the Asbestos Investigation electronically by McPhee Kelshaw through Hightail on 7 December 2017.

Under letter dated 13 December 2017, McPhee Kelshaw provided us with the amended Terms of Reference (**TOR**) for the Asbestos Investigation.

We have developed the below action plan for the Asbestos Investigation in light of the amended TOR provided to the Asbestos Investigation team on 13 December 2017.

We understand that it is now proposed that the investigation be made public and be conducted in consultation with SafeWork NSW and the United Services Union (**USU**).

Consultation

We are committed to consultation in the conduct of this investigation. We will seek the views of relevant stakeholders throughout the process, including SafeWork NSW and the USU. We will consult with these stakeholders at each stage of the Asbestos Investigation through monthly stakeholder engagement meetings during the course of the investigation.

The Asbestos Investigation team will conduct a number of inquiries to seek information to inform its findings in the Reports above. These inquiries will include:

- Seeking written and oral submissions from interested parties
- Providing an avenue for anonymous submissions to be made to the Asbestos Investigation
- Interviewing relevant current and former members of BMCC staff
- Organising meetings with relevant stakeholders (such as the USU and SafeWork NSW), and
- Issuing requests for information and further documentation as and when necessary.

Reporting on findings

As requested, the Asbestos Investigation team will initially focus its attention on the matters related to the Lawson car park works, the transfer of materials from the car park site to the Lawson Depot,

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access to the depot and the subsequent transfer of materials from the depot to other sites (matters subject of TOR Items 1 and 2).

The Asbestos Investigation team will produce a series of interim investigation reports as follows:

- Interim Report 1: Asbestos management at the Lawson Car Park, Lawson Mechanics Institute, Lawson Depot (TOR Items 1 and 2)
- Interim Report 2: Asbestos management at the Blackheath Tip (TOR Item 5)
- Interim Report 3: Asbestos management at the Lawson Library Building (1 Loftus Street, Lawson)
- Interim Report 4: Asbestos management at the Heather Brae Building (1 Benang Street, Lawson)
- Interim Report 5: Asbestos management at the Springwood Depot (2 Lawson Road, Springwood)
- Interim Report 6: Asbestos management at the Katoomba Waste Management Facility (49 Woodlands Road, Katoomba)
- Interim Report 7: Asbestos management at the Katoomba Leura Preschool (34 Lett St, Katoomba)
- Interim Report 8: Asbestos management at the Katoomba Council Offices (2 Civic Place, Katoomba)
- Interim Report 9: Asbestos management at the Wentworth Falls Kindergarten (2 Day St, Wentworth Falls)
- Interim Report 10: Asbestos management at the Warrimoo Citizens Hall (7 Eley Hawkins Dr, Warrimoo)
- Interim Report 11: Council's response to issues raised regarding asbestos management and response to regulatory investigations (TOR Items 6, 7 and 8)
- Interim Report 12: Asbestos management systems, plans, registers and practices at the Council (TOR Items 3, 4, 9, 10 and 11)

Following completion of the above Interim Reports, we will issue a final consolidated Report with our findings and recommendations. The Final Report will be issued on **31 March 2018**.

Asbestos Investigation Process Steps

The table below sets out a timetable of key steps for the conduct of the Asbestos Investigation.

DATES	KEY STEPS
15 December	Investigation team provides Action Plan to McPhee Kelshaw
18 December	McPhee Kelshaw provides confirmed list of complete site locations for Interim Report descriptions in Action Plan
Week of 18 December	Investigation team establishes investigation email address and website for the purposes of receiving anonymous submissions
Week of 18 December	Investigation Commencement: Investigation team conducts initial consultation on Terms of Reference with SafeWork NSW and USU
18 December	Investigation team provides invitation for submissions to McPhee Kelshaw for comment
22 December	Invitation issued for Council staff, USU and members of the public to make written or oral submissions on matters related to the TORs and website for anonymous

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DATES	KEY STEPS
	submissions established
8 January	Investigation team provides to McPhee Kelshaw initial request for further information / documentation
8 January	Investigation team provides to McPhee Kelshaw list of persons requested for interview
Week of 15 January	Investigation team conducts staff interviews
15 January	McPhee Kelshaw provides requested further documentation to the Investigation team
19 January	Closing date for written submissions from interested parties
From 22 January	Oral submissions of interested parties commence
Week of 29 January	Investigation Progress Update: Investigation team conducts stakeholder engagement meetings with USU and SafeWork NSW
12 February	Investigation team determines if further information / interviews required and issues further requests for information / documentation and interview (if required)
16 February	McPhee Kelshaw provides requested further documentation to the Investigation team
Week of 19 February	Investigation team conducts further interviews (if required)
26 February	McPhee Kelshaw provides requested further documentation to the Investigation team
28 February	Investigation team issues Interim Reports 1 and 2 to McPhee Kelshaw
Week of 26 February	Investigation Progress Update: Investigation team conducts stakeholder engagement meetings with USU and SafeWork NSW
20 March	Investigation team issues Interim Reports 3 to 12 to McPhee Kelshaw
Week of 26 March	Stakeholder engagement meetings with USU and SafeWork NSW
31 March	Investigation team issues Final Report to McPhee Kelshaw

Melinda Kelly

From: Trevor Cork
Sent: Wednesday, 15 November 2017 5:27 PM
To: 'Robert Greenwood'
Cc: 'jcooper@bmcc.nsw.gov.au'; 'gmckay@bmcc.nsw.gov.au'; 'rdillon@bmcc.nsw.gov.au'; 'tcork@mcphreekelshaw.com.au'
Subject: Confidential and Privileged (MPK 143988)
Attachments: letter 1 to R Greenwood.pdf

Confidential and Privileged

15 November 2017

Our Ref: TC:RP143988
Your Ref:

Dear Mr Greenwood,



We refer to the telephone conference today between yourself, Ms Cooper, Ms Dillon and Mr McKay of Council and Mr Cork of our firm.

As foreshadowed during that conference, we **attach** a copy of our letter of today's date, recording the advice that was given to the Councillors at the meeting last night, and that was previously given over recent days in meetings, telephone discussions and emails, relating to allegations that have recently been made against the Council.

Yours faithfully,

Trevor Cork

McPhee Kelshaw Solicitors and Conveyancers

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McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road Springwood NSW 2777
 Telephone +61 2 4751 1055
 FAX +61 2 4751 5668
 E-mail : ramonap@mcphreekelshaw.com.au

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Our Ref: TC:RP:143988

Your Ref:

15 November 2017

Mr Robert Greenwood
General Manager
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

SOLICITORS
**McPHEE
KELSHAW**
CONVEYANCERS

PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law S&D
CRAIG COCKBURN B.Com., LL.B.
ANN SCHRALE B.A., LL.B. Acc. Spec. (Family Law)
AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hons)

Dear Mr Greenwood,

CONFIDENTIAL AND PRIVILEGED

Recent Allegations Against the Council – (1) Asbestos Management and (2) Staff Appointments

Background

1. We have been instructed to advise the Council concerning a series of allegations that have recently been made against it. These allegations have been made in the news media (radio and print), by the United Services Union (USU) and in anonymous communications.
2. Our preliminary advice on these issues has been provided in meetings, telephone conversations and by email. This letter has been prepared to bring together and formalise that advice, in the context of the decisions made by the Council at the meeting held on 14 November 2017.
3. In summary, we have advised the Council that the allegations assert actions, events and circumstances which could give rise to litigation against the Council, including civil litigation, the issue of penalty notices, prosecutions and investigations.
4. The allegations, if established to be true (in whole or in part), raise very serious issues for the Council. The Council has already suffered reputational damage and damage to the organisation as a result of the allegations. We consider that the matters concerned merit early but thorough investigation.

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Legislation

5. We have advised the Council that its relevant insurers should be notified (as appropriate under the policies concerned) of the identification of facts and circumstances that may give rise to claims. As explained to Councillors in the confidential briefing session last night, the applicable insurance policies appear to the following:
 - (a) workers compensation (with common law extension);
 - (b) public liability (and policy extensions);
 - (c) professional indemnity; and
 - (d) councillors and officers (or equivalent).
6. We understand that the policy described in paragraph 5(d) provides cover on a claims made basis and that early notification of any relevant facts and circumstances should be given to the insurers. The Council's senior staff responsible for insurance and risk management should consider the notifications that are appropriate, in light of the allegations.

Summary of Recommendations and Instructions - Investigations

7. In summary, we recommended that Mr Cork of our firm be instructed to engage investigators to initiate two separate investigations. First, an investigation in relation to the allegations made concerning asbestos management and related issues. Secondly, an investigation into asserted improper conduct in staff recruitment. Each matter is referred to in greater detail below.
8. The Council has resolved to accept our recommendations and we are now instructed to initiate both investigations, and to engage appropriately qualified and experienced independent investigators.
9. We confirm the advice given to the Councillors last night, both in the confidential briefing session and during the Council meeting, that neither Councillors nor Council staff should make any public comments whatsoever in relation to the matters under investigation. The fact of the investigation may be appropriately disclosed. However, neither the matters under investigation (other than by general category) nor any concerns that the Council may have arising from the allegations, should be the subject of public comment.
10. Mr Cork advised the Councillors that it is imperative that the Council's legal position not be prejudiced or compromised in any way by inappropriate disclosures or comments. The Councillors have approved detailed terms of reference for each investigation. Those investigations should now be quickly initiated and allowed to run their course, without public comment.

11. The Council's decision not to comment publically on the investigations will be a difficult one to maintain. The Council is already under pressure, through reports in the print media and comments made on the radio, concerning the allegations. The Council has also met with representatives of the USU as recently as yesterday.
12. We confirm our advice that the Council should respond to the allegations in two ways.
13. The allegations in relation to past events, including the Council's asserted non-compliance with applicable legislation, standards or policies, are the subject of the investigations that have now been initiated. Those investigations relate to both asbestos issues and to the recruitment and appointment of staff. No public comments should be made on those matters, pending the conclusion of each investigation.
14. Secondly, the Council's current and future compliance with legislation regulating work, health and safety, asbestos management, the implementation of the Council's Asbestos Management Plan (AMP), and the appointment of staff in accordance with all relevant recruitment policies and procedures, are all matters that should remain the subject of open communications with Council staff, with the USU and with any other relevant and responsible parties. Those matters are appropriate for dialogue and comment.
15. The Council has resolved that the fact of the investigations, and their respective Terms of Reference, should be formally notified to the Office of Local Government (OLG) (in relation to the asbestos management and related issues) and to each of the ICAC and the OLG in relation to staff recruitment and associated matters.
16. The Council will to keep each of the OLG and the ICAC informed of the progress of the investigations and, in due course, of their outcomes. Obviously, it is open to either the OLG or the ICAC or both to seek further information from the Council, and further involvement with the Council, in relation to the allegations and the investigations. That is not a matter that is within the Council's control.

Asbestos Related Allegations and Investigation

17. The first series of allegations relate to the management of asbestos and asbestos risks at Council owned or controlled properties. It is alleged that the Council caused employees (and possibly independent tradespeople) to be exposed to asbestos related risks, without the persons concerned being aware of those risks.
18. Specific allegations have been made in relation to the construction of the new car park adjacent to the Lawson Mechanics Institute, the storage of asbestos at the Council depot at Park Street, Lawson (Lawson depot), the former Blackheath Tip in Ridgeview Road, Blackheath (Blackheath site) and the Solitary Restaurant building at Cliff Drive, Katoomba (Solitary).

19. Issues relating to the Council's identification and management of asbestos at the Springwood Works Depot (Springwood depot) were raised with the Council by SafeWork NSW (SafeWork) in May this year. We are instructed that SafeWork subsequently issued the Council with an Improvement Notice. Since the Improvement Notice was served, the Council has worked in close consultation with SafeWork to complete and adopt the Council's AMP.
20. In the course of on-air discussions between Mr Ray Hadley of 2GB and Mr Steve Donley of the USU, there have been suggestions that the Council, by its actions and inactions, may be guilty of criminal conduct or of gross negligence in relation to asbestos management and the risks presented by asbestos (on Council owned or controlled properties) to employees, contractors, and members of the public.
21. In relation to the Lawson depot, Mr Hadley has suggested that the presence of asbestos contaminated materials within the depot presents a risk to the health and safety of students and staff at Our Lady of the Nativity School, which is located in Somers Street Lawson.
22. Our specific recommendations in relation to the proposed investigation of asbestos management and related issues are made in our second letter of today's date.

Allegations of Improper Conduct – Staff Recruitment

23. Allegations have also been made by Mr Hadley and by anonymous complainants in relation to the recruitment of senior Council staff.
24. In particular, Mr Hadley, moving beyond his allegations in relation to asbestos management, has asserted that Mr Mark Mulligan, who was recently appointed as the Council's Acting Director, Service Delivery, was appointed to this position because of Mr Mulligan's links with Mr Stuart Liddell.
25. Mr Hadley has also asserted that Mr Mulligan was appointed by the Council in 2016 as a safety consultant due to his personal association and links with Mr Liddell. Mr Hadley further asserts that Mr Mulligan does not have the experience or the qualifications to support his appointment as either a consultant or as the Acting Director.
26. More wide ranging allegations have been made by Mr Hadley in relation to staff recruitment issues. Mr Hadley has suggested that Mr John Hargreaves was appointed to a position with the Council as a result of his relationship with Mr Liddell and that other persons, associated with the Wentworth Falls Golf Club, have received favourable consideration when seeking appointment as employees of the Council. Mr Hadley has identified Mr Liddell as the President or the Captain of the Wentworth Falls Golf Club.

27. These allegations assert improper and/or corrupt conduct on the part of Mr Liddell and, possibly, on the part of other unnamed Council staff. The allegations purport to identify major deficiencies in the Council's recruitment policies and practices.
28. These allegations are also extremely serious. If established, the allegations may fall within the responsibility of the Independent Commission Against Corruption (ICAC). The allegations could also raise disciplinary matters, and raise potential breaches, of the Council's Code of Conduct and of the relevant provisions and requirements of the *Local Government Act, 1993*.
29. However, if the allegations have no substance, then there is the potential for other legal action, including the possible commencement of proceedings against the Council on the basis of alleged bullying and harassment. We are instructed that the allegations made against Mr Liddell have imposed very significant work pressures on him, to the point where he considered that it was appropriate to request that he be permitted to stand down from his position, pending the outcome of the investigation.
30. Our specific recommendations in relation to the proposed investigation of staff recruitment and appointment issues are made in our third letter of today's date.

Conclusion and Advice

31. Against this background, and we emphasise that this letter summarises a very complex series of events, we have advised the Council that the allegations should be identified, documented and investigated.
32. We have recommended that the investigators be engaged by our firm. There will be two separate investigations, one related to the asbestos issues and one related to the staff recruitment issues.
33. We have recommended that the investigation be undertaken on the instructions of our firm to ensure that the investigators' enquiries, the investigators' reports and the advice subsequently given to the Council in relation to those reports are all protected by the Council's legal professional privilege.
34. As explained to the Councillors last night, that legal professional privilege benefits the Council. The Council will ultimately determine whether it wishes to waive, in whole or in part, that privilege or whether the Council wishes to maintain the privilege and to act on that basis.
35. The Council has adopted our recommendations and resolved to act in accordance with our advice. We have, in our second and third letters to the Council of today's date, formally recommended the appointment of investigators in relation to each matter.

36. As instructed by the Council, we will continue to act to implement the resolutions passed by the Council at the meeting held on 14 November 2017.

Yours faithfully
McPhee Kelshaw



Trevor Cork

Melinda Kelly

From: Trevor Cork
Sent: Wednesday, 15 November 2017 5:27 PM
To: 'Robert Greenwood'
Cc: 'jcooper@bmcc.nsw.gov.au'; 'gmckay@bmcc.nsw.gov.au'; 'rdillon@bmcc.nsw.gov.au'; 'tcork@mcphreekelshaw.com.au'
Subject: Confidential and Privileged: Independent Investigation - Asbestos Issues - Appointment of Investigator (MPK 143988)
Attachments: Letter 2.pdf; Terms of Reference - Work, Health and Safety - Asbestos Issues.pdf
Categories: Blue Category

Confidential and Privileged: Independent Investigation - Asbestos Issues - Appointment of Investigator

15 November 2017

Our Ref: TC:RP143988
 Your Ref:

Dear Mr Greenwood,



We refer to the telephone conference today between yourself, Ms Jasmine Cooper, Ms Rosemary Dillon and Mr Grant McKay on behalf of the Council and Mr Cork of our firm.

We **attach** our second letter of today's date, making our recommendations concerning the appointment of an investigator to investigate the matters set out in the Terms of Reference attached to Mayoral Minute 3, considered at the ordinary Council meeting last night.

Yours faithfully,

Trevor Cork

McPhee Kelshaw Solicitors and Conveyancers

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		TELEPHONE (02) 4751 1055 • FAX (02) 4751 5668 • PO BOX 4, SPRINGWOOD NSW 2777	
		DX 26729 SPRINGWOOD • EMAIL: info@mcphreekelshaw.com.au • WEBSITE: www.mcphreekelshaw.com.au	

McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road Springwood NSW 2777
 Telephone +61 2 4751 1055
 FAX +61 2 4751 5668
 E-mail : ramonap@mcphreekelshaw.com.au

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Our Ref: TC:RP:143988

Your Ref:

15 November 2017

Mr Robert Greenwood
 General Manager
 Blue Mountains City Council
 Locked Bag 1005
 KATOOMBA NSW 2780

Dear Mr Greenwood,

CONFIDENTIAL AND PRIVILEGED

SOLICITORS
McPHEE
KELSHAW
CONVEYANCERS

PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
 TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
 STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN B.A., LL.B.
 CRAIG COCKBURN B.Com., LL.B.
 ANN SCHRALE B.A., LL.B., Acc. Spec. (Family Law)
 AMANDA WALINOWSKY B.A., LL.B., Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Joint)

Council Meeting held on Tuesday 14 November 2017
Independent Investigation Review into Asbestos Allegations

1. We refer to the Ordinary Meeting of the Council held on Tuesday 14 November 2017 and to the Council's consideration of Confidential Mayoral Minute 3 relating to allegations recently made against the Council in relation to the management of asbestos and related issues.
2. Prior to that meeting we provided advice and recommendations to the Council in relation to the allegations. Amongst other matters, we recommended that the Council initiate an independent review, with the independent investigator appointed by our firm, acting as the Council's solicitors.
3. After consideration of our advice the Council in confidential session passed the following resolutions:
 1. *That the Council notes over recent days very serious allegations have been made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council;*
 2. *That the Council instruct Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations and on such asbestos related matters as the Council solicitor and independent investigator deem merit further investigating;*

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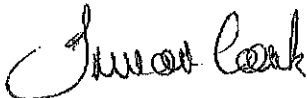


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3. *That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;*
 4. *That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;*
 5. *That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;*
 6. *That the Council notes that the Office of Local Government (OLG) has been made aware of the allegations made in the media; and*
 7. *That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government, notifying him of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.*
4. In response to the Council's decisions, we have today recommended that Mr Michael Tooma solicitor of Clyde & Co, assisted by Ms Lucy Bochenek, solicitor, be appointed by our firm to investigate the allegations. Mr Tooma has accepted that engagement and we are now formalising our instructions.
 5. Mr Tooma, assisted by Ms Bochenek, has been engaged to investigate the matters identified in the terms of reference attached to Mayoral Minute 3. A copy of those terms of reference is **attached** to this letter.
 6. In accordance with the Council's resolution 2 we recommend that the Council now formally notify the Acting Chief Executive of the Office of Local Government of the Council's decision, and of our instructions to initiate the investigation. As part of that notification, the Council would appropriately make available to the OLG a copy of this letter and a copy of the terms of reference.
 7. As indicated to the Councillors at the meeting last night, the investigation will be undertaken in relation to each of the matters identified in the attached terms of reference. However, the scope of the investigation may be widened, in accordance with the Council's second resolution.
 8. If in the course of the investigation Mr Tooma and Ms Bochenek identify matters which, in their opinion, merit investigation, but which fall outside the scope of the terms of reference, then they are instructed to bring that matter to the attention of our firm. We will in turn provide advice to the Council on the broadening of the scope of the investigation.
 9. The intention of the Council is that the investigators should be empowered to investigate all relevant issues, without the investigation becoming open ended. The proposed control of a joint recommendation by the investigators and by our firm was designed to avoid that possible outcome.

10. The investigators have been informed, and will be formally instructed, that in the course of their investigation they may request access to any Council documents and records that the investigators consider to be relevant to their enquiries. The investigators may also nominate Council employees who are to be interviewed.
11. In that regard, we confirm our recommendation that the Council give an appropriate instruction to nominated employees, requiring them to participate in any interviews requested by the investigators. At the same time, the Council would acknowledge that an employee may wish a Union representative or a support person to be present during the interview and will indicate that such a request would be accepted.
12. In relation to the notification to the OLG, we recommend that the Council confirm that it stands ready and willing to provide to the OLG any information in relation to the proposed investigation, or in relation to the allegations, that the OLG might request.
13. The investigation is intended to ensure that the Council is fully informed of the events and circumstances that underpin the allegations. The investigation is not an attempt to limit enquiries or requests for information that may be made by the OLG or by any other relevant agency.

Yours faithfully
McPhee Kelshaw



Trevor Cork

TERMS OF REFERENCE**FIRST INVESTIGATION****WORK, HEALTH & SAFETY / ASBESTOS ISSUES****Lawson Car Park and Lawson Depot**

1. What information was available to the Council concerning the possible presence of asbestos within the proposed Lawson car park, prior to the commencement of work on the car park?
2. To whom was that information made available?
3. What assessment of the site at 283 Great Western Highway, Lawson was undertaken by or on behalf of the Council before work commenced on the construction of the car park commenced?
4. When in the course of this work did any Council employees or subcontractors engaged in the work become aware of the presence of asbestos within the construction site? When and by what means (if at all) was this information reported to the team leaders or managers supervising or responsible for the car park work?
5. What action was taken by the Council when asbestos was discovered within the construction site?
6. When and in what circumstances did the Council decide to move the asbestos contaminated material from the construction site to the depot at Park Street, Lawson?
7. Where was the asbestos contaminated material placed within the Park Street depot?
8. What action, if any, was taken to:
 - (a) segregate the asbestos contaminated material from other material within the Park Street depot; or
 - (b) to cover the asbestos contaminated material within the Park Street depot?
9. Was access to the Park Street depot restricted after the asbestos contaminated material was deposited at that depot?
10. If so, how was access to the Park Street depot restricted?
11. Which Council staff were authorised to allow access to the Park Street depot after the asbestos contaminated material was taken to that depot?
12. Was any asbestos contaminated material (originating in the Lawson car park) removed from the Park Street depot? If so, when was that material removed and to which places was the material taken?
13. Has the material referred to in 12. been tested and, if so, with what results?
14. Were any Council employees directed to work within the Park Street depot either:

- (a) to remove asbestos contaminated material from that depot; or
 - (b) to carry out training or other work using the asbestos contaminated material?
15. Have members of the public been able to gain access to the Park Street depot, and to the asbestos contaminated material within the depot, since that material was stored at the depot?
 16. Is Our Lady of the Nativity Primary School located in such proximity to the Lawson depot that children or staff at the school are at risk because of the presence of asbestos contaminated material held at the depot?
 17. When did the responsible members of the Council's Executive Leadership Team become aware that there was a stockpile of asbestos contaminated material at Lawson depot?
 18. What action was taken by the Council to manage the asbestos contaminated material at the Lawson Depot once its presence was known to the responsible members of the Executive Leadership Team?

Blackheath Site

1. When did the Council become aware that fragments of asbestos contaminated material were present within the boundaries of the former Blackheath Tip (Blackheath site)?
2. Did the Council direct either Council staff or independent tradespeople to work on the Blackheath site, without disclosing that bonded asbestos fragments may be present within the areas in which work was to be undertaken or without those workers being aware of this possibility? If so, when and in what circumstances?
3. What steps did the Council take after becoming aware of the presence within the site of fragments of asbestos contaminated material?
4. Have asbestos contaminated materials been escaping or "*leaking*" from the Blackheath site "*for years*" with the full knowledge of the Council?
5. Did the Council "*turn*" or promote the Blackheath site to members of the public as a recreation area? When did the Council take this action?

Solitary Restaurant Building

1. Was the Council aware in 2013 that the Solitary Restaurant building contained asbestos?
2. In or about 2013 (or at any time since 2013) were Council staff directed to carry out repair or maintenance work at the Solitary Restaurant? If so, what was the nature of the work?

3. Were any Council employees, who were directed to carry out work within Solitary Restaurant, informed that the building contained asbestos? Did the work involve any part of the building or any materials containing asbestos?

Threats of Dismissal

1. Were any Council staff threatened with dismissal or other disciplinary action if they reported the Council's alleged failure to manage asbestos (or any action by the Council in breach of the law)?
2. If so, when and by whom on behalf of the Council and to which employees were such threats made?
3. Were any employees (who considered that they had been threatened with dismissal if they reported asbestos management issues) interviewed by the then General Manager and assured that their employment was not at risk? If so, when did that interview or those interviews take place and who was present?

SafeWork NSW

1. When did SafeWork NSW first communicate with the Council in relation to asbestos management and asbestos risks, either in relation to the Springwood Works Depot (Springwood site) or in relation to any other matter?
2. Was SafeWork NSW satisfied with the way in which the Council managed asbestos risks at the Springwood depot, at that time?
3. Did the Council appropriately work in consultation with SafeWork in its management of sites at which asbestos was known or suspected to be present?
4. Did the Council appropriately communicate with SafeWork in relation to the preparation, completion and adoption of the Council's Asbestos Management Plan?

Asbestos Management Plan

1. When did the Council begin the preparation of its Asbestos Management Plan?
2. Was work on the Asbestos Management Plan undertaken only after communications were received from the United Services Union (USU) in relation to either the Council's Asbestos Register or the Council's Asbestos Management Plan? If so, when did the USU make contact with the Council in relation to these issues?
3. When and in what circumstances did the Council complete the preparation of its Asbestos Management Plan?

Other Documents

1. What other procedures, plans or practices have been adopted by the Council in the period from 1 May 2017 to 14 November 2017 to date to manage risks associated with working with asbestos?

2. How are such processes, procedures or practices communicated to Council staff who may work on buildings or at sites at which asbestos is present?
3. Is this communication process adequate to ensure that relevant information is provided to staff working on such buildings or sites?

Work Health and Safety

1. Is there a WHS Committee at the Council?
2. If so, does a review of that Committee's meeting Minutes show that possible exposure to asbestos was raised as an issue for Council employees?
3. What actions have been taken to address the issues in relation to the risks of exposure to asbestos that have been raised in the Committee's Minutes (if applicable)?



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Our Ref: TC:RP:143988

Your Ref:

15 November 2017

Mr Robert Greenwood
 General Manager
 Blue Mountains City Council
 Locked Bag 1005
 KATOOMBA NSW 2780

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PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
 TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
 STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip. Law GAN
 GRAIG COCKBURN B.Com., LL.B.
 ANN SCHIRALE B.A., LL.B. Acc. Spec. (Family Law)
 AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hons)

Dear Mr Greenwood,

CONFIDENTIAL AND PRIVILEGED

**Council Meeting held on Tuesday 14 November 2017
 Independent Investigation Review into Publically Made Allegations – Staff and
 Consultant Appointments**

1. We refer to the Ordinary Meeting of the Council held on Tuesday 14 November 2017 and to the Council's consideration of Confidential Mayoral Minute 4 relating to allegations recently made against the Council in relation to the appointment of staff and consultants.
2. Prior to that meeting we provided advice and recommendations to the Council in relation to the allegations. Amongst other matters, we recommended that the Council initiate an independent review, with the independent investigator appointed by our firm, acting as the Council's solicitors.
3. After consideration of our advice the Council in confidential session passed the following resolutions:
 1. *That the Council notes over recent days very serious allegations have been made against the Council and against individual Council officers in relation to the recruitment of staff and consultants;*
 2. *That the Council instruct Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations and any related allegations that the Council solicitor and independent investigator deem merit further investigating;*

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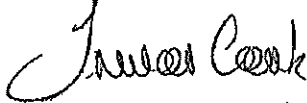


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3. *That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;*
 4. *That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;*
 5. *That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;*
 6. *That the Council notes that the Office of Local Government (OLG) and the Independent Commission Against Corruption (ICAC) have been made aware of the allegations made in the media;*
 7. *That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government and The Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, notifying them of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.*
4. In response to the Council's decisions, we have today recommended that Ms Scarlet Reid solicitor of McCullough Robertson solicitors, assisted by Mr Nathan Roberts, Senior Associate be appointed by our firm to investigate the allegations. Ms Reid has accepted that engagement and we are now formalising our instructions.
 5. Ms Reid, assisted by Mr Roberts, has been engaged to investigate the matters identified in the terms of reference attached to Mayoral Minute 4. A copy of those terms of reference is **attached** to this letter.
 6. In accordance with the Council's resolution 2 we recommend that the Council now formally notify the Acting Chief Executive of the Office of Local Government and The Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption (ICAC) of the Council's decision, and of our instructions to initiate the investigation. As part of that notification, the Council would appropriately make available to the OLG and to the ICAC a copy of this letter and a copy of the terms of reference.
 7. As indicated to the Councillors at the meeting last night, the investigation is to address each of the matters identified in the terms of reference. However, the scope of the investigation may be widened, in accordance with the Council's second resolution.
 8. If in the course of the investigation Ms Reid or Mr Roberts identify matters which in their opinion merit investigation, but which fall outside the scope of the terms of reference, then they are instructed to bring that matter to the attention of our firm. We will in turn provide advice to the Council on the broadening of the scope of the investigation.

9. The intention of the Council is that the investigators will be empowered to investigate all relevant issues, without the investigation becoming open ended. The proposed control of a joint recommendation by the investigators and by our firm was designed to avoid that possible outcome.
10. The investigators have been informed, and will be formally instructed, that in the course of their investigation they may request access to any Council documents and records that the investigators consider to be relevant to their enquiries. The investigators may also nominate Council employees who are to be interviewed.
11. In that regard, we confirm our recommendation that the Council give an appropriate instruction to nominated employees, requiring them to participate in any interviews requested by the investigators. At the same time, the Council would acknowledge that an employee may wish a Union representative or a support person to be present during the interview and will indicate that such a request would be accepted.
12. In relation to the notification to each of the OLG and to ICAC, we recommend that the Council confirm that its stands ready and willing to provide to those agencies any information in relation to the proposed investigation, or in relation to the allegations, that either the OLG or ICAC might request.
13. The investigation is intended to ensure that the Council is fully informed of the events and circumstances that underpin the allegations. The investigation is not an attempt to limit enquiries or requests for information that may be made by the OLG or by ICAC or by any other relevant agency.

Yours faithfully
McPhee Kelshaw



Trevor Cork

TERMS OF REFERENCE**SECOND INVESTIGATION****ALLEGED MISCONDUCT OR CORRUPTION****Appointment of Mr Mark Mulligan as Safety Consultant**

1. What process was followed by the Council when Mr Mark Mulligan was appointed as a safety consultant to the Council in calendar year 2016 (CY 2016)?
2. Did Mr Mulligan have the qualifications and experience in CY2016 to support his engagement as a consultant to the Council?
3. Was Mr Mulligan's appointment as a consultant to the Council in CY2016 inappropriately influenced by:
 - (1) Mr Mulligan having previously worked with Mr Stuart Liddell or any other then employee (in CY 2016) of the Council in a consultancy firm?
 - (2) Any prior business or working relationship between Mr Mulligan and Mr Liddell or any other then employee of the Council?
4. When did Mr Mulligan's engagement as a safety consultant to the Council end?

Mr Mulligan's Appointment as Acting Director, Service Delivery FY2018

1. What were the circumstances and the context in which Mr Mulligan was appointed as Acting Director, Service Delivery, for the Council in Financial Year 2018 (FY2018)?
2. What processes were followed by the Council when seeking to recruit the person to be appointed as Acting Director, Service Delivery for the Council in FY2018?
3. At the time of his appointment, did Mr Mulligan have the qualifications and experience to support his appointment as Acting Director, Service Delivery, for the Council?
4. Was Mr Mulligan's appointment as Acting Director, Service Delivery of the Council in FY2018 inappropriately influenced by:
 - (1) Mr Mulligan having previously worked with Mr Stuart Liddell or any other current employee of the Council in a consultancy firm?
 - (2) Any prior business or working relationship between Mr Mulligan and either Mr Liddell or any other current employee of the Council?

Alleged Improper Employment of Staff

1. Was Mr John Hargreaves improperly appointed to an acting position at the Council on a one year contract on a salary of \$100,000.00 per annum?
2. What processes were followed by the Council in the appointment of Mr Hargreaves?

3. In what circumstances did Mr Hargreaves leave his employment with the Council?

4. Is there any evidence to support the assertion that either;

(a) membership of the Wentworth Falls Golf Club; or

(b) a relationship with Mr Stuart Liddell,

assists a candidate's prospects of employment by the Council or favourably affects a candidate's terms of employment, including but not limited to their remuneration?


Melinda Kelly

From: Trevor Cork
Sent: Wednesday, 15 November 2017 5:42 PM
To: 'Robert Greenwood'
Cc: 'jcooper@bmcc.nsw.gov.au'; 'tcork@mcpheelshaw.com.au'
Subject: Confidential and Privileged (MPK 143988)
Attachments: ltr to R Greenwood.pdf; Draft letter to ICAC (Asbestos).docx; Draft letter to Tim Hurst (Staff Recruitment).docx; Draft letter to Tim Hurst (Asbestos).docx

Dear Robert,

Our fourth letter of today's date is **attached**.

Kind regards,
 Trevor.

<p>SOLICITORS</p> <p>McPHEE KELSHAW</p> <p>CONVEYANCERS</p>		<p>Accredited Specialists Available in:-</p> <p>• Property Law • Family Law • Business Law • Local Government & Planning Law</p> <p>McPHEE KELSHAW PTY LTD TRADING AS McPHEE KELSHAW THE OLD BAKERY ARCADE, 170 MACQUARIE ROAD, SPRINGWOOD TELEPHONE (02) 4751 1055 • FAX (02) 4751 5668 • PO BOX 4, SPRINGWOOD NSW 2777 DX. 26729 SPRINGWOOD • EMAIL: info@mcpheelshaw.com.au • WEBSITE: www.mcpheelshaw.com.au</p>
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McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road Springwood NSW 2777
 Telephone +61 2 4751 1055
 FAX +61 2 4751 5668
 E-mail : ramonap@mcpheelshaw.com.au

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Our Ref: TC:RP:143988

Your Ref:

15 November 2017

Mr Robert Greenwood
General Manager
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

Dear Mr Greenwood,

PRINCIPALS

PAUL MCPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)

TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)

STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip. Law SAG

CRAIG COCKBURN B.Com., LL.B.

ANN SCHRALE B.A., LL.B. Acc. Spec. (Family Law)

AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hons)

CONFIDENTIAL AND PRIVILEGED

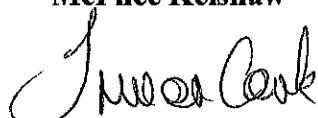
Recent Allegations Against the Council – Investigations (1) Asbestos Management and (2) Staff Appointments

1. We refer to our first, second and third letters of today's date, all relating to the investigations that were authorised by the Council in confidential session at the Ordinary Council meeting last night.
2. In response to those letters the Council has accepted our recommendations that the following investigators be engaged by our firm on behalf of the Council:
 - (1) Mr Michael Tooma of Clyde & Co solicitors, assisted by Ms Lucy Bochenek, in relation to asbestos management and asbestos related issues.
 - (2) Ms Scarlet Reid of McCullough Robertson solicitors, assisted by Mr Nathan Roberts, in relation to staff recruitment and appointment issues.
3. In response to the Council's instructions we have notified each of Clyde & Co (through Ms Bochenek) and McCullough Robertson (through Ms Reid) of our instructions, and confirmed that they are engaged by us on behalf of the Council to carry out the nominated investigation. We will now formalise those instructions. In doing so, we will arrange for both investigators to provide estimates of their costs of conducting their respective investigation.
4. In the meantime, we **attach** drafts of each of the following letters that the Council could, if considered appropriate, forward to the nominated authority:

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- (a) OLG (Mr Tim Hurst) – asbestos;
- (b) OLG (Mr Tim Hurst) – staff recruitment and appointment; and
- (c) ICAC (Hon. Peter Hall QC) – staff recruitment and appointments.

Yours faithfully
McPhee Kelshaw



Trevor Cork

[LETTER TO ICAC BE PRINTED ON THE LETTERHEAD OF BMCC]

15 November 2017

Hon. Peter Hall QC
Senior Commissioner
Independent Commission Against Corruption
GPO Box 500
Sydney NSW 2001

Dear Mr Hall

CONFIDENTIAL

**Blue Mountains City Council – Allegations in Relation to Staff Recruitment Issues –
Independent Investigation**

I refer to [the telephone conversation between a representative of ICAC and myself] on Friday 10 November 2017.

On behalf of the Council I now confirm that at the Ordinary Council meeting held on 14 November 2017 the Council resolved to engage Mr Trevor Cork of McPhee Kelshaw solicitors, one of the Council's panel solicitors, to engage Ms Scarlet Reid of McCullough Robertson, assisted by Mr Nathan Roberts, to investigate the allegations identified in a Confidential Mayoral Minute that was considered by the Councillors, relating to staff recruitment and appointment issues.

Attached is a copy of a letter dated 15 November 2017 forwarded to the Council by McPhee Kelshaw, confirming Ms Reid's engagement and attaching a copy of the terms of reference of the proposed investigation. The letter provides other information concerning the investigation.

The Council is now working with McPhee Kelshaw to prepare the investigator's detailed instructions. Those instructions will include background information and relevant documents.

The investigator is authorised to request access to any of the Council's documents and records that are required for the purpose of the investigation. The investigator may also nominate Council officers for interview. In that event, the Council will give appropriate instructions to

the Council staff concerned to assist investigator and to participate in interviews. The opportunity to be accompanied by a Union representative or support person will also be confirmed.

The Council will keep ICAC informed of the progress of the investigation. McPhee Kelshaw are instructed to provide further advice to the Council concerning the provision of instructions and documents to the investigator, in the week commencing 27 November 2017. The Council will write to ICAC again after that correspondence is received.

In the meantime, if ICAC requires any further information concerning the investigation, or concerning the allegations that have led to the investigation, please contact the Council's Executive Officer Ms Jasmine Cooper or Ms Rosemary Dillon, who will become the Acting General Manager of the Council following my retirement on Friday 17 November 2017.

Yours faithfully

Robert Greenwood
General Manager

[LETTER TO BE PRINTED ON THE LETTERHEAD OF BMCC]

15 November 2017

Mr Tim Hurst
Acting Chief Executive
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Dear Mr Hurst,

CONFIDENTIAL

**Blue Mountains City Council – Allegations in Relation to Staff Recruitment Issues–
Independent Investigation**

I refer to [the telephone conversation between a representative of your office and myself] on Friday 10 November 2017.

On behalf of the Council I now confirm that at the Ordinary Council meeting held on 14 November 2017 the Council resolved to engage Mr Trevor Cork of McPhee Kelshaw solicitors, one of the Council's panel solicitors, to engage Ms Scarlet Reid of McCullough Robertson, assisted by Mr Nathan Roberts, to investigate the allegations identified in a Confidential Mayoral Minute that was considered by the Councillors, relating to staff recruitment and appointment issues

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opportunity to be accompanied by a Union representative or support person will also be confirmed.

The Council will keep your Office informed of the progress of the investigation. McPhee Kelshaw are instructed to provide further advice to the Council concerning the provision of instructions and documents to the investigator, in the week commencing 27 November 2017. The Council will write to your Office again after that correspondence is received.

In the meantime, if your Office requires any further information concerning the investigation, or concerning the allegations that have led to the investigation, please contact the Council's Executive Officer Ms Jasmine Cooper or Ms Rosemary Dillon, who will become the Acting General Manager of the Council following my retirement on Friday 17 November 2017.

Yours faithfully

Robert Greenwood
General Manager

[LETTER TO BE PRINTED ON THE LETTERHEAD OF BMCC]

15 November 2017

Mr Tim Hurst
Acting Chief Executive
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Dear Mr Hurst,

CONFIDENTIAL

Blue Mountains City Council – Allegations in Relation to Management of Asbestos and Asbestos Risks – Independent Investigation

I refer to [the telephone conversation between a representative of your office and myself] on Friday 10 November 2017.

On behalf of the Council I now confirm that at the Ordinary Council meeting held on 14 November 2017 the Council resolved to engage Mr Trevor Cork of McPhee Kelshaw, one of the Council's panel solicitors, to engage Mr Michel Tooma of Clyde & Co, assisted by Ms Lucy Bochenek, to investigate the allegations in relation to asbestos management and asbestos risks that were identified in a Confidential Mayoral Minute that was considered by the Councillors.

Attached is a copy of a letter dated 15 November 2017 forwarded to the Council by McPhee Kelshaw, confirming Mr Tooma's engagement and attaching a copy of the terms of reference of the proposed investigation. The letter provides other information concerning the investigation.

The Council is now working with McPhee Kelshaw to prepare the investigator's detailed instructions. Those instructions will include background information and relevant documents.

The investigator is authorised to request access to any of the Council's documents and records that are required for the purpose of the investigation. The investigator may also nominate Council officers for interview. In that event, the Council will give appropriate instructions to the Council officers concerned to assist the investigator and to participate in interviews. The

opportunity to be accompanied by a Union representative or support person will also be confirmed.

The Council will keep your Office informed of the progress of the investigation. McPhee Kelshaw are instructed to provide further advice to the Council concerning the provision of instructions and documents to the investigator, in the week commencing 27 November 2017. The Council will write to your Office again after that correspondence is received.

In the meantime, if your Office requires any further information concerning the investigation, or concerning the allegations that have led to the investigation, please contact the Council's Executive Officer Ms Jasmine Cooper or Ms Rosemary Dillon, who will become the Acting General Manager of the Council following my retirement on Friday 17 November 2017.

Yours faithfully

Robert Greenwood
General Manager


Ramona Priestly

From: Trevor Cork
Sent: Thursday, 16 November 2017 2:03 PM
To: 'michael.tooma@clydeco.com'
Cc: Ramona Priestly
Subject: Confidential and Privileged: Blue Mountains City Council - Asbestos Investigation (MPK 143988)
Attachments: Resolutions Asbestos.pdf; TOR.pdf; announcement.pdf; ltr to Michael Tooma.pdf; Engagement letter.pdf

Dear Mr Tooma,

Our letter of today's date is **attached**.

Kind regards,
 Trevor Cork.

<p>SOLICITORS McPHEE KELSHAW CONVEYANCERS</p>		<p>Accredited Specialists Available In:- • Property Law • Family Law • Business Law • Local Government & Planning Law</p> <p>McPHEE KELSHAW PTY LTD TRADING AS McPHEE KELSHAW THE OLD BAKERY ARCADE, 170 MACQUARIE ROAD, SPRINGWOOD TELEPHONE (02) 4751 1055 • FAX (02) 4751 5668 • PO BOX 4, SPRINGWOOD NSW 2777 DX 26720 SPRINGWOOD • EMAIL: info@mcpheekelshaw.com.au • WEBSITE: www.mcpheekelshaw.com.au</p>
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McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road Springwood NSW 2777
 Telephone +61 2 4751 1055
 FAX +61 2 4751 5668
 E-mail : ramonap@mcpheekelshaw.com.au

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Our Ref: TC:JB:143988

Your Ref:

16 November 2017

Mr Michael Tooma
 Clyde & Co
 Level 15, 333 George St
 SYDNEY NSW 2000

SOLICITORS
**McPHEE
 KELSHAW**
 CONVEYANCERS

PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
 TREVOR CORK B.A., LL.M., Acc. Spec. (Disputes, Local Govt. & Planning Law)
 STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law B.A.
 ORAH COCKBURN B.Com., LL.B.
 ANN SCHIRALE B.A., LL.B. Acc. Spec. (Family Law)
 AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

SOLICITORS

Also by email: michael.tooma@clydeco.com

Dear Mr Tooma,

CONFIDENTIAL AND PRIVILEGED

Blue Mountains City Council – Asbestos Investigation

1. We refer to the recent telephone conversation between yourself and Mr Cork of our firm and to the telephone conversations yesterday between your solicitor assistant Ms Lucy Bochenek and Mr Cork.
2. We are instructed by Blue Mountains City Council to engage you to investigate a number of allegations that have been made against the Council in relation to asbestos management and asbestos related issues.
3. You are engaged by our firm in accordance with resolutions that were passed by the Council in confidential session at the Ordinary meeting held on Tuesday 14 November 2017. The engagement is conditional upon the investigation being undertaken by you or under your supervision, with Ms Bochenek's assistance.
4. The United Services Union has been informed of your appointment. **Attached** is a copy of an announcement that has been made by the USU Blue Mountains to its members. You will note that your appointment as investigator has been well received by the USU on behalf of its members.
5. **Attached** for your consideration is a copy of the terms of reference for the investigation. As discussed with Ms Bochenek, we will now work with the Council to prepare a comprehensive brief of documents relevant to the investigation. Realistically, that brief will not be available to you before next week.

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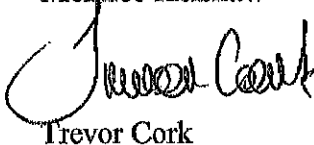
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 PO BOX 4, SPRINGWOOD NSW 2777 • DX 26729 SPRINGWOOD • EMAIL: info@mcphreekelshaw.com.au • ABN: 76 117 882 194



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6. We **attach** to this letter a copy of your letter of engagement dated 9 November 2017, signed by Mr Cork. The hard copy of this letter, with the signed engagement letter, will be forwarded to you by express post today.
7. As also discussed with Ms Bochenek, the Council seeks an estimate of your fees and expenses for the conduct of the investigation. However, the Council understands that it is not yet possible to provide even an indicative estimate. That step must wait for at least the initial brief and supporting documents to be made available to you.
8. We confirm that the responsible Council staff are instructed to provide all possible assistance to you in the conduct of the investigation. Any records or documents that you identify will be made available for review. The Council will make every effort to arrange for any employees, who are identified by you for to interview, to participate in such interviews.
9. In relation to the interview of Council staff, the Council accepts that some employees may wish to be accompanied by a Union or representative or support person during the interview. Other employees may not wish to participate in an interview. These matters will be considered in consultation with you in due course.
10. We have **attached** to this letter, the text of the resolutions passed by the Council on Tuesday night in relation to the investigation that you are to conduct. You will note resolution 2.
11. The Council wishes to ensure that all relevant issues are properly investigated and that the Council receives a comprehensive report and appropriate legal advice, based on your findings and any recommendations that you make to our firm on behalf of the Council.
12. Resolution 2 allows matters additional to those nominated in the terms of reference to be investigated, should a recommendation to that effect be made by yourself and by this firm. We envisage that any such matters would be drawn to our attention as quickly as possible and that we would consider the relevant issues together and determine the recommendation, if any, that would be made to the Council.
13. Thank you for accepting our instructions. We look forward to working with you and with Ms Bochenek. Please note that in this matter Mr Cork of our firm will be assisted by Ms Deanne Cole, graduate lawyer, as discussed with Ms Bochenek.

Yours faithfully
McPhee Kelshaw



Trevor Cork

MM3	4	Independent Review into Asbestos Allegations	
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1. *That the Council notes over recent days very serious allegations have been made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council;*
2. *That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations **and any further related matters that the Council solicitor and independent investigator deem merit further investigation;***
3. *That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;*
4. *That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;*
5. *That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;*
6. *That the Council notes that the Office of Local Government (OLG) has been made aware of the allegations made in the media; and*
7. *That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government, notifying him of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.*

TERMS OF REFERENCE

FIRST INVESTIGATION

WORK, HEALTH & SAFETY / ASBESTOS ISSUES

Lawson Car Park and Lawson Depot

1. What information was available to the Council concerning the possible presence of asbestos within the proposed Lawson car park, prior to the commencement of work on the car park?
2. To whom was that information made available?
3. What assessment of the site at 283 Great Western Highway, Lawson was undertaken by or on behalf of the Council before work commenced on the construction of the car park commenced?
4. When in the course of this work did any Council employees or subcontractors engaged in the work become aware of the presence of asbestos within the construction site? When and by what means (if at all) was this information reported to the team leaders or managers supervising or responsible for the car park work?
5. What action was taken by the Council when asbestos was discovered within the construction site?
6. When and in what circumstances did the Council decide to move the asbestos contaminated material from the construction site to the depot at Park Street, Lawson?
7. Where was the asbestos contaminated material placed within the Park Street depot?
8. What action, if any, was taken to:
 - (a) segregate the asbestos contaminated material from other material within the Park Street depot; or
 - (b) to cover the asbestos contaminated material within the Park Street depot?
9. Was access to the Park Street depot restricted after the asbestos contaminated material was deposited at that depot?
10. If so, how was access to the Park Street depot restricted?
11. Which Council staff were authorised to allow access to the Park Street depot after the asbestos contaminated material was taken to that depot?
12. Was any asbestos contaminated material (originating in the Lawson car park) removed from the Park Street depot? If so, when was that material removed and to which places was the material taken?
13. Has the material referred to in 12. been tested and, if so, with what results?
14. Were any Council employees directed to work within the Park Street depot either:

MINUTE BY MAYOR**Item MM3, Ordinary Meeting, 14.11.17**

- (a) to remove asbestos contaminated material from that depot; or
- (b) to carry out training or other work using the asbestos contaminated material?

15. Have members of the public been able to gain access to the Park Street depot, and to the asbestos contaminated material within the depot, since that material was stored at the depot?
16. Is Our Lady of the Nativity Primary School located in such proximity to the Lawson depot that children or staff at the school are at risk because of the presence of asbestos contaminated material held at the depot?
17. When did the responsible members of the Council's Executive Leadership Team become aware that there was a stockpile of asbestos contaminated material at Lawson depot?
18. What action was taken by the Council to manage the asbestos contaminated material at the Lawson Depot once its presence was known to the responsible members of the Executive Leadership Team?

Blackheath Site

1. When did the Council become aware that fragments of asbestos contaminated material were present within the boundaries of the former Blackheath Tip (Blackheath site)?
2. Did the Council direct either Council staff or independent tradespeople to work on the Blackheath site, without disclosing that bonded asbestos fragments may be present within the areas in which work was to be undertaken or without those workers being aware of this possibility? If so, when and in what circumstances?
3. What steps did the Council take after becoming aware of the presence within the site of fragments of asbestos contaminated material?
4. Have asbestos contaminated materials been escaping or "leaking" from the Blackheath site "for years" with the full knowledge of the Council?
5. Did the Council "turn" or promote the Blackheath site to members of the public as a recreation area? When did the Council take this action?

Solitary Restaurant Building

1. Was the Council aware in 2013 that the Solitary Restaurant building contained asbestos?
2. In or about 2013 (or at any time since 2013) were Council staff directed to carry out repair or maintenance work at the Solitary Restaurant? If so, what was the nature of the work?

3. Were any Council employees, who were directed to carry out work within Solitary Restaurant, informed that the building contained asbestos? Did the work involve any part of the building or any materials containing asbestos?

Threats of Dismissal

1. Were any Council staff threatened with dismissal or other disciplinary action if they reported the Council's alleged failure to manage asbestos (or any action by the Council in breach of the law)?
2. If so, when and by whom on behalf of the Council and to which employees were such threats made?
3. Were any employees (who considered that they had been threatened with dismissal if they reported asbestos management issues) interviewed by the then General Manager and assured that their employment was not at risk? If so, when did that interview or those interviews take place and who was present?

SafeWork NSW

1. When did SafeWork NSW first communicate with the Council in relation to asbestos management and asbestos risks, either in relation to the Springwood Works Depot (Springwood site) or in relation to any other matter?
2. Was SafeWork NSW satisfied with the way in which the Council managed asbestos risks at the Springwood depot, at that time?
3. Did the Council appropriately work in consultation with SafeWork in its management of sites at which asbestos was known or suspected to be present?
4. Did the Council appropriately communicate with SafeWork in relation to the preparation, completion and adoption of the Council's Asbestos Management Plan?

Asbestos Management Plan

1. When did the Council begin the preparation of its Asbestos Management Plan?
2. Was work on the Asbestos Management Plan undertaken only after communications were received from the United Services Union (USU) in relation to either the Council's Asbestos Register or the Council's Asbestos Management Plan? If so, when did the USU make contact with the Council in relation to these issues?
3. When and in what circumstances did the Council complete the preparation of its Asbestos Management Plan?

Other Documents

1. What other procedures, plans or practices have been adopted by the Council in the period from 1 May 2017 to 14 November 2017 to date to manage risks associated with working with asbestos?

MINUTE BY MAYOR**Item MM13, Ordinary Meeting, 14.11.17**

2. How are such processes, procedures or practices communicated to Council staff who may work on buildings or at sites at which asbestos is present?
3. Is this communication process adequate to ensure that relevant information is provided to staff working on such buildings or sites?

Work Health and Safety

1. Is there a WHS Committee at the Council?
2. If so, does a review of that Committee's meeting Minutes show that possible exposure to asbestos was raised as an issue for Council employees?
3. What actions have been taken to address the issues in relation to the risks of exposure to asbestos that have been raised in the Committee's Minutes (if applicable)?

USU@BLUE MOUNTAINS

Blue Mountains Council Update • 15 November 2017

! ASBESTOS UPDATE

INVESTIGATION UNDERWAY

The USU on behalf of twelve members recently lodged grievances with Council regarding allegations relating to the management of asbestos.

At the Council meeting on Tuesday 14 November a Council resolution was passed which included the following:

'That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations and any further related matters that the Council solicitor and independent investigator deem merit further investigation.'

The USU has been given assurances that the investigation will be independent and transparent.

Neither the Solicitor guiding the investigation nor the investigator are employees of the Council. The investigator is a well-regarded health and safety lawyer and the USU is pleased with his appointment.

While the USU will continue to monitor this situation closely, we consider this to be a positive step in the process of getting to the bottom of who knew what and when.



Join today.  www.usu.org.au/join

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CLYDE & CO

Clyde & Co
Level 15
333 George Street
Sydney NSW 2000
Australia
Telephone: +61 (0) 2 9210 4400
Facsimile: +61 (0) 2 9210 4599
www.clydeco.com

PRIVATE & CONFIDENTIAL

Mr Trevor Cork
McPhee Kelshaw Solicitors and Conveyancers
170 Macquarie Road
Springwood NSW 2777

By Email: tcork@mcpheekelshaw.com.au

Date:

9 November 2017

Dear Trevor,

Engagement Letter: Blue Mountains City Council – Asbestos Investigation

Thank you for your instructions.

I set out in this letter and the annexed Terms of Business the basis on which Clyde & Co would be pleased to act for you. Please read them through carefully.

1. Scope of work

We have been instructed by your firm, who are acting on behalf Blue Mountains City Council, to conduct an independent investigation into recent asbestos related incidents involving the Blue Mountains City Council.

2. Our client

We will be acting for McPhee Kelshaw Solicitors and Conveyancers. We do not act for anyone other than our named clients, and we do not accept duties to anyone else in respect of our work. In particular, where our named client is a company we do not act for or accept duties to any other group company, and we do not act for or owe duties to any officer, director or employee of an entity or business unless he or she is our named client. Solicitors do, however, owe duties to the Court and other authorities which may on occasion override their duties to their clients.

We understand that our principal point of contact will be Trevor Cork.

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In Australia Clyde & Co practises as an unincorporated legal practice Clyde & Co Australia trading as Clyde & Co, ABN 72 157 316 912. Clyde & Co is regulated by the Law Society of New South Wales and is now in Sydney, Perth, Melbourne and Brisbane.

3

Our team

I am a Partner in the Regulatory & Investigations Department and will be responsible for the delivery of the firm's work for you. I will be assisted on a day to day basis by Lucy Bochenek, Special Counsel.

It may be necessary to involve other lawyers in order to ensure that the work is adequately resourced. We will always try to discuss this with you in advance, but occasionally it may be necessary to introduce other lawyers without consulting you with a view to ensuring that very urgent deadlines are met or absences by team members are adequately covered. We may also assign tasks to more junior colleagues where it is cost-effective to do so.

4

Our charges

Our fees will be based on the amount of work carried out. We charge principally (but not exclusively) according to the time we spend on your matter and by reference to the hourly rates of those involved. Our rates will be proportionately charged in six minute increments. The hourly rates currently applicable are:

Name	Status and department	Rate
Michael Tooma	Partner	\$700.00 per hour
Lucy Bochenek	Special Counsel	\$580.00 per hour

We may incur disbursements (being money which we pay or are liable to pay to others on your behalf). Disbursements may include search fees, court filing fees, expert fees, witness expenses, reasonable local travel expenses, transcript expenses and barrister's expenses. If it is necessary to incur substantial disbursements we may ask you to pay them to us in advance. Where you instruct us to brief a barrister or other expert and they provide a disclosure and costs agreement we will provide this to you.

GST will also be charged to you where applicable on fees, disbursements and expenses.

Clause 6 of our Terms of Business contains further information about our charges.

A full list of Clyde & Co hourly rates is set out in Schedule 1.

We estimate the likely amount of our total legal costs will be \$25,000.00 (excluding GST)

This is only an estimate and is not binding on us. It is not a quote. The actual fees and disbursements will vary depending on the circumstances, and the total costs may exceed the estimate. While the estimate is based on present information and instructions and our current understanding from you as to what services are required, our costs may exceed the estimate if further information becomes available or circumstances change which affect these matters. In this event we will provide you with a revised estimate as soon as practicable. Where there is a significant change in your matter then as far as possible we will advise the impact of the change on the legal costs.

Some of the variables which may affect and change the costs estimate include:

- (a) the number and duration of telephone calls or other communications;
- (b) your prompt and efficient response to requests for information or instructions;
- (c) whether your instructions are varied;

- (d) whether documents have to be revised in light of varied instructions;
- (e) the lawyer or other persons with whom we deal and the level of co-operation of the lawyer's clients and other persons involved;
- (f) changes in the law; and
- (g) the complexity or uncertainty concerning legal issues affecting your matter.

We anticipate that the legal costs will include the following: postage, reasonable local travel expenses and government fees, but other fees and disbursements may be incurred.

I will be the responsible partner in relation to your bills. Please contact me to discuss any queries or other issues you may have in relation to billing or legal costs. Schedule 2 to this letter contains detailed information regarding avenues open to you in the event of disputed legal costs and the time limits that apply. Please note that New South Wales law applies to legal costs in this matter.

5

Billing

We will deliver interim bills on a monthly basis unless activity on the case justifies billing at more or less frequent intervals.

We ask that you pay bills within one month of receipt. We therefore ask that you raise any questions about bills with us promptly. If payment is not made when due, we reserve the right to suspend activity on the file and to charge interest on the balance outstanding from the due date.

Clause 9 of our Terms of Business contains further information about billing.

6

Payment on account of charges

We may ask you to make payments on account of future charges (including disbursements).

7

Limitation of Liability

Clause 16 of our Terms of Business contains important restrictions on our liability to you, which we ask you to review carefully. Your contract will be with Clyde & Co, which will have sole responsibility for all work carried out.

8

Client Identity procedures

In accordance with anti-money laundering legislation, we are required to obtain specific information and evidence to verify your identity. If adequate information and evidence is not forthcoming we may be unable to act for you. Clause 12 of our Terms of Business contains more information about our obligations and procedures in this respect.

9

Conflicts of Interest

Clyde & Co adheres to the conflict and confidentiality rules which apply in New South Wales. To the extent that there are matters which are not covered by the local ethical rules and guidelines, Clyde & Co will adhere to those of the Solicitors Regulation Authority of England and Wales. Clause 13 of our Terms of Business contains important information regarding our approach to managing conflicts and confidentiality; which we ask you to review carefully.

10

Our service

If you have any queries or concerns, please do not hesitate to contact me. If this does not resolve the matter to your satisfaction, or you would prefer to speak to someone else, please feel free to refer the matter to the Firm's Client Care Partner, our Managing Partner, Dean Carrigan on +61 (02) 9210 4400. Further details of our procedures in this respect are set out in our Terms of Business.

11

Terms of Business

The Terms of Business accompanying this letter contain further information about the basis on which Clyde & Co will act for you. In the event of a conflict between the Terms of Business and what is set out in this letter, this letter will prevail. The Terms of Business, as updated from time to time, will apply to any future matter on which you instruct us.

If you have not read the Terms of Business and Disclosure in Schedule 2 to this letter, we encourage you to take the opportunity to review these now as they set out further information for you. In particular we draw your attention to clause 16.1 in the Terms of Business covering our limitation of liability.

This letter and the Terms of Business and the Schedule of Rates constitute an offer to enter into a costs agreement as defined in the Terms of Business. You may accept the offer in writing by signing and returning a copy of this letter to me, but if you do not, your continued instructions to us will constitute your acceptance of the offer.

We would be happy to discuss the contents of this letter and the Terms of Business with you to ensure that you understand and consent to the proposed course of conduct of your matter and the proposed costs.

Please let us know if you would like to clarify or further discuss any of these matters with us.

We look forward to working with you.

Yours sincerely



Michael Tooma
Partner
Clyde & Co

I confirm acceptance of the terms in this letter and the accompanying Terms of Business (August 2016 Edition).

Signed

James Cook

Date

16.11.12

Schedule 1 – Clyde & Co hourly rates as at 1 July 2017 (rates remain unchanged from 2016 rates)

Position	Hourly Rate (excluding GST)
Senior Partner	\$700.00
Partner	\$640.00
Special Counsel	\$580.00
Senior Associate 5+ to 8+	\$565.00
Senior Associate +4	\$540.00
Senior Associate +3	\$510.00
Senior Associate +2	\$485.00
Senior Associate +1	\$465.00
Associate +4	\$425.00
Associate +3	\$390.00
Associate +2	\$350.00
Associate +1	\$350.00
Graduate	\$350.00
Paralegal	\$220.00

Schedule 2 – Our disclosure obligations under the Legal Profession Uniform Law (NSW)

We are required under the Legal Profession Uniform Law (NSW) to disclose the following to you:

1 Basis for legal costs

- 1.1 You acknowledge that the fees chargeable under the terms of this Agreement will in most cases be more than would be chargeable in the absence of this Agreement. The reason for that is that in the absence of this Agreement a court scale applies to the legal services described in the engagement letter. The court scale may limit the number of hours that can be charged by the law practice for some services, and in some cases, may provide that certain work may not be chargeable at all. Further, a court scale applies different hourly rates for different services. Under this Agreement the amount that will be charged to you will in most cases be more than the scale because the law practice may charge a flat hourly rate for all work undertaken whether it is complex or not.
- 1.2 If our professional fees are likely to be more than \$3,000 (before GST and disbursements are added) we will provide you with a full disclosure of costs in writing. We will inform you if anything happens that significantly changes our estimate(s).

2 Bills and interest

- 2.1 Each bill must be paid within one month of receipt. Thereafter, we are entitled to charge interest on any outstanding amount of the bill at a rate equal to the Cash Rate Target percentage rate specified by the Reserve Bank of Australia, at the date the bill is issued, increased by 2 percentage points, but not exceeding the maximum rate that may otherwise be prescribed, or be applicable, under section 195 of the Uniform Law and rule 76 of the Legal Profession Uniform General Rules 2015 (General Rules). We will not charge interest on a bill given to you more than 6 months after completion of your matter, except in limited circumstances as allowed under section 195 of the Uniform Law.

3 Your rights

3.1 You are entitled to:

- (a) negotiate a costs agreement with us (please refer to the engagement letter);
- (b) negotiate the method of billing (eg task based or time based);
- (c) request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
- (d) be notified of any substantial change to the matters disclosed in this document or the engagement letter as soon as reasonably practicable after we are aware of the change;
- (e) accept or reject any offer we make for an interstate costs law to apply to your matter;
- (f) notify us that you require an interstate costs law to apply to your matter; and
- (g) receive, on making a reasonable request:
 - (i) A written report of the progress of your matter; and
 - (ii) A written report of the costs incurred to date or since the last bill.

3.2 If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us only if:

- (a) when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill, and
- (b) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.

3.3 Please note that we may charge a reasonable amount for a written report as to the progress of your matter. There is no charge for a report in respect of costs or for the preparation of an itemised bill.

3.4 Nothing in these terms affects your rights under the Australian Consumer Law.

4 Action available if costs disputed

4.1 If you have any concerns about our legal costs, please do not hesitate to contact *Michael Toome* on 9210 4578.

4.2 We hope that we would be able to resolve any dispute over our costs by agreement. However, if this is not possible, the following steps are open to you, you may lodge a complaint concerning a consumer matter with the office of the Legal Services Commissioner (NSW Commissioner) or such other designated local regulatory authority as may be designated from time to time under the Uniform Law. Consumer matters include a costs dispute under s269 of the Uniform Law, but relief from the NSW Commissioner in relation to a consumer matter is not available to commercial or government clients as defined in the Uniform Law.

4.3 There are time and cost limits for disputing your legal bill.

4.4 **Time limits:** In most cases, you have 60 days from the date of the bill to dispute those costs. If you have requested an itemised bill, then you have 30 days after the date of that bill to dispute those costs. The NSW Commissioner may accept a costs dispute up to four months outside these timeframes, if you can prove there was a good reason for the delay (you need to include a statement giving your reasons for delay with your complaint form or letter), and we have not sued you for the costs.

4.5 **Cost limits:** The NSW Commissioner can deal with complaints about legal (including any barrister's costs) of up to \$100,000 in respect of any one matter (indexed) or, where the total amount is greater than \$100,000 in respect of any one matter, but the amount in dispute is limited to under \$10,000 (indexed) including disbursements, but excluding interest and GST. The Commissioner will deal with the costs dispute in the same manner as a consumer matter.

4.6 The NSW Commissioner may order the parties to mediate pursuant to section 288 of the Uniform Law. At any stage you may wholly or partly withdraw your complaint, in which case no further action will be taken by the NSW Commissioner to the extent the complaint is withdrawn. If mediation fails in relation to a consumer matter, the NSW Commissioner may investigate the complaint further and proceed to a determination of the matter.

4.7 If the costs dispute is not resolved, the NSW Commissioner may make a binding determination as to the amount of legal costs payable by having regard to what is fair and

reasonable in the circumstances where the amount in dispute is less than \$10,000 (Indexed).

4.8 The NSW Commissioner may close the matter without any determination being made if, for example, the facts in the matter should be determined by a Court or Tribunal, or if a party refuses to participate in good faith in the dispute resolution process.

4.9 If costs dispute is not resolved and the total amount of legal costs still in dispute is equal to or more than \$10,000 (Indexed) OR the total amount of legal costs still in dispute is less than \$10,000 (Indexed) and the NSW Commissioner notified the parties in writing that it is unable to resolve the dispute, the NSW Commissioner may give the parties the right to refer the matter to the Civil and Administrative Tribunal of New South Wales (NCAT) for determination (where amount in dispute is under \$25,000) or to the Costs Court of the Supreme Court of New South Wales for assessment (where the amount in dispute is greater than \$25,000). Legal costs may not be the subject of a costs assessment except where the NSW Commissioner notifies the parties of their entitlement to apply for a costs assessment or the Commissioner arranges for a costs assessment under s284(1) of the Uniform Law.

4.10 For further information, please refer to the website of the Office of the Legal Services Commissioner at www.olsc.nsw.gov.au under the heading "Complaints".

5 Law and jurisdiction

5.1 The contract between you and us in respect of our engagement, and any non-contractual obligations arising out of or in connection with such engagement, will be governed by and construed in accordance with the law of New South Wales.

5.2 In circumstances where our legal services will be provided wholly or primarily in another jurisdiction or your matter has a substantial connection with another jurisdiction, you may:

- (a) enter into an agreement with us under the corresponding law of the other jurisdiction for the corresponding provisions of the corresponding law to apply; or
- (b) notify us within the time allowed under the corresponding law that you require the provisions of the corresponding law to apply to your matter.

5.3 All legal costs are subject to the law of New South Wales.

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

Definitions and Interpretation

In these Terms of Business and any associated engagement letter:

1.1 unless the context otherwise requires:

references to **you** and **your** are to the client entity instructing us and named in the engagement letter;

references to **we**, **us**, **our**, **Clyde & Co**, **Clyde & Co Australia**, **Firm** and the like are to the Australian unincorporated legal practice of Clyde & Co, as described in 2.1;

references to **Partner** or **Partners** are to a partner or partners in Clyde & Co;

Client Care Partner means Clyde & Co's client care partner as identified in the engagement letter or as otherwise notified to you from time to time;

References to **Clyde & Co LLP** are to Clyde & Co LLP, a limited liability partnership registered in England and Wales with registration number OC326539 whose registered office is at The St. Botolph Building, 138 Houndsditch, London, EC3A 7AR;

Clyde & Co Entity means Clyde & Co LLP or any entity (including any partnership, company, limited liability partnership or other body corporate or unincorporate) established or practising in any jurisdiction and authorised by Clyde & Co LLP to include in its name 'Clyde & Co' or 'Beaumont & Son' or to describe itself as 'in association with' Clyde & Co LLP;

Clyde & Co Person means any partner, member, officer, employee or consultant of Clyde & Co or of any other Clyde & Co Entity;

Services means the provision of legal services by an Australian legal practitioner and no other service unless you are otherwise informed in writing;

Supervising Partner means the Partner responsible for the Clyde & Co team working with you on our engagement;

Uniform Law has the meaning given in section 4 of the Legal Profession Uniform Law Application Act 2014 (NSW);

1.2 the term **partner**, **partners**, **Partner** or **Partners** is used to refer to a partner of Clyde & Co, or (where applicable) a person with equivalent status or an employee or consultant with equivalent standing and qualifications in another Clyde & Co Entity;

1.3 words importing the singular include the plural and vice versa, words importing a gender include all genders and words importing persons include

bodies corporate, unincorporated associations and partnerships;

1.4 any reference to persons, includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, governmental or state agencies, foundations and trusts (in each case whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);

1.5 a reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute;

1.6 any reference to a statute, statutory provision, subordinate legislation, code or guideline (**legislation**) is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation; and

1.7 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

2 Clyde & Co

2.1 In Australia Clyde & Co practises as an unincorporated legal practice Clyde & Co Australia trading as Clyde & Co, ABN 72 157 316 912, which has its main place of business at Level 30, 420 George Street, Sydney NSW 2000, Australia (Tel. +61 2 9210 4400, Fax. +61 2 9210 4599) and is regulated by the Law Society of New South Wales.

2.2 A list of the partners of Clyde & Co is open to inspection at its registered office at Level 30, 420 George Street, Sydney, NSW 2000.

3 Terms of Business

3.1 These Terms of Business relate to engagements undertaken by Clyde & Co in New South Wales.

3.2 These Terms of Business, together with any engagement letter and schedule of rates, set out the terms and conditions upon which we agree to be engaged by you, to the exclusion of all other terms that you or we may purport to apply in connection with our engagement (unless otherwise agreed in writing between you and us).

4 Respective responsibilities

4.1 We aim to offer you a friendly and efficient service. We will exercise reasonable skill, care and diligence in carrying out your instructions.

4.2 Our advice will be limited to Australian law and,

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unless otherwise agreed between you and us, we will not supply you with advice on the laws of any other jurisdiction.

- 4.3 We do not represent or owe a duty to any of your parent, companies, subsidiaries, affiliates, officers, directors or employees, each of whom will (unless otherwise agreed by us) be deemed to have separate interests from you with respect to this, and any future, engagement.

- 4.4 Our role is to act as legal adviser; it is not part of our role to advise on commercial, financial or business issues. In particular, we do not advise on the commercial or financial viability or merits of transactions, or the business risks that may be associated with them.

- 4.5 Unless specifically agreed as part of our engagement, we will not advise on tax-related issues.

- 4.6 You agree that during the course of our engagement you will:

- (a) give us clear and prompt instructions and keep us informed of developments in your matter;
- (b) co-operate with us to progress your matter;
- (c) not ask us to work in an improper or unreasonable way, as solicitors we are officers of the Court and as such we owe duties to the Court that are, at all times, paramount to the duties we owe to our clients; and
- (d) safeguard documents which are likely to be required and provide promptly all relevant information and documents, including all information and documents that we request, in connection with your matter.

5 Costs agreement

- 5.1 This document contains information as to your rights and the terms of engagement on which, in addition to those in the accompanying engagement letter, we will provide the legal services described in the engagement letter (the "Work").

- 5.2 When you accept our offer to enter into a costs agreement you will retain us to do the Work on the terms set out in these Terms of Business and the engagement letter which, together, will constitute a costs agreement ("Agreement") for the purposes of Part 4.3 of the Uniform Law, insofar as the Uniform Law applies to you.

- 5.3 The Uniform Law does not apply to the provision of any non-legal services which we may provide.

6 Fees and disbursements

- 6.1 Our fees are primarily calculated on the basis of hourly fee rates, which vary according to the

seniority and experience of those concerned. Details of our current rates have been advised to you separately. However, if you would like confirmation, please do not hesitate to contact us.

- 6.2 Our hourly rates will normally be reviewed annually. Details of any revision of our rates while we are acting for you will be supplied to you. In addition, rates charged in respect of individual lawyers may change as they increase in seniority.

- 6.3 In the case of overseas clients, where our fees are paid subject to any deduction or withholding in respect of tax in any non-Australian jurisdiction, we reserve the right to charge you an additional amount which will, after any deduction or withholding has been made, leave us with the same amount we would have received in the absence of any such deduction or withholding.

- 6.4 We reserve the right to charge you for any losses incurred on foreign currency disbursements as a result of changes in the exchange rates between the date of our rendering our invoice and its date of payment.

- 6.5 Where we act for more than one client in relation to a matter you agree that each client will, unless otherwise agreed by us, be jointly and severally liable for our charges.

7 Goods and Services Tax (GST)

- 7.1 All costs and disbursements disclosed in or payable under or in connection with this Agreement, which are expressed to be inclusive of GST, include the amount of GST payable unless this Agreement does not include GST or GST is not payable on the supply of our services or a disbursement. If an amount does not include GST and the amount is consideration for a taxable supply, the GST payable will be added when the amounts payable for our services and disbursements are calculated and billed in a Tax Invoice.

- 7.2 We will provide you with a Tax Invoice when and as required by the GST Law.

- 7.3 The GST indicated in our Tax Invoice will be payable by you in the same manner and at the same time as the costs and disbursements to which it relates are payable.

- 7.4 The above references to GST; GST Law; Tax Invoice; Consideration and Taxable Supply have the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 and GST Law includes applicable rulings issued by the Commissioner of Taxation.

8 Payments on account

- 8.1 We may ask you for payments on account of fees

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- and/or disbursements in both contentious and non-contentious matters from time to time and it is a condition of our acceptance of your instructions that you agree to make such payments. It should be clearly understood that the total of our fees and disbursements in the matter may amount to more than the payments on account requested from you.
- 8.2 Any money received on your behalf by Clyde & Co will be paid into a Clyde & Co trust account operated by Clyde & Co in New South Wales. This trust account is subject to supervision by the Law Society of New South Wales and is maintained in accordance with section 137 of the Legal Profession Uniform Law (NSW). In all cases, any monies on account will be paid into a non-interest-bearing Clyde & Co trust account until used for disbursements or until delivery to you of a bill. If at any time you would like confirmation of the monies remaining on account, please let us know. If you do not pay promptly any request for money on account, we reserve the right to decline to act further.
- 9 **Bills**
- 9.1 If you wish to set a limit on fees and disbursements to be incurred or on the length of time which may elapse before we render a bill to you, please let us know by writing to the Supervising Partner for your matter.
- 9.2 Unless otherwise agreed in writing, we have the right to render interim bills at monthly intervals or other periodic intervals which we regard as appropriate in the circumstances of any particular case. You consent to receiving a bill sent electronically to you.
- 9.3 Any money received on your behalf will be held in our trust account.
- 9.4 You authorise us to deduct from monies we hold on trust sums we invoice you pursuant to this agreement including disbursements and fees payable to service providers such as expert witnesses. From time to time we may ask you to top up the amount held in trust against costs. If we receive any money on your behalf from any third party you expressly authorise us to deduct from such trust monies received in one matter sufficient to cover bills rendered in respect of any other matter in which we may act on your behalf.
- 9.5 If arrangements are made for a third party to pay any of our fees or disbursements and GST, you remain responsible for the payment of any charges to the extent that the third party does not pay our bill in full. This includes any case in which we have been instructed by your insurers to represent you under a policy of insurance.
- 9.6 We reserve the right to recover additional costs if the total amount of legal costs specified in an itemised bill exceeds the amount previously specified in a lump sum bill for the same matter if:
- (a) we informed you when we gave you the lump sum bill that the amount in the itemised bill might be higher than the lump sum bill; and
 - (b) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.
- 10 **Costs**
- 10.1 Under sections 178 and 187(2) of the Uniform Law, we will be entitled to commence legal proceedings to recover legal costs from you if:
- (a) we have provided you with a bill which complies with the requirements under the Uniform Law and General Rules; and
 - (b) any costs dispute relating to the legal costs has been closed or resolved by the designated local regulatory authority; or
 - (c) 30 days has elapsed after you are given the bill or when you received an itemised bill after making a request for one.
- 11 **Estimates of fees and disbursements**
- 11.1 We are always happy to provide estimates of fees and disbursements upon request, where possible. However, it is important to remember that it may not be possible to predict the exact amount of work which will be required and that the stance adopted by opponents, or other parties to a transaction, can significantly affect matters.
- 11.2 We do not give oral estimates and any estimate given must be in writing and signed by a Partner. Estimates are given only as a guide and should not be regarded as a firm quotation, unless this is agreed in writing.
- 11.3 Estimates are given exclusive of GST.
- 12 **Anti-money laundering and Counter terrorist financing (CTF)**
- 12.1 We are required by anti-money laundering and CTF legislation to verify your identity and we can accept instructions only on the basis that you can properly identify yourself (and any persons whom you represent) to us. We take our obligations seriously to protect both us and our clients and so, if we do not receive sufficient evidence of identity, within a reasonable time of our request, we may have to stop acting for you. In that event, you will be charged for work done up to the time we stop acting. Our verification of identity may include the use of electronic verification services and/or require

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you to provide us with original documents, which we will copy for our records. We may in the course of the matter, need to ask you for additional information and/or evidence to satisfy our continuing obligations under the legislation.

12.2 Under the anti-money laundering and CTF legislation, we may also need to raise enquiries as to the source of client assets and the source of funds to be used with each engagement.

12.3 We reserve the right to decline the receipt of sums of money in cash. In addition, we will not accept funds from any source unless that source is one which has previously been identified to our satisfaction and from which we have agreed to accept funds. If this is not the case, the funds will be dealt with in accordance with applicable law and regulation. In the event that we are unable to accept funds from the source in question, you will remain responsible for the payment of our fees, disbursements and GST and the discharge of any other liabilities which the funds were intended to meet.

13. Confidentiality and conflicts

13.1 The rules of professional conduct under which we practise impose requirements upon us regarding conflict between the duties we owe to different clients in relation to the same or related matters and regarding preservation of our clients' confidences.

13.2 The legal knowledge and experience of Clyde & Co Entities derives from their ability to act for many clients at any one time, and we wish to retain this ability for the benefit of all our clients. It is therefore likely that some of our other clients will operate in the same industry or sector as you and that some may have, or develop, commercial interests adverse to you.

13.3 We adhere to the conflict and confidentiality rules which apply in New South Wales. To the extent that there are matters which are not covered by the local ethical rules and guidelines, we will adhere to those of the Solicitors Regulation Authority of England and Wales. These rules preclude us from acting for one client against another in respect of the same or related matters but permit us to act for one client against another (including in litigation and other dispute resolution work) if the matters are unrelated and provided that we take appropriate steps to protect the confidentiality of information that we hold for either client. We are not obliged to disclose to you our representation of clients who may have interests adverse to yours on unrelated matters. By the same token, we will not without your consent disclose to other clients our representation of you.

13.4 Similar rules apply in most countries where Clyde & Co Entities operate, but not in the United States, where lawyers are generally precluded from acting for one client adversely to another client in any matter unless all relevant clients consent. So as to provide certainty, you agree that:

(a) any issue regarding our ability to represent you in this matter, including any disclosure requirements we may have to you, will be determined by the rules of New South Wales or the Solicitors Regulation Authority of England and Wales, if necessary; and

(b) if any issue should be raised in this or any other jurisdiction as to whether our representing you in this matter should preclude any Clyde & Co Entity from acting against you in another matter it will be determined by reference to the rules of New South Wales or the Solicitors Regulation Authority of England and Wales, if necessary, and not by reference to the rules of professional conduct of any other jurisdiction.

13.5 We will take appropriate steps to preserve your confidential information both during an engagement and after its completion, and it is agreed that we may use internal information barriers for this purpose. We owe the same obligation to other clients and you agree that we will not be required, and you will not expect us to divulge to you confidential information held for other clients. If, while representing you, we learn that your interests are adverse to another client or potential client of Clyde & Co (or another Clyde & Co Entity), we may (in accordance with our professional rules) approach you to seek your agreement to our continuing to act on terms satisfactory to all concerned. In some circumstances, however, our professional rules may require that we cease to act.

13.6 Our confidentiality obligations are subject to certain exceptions, including where disclosure is required by law, regulation or an order of the court. An example is the legislation on money laundering and terrorist financing.

13.7 We reserve the right to use external agencies for photocopying, printing, translation and typing services, subject to appropriate safeguards to maintain confidentiality. Please let us know if you do not wish us to do so in any particular case. There may be occasions when it is desirable to outsource other activities, but we will advise you before doing so.

13.8 External firms or organisations may conduct audit or quality checks on our practice for legal or regulatory purposes. These external firms or organisations are required to maintain confidentiality in relation to your files.

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14 Ceasing to act

- 14.1 If you wish to terminate our engagement at any time (either generally or in respect of any particular matter or aspect of a matter), please notify the Supervising Partner and, if we so request, confirm the position in writing. No period of notice is necessary.
- 14.2 We reserve the right for good reason and upon reasonable notice to terminate our engagement, including if:
- (a) you fail to comply with your responsibilities under Clause 4 of these Terms of Business;
 - (b) our continuing to act would be impractical, unethical or contravene legal or regulatory requirements; or
 - (c) you commit an act of bankruptcy or insolvency or if an external administrator is appointed to conduct the affairs of your business or company.
- 14.3 We also reserve the right to suspend our work if you do not pay promptly any request for money on account or do not pay a bill within the due period.
- 14.4 Any termination by us will be confirmed to you in writing, if requested.
- 14.5 In certain circumstances, we may be required by law or regulation to suspend or terminate our engagement without giving any period of notice or reasons.
- 14.6 On termination of our engagement, we will submit a bill to you to cover work done and disbursements incurred in respect of the period up to the date of termination, and necessarily incurred afterwards as part of the orderly termination of our engagement.
- 14.7 For contentious matters, if we are on the record at court as acting for you in any proceedings, the consent of the court may be required before we can be removed from the record and, to that extent, your right to terminate our engagement may be restricted.
- 14.8 Unless otherwise terminated, our engagement will end when our work on the matter is completed and our final statement of account is rendered.
- 14.9 Clauses 6, 9, 10, 13.6, 14.6 to 14.9 (inclusive), 15, 16, 17, 18, 19, 20, 22, and 23.3 to 32 (inclusive) will survive termination of our engagement as will any other provision of our engagement which, by its nature, is intended to survive such termination.

15 Files and documents

- 15.1 We may have the right to keep your papers, documents or other property which are in our possession until you have paid all the money that is due to us. This right will continue after the

termination of our engagement.

- 15.2 We will retain all papers and documents (except for any papers and documents to which you are entitled and which you ask to be returned to you) electronically or in storage for a reasonable period, being at least seven years from the end of the instructions on the matter concerned, on the understanding that we have your authority to destroy them at any time after this period, if appropriate. If you wish papers and documents to be retained for a longer period, then please contact us to make specific arrangements.
- 15.3 Subject to there being no money owing to us for our fees and disbursements, we will return to you on request papers and documents to which you are entitled. Where you request papers and documents to be sent to you or another person, we are entitled to make a reasonable charge for handling costs, photocopying costs and delivery.
- 15.4 Without affecting any lien to which we are otherwise entitled at law over funds, papers and other property of yours:
- (a) we will be entitled to retain by way of lien any funds, property or papers of yours, which are from time to time in our possession or control, until all costs, disbursements, interest and other moneys due to the firm have been paid; and
 - (b) our lien will continue notwithstanding that we cease to act for you.
- 15.5 We may disseminate documents arising from client matters to our staff on internal databases or intranets (which are confidential to the Firm); please let us know if you do not wish us to do so in any particular case.

16 Liability

- 16.1 Our liability to you under or in connection with our engagement, above the compulsory minimum level of professional indemnity cover set by our professional rules from time to time, will not exceed A\$10 million. This limit will apply to any and all causes of action against us in respect of or arising from or in any way connected with our engagement by you. Where you instruct us on future matters, this Clause 16.1 will also apply to each such future matter but with a fresh limit, as above.
- 16.2 Where instructions on any matter are from multiple clients, a single limit will apply to be shared by all such clients.
- 16.3 If you would like us to have a higher limit for any particular matter, please contact us to discuss this.
- 16.4 Without prejudice to Clause 18 and save as provided in Clause 20, your relationship will be

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

solely with Clyde & Co, and Clyde & Co will have sole legal liability for the work done for you and for any act or omission in the course of that work. No Clyde & Co Person will have any personal legal liability for that work, whether in contract, tort (including negligence) or otherwise. In particular, the fact that a Clyde & Co Person signs in his or her own name any letter, email or other document in the course of carrying out that work will not mean that he or she is assuming any personal legal liability separate to that of Clyde & Co.

16.5 You agree that any claim brought in respect of a matter upon which we are instructed will be made against Clyde & Co and not against any Clyde & Co Person or any other Clyde & Co Entity.

16.6 However, in the unlikely situation that a court of competent jurisdiction allows you to make a claim, in respect of a matter upon which we are instructed, against Clyde & Co and/or any other Clyde & Co Entity and/or any Clyde & Co Person, you agree that the restrictions and limitations of liability set out in Clause 16.1 (or as may otherwise be agreed in writing between you and us pursuant to Clause 16.3) and Clause 17 will apply as if Clyde & Co, all other Clyde & Co Entities and all Clyde & Co Persons against whom a claim is made were a single entity. Accordingly, you will not be entitled to recover any more than the aggregate capped amount set out in Clause 16.1 (or as may otherwise be agreed in writing between you and us pursuant to Clause 16.3) from the combined resources (including applicable insurance) of Clyde & Co, all other Clyde & Co Entities and all Clyde & Co Persons.

16.7 These Terms of Business will only apply to exclude or limit any liability to the extent permitted by law.

17 Contribution claims

17.1 Our liability to you will be limited to that proportion of any loss or damage you may suffer as is just and equitable, having regard to the extent of your own responsibility for the loss and damage and that of any other person who may also be liable to you in respect of it.

17.2 In considering whether other persons may be liable to you, no account is to be taken of any inability on your part to enforce remedies against another person by reason of causes of action against that person becoming time-barred, or the person's lack of means or the person's reliance on exclusions or limitations of liability.

17.3 Nothing in this Clause 17 will increase our liability beyond that set out in Clause 16.

18 Use of Clyde & Co Entities

18.1 There may be occasions when we consider it to be

in your interests that we refer all or some of your instructions under or in connection with our engagement to another Clyde & Co Entity; for example, in another jurisdiction. You agree that, in these circumstances, we are authorised by you to obtain advice and services from, and to disclose all relevant information to, that other Clyde & Co Entity.

18.2 Each time we obtain advice and services for you from another Clyde and Co Entity, we will do so, and you agree that we will do so, on the basis that:

(a) we, and not such (or any) other Clyde & Co Entity, are responsible for such advice and services and for the performance of the contract with you;

(b) without prejudice to Clause 16.6, no such other Clyde & Co Entity will have any responsibility or liability whatsoever to you or anyone else as regards such advice and/or services, whether or not provided by us or such other Clyde & Co Entity; and

(c) you will not make or seek to make, or procure or seek to procure that any other person makes, any claim in relation to any such advice given, or service provided, against any Clyde & Co Entity (other than us).

19 Responsibility to third parties

19.1 The advice we give is intended for your sole benefit in respect of the particular work you instruct us to do; it is not intended to be used or relied upon by others, or for a different purpose. Accordingly, you should not disclose our advice to others without our consent or rely on it in connection with any other matter.

19.2 Save where imposed by law, we do not accept any responsibilities to any third parties in relation to the matter on which we are instructed by you. To the extent that the law nonetheless imposes on us such responsibility to any third parties, our liability to them will be limited in accordance with Clauses 16, 17 and 18, and a single limit as set out in Clause 16 will be shared between such third parties and you.

20 Correspondent lawyers, counsel, etc.

20.1 Where we consider it to be an effective way of dealing with a matter, we will instruct counsel or engage correspondent lawyers, experts or others on your behalf. We will, however, consult you before instructing or engaging any such persons. We will not be responsible for the advice given, services provided by, or default of, counsel, correspondent lawyers, experts or others instructed by us on your behalf, but we will use reasonable care in selecting them. You will be responsible for the fees and expenses of any such persons instructed or engaged.

CLYDE & CO - TERMS OF BUSINESS (NEW SOUTH WALES)

20.2 Clause 20.1 does not apply to the appointment or engagement by us of another Clyde & Co Entity; any such appointment or engagement will be dealt with in accordance with Clause 18.

20.3 If we intend to engage another law practice (law firm or barrister) on your behalf, we will disclose to you the matter's under s174(1) of the Uniform Law in relation to that law practice prior to engaging that law practice. This will not apply where we cease to act on your behalf.

21 Privacy

21.1 In the course of our dealings, you may disclose to us, and we may collect, personal information that is subject to privacy regulation. We will use that personal information for the purpose of providing our services to you. If you do not provide such personal information, we may not be able to provide our services to you.

21.2 For this purpose and any other purposes for which information is provided to us, the personal information may be shared with other Clyde & Co Entities both here and overseas and with other organisations or persons engaged by us in connection with the provision of our services to you.

21.3 Other purposes for which we may use the personal information provided to us include complying with legal and regulatory requirements; to carry out credit checks; to detect, investigate and prevent fraud and to trace debtors; to update and enhance client records; for internal analysis and research; to send you or your employees by email or other permitted means (such as post or phone) publications, event information and marketing communications about our legal products and services which we think may be of interest to you or your employees. You and your employees can tell us at any time if you/they would prefer not to receive such information; and to help detect, prevent or deal with crime and unsavoury behaviour.

21.4 Further details of our commitment to you in respect of how we handle your personal information are set out in our privacy policy, a current copy of which can be found on our website at: www.clydeco.com.

22 Disclosure to Australian revenue services

22.1 In certain circumstances legislation may require us to disclose details of transactions to the Australian revenue services including the Australian Taxation Office, where these may result in a tax advantage. If we consider that such a requirement arises we will inform you, and you agree to provide us with such information and assistance as may be necessary to enable us to meet our obligations in this regard within the time frame imposed by law.

While we will aim to secure your consent to such disclosure, we may be required to make disclosure whether you consent or not and neither we nor any other Clyde & Co Entity or any Clyde & Co Person will be responsible for any loss (including additional tax, interest or penalties) which may arise by reason of our having done so.

23 Electronic communications

23.1 During the course of this matter, we may wish to communicate electronically with one another. The electronic transmission of information cannot be guaranteed to be secure or error-free, as it will be transmitted over a public network, and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or otherwise be adversely affected or unsafe to use.

23.2 We and you each agree to use reasonable procedures to check for the most recently known viruses before sending information electronically, but we each recognise that such procedures cannot be a guarantee that transmissions will be virus-free.

23.3 We will each be responsible for protecting our own interests in relation to electronic communications. Neither you or we (nor any other Clyde & Co Entity or any Clyde & Co Person) will be liable to the other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any damage or loss arising from or in connection with the electronic communication of information between us.

24 Future instructions

Unless we both agree otherwise, and subject to our then current hourly rates, these Terms of Business will apply to any future instructions that you are kind enough to give us.

25 Complaints procedure

25.1 If at any time you have any queries or concerns on any aspect of a matter (including a bill) then please do not hesitate to contact the Supervising Partner. If this does not resolve the matter to your satisfaction, or you would prefer not to speak to the Supervising Partner, then please feel free to contact our Client Care Partner. We will try to address any problem quickly and operate an internal complaints handling system to help us resolve the matter between ourselves. Details of our procedure for handling complaints are available from our Client Care Partner on request.

26 Intellectual property

Unless otherwise expressly agreed in writing, we own the rights in the work product that we produce in providing services to you. Subject to payment of our fees for services provided, we grant to you a



Ramona Priestly

From: Trevor Cork
Sent: Thursday, 16 November 2017 2:03 PM
To: 'sreid@mccullough.com.au'
Cc: Ramona Priestly
Subject: Confidential and Privileged: Blue Mountains City Council - Investigation of Staff Recruitment and Appointment Issues
Attachments: Resolution Staff Appointments.pdf; MM4.pdf; ltr to S Reid.pdf
Categories: Blue Category

Dear Ms Reid,

Our letter of today's date is **attached**.

Kind regards,
Trevor Cork.

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McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road Springwood NSW 2777
 Telephone +61 2 4751 1055
 FAX +61 2 4751 5668
 E-mail : ramonap@mcpheekelshaw.com.au

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Our Ref: TC:JB:143988

Your Ref:

16 November 2017

Ms Scarlet Reid
 McCullough Robertson
 Level 32 MLC Centre
 19 Martin Place
 SYDNEY NSW 2000

SOLICITORS
McPHEE
KELSHAW
CONVEYANCERS

PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)

TREVOR GORK G.A., LL.M., Acc. Spec. (Conveyance, Local Govt. & Planning Law)

STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law S.A.D.

CRAIG COCKBURN B.Com., LL.B.

ANN SCHRALE B.A., LL.B., Acc. Spec. (Family Law)

AMANDA MALINOWSKY B.A., LL.B., Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hons)

Also by email: sreid@mccullough.com.au

Dear Ms Reid,

CONFIDENTIAL AND PRIVILEGED

Blue Mountains City Council – Investigation of Staff Recruitment and Appointment Issues

1. We refer to the recent telephone conversations between yourself and Mr Cork of our firm.
2. We are instructed by Blue Mountains City Council to engage you to investigate a number of allegations that have been made against the Council in relation to staff recruitment and appointment issues.
3. You are engaged by our firm in accordance with resolutions that were passed by the Council in confidential session at the Ordinary meeting held on Tuesday 14 November 2017. The engagement is conditional upon the investigation being undertaken by you or under your supervision, with Mr Roberts' assistance.
4. Attached for your consideration is a copy of the terms of reference for the investigation. As discussed with you, we will now work with the Council to prepare a comprehensive brief of documents relevant to the investigation. Realistically, that brief will not be available to you before next week.
5. As also discussed with you, the Council seeks an estimate of your fees and expenses for the conduct of the investigation. However, the Council understands that it is not yet possible to provide even an indicative estimate. That step must wait for at least the initial brief and supporting documents to be made available to you.

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6. We confirm that the responsible Council staff are instructed to provide all possible assistance to you in the conduct of the investigation. Any records or documents that you identify will be made available for review. The Council will make every effort to arrange for any employees, who are identified by you for to interview, to participate in such interviews.
7. In relation to the interview of Council staff, the Council accepts that some employees may wish to be accompanied by a Union or representative or support person during the interview. Other employees may not wish to participate in an interview. These matters will be considered in consultation with you in due course.
8. We have **attached** to this letter, the text of the resolutions passed by the Council on Tuesday night in relation to the investigation that you are to conduct. You will note resolution 2.
9. The Council wishes to ensure that all relevant issues are properly investigated and that the Council receives a comprehensive report and appropriate legal advice, based on your findings and any recommendations that you make to our firm on behalf of the Council.
10. Resolution 2 allows matters additional to those nominated in the terms of reference to be investigated, should a recommendation to that effect be made by yourself and by this firm. We envisage that any such matters would be drawn to our attention as quickly as possible and that we would consider the relevant issues together and determine the recommendation, if any, that would be made to the Council.
11. Thank you for accepting our instructions. We look forward to working with you and with Mr Roberts. Please note that in this matter Mr Cork of our firm will be assisted by Ms Deanne Cole, graduate lawyer, as discussed with you.

Yours faithfully
McPhee Kelshaw



Trevor Cork

MM4	4	Independent Review into Publicly Made Allegations - Staff Appointments	
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1. That the Council notes over recent days very serious allegations have been made against the Council and against individual Council officers in relation to the recruitment of staff and consultants;
2. That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations and **any further related matters that the Council solicitor and Independent Investigator deem merit further investigation;**
3. That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;
4. That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;
5. That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;
6. That the Council notes that the Office of Local Government (OLG) and the Independent Commission Against Corruption (ICAC) have been made aware of the allegations made in the media;
7. That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government and The Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, notifying them of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.

TERMS OF REFERENCE**SECOND INVESTIGATION****ALLEGED MISCONDUCT OR CORRUPTION****Appointment of Mr Mark Mulligan as Safety Consultant**

1. What process was followed by the Council when Mr Mark Mulligan was appointed as a safety consultant to the Council in calendar year 2016 (CY 2016)?
2. Did Mr Mulligan have the qualifications and experience in CY2016 to support his engagement as a consultant to the Council?
3. Was Mr Mulligan's appointment as a consultant to the Council in CY2016 Inappropriately influenced by:
 - (1) Mr Mulligan having previously worked with Mr Stuart Liddell or any other then employee (in CY 2016) of the Council in a consultancy firm?
 - (2) Any prior business or working relationship between Mr Mulligan and Mr Liddell or any other then employee of the Council?
4. When did Mr Mulligan's engagement as a safety consultant to the Council end?

Mr Mulligan's Appointment as Acting Director, Service Delivery FY2018

1. What were the circumstances and the context in which Mr Mulligan was appointed as Acting Director, Service Delivery, for the Council in Financial Year 2018 (FY2018)?
2. What processes were followed by the Council when seeking to recruit the person to be appointed as Acting Director, Service Delivery for the Council in FY2018?
3. At the time of his appointment, did Mr Mulligan have the qualifications and experience to support his appointment as Acting Director, Service Delivery, for the Council?
4. Was Mr Mulligan's appointment as Acting Director, Service Delivery of the Council in FY2018 Inappropriately influenced by:
 - (1) Mr Mulligan having previously worked with Mr Stuart Liddell or any other current employee of the Council in a consultancy firm?
 - (2) Any prior business or working relationship between Mr Mulligan and either Mr Liddell or any other current employee of the Council?

Alleged Improper Employment of Staff

1. Was Mr John Hargreaves improperly appointed to an acting position at the Council on a one year contract on a salary of \$100,000.00 per annum?
2. What processes were followed by the Council in the appointment of Mr Hargreaves?

MINUTE BY MAYORItem MM4, Ordinary Meeting, 14.11.17

3. In what circumstances did Mr Hargreaves leave his employment with the Council?

4. Is there any evidence to support the assertion that either;

(a) membership of the Wentworth Falls Golf Club; or

(b) a relationship with Mr Stuart Liddell,

assists a candidate's prospects of employment by the Council or favourably affects a candidate's terms of employment, including but not limited to their remuneration?

Ramona Priestly

From: Trevor Cork
Sent: Tuesday, 28 November 2017 4:49 PM
To: 'sreid@mccullough.com.au'
Cc: 'Nathan Roberts'; Jess Badman
Subject: Blue Mountains City Council – Staff Recruitment Investigation – Confidential and Privileged (MPK 143988)
Attachments: copier@mcpheelshaw.com.au_20171128_163256.pdf

Blue Mountains City Council – Staff Recruitment Investigation – Confidential and Privileged 28 November 2017

Our Ref: TC:RP143988
Your Ref:

Dear Ms Reid,

I **attach** my letter to you of today's date, relating to your investigation of the staff and contractor recruitment issues identified in previous correspondence.



Please feel free to contact me if either you or Mr Roberts have any questions concerning the letter. If you have any difficulty accessing the documents through the Hightail link, please also let us know.

In relation to the document link, Mrs Jess Badman, one of my personal assistants, would be your best contact.

Regards,

Trevor Cork

McPhee Kelshaw Solicitors and Conveyancers

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McPhee Kelshaw Solicitors and Conveyancers
 170 Macquarie Road Springwood NSW 2777
 Telephone +61 2 4751 1055
 FAX +61 2 4751 5668
 E-mail : ramonap@mcpheelshaw.com.au

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Our Ref: TC:JB:143988

Your Ref:

28 November 2017

Ms Scarlet Reid
McCullough Robertson
Level 32 MLC Centre
19 Martin Place
SYDNEY NSW 2000

SOLICITORS
**McPHEE
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PRINCIPALS

PAUL MCPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law SAS
CRAIG COCKBURN B.Com., LL.B.
ANN SCHRALE B.A., LL.B., Acc. Spec. (Family Law)
AMANDA MALINOWSKY B.A., LL.B., Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hon)

Also by email: sreid@mccullough.com.au and
nroberts@mccullough.com.au

Dear Ms Reid,

CONFIDENTIAL AND PRIVILEGED

Blue Mountains City Council – Investigation of Staff Recruitment and Appointment Issues

1. I refer to our letters dated 16 and 21 November 2017, and to the telephone conversation last week between Mr Nathan Roberts of your firm and myself.
2. I am today forwarding to you two folders containing the documents that have been made available to us by Blue Mountains City Council (Council) in relation to your investigation.
3. Unfortunately, there are a number of gaps in the available material. For ease of reference I have prepared a table of contents which aligns with each of the Terms of Reference. Each Term is given a separate tab and any documents currently available in relation to the Term of Reference concerned will be found behind that tab.
4. As previously indicated, the investigation is intended to be thorough. You are therefore authorised to take the following action (together with any other action you consider to be appropriate) to ensure the successful conclusion of the investigation:

(1) Ask questions concerning the availability of documents.

(2) Nominate any documents (by category or description) that you require.

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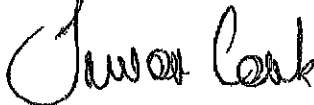


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- (3) Nominate members of staff or former members of staff of the Council whom you wish to interview.
- (4) Seek from me clarification of any issues.
5. I regret that the documents provided to you are not as comprehensive as I had hoped. However, the Council is under great stress at the moment dealing with many, many allegations. Available staff are heavily deployed in continuing the operations of the Council on the day-to-day basis. The resources available to identify and retrieve documents have therefore been limited.
6. The Council is anxious to ensure that the investigation is undertaken as quickly as possible, consistent with your existing work commitments. Once you have assessed the material made available to you, and identified the further documents that you wish to secure (by category or otherwise) and identified the employees or former employees whom you wish to interview, please make contact with me so that the necessary searches can be undertaken and the nominated employees put on notice of the proposed investigation.
7. As previously confirmed in your formal letter of engagement, you are instructed by me on behalf of the Council to undertake the investigation of the matters nominated in the Terms of Reference approved by the Council, by resolutions passed at the ordinary meeting held on 14 November 2017. The Terms of Reference are confidential.
8. The Council has authorised an expansion of the Terms of Reference if you identify issues, not presently covered by those Terms, which you consider should be investigated, given the matters that are before you. I am authorised by the Council, if I agree with your assessment (which in all probability I will), to approve the expansion of the Terms of Reference in such circumstances.
9. At the conclusion of your investigation the Council looks to you to take the following action:
 - (1) Make findings of fact, on the basis of the material available to you, in relation to the issues nominated in the Terms of Reference (including any additional Terms).
 - (2) Identify whether, having regard to your findings of fact, there are any apparent breaches of the Council's Code of Conduct.
 - (3) Identify whether, having regard to your findings of fact, there are any apparent breaches of the Council's policies and procedures that were relevant to the matters addressed in the Terms of Reference.
 - (4) Make recommendations to the Council concerning any changes in its policies and procedures, within the relevant areas, that you consider should be made.

10. You will note a copy of the Council's Code of Conduct (Parts 1 and 2) is found under the Tab titled "Reference" which is the last tab in the folder. The documents behind that tab include relevant policies of the Council.
11. Please do not hesitate to contact me if you have any questions or if there are any issues that you wish to clarify as you begin the investigation.
12. Finally, and as discussed this afternoon with Mr Roberts, you may consider that it is appropriate to propose that you undertake the investigation in parts.
13. For example, if you considered that you should undertake an investigation in relation to the appointment of Mr Mark Mulligan as safety consultant in 2016, or in relation to the appointment of Mr Mark Mulligan as Acting Director, Service Delivery in 2017, before dealing with the other Terms of Reference, please let me know.
14. A step-by-step investigation, dealing with discrete categories of issues within the Terms of Reference, may well be an ordered, logical and sensible way to approach the matter. However, that decision must be your own decision.

Yours faithfully
McPhee Kelshaw



Trevor Cork



Mayoral Minute MM2 Ordinary Meeting

Venue: **Administrative Headquarters
Civic Place
Katoomba**

Meeting: **7.30pm 12 December, 2017**



ORDINARY MEETING

12 DECEMBER 2017

AGENDA

ITEM NO.	PAGE	SUBJECT	COMMENTS
		<u>MINUTE BY MAYOR</u>	
MM2	4	Confidential Business Paper - Independent Review relating to asbestos managment	

ITEM NO: MM2

SUBJECT: CONFIDENTIAL BUSINESS PAPER – INDEPENDENT REVIEW

FILE NO: 17/259745

Recommendations:

1. *That Item SMM2 in the Business Paper be deferred for consideration until all other business of this meeting has been concluded; and*
2. *That the Council close part of the Council Meeting for consideration of Item SMM2 in the Confidential Business Paper - Independent Review pursuant to the provisions of Section 10A(2) (g) of the Local Government Act 1993, as the report contains and discussion is likely to involve:*

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Mayoral Minute

This matter has been listed in the Confidential Business Paper because consideration of the matter will involve discussion that would best take place in a meeting which has been closed to the public in accordance with the provisions of Section 10A of the Local Government Act 1993.

The matter to be dealt with relates to Independent Review and involves discussion of advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Section 10A of the Act requires that any proposal to close part of a meeting to the public be notified in the agenda, and a resolution to close part of a meeting to the public be passed setting out reasons for doing so.

In this case, the reason for closing that part of the meeting to consider Item SMM2 in the Confidential Business Paper is that the report includes, and discussion is likely to involve advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

* * * * *

BLUE MOUNTAINS CITY COUNCIL

MINUTES OF ORDINARY MEETING OF COUNCIL12 December 2017INDEX

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Minutes of the Ordinary Meeting of Council of the City of Blue Mountains, held in the Chambers on Tuesday, 12 December 2017, commencing at 7.30pm.

* * * * *

There were present:

The Mayor (Councillor Greenhill) in the Chair, and Councillors Bowling, Brown, Christie, Fell, Foenander, Hoare, Hollywood, McGregor, Myles, Schreiber, Van der Kley.

* * * * *

In attendance:

General Manager; A/Director City Services; Director City & Community Outcomes; Director Development & Customer Services; A/Group Manager, People & Systems, A/Group Manager Integrated Planning and Finance; Executive Officer; Manager Community & Economic; Program Leader Community & Economic; Manager Development and Planning Services; Communications Officer; Principal Urban Designer; Special Project Manager; Recreation and Facilities Development Officer; Meeting and Councillor Support Officer; Ranger; Ranger.

* * * * *

Prayer/Reflection:

The Prayer/Reflection was read by the Mayor, as was the acknowledgement of the traditional owners, the Darug and Gundungurra people.

* * * * *

Apologies

A MOTION was MOVED by Councillors

Nil

* * * * *

MINUTE NO. 421

Confirmation of Minutes - Ordinary Meeting - 14 November 2017

A MOTION was MOVED by Councillors Van der Kley and Fell:

That the Minutes of the Ordinary Meeting of 14 November 2017 be confirmed.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	

Brown
Foenander
Hoare
Schreiber

* * * * *

Declarations of Interest – Ordinary Meeting, 12 December 2017

Councillor Hollywood declared a non-significant, non-pecuniary interest with respect to Item 11:

“I am declaring that the convenor of the Blue Mountains Dog Off-Leash Group was my running mate at the 2016 Council elections, but will be remaining in the Chamber for the debate and the vote.”

Councillor Schreiber declared a non-significant, non-pecuniary interest with respect to Item 9:

“I am declaring that I am a member of the Central Blue Mountains Rotary Club, but will be remaining in the Chamber for the debate and the vote.”

Councillor Van der Kley declared a non-significant, non-pecuniary interest with respect to Item 9:

“I am declaring that I am a member of the Central Blue Mountains Rotary Club, but will be remaining in the Chamber for the debate and the vote.”

Councillor Hoare declared a non-significant, non-pecuniary interest with respect to Item 11:

“I am declaring that I am a dog owner that uses Pitt Park, but will be remaining in the Chamber for the debate and the vote.”

Councillor Hollywood declared a non-significant, non-pecuniary interest with respect to Item 14:

“I am declaring that I am an ordinary committee member on the management committee of Blue Mountains Women's Health and Resource Centre, I am also an ex-officio member of the Mountains Community Resource Centre. Both of these services receive some funding that may be affected by TIE funding reforms, but will be remaining in the Chamber for the debate and the vote.”

Councillor Foenander declared a non-significant, non-pecuniary interest with respect to Item 14:

“I am declaring that member of the board of Springwood Neighbourhood Centre, but will be remaining in the Chamber for the debate and the vote.”

Councillor McGregor declared a non-significant, non-pecuniary interest with respect to Item 14:

“I am declaring that member of the board of Katoomba Neighbourhood Centre but will be remaining in the Chamber for the debate and the vote.”

Councillor Schreiber declared a non-significant, non-pecuniary interest with respect to Item 19:

“I am declaring that I am a member of the Katoomba RSL Club, but will be remaining in the Chamber for the debate and the vote.”

MINUTE NO. 460**Procedural – Move into Confidential Session**

The meeting was addressed by: Mark Lipscombe

A MOTION was MOVED by Councillors Brown and Hoare:

1. That Item MM1 in the Confidential Business Paper be deferred for consideration until all other business of this meeting has been concluded;
2. That the Council close part of the Council Meeting for consideration of Item MM1 in the Confidential Business Paper 'General Manager Recruitment' pursuant to the provisions of Section 10A(2)(a) of the Local Government Act 1993, as the report contains, and discussion is likely to involve:
 - a. personal matters concerning particular individuals (other than councillors); and
3. That the Council should only close so much of the Council Meeting for only so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security being protected as per Section 10B(1)(a) and (b) of the Local Government Act 1993;
 - 10B Further limitations relating to closure of parts of meetings to public
 - A meeting is not to remain closed during the discussion of anything referred to in section 10A (2):
 - except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
 - if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret—unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

For
Councillors Brown
Hoare

Against
Councillors Greenhill
Christie
Fell
Myles
Hollywood
Van der Kley
McGregor
Bowling
Foenander
Schreiber

MINUTE NO. 461

A MOTION was MOVED by Councillors Van der Kley and Fell:

1. That the Meeting move into a Confidential Session;
2. That pursuant to the provisions of Section 10A(2) (a) of the Local Government Act 1993, as the report contains and discussion is likely to involve:

- (a) Personal matters concerning particular individuals (other than councillors);
- (c) Information that would if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposed to conduct business)
- (di) Commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it;
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

3. That the correspondence and reports relevant to the subject business be withheld from access to the media and public as required by section 11(2) of the Local Government Act 1993.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For		Against	
Councillors	Greenhill	Councillors	Brown
	Christie		Hoare
	Fell		
	Myles		
	Hollywood		
	Van der Kley		
	McGregor		
	Bowling		
	Foenander		
	Schreiber		

* * * * *

MINUTE NO. 462

MM1. 17/257089. Confidential Business Paper - General Manager Recruitment

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

1. That the Council notes, following the retirement of Mr Robert Greenwood as General Manager of the Council, with effect from Friday 17 November 2017, Ms Rosemary Dillon has diligently served as Acting General Manager, in accordance with the resolution passed by the Council at the Ordinary Meeting on 14 November 2017;
2. That the Council, noting the requirement for leadership stability at this time, vacates the General Manager Recruitment & Selection Panel and ceases the current process of recruitment and appointment to the vacant position of General Manager;
3. That the Council to appoints Ms Rosemary Dillon as General Manager for a fixed period of up to one year, effective from Friday 17 November 2017 to Sunday 18 November 2018, with the view of formally appointing a General Manager with a commencement date of Monday 19 November 2018; and
4. That the Council notes that the Council will establish and determine a General Manager Recruitment & Selection Panel and process for the purpose of determining and managing the recruitment by separate resolution within the

required timeframes to achieve formal appointment in November 2018.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For		Against	
Councillors	Greenhill	Councillors	Brown
	Christie		Schreiber
	Fell		
	Myles		
	Hollywood		
	Van der Kley		
	McGregor		
	Bowling		
	Foenander		
	Hoare		

* * * * *

MINUTE NO. 463

MM2. 17/259745. Confidential Business Paper - Independent Review

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

- 1. That the Council notes the matters addressed in the Mayoral Minute;**
- 2. That the Council hereby adopts the amended Terms of Reference for the investigation in relation to asbestos related issues that are attached to this Mayoral Minute; and**
- 3. That the Council endorses the amended Terms of Reference that are attached to this Mayoral Minute be released to the public by the Council.**

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against	
Councillors	Greenhill	Councillors	
	Christie		
	Fell		
	Myles		
	Hollywood		
	Van der Kley		
	McGregor		
	Bowling		
	Foenander		
	Hoare		
	Schreiber		

With Councillor Brown out of the chambers.

* * * * *

MINUTE NO. 464

15. 17/190697. Confidential Business Paper - Sale of 93 Kent Street, Bullaburra to adjoining owner

A MOTION was MOVED by Councillors Van der Kley and Hollywood:

1. That the Council endorses the sale of 93 Kent Street Bullaburra, being Lot 28 in DP 29496 to an adjoining landowner, as per independent valuation received;
2. That the Council endorses a joint sale agreement between Council owned 93 Kent Street Bullaburra and an adjoining landowner to ensure that the lots retain their future potential for development; and
3. That the Council resolves that funds from the sale of 93 Kent Street Bullaburra be invested in the Property Investment Fund to assist future property, infrastructure, strategic asset works.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For	Against
Councillors	Councillors
Greenhill	Brown
Christie	Hoare
Fell	Schreiber
Myles	
Hollywood	
Van der Kley	
McGregor	
Bowling	
Foenander	

* * * * *

MINUTE NO. 465

Procedural – Return to Public Meeting

A MOTION was MOVED by Councillors Foenander and Fell:

That the Meeting be reopened to the Public to address the remaining open session items of business.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Christie	
Fell	
Myles	
Hollywood	
Van der Kley	
McGregor	
Bowling	
Brown	
Foenander	
Hoare	
Schreiber	

* * * * *

MINUTE NO. 466**Procedural – Question that Meeting Close**

A MOTION was MOVED by Councillors Bowling and Christie:

That as there was no further business before the Ordinary Meeting of Tuesday, 12 December 2017, the meeting closed at 10:57pm.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

I confirm that these minutes, consisting of this page 34 and the previous 33 pages, were confirmed at the Ordinary Meeting of the Council on 15 December 2017.

Chairman: Mayor Mark Greenhill..... Date.....



The Hon. Gabrielle Upton MP
 Minister for the Environment
 Minister for Local Government
 Minister for Heritage

Doc ID: A574986

A576193

Clr Mark Greenhill
 Mayor
 Blue Mountains City Council
 Locked Bag 1005
 KATOOMBA NSW 2780

By email: mgreenhill@bmcc.nsw.gov.au

Dear Clr Greenhill

In accordance with section 438K of the *Local Government Act 1993* (the Act), I hereby give notice of my intention to issue a suspension order to suspend councillors of Blue Mountains City Council for a period of 3 months and appoint an interim administrator under section 438M of the Act. I may suspend a council under section 438I of the Act if I reasonably believe that appointment of an interim administrator is necessary to restore the proper or effective functioning of the Council.

I hereby invite Council to make a submission in respect of the proposed suspension. As I consider the suspension is required as a matter of urgency, Council is invited to provide its written response within 7 days of the date of this notice. It is suggested that Council tables the notice of intention at an open Council meeting and provides its submission by way of resolution of the Council.

In accordance with clause 413E of the *Local Government (General) Regulation 2005*, I have considered each of the criterion listed before issuing this notice of intention. Having regard to this criteria, I have formed the preliminary belief that appointment of an interim administrator is necessary to restore the both the proper and effective functioning of Council for the following reasons:

- The Council has failed to comply with its statutory obligations under the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011* as evidenced by the improvement notices and prohibition notices issued by SafeWork NSW in November and December 2017 (**see list of notices in items 1 and 2 of Schedule**);
- There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos. These arise from the issues identified in the SafeWork notices, as well as in clean up notices issued by the EPA in December 2017, and the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017.
- It is acknowledged that the Council is taking steps to respond to both SafeWork NSW and the EPA, including through appointment of a new A/General Manager. However, the elected council body remains unchanged. I am of the preliminary view that the issues identified in the recent regulatory action taken by SafeWork NSW and the EPA are indicative of a systemic problem at Council

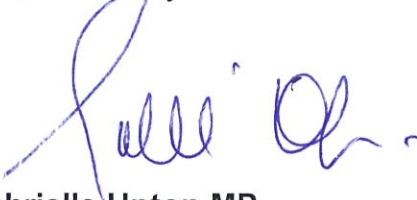
in managing asbestos which has not been adequately proactively addressed to date. This is particularly given that improvement notices with respect to asbestos management were issued by SafeWork NSW in 2015 and May 2017 **(see list of notices in item 3 of Schedule)**.

- Media coverage of the recent regulatory action reflects an understandable level of community concern about the ineffective asbestos management by Council evidenced in the notices issued by SafeWork in November 2017 and the EPA in December 2017; as well as the SafeWork investigation announced by the Minister for Better regulation on 11 December 2017. This is particularly in circumstances where some of the identified sites of contamination are in community areas such as a preschool and a waste depot. I am of the present view that community confidence in the Council's capacity to address the asbestos management issues needs to be restored.
- Council requires a period of independent governance to oversee the investigation of past actions and the implementation of future strategies to ensure that Council meets its legislative responsibilities in relation to asbestos management.

However, as required by section 438K(5), I will have regard to any submission provided by the Council, within the specified period, before making a final decision under section 438I.

I have attached an information sheet about the process.

Yours sincerely



Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

12-12-17

Schedule

1. list of Improvement notices issued in November and December 2017

WSMS reference #7-316426 issued 10/11/17 @ 2 Civic Pl Katoomba
compliance date 16 February 2018

WSMS reference #7-316743 issued 16/11/17 @ 2 Park St Lawson
compliance date 15 December 2017

WSMS reference #7-316748 issued 16/11/17 @ 2 Park St Lawson
compliance date 19 January 2018

WSMS reference #7-316750 issued 16/11/17 @ 283 Great Western Hwy
Lawson Compliance date 19 January 2018

WSMS reference #7-317451 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 31 January 2018

WSMS reference #7-316754 issued 16/11/17 @ 2 Park St Lawson
compliance date 15 December 2017

WSMS reference #7-317447 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 20 December 2017

WSMS reference #7-317450 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 20 December 2017

WSMS reference #7-317451 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 31 January 2018

WSMS reference #7-317646; issued 28/11/17 to BMCC re. Wentworth Falls
Pre-School 2 Day Street Wentworth Falls compliance date 15 December 2017

WSMS reference #7-317647; issued 28/11/17 to BMCC re. Wentworth Falls
Pre-School 2 Day Street Wentworth Falls compliance date 15 December 2017

WSMS reference #7-317886; issued 1/12/17 to BMCC re. Heatherbrae
Cottage 6 Benang Street Lawson compliance date 15 December 2017

WSMS reference #7-318018; issued 1/12/17 to BMCC re. Katoomba/Leura
Pre-School, 32-34 Lett Street Katoomba compliance date 22 December 2017

WSMS reference #7-318117; issued 4/12/17 to BMCC re. Springwood Depot
2 Lawson Road Springwood compliance date 22 December 2017

WSMS reference #7-318116; issued 4/12/17 to BMCC re. Springwood Depot
2 Lawson Road Springwood compliance date 22 December 2017

WSMS reference #7-318317; issued 6/12/17 to BMCC re. Warrimoo Citizen's
Hall, 7 Eley Hawkins Drive Warrimoo compliance date 22 December 2017

2. SafeWork Prohibition notices issued by the EPA in November and December 2017

WSMS reference #7-317405 issued 24/11/17 to BMCC re 49 Woodlands Rd
Katoomba

WSMS reference #7-317408 issued 24/11/17 to BMCC re 49 Woodlands Rd
Katoomba

WSMS reference #7-317409 issued 24/11/17 to BMCC re 49 Woodlands Rd
Katoomba

WSMS reference 7-317655; issued to BMCC re. Wentworth Falls Pre-School
2 Day Street Wentworth Falls

WSMS reference 7-318114; issued 4/12/17 to BMCC re. Springwood Depot 2
Lawson Road Springwood

WSMS reference 7-318115; issued 4/12/17 to BMCC re. Springwood Depot 2
Lawson Road
Springwood

3. Improvement notices issued by SafeWork NSW in 2015 and May 2017

WSMS reference #7-282733 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282736 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282737 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282740 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282743 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282747 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-306943 issued 22/5/2017 requiring an Asbestos
Management Plan (AMP) to be developed by BMCC.



Accredited Specialists Available In:-
 • Property Law • Local Government &
 • Family Law Planning Law
 • Business Law

Our Ref: TC:RP:143988

Your Ref:

13 December 2017

Mr Michael Tooma
 Clyde & Co
 Level 15, 333 George Street
 SYDNEY NSW 2000

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· SOLICITORS ·
**McPHEE
 KELSHAW**
 · CONVEYANCERS ·

PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
 TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
 STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law SAB
 CRAIG COCKBURN B.Com., LL.B.
 ANN SCHRALE B.A., LL.B. Acc. Spec. (Family Law)
 AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

SOLICITORS

Also by email: michael.tooma@clydeco.com.au; and
lucy.bochenek@clydeco.com.au

CONFIDENTIAL AND PRIVILEGED

Dear Mr Tooma,

Blue Mountains City Council – Asbestos Investigation

I refer to our telephone conversation on Tuesday 12 November 2017. Thank you for taking the time to call me from Darwin.

As foreshadowed in that conversation, Blue Mountains City Council, in confidential session, last night revisited the Terms of Reference (TOR) for your investigation in relation to asbestos related matters. The elected Councillors (by 11 votes, with 1 Councillor absent from the chambers, by choice) accepted that revised TOR should be adopted, drafted in terms that could be released to members of the public and to the United Services Union (USU).

I have provided certain advice to the Council in relation to both the purpose of the investigation (to inform the Councillors, so that sound decisions can be made, having regard to the Council's legal exposure) and the expectations that the release of the TOR might reinforce. However, the Councillors considered that, given the Council's current circumstances, there was no choice but to release appropriately drawn amended TOR.

The amended TOR, as adopted by the Council, are **attached**. As you will note, they are comprehensive and, in some cases, broader than the original TOR.

In relation to the latter point, the Council now wishes to extend your investigation to address each of the properties that has been identified by SafeWork NSW (SW) in the course of its investigation.



The requested progression of your investigation has not changed. The Council seeks an initial focus on issues relating to:

- (a) the Lawson car park works;
- (b) the transfer of materials from the car park site to the Lawson depot;
- (c) access to the depot; and
- (d) the subsequent transfer of materials from the depot to other sites.

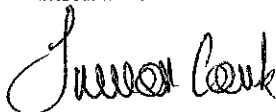
As discussed yesterday, I would be grateful if you could call me when you return to Sydney on Thursday, to outline the steps that you will take to progress the investigation. The Council understands that this is an extremely difficult time of year and that Ms Bochenek and yourself will almost certainly be on annual leave at some time over the late December/January period.

The Council has now received further Improvement Notices from SW. The Council has also been served with a Clean-Up Notice by EPA (which was expected) in relation to the Lawson depot. The Clean-Up Notice requires that the Council remove from the depot any asbestos contaminated soil, and take that soil to an appropriately licensed facility.

I will arrange for copies of all of the SW notices and both of the EPA notices to be forwarded to you by one transfer of documents. While I realise that some copies have previously been made available to you, I will take the present opportunity to provide to you, in sequence and by number, all of the notices served by SW (Improvement Notices and Prohibition Notices) and by the EPA (Notice to Produce Documents and Clean-Up Notice).

I look forward to speaking to you later this week.

Yours faithfully
McPhee Kelshaw



Trevor Cork

AMENDED TERMS OF REFERENCE

FIRST INVESTIGATION

WORK, HEALTH & SAFETY / ASBESTOS ISSUES

1. The conduct of the works at the Lawson car park and at the Lawson Mechanics Institute, including the removal of any soil, rock and other materials from the work site and the relocation of any such materials to other sites.
2. The use of the Lawson depot to receive any materials referred to in paragraph 1 and the storage and subsequent removal of those materials from the Lawson depot to any other work sites within the City.
3. The work undertaken by the Council in the period 2012 to date to compile the Council's Asbestos Register (AR) and to prepare the Council's Asbestos Management Plan (AMP), including any factors which delayed or contributed to the delay in the completion of that work.
4. Whether the presence of asbestos based building materials, or asbestos contaminated soil, within any building or on any properties owned by the Council, in the period 2016 to date, was not appropriately documented, recognised or managed at that time.
5. The identification of asbestos contaminated materials (including fill) within the former Blackheath tip site, including the access allowed to that site (by staff and members of the public) once the presence of asbestos based materials was known.
6. The actions taken by the Council in the period May 2017 to date, in response to any enquiries undertaken by SafeWork NSW (SW) or any notices given by SW to the Council, in relation to the management of asbestos based materials in Council owned properties, the repair of properties containing such materials and the advice given to Council staff in relation to the presence of those materials.
7. Investigations undertaken by the Council in the period 2012 to date to identify asbestos based materials in any building or on any site identified by SW in the period May 2017 to date, and the steps taken by the Council, both before and after May 2017, to record, remediate or render safe asbestos in any such buildings.
8. Whether any disciplinary action was taken or threatened against members of the Council staff arising from information brought forward by those staff members in relation to the Council's management of asbestos issues.
9. The procedures and plans that have been adopted by the Council in the period 2012 to date, and the work practices that have been implemented by the Council over that period, to manage risks associated with asbestos based materials, present within Council owned buildings or on Council owned land.
10. The Council's policies and practices adopted and implemented in the period 2012 to date to ensure that Council staff were informed from time to time of the presence of asbestos based materials in Council owned buildings and on Council owned sites, including information made available to Council staff before work was undertaken at any such building or site.
11. The establishment, role and operation of the Council's Work, Health and Safety Committee.

12. Such other matters as the investigator brings to the Council's attention and recommends as a matter that should be investigated (subject to that recommendation being endorsed by the Council's solicitor).



Business Paper Extraordinary Meeting

Venue: **Administrative Headquarters
Civic Place
Katoomba**

Meeting: **7.30 15 December, 2017**

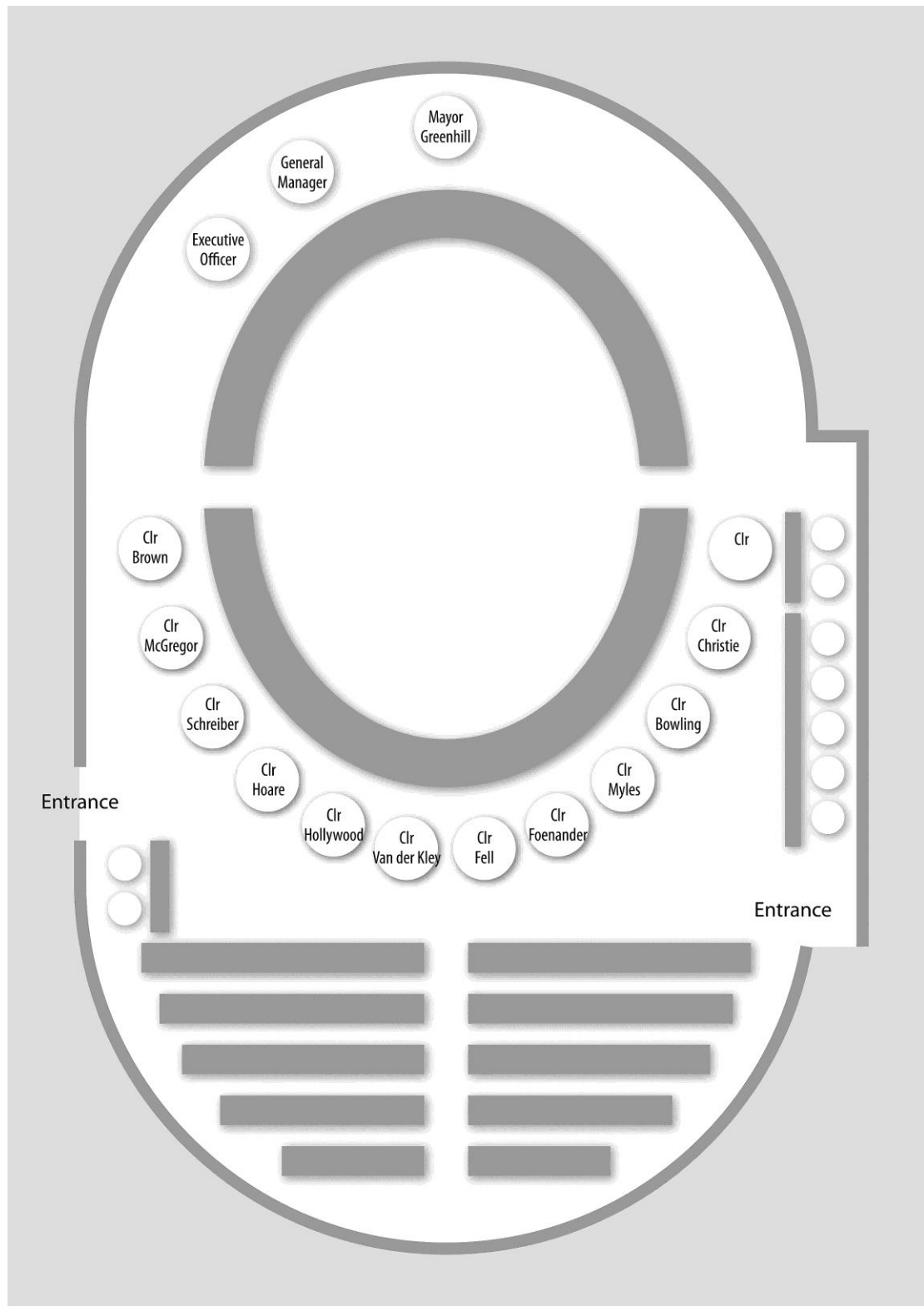


EXTRAORDINARY MEETING

15 DECEMBER 2017

AGENDA

ITEM NO.	PAGE	SUBJECT	COMMENTS
1	9	<p><u>PRAYER/REFLECTION</u> (and Recognition of the Traditional Owners, the Darug and Gundungurra People)</p> <p><u>APOLOGIES</u></p> <p><u>CONFIRMATION OF MINUTES</u></p> <p>Ordinary Meeting held on 12 December 2017</p> <p><u>DECLARATIONS OF INTEREST</u></p> <p><u>MINUTE BY MAYOR</u></p> <p>Submission in response to notice of intention to issue a suspension order <i>Attachment x 1</i></p>	



THE COUNCIL MEETING

Blue Mountains City Council meetings are conducted in accordance with Council's adopted Code of Meeting Practice. This Code is available via the Council website, from Council offices and in Council meetings.

<http://www.bmcc.nsw.gov.au/yourcouncil/councilmeetings>

Councillor Seating Map

While the Councillor and Senior Staff seating map indicates the seating arrangement in most Council meetings, occasionally the seating may change based on the change to the venue or content experts.

Business Papers and Minutes

Before each Council meeting, a Business Paper is prepared detailing the items that are to be presented to the Council meeting. Readers should be aware that the Recommendations and Notices of Motion as set out in the Council Business Paper are simply proposals to the Council for its consideration.

The Council may adopt these proposals, amend the proposals, determine a completely different course of action, or it may decline to pursue any course of action. The decision of the Council becomes a resolution of the Council and is recorded in the Council Minutes. Readers are referred to this separate document.

The Council Business Paper and the Council Minutes are linked by the common Item Numbers and Titles. Minutes from the meeting are confirmed at the following meeting, until then they are presented as draft unconfirmed minutes.

To Register to Speak at a Council Meeting

Members of the public are welcome to address the Council on any items of business in the Business Paper other than:

- Unconfirmed Minutes;
- Minutes by the Mayor;
- Rescission Motions;
- Councillor Reports;
- Questions with Notice;
- Responses to Questions without Notice;
- Responses to Questions with Notice;
- Notices of Motion (including Rescission Motions)
- the Précis of Correspondence; and
- Matters of Urgency.

To address the meeting a speaker's registration form must be completed at the speaker's registration desk on the night of the Council meeting. To pre-register, the speaker's registration form must be emailed no later than 4pm on the day of the meeting to council@bmcc.nsw.gov.au.

DEVELOPMENT APPLICATIONS – MATTERS FOR CONSIDERATION

When determining a development application the Council is required to take certain matters into consideration. These must be relevant to the development application under consideration. These considerations are detailed under s. 79C (1) (Matters for consideration – general) of the Environmental Planning and Assessment Act 1979 and are reproduced below:

79C Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iii) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),
 that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

MINUTE BY MAYOR

ITEM NO: 1

SUBJECT: SUBMISSION IN RESPONSE TO NOTICE OF INTENTION TO ISSUE A
SUSPENSION ORDER

FILE NO: F11230 - 17/261276

Delivery Program Link

Principal Activity: Civic Leadership

Service: Governance and Risk

Recommendations:

1. *That the Council notes that on 12 December 2017, the Hon Gabrielle Upton MP, Minister for Local Government, gave notice to the Council of the Minister's intention to suspend the Council for a period of three months and appoint an interim administrator;*
 2. *That the Council notes that the Minister has invited the Council to make a submission in respect of the proposed suspension and provide a written response within seven days of the date of the notice; and*
 3. *That the Council endorses the preparation of a Council submission in respect of the proposed suspension for consideration at an extraordinary Council meeting on 19 December 2017.*
-

Mayoral Minute**Reason for report**

On 12 December 2017, the Hon Gabrielle Upton MP, Minister for Local Government, gave notice to the Council of the Minister's intention to suspend the Council for a period of three months and appoint an interim administrator. This notice has been given because the Minister has formed the preliminary belief that appointment of an interim administrator is necessary to ensure the Council meets its legislative responsibilities in relation to asbestos management.

The Minister has invited the Council to make a submission in respect of the proposed suspension and provide a written response within seven days of the date of the notice. The reason for this report is to recommend that Council prepares a submission in respect of the proposed suspension for consideration at a Council meeting on 19 December 2017.

Background

On 12 December 2017, the Hon Gabrielle Upton MP, Minister for Local Government, gave notice to the Council of the Minister's intention to suspend the Council (see attached letter).

This notice was given in accordance with section 438K of the *Local Government Act 1993* (the Act). The Minister's intention is issue a suspension order to suspend councillors of the Council for a period of three months and appoint an interim administrator under section 438M of the Act. The Minister may suspend a council under section 438I of the Act if the Minister reasonably believes that appointment of an interim administrator is necessary to restore the proper or effective functioning of the Council.

The Minister has invited the Council to make a submission in respect of the proposed suspension and provide a written response within seven days of the date of the notice.

Prior to issuing the notice, the Minister has considered the suspension criteria set out in clause 413E of the *Local Government (General) Regulation 2005* and formed the preliminary belief that appointment of an interim administrator is necessary to restore both the proper and effective functioning of the Council for the following reasons:

- The Council has failed to comply with its statutory obligations under the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.
- There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos.
- The issues identified in the recent regulatory action taken by SafeWork NSW and the Environment Protection Authority are indicative of a systemic problem at Council in managing asbestos which has not been adequately proactively addressed to date.
- Community confidence in the Council's capacity to address the asbestos management issues needs to be restored.
- Council requires a period of independence governance to oversee the investigation of past actions and the implementation of future strategies to ensure that Council meets its legislative responsibilities in relation to asbestos management.

ATTACHMENTS/ENCLOSURES

1	Letter from Minister for Local Government	17/261830	Attachment
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* * * * *

Attachment 1 - Letter from Minister for Local Government



The Hon. Gabrielle Upton MP

Minister for the Environment
Minister for Local Government
Minister for Heritage

Doc ID: A574986

A576193

Clr Mark Greenhill
Mayor
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

By email: mgreenhill@bmcc.nsw.gov.au

Dear Clr Greenhill

In accordance with section 438K of the *Local Government Act 1993* (the Act), I hereby give notice of my intention to issue a suspension order to suspend councillors of Blue Mountains City Council for a period of 3 months and appoint an interim administrator under section 438M of the Act. I may suspend a council under section 438I of the Act if I reasonably believe that appointment of an interim administrator is necessary to restore the proper or effective functioning of the Council.

I hereby invite Council to make a submission in respect of the proposed suspension. As I consider the suspension is required as a matter of urgency, Council is invited to provide its written response within 7 days of the date of this notice. It is suggested that Council tables the notice of intention at an open Council meeting and provides its submission by way of resolution of the Council.

In accordance with clause 413E of the *Local Government (General) Regulation 2005*, I have considered each of the criterion listed before issuing this notice of intention. Having regard to this criteria, I have formed the preliminary belief that appointment of an interim administrator is necessary to restore the both the proper and effective functioning of Council for the following reasons:

- The Council has failed to comply with its statutory obligations under the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011* as evidenced by the improvement notices and prohibition notices issued by SafeWork NSW in November and December 2017 (see list of notices in items 1 and 2 of Schedule);
- There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos. These arise from the issues identified in the SafeWork notices, as well as in clean up notices issued by the EPA in December 2017, and the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017.
- It is acknowledged that the Council is taking steps to respond to both SafeWork NSW and the EPA, including through appointment of a new A/General Manager. However, the elected council body remains unchanged. I am of the preliminary view that the issues identified in the recent regulatory action taken by SafeWork NSW and the EPA are indicative of a systemic problem at Council

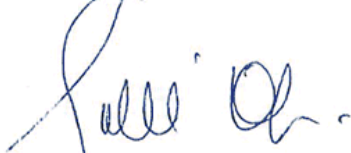
in managing asbestos which has not been adequately proactively addressed to date. This is particularly given that improvement notices with respect to asbestos management were issued by SafeWork NSW in 2015 and May 2017 (see list of notices in item 3 of Schedule).

- Media coverage of the recent regulatory action reflects an understandable level of community concern about the ineffective asbestos management by Council evidenced in the notices issued by SafeWork in November 2017 and the EPA in December 2017; as well as the SafeWork investigation announced by the Minister for Better regulation on 11 December 2017. This is particularly in circumstances where some of the identified sites of contamination are in community areas such as a preschool and a waste depot. I am of the present view that community confidence in the Council's capacity to address the asbestos management issues needs to be restored.
- Council requires a period of independent governance to oversee the investigation of past actions and the implementation of future strategies to ensure that Council meets its legislative responsibilities in relation to asbestos management.

However, as required by section 438K(5), I will have regard to any submission provided by the Council, within the specified period, before making a final decision under section 438L.

I have attached an information sheet about the process.

Yours sincerely



Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

12-12-17

Schedule

1. list of Improvement notices issued in November and December 2017

WSMS reference #7-316426 issued 10/11/17 @ 2 Civic Pl Katoomba
compliance date 16 February 2018
WSMS reference #7-316743 issued 16/11/17 @ 2 Park St Lawson
compliance date 15 December 2017
WSMS reference #7-316748 issued 16/11/17 @ 2 Park St Lawson
compliance date 19 January 2018
WSMS reference #7-316750 issued 16/11/17 @ 283 Great Western Hwy
Lawson Compliance date 19 January 2018
WSMS reference #7-317451 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 31 January 2018
WSMS reference #7-316754 issued 16/11/17 @ 2 Park St Lawson
compliance date 15 December 2017
WSMS reference #7-317447 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 20 December 2017
WSMS reference #7-317450 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 20 December 2017
WSMS reference #7-317451 issued 27/11/17 @ 49 Woodlands Rd Katoomba
compliance date 31 January 2018
WSMS reference #7-317646; issued 28/11/17 to BMCC re. Wentworth Falls
Pre-School 2 Day Street Wentworth Falls compliance date 15 December 2017
WSMS reference #7-317647; issued 28/11/17 to BMCC re. Wentworth Falls
Pre-School 2 Day Street Wentworth Falls compliance date 15 December 2017
WSMS reference #7-317886; issued 1/12/17 to BMCC re. Heatherbrae
Cottage 6 Benang Street Lawson compliance date 15 December 2017
WSMS reference #7-318018; issued 1/12/17 to BMCC re. Katoomba/Leura
Pre-School, 32-34 Lett Street Katoomba compliance date 22 December 2017
WSMS reference #7-318117; issued 4/12/17 to BMCC re. Springwood Depot
2 Lawson Road Springwood compliance date 22 December 2017
WSMS reference #7-318116; issued 4/12/17 to BMCC re. Springwood Depot
2 Lawson Road Springwood compliance date 22 December 2017
WSMS reference #7-318317; issued 6/12/17 to BMCC re. Warrimoo Citizen's
Hall, 7 Eley Hawkins Drive Warrimoo compliance date 22 December 2017

2. SafeWork Prohibition notices issued by the EPA in November and December 2017

WSMS reference #7-317405 issued 24/11/17 to BMCC re 49 Woodlands Rd
Katoomba
WSMS reference #7-317408 issued 24/11/17 to BMCC re 49 Woodlands Rd
Katoomba
WSMS reference #7-317409 issued 24/11/17 to BMCC re 49 Woodlands Rd
Katoomba
WSMS reference #7-317655; issued to BMCC re. Wentworth Falls Pre-School
2 Day Street Wentworth Falls

WSMS reference 7-318114; issued 4/12/17 to BMCC re. Springwood Depot 2
Lawson Road Springwood
WSMS reference 7-318115; issued 4/12/17 to BMCC re. Springwood Depot 2
Lawson Road
Springwood

3. Improvement notices issued by SafeWork NSW in 2015 and May 2017

WSMS reference #7-282733 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282736 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282737 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282740 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282743 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-282747 issued 13/10/15 @ 28 Attunga Rd Blaxland
WSMS reference #7-306943 issued 22/5/2017 requiring an Asbestos
Management Plan (AMP) to be developed by BMCC.



Mayoral Minute MM2 Extraordinary Meeting

Venue: **Administrative Headquarters
Civic Place
Katoomba**

Meeting: **7.30 15 December, 2017**



EXTRAORDINARY MEETING

15 DECEMBER 2017

AGENDA

ITEM NO.	PAGE	SUBJECT	COMMENTS
		<u>MINUTE BY MAYOR</u>	
MM2	4	Confidential Business Paper – Ongoing Investigation Process	

ITEM NO: MM2

SUBJECT: CONFIDENTIAL BUSINESS PAPER – ONGOING INVESTIGATION PROCESS

FILE NO: 17/263360

Recommendations:

1. *That Item S1 in the Business Paper be deferred for consideration until all other business of this meeting has been concluded; and*
2. *That the Council close part of the Council Meeting for consideration of Item S1 in the Confidential Business Paper - Investigation in consultation with SafeWork NSW pursuant to the provisions of Section 10A(2) (g) of the Local Government Act 1993, as the report contains and discussion is likely to involve:*

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Mayoral Minute

This matter has been listed in the Confidential Business Paper because consideration of the matter will involve discussion that would best take place in a meeting which has been closed to the public in accordance with the provisions of Section 10A of the Local Government Act 1993.

The matter to be dealt with relates to Investigation in consultation with SafeWork NSW and involves discussion of advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

Section 10A of the Act requires that any proposal to close part of a meeting to the public be notified in the agenda, and a resolution to close part of a meeting to the public be passed setting out reasons for doing so.

In this case, the reason for closing that part of the meeting to consider Item S1 in the Confidential Business Paper is that the report includes, and discussion is likely to involve advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

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BLUE MOUNTAINS CITY COUNCIL

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Minutes of the Extraordinary Council Meeting of the City of Blue Mountains, held in the Chambers on Friday, 15 December 2017, commencing at 7.30pm.

* * * * *

There were present:

The Mayor (Councillor Greenhill) in the Chair, and Councillors Bowling, Brown, Christie, Fell, Foenander, Hoare, Hollywood, McGregor, Myles, Schreiber, Van der Kley.

* * * * *

In attendance:

A/General Manager; A/Director City Services; Director City & Community Outcomes; Director Development & Customer Services; A/Group Manager, People & Systems, A/Group Manager Integrated Planning and Finance; Executive Officer; Communications Officer; Coordinator Corporate Marketing; Meeting and Councillor Support Officer; Senior Ranger; Ranger.

* * * * *

Prayer/Reflection:

The Prayer/Reflection was read by the Mayor, as was the acknowledgement of the traditional owners, the Darug and Gundungurra people.

* * * * *

MINUTE NO. 467

Apologies

A MOTION was MOVED by Councillors Fell and Hollywood:

That the Council accepts the apologies of Councillors Van der Kley and Bowling.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	McGregor	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 468**Confirmation of Minutes - Ordinary Meeting - 12 December 2017**

A MOTION was MOVED by Councillors Fell and Foenander:

That the Minutes of the Ordinary Meeting of 12 December 2017 be confirmed.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	McGregor	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

Declarations of Interest – Ordinary Meeting, 15 December 2017

Nil

* * * * *

MINUTE NO. 469**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Fell and Myles:

That the Council endorses the use of recording devices to film the meeting pertaining to the Item 1 - Submission in response to notice of intention to issue a suspension order; held at the Extraordinary Meeting of 15 December 2017 following a request from Vision TV.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	McGregor	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 470**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Brown and Schreiber:

That the Council suspends the standing orders of the meeting to allow up to eight (8) public speakers to address the meeting, indicating by way of a show of hands, and not requiring them to register to speak.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	McGregor	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 471**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Fell and Myles:

That the Council returns to meeting standing orders.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	McGregor	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 472**MM1. 17/261276. Submission in response to notice of intention to issue a suspension order**

A MOTION was MOVED by Councillors Greenhill and Myles:

1. That the Council notes that on 12 December 2017, the Hon Gabrielle Upton MP, Minister for Local Government, gave notice to the Council of the Minister's intention to suspend the Council for a period of three months and appoint an interim administrator;
2. That the Council notes that the Minister has invited the Council to make a submission in respect of the proposed suspension and provide a written response within seven days of the date of the notice; and
3. That the Council endorses the preparation of a Council submission in respect of the proposed suspension for consideration at an extraordinary Council meeting on 19 December 2017.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Christie	
Fell	
Myles	
Hollywood	
McGregor	
Brown	
Foenander	
Hoare	
Schreiber	

* * * * *

MINUTE NO. 473**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Brown and Schreiber:

1. That the Council hears the Mayoral Minute 2 in open session;
2. That the Council notes that it may only close so much of a Council Meeting for only so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security being protected (Section 10B(1)(a) of the Local Government Act 1993) in accordance with the office of Local government Director General's guidelines; and
3. That the Council notes that Legal Professional Privilege does not apply as there is a third party involved - SafeWork NSW.

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

For	Against
-----	---------

Councillors Brown
Schreiber

Councillors Greenhill
Fell
Myles
Hollywood
McGregor
Foenander
Hoare

With Cr Christie out of the chamber.

* * * * *

MINUTE NO. 474

Procedural - Move into Confidential Session

A MOTION was MOVED by Councillors Hollywood and Fell:

1. That the Meeting move into a Confidential Session;
2. That pursuant to the provisions of Section 10A(2) (g) of the Local Government Act 1993, as the report contains and discussion is likely to involve:
 - a. (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
3. That the correspondence and reports relevant to the subject business be withheld from access to the media and public as required by section 11(2) of the Local Government Act 1993.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For
Councillors Greenhill
Fell
Myles
Hollywood
McGregor
Foenander
Hoare
Schreiber

Against
Councillors Brown

With Cr Christie out of the chamber.

* * * * *

MINUTE NO. 475

MM2. 17/263360. ONGOING INVESTIGATION PROCESS

A MOTION was MOVED by Councillors

Recommendations:

1. That the Council notes that Mr Michael Tooma of Clyde & Co has been appointed as independent investigator to conduct an investigation into allegations made against the Council in relation to the management of asbestos (including asbestos in Council owned properties);

2. That the Council notes the amended terms of reference for Mr Tooma's investigation, adopted at the ordinary Council meeting held on 12 December 2017, have been released by resolution of the Council to the media and to the public;
3. That the Council authorises Mr Tooma to conduct his investigation in consultation with SafeWork NSW, the United Services Union (USU) and all other relevant stakeholders and to publicly release his report and to make his report available to the Minister for Local Government, SafeWork NSW and the USU; and
4. That the Council submits to the Minister for Local Government that it is in the public interest for the Councillors as the governing body of the Council to remain in office pending the conduct and conclusion of Mr Tooma's investigation, and the delivery of his report, noting that SafeWork NSW, acting as regulator, is not equipped to conduct, and does not as a matter of practice conduct, investigations that result in publicly available reports.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Fell	
Myles	
Hollywood	
McGregor	
Brown	
Foenander	
Hoare	
Schreiber	

With Cr Christie out of the chamber.

* * * * *

MINUTE NO. 476

Procedural - Return to Public Meeting

A MOTION was MOVED by Councillors Fell and Foenander:

That the Council returns to open session.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Fell	
Myles	
Hollywood	
McGregor	
Brown	
Foenander	
Hoare	
Schreiber	

With Cr Christie out of the chamber.

* * * * *

MINUTE NO. 477**Procedural – Question that Meeting Close**

A MOTION was MOVED by Councillors Foenander and Hollywood:

1. That as there was no further business before the Ordinary Meeting of Friday, 15 December 2017, the meeting closed at 10:07pm; and
2. That the Council gives a vote of thanks to the Mayor, General Manager, legal counsel, Staff and elected body for their work and contribution to the Council.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Fell	
	Myles	
	Hollywood	
	McGregor	
	Brown	
	Foenander	
	Hoare	
	Schreiber	

With Cr Christie out of the chamber.

* * * * *

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Minutes of the Extraordinary Council Meeting of the City of Blue Mountains, held in the Chambers on Tuesday, 19 December 2017, commencing at 7.30pm.

* * * * *

There were present:

The Mayor (Councillor Greenhill) in the Chair, and Councillors Bowling, Brown, Christie, Fell, Hoare, Hollywood, McGregor, Myles, Schreiber, Van der Kley.

* * * * *

In attendance:

General Manager; Director City Services; Director City & Community Outcomes; Director Development & Customer Services; A/Group Manager, People & Systems, A/Group Manager Integrated Planning and Finance; Executive Officer: Manager, Development and Planning Services; Communications Officer; Policy & Compliance Lead; Coordinator Corporate Marketing; Communications Officer; IT Trainee; Senior Ranger; Ranger.

* * * * *

Prayer/Reflection:

The Prayer/Reflection was read by the Mayor, as was the acknowledgement of the traditional owners, the Darug and Gundungurra people.

* * * * *

MINUTE NO. 478

Apologies

A MOTION was MOVED by Councillors Fell and Van der Kley:

That the Council accepts the apology of Councillor Foenander for this Extraordinary Meeting of the Council.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 479**Confirmation of Minutes - Extraordinary Meeting - 15 December 2017**

A MOTION was MOVED by Councillors Fell and Hollywood:

That the Minutes of the Extraordinary Meeting of 15 December 2017 be confirmed.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Hoare	
	Schreiber	

* * * * *

Declarations of Interest – Ordinary Meeting, 19 December 2017

Nil

* * * * *

MINUTE NO. 480**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Hollywood and Christie:

That the Council endorses the use of recording devices to film the meeting pertaining to the Mayoral Minute 1 - Submission in response to the Minister for Local Government's notice of intended suspension of the elected councillors of Blue Mountains City Council; held at the Extraordinary Meeting of 19 December 2017 following a request from Vision TV.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 481**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Brown and Schreiber:

That the Council adjourns the meeting to allow people to register to speak.

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

For		Against	
Councillors	Christie	Councillors	Greenhill
	Brown		Fell
	Schreiber		Myles
			Hollywood
			Van der Kley
			McGregor
			Bowling
			Hoare

* * * * *

MINUTE NO. 482

A MOTION was MOVED by Councillors Myles and Fell:

That the Council suspends the standing orders of the meeting to allow up to six (6) public speakers to address the meeting, indicating by way of a show of hands, and selected at random by the Mayor, and not requiring them to register to speak.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against	
Councillors	Greenhill	Councillors	
	Christie		
	Fell		
	Myles		
	Hollywood		
	Van der Kley		
	McGregor		
	Bowling		
	Brown		
	Hoare		
	Schreiber		

* * * * *

MINUTE NO. 483**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Fell and Hoare:

That the Council suspends the standing orders of the meeting to allow the representative of the office of the State Member for Blue Mountains, Trish Doyle, to address the meeting.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For	Against
Councillors	Councillors
Greenhill	
Christie	
Fell	
Myles	
Hollywood	
Van der Kley	
McGregor	
Bowling	
Brown	
Hoare	
Schreiber	

* * * * *

MINUTE NO. 484

1. 17/261280. Submission in response to the Minister for Local Government's notice of intended suspension of the elected councillors of Blue Mountains City Council

A MOTION was MOVED by Councillors Brown and Schreiber:

1. That the Council, in response to the Minister for Local Government, the Hon. Gabrielle Upton serving a notice of intention to suspend the elected Councillors of Blue Mountains City Council for a period of 3 months and to appoint an interim administrator to restore the proper and effective functioning of the Council, endorse the following as the basis for making representations to the Minister:
 - a) the letter from the Mayor and Deputy Mayor as attached;
 - b) the Memorandum from the General Manager as attached; and
 - c) the enclosed Submission from the General Manager;
2. That as an alternative to suspending the elected Councillors and appointing an interim administrator to govern the City, the Council respectfully submits that the Minister could instead consider:
 - (a) issuing a Performance Improvement Order to the Council to improve its management of asbestos and appoint a temporary advisor to the Council with the requisite experience in safety and asbestos management, in accordance with Chapter 13, Part 6 (Performance Management) of the Local Government Act 1993, and
 - (b) noting the Council's "in principle" offer to enter into an Enforceable Undertaking with SafeWork NSW, regulating the Council's ongoing management of asbestos to ensure its obligations under the Work Health and Safety Act 2011 are fully satisfied, following the conclusion of the independent investigation now being conducted;
3. That the Council submits to the Minister that the alternative approach in Recommendation 2 is a more targeted and effective response to the Minister's expressed concerns, which recognizes the seriousness of asbestos management and reflects the Council's intention to place the safety of its staff and community at the centre of its operations and organisational culture;
4. That the Council endorses the publication of this Mayoral Minute and the submission to the Minister, which may include distribution to the media as appropriate;

5. That the Council writes to NSW Councils and local government bodies, including Local Government NSW and the Regional Organisations of Councils, providing a copy of the Council's submission; and
6. That the Council writes to all members of the NSW Parliament providing a copy of the Council's submission;
7. That the Council acknowledges it has not dealt with the issue of asbestos management adequately;
8. That Council issues an apology to the staff of BMCC and the community of Blue Mountains for the inadequate management and reassures staff and the public alike it will spare no effort to implement the best practice management of asbestos in the BM LGA;
9. That Council adopts a policy of openness and transparency regarding the management of asbestos via publishing its Asbestos Management Plan and the Terms of References for the inquiry implemented by Council (with the names of individuals removed);
10. That the submission to the Minister includes on p22 along with the Mayoral Minutes and reports, all relevant resolutions regarding WHS of the council meetings of 14 November and 12 December 2017; and
11. That the Council include in the submission acknowledgement that councillors are required to actively participate in developing councils "integrated planning and reporting framework to manage the risks to the local community, area and council effectively and proactively" Local Government Act 8C(h).

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

For
Councillors Brown
Hoare
Schreiber

Against
Councillors Greenhill
Christie
Fell
Myles
Hollywood
Van der Kley
McGregor
Bowling

* * * * *

MINUTE NO. 485

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

1. That the Council, in response to the Minister for Local Government, the Hon. Gabrielle Upton serving a notice of intention to suspend the elected Councillors of Blue Mountains City Council for a period of 3 months and to appoint an interim administrator to restore the proper and effective functioning of the Council, endorse the following as the basis for making representations to the Minister:
 - a) the letter from the Mayor and Deputy Mayor as attached;
 - b) the Memorandum from the General Manager as attached; and
 - c) the enclosed Submission from the General Manager;

2. That as an alternative to suspending the elected Councillors and appointing an interim administrator to govern the City, the Council respectfully submits that the Minister could instead consider:
 - (a) issuing a Performance Improvement Order to the Council to improve its management of asbestos and appoint a temporary advisor to the Council with the requisite experience in safety and asbestos management, in accordance with Chapter 13, Part 6 (Performance Management) of the Local Government Act 1993, and
 - (b) noting the Council's "in principle" offer to enter into an Enforceable Undertaking with SafeWork NSW, regulating the Council's ongoing management of asbestos to ensure its obligations under the Work Health and Safety Act 2011 are fully satisfied, following the conclusion of the independent investigation now being conducted;
3. That the Council submits to the Minister that the alternative approach in Recommendation 2 is a more targeted and effective response to the Minister's expressed concerns, which recognizes the seriousness of asbestos management and reflects the Council's intention to place the safety of its staff and community at the centre of its operations and organisational culture;
4. That in its submission to the Minister, the Council draw the Minister's attention to the NSW Ombudsman's April 2017 Report into Asbestos: "How NSW Government Agencies deal with the problem" which identifies some of the challenges faced by the local government sector in asbestos management, noting the Ombudsman's report identified that in August 2016 only 62 out of 152 councils had promulgated the Model Asbestos Policy as directed by the Office of Local Government, which forms the basis of the Blue Mountains Asbestos Management Plan;
5. That the Council delegate authority to the Mayor and the General Manager to make any alterations necessary to the submission, without altering its intent or substance, and the delivery of the final submission to the Minister by 5.00pm on 20 December 2017;
6. That the Council endorses the publication of this Mayoral Minute and the submission to the Minister, which may include distribution to the media as appropriate;
7. That the Council writes to NSW Councils and local government bodies, including Local Government NSW and the Regional Organisations of Councils, providing a copy of the Council's submission; and
8. That the Council writes to all members of the NSW Parliament providing a copy of the Council's submission.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

For	Against
Councillors	Councillors
Greenhill	Christie
Fell	Schreiber
Myles	
Hollywood	
Van der Kley	
McGregor	
Bowling	
Brown	
Hoare	

* * * * *

MINUTE NO. 486**Procedural - Procedural Motion**

A MOTION was MOVED by Councillors Fell and Van der Kley:

That the Council accepts an address from the General Manager.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Hoare	
	Schreiber	

* * * * *

MINUTE NO. 487**Procedural – Question that Meeting Close**

A MOTION was MOVED by Councillors Van der Kley and Hollywood:

That as there was no further business before the Extraordinary Meeting of Tuesday, 19 December 2017, the meeting closed at 9:30pm.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

For		Against
Councillors	Greenhill	Councillors
	Christie	
	Fell	
	Myles	
	Hollywood	
	Van der Kley	
	McGregor	
	Bowling	
	Brown	
	Hoare	
	Schreiber	

* * * * *

I confirm that these minutes, consisting of this page 8 and the previous 7 pages, were confirmed at the Ordinary Meeting of the Council on 30 January 2018.

Chairman: Mayor Mark Greenhill..... Date.....



20 December 2017

Office of the Mayor

Reference File: 17/267191

The Hon Gabrielle Upton MP
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

Dear Minister

SUBJECT: Blue Mountains City Council Response to the Notice of Intention to Suspend the Elected Council.

As Mayor and Deputy Mayor of Blue Mountains City Council, we respectfully submit the response of the Council to your notice of intention, received 13 December 2017, to suspend the elected councillors for a period of 3 months, and appoint an interim administrator.

The Council's submission comprises the following elements, as attached:

- a) *a letter from the Mayor and Deputy Mayor;*
- b) *draft Terms of Performance Improvement Order for the Minister's consideration; and*
- c) *a submission from the Council;*

We make this submission in accordance with the resolutions of the Council made at an open extraordinary meeting on Tuesday 19 December 2017, as follows;

1. *That the Council, in response to the Minister for Local Government, the Hon. Gabrielle Upton serving a notice of intention to suspend the elected Councillors of Blue Mountains City Council for a period of 3 months and to appoint an interim administrator to restore the proper and effective functioning of the Council, endorse the following as the basis for making representations to the Minister:*
2. *That as an alternative to suspending the elected Councillors and appointing an interim administrator to govern the City, the Council respectfully submits that the Minister could instead consider:*
 - a. *issuing a Performance Improvement Order to the Council to improve its management of asbestos and appoint a temporary advisor to the Council with the requisite experience in safety and asbestos management, in accordance with Chapter 13, Part 6 (Performance Management) of the Local Government Act 1993, and*
 - b. *noting the Council's "in principle" offer to enter into an Enforceable Undertaking with SafeWork NSW, regulating the Council's ongoing management of asbestos to ensure its obligations under the Work Health and Safety Act 2011 are fully satisfied, following the conclusion of the independent investigation now being conducted;*

3. *That the Council submits to the Minister that the alternative approach in Recommendation 2 is a more targeted and effective response to the Minister's expressed concerns, which recognizes the seriousness of asbestos management and reflects the Council's intention to place the safety of its staff and community at the centre of its operations and organisational culture;*
4. *That in its submission to the Minister, the Council draw the Minister's attention to the NSW Ombudsman's April 2017 Report into Asbestos: "How NSW Government Agencies deal with the problem" which identifies some of the challenges faced by the local government sector in asbestos management, noting the Ombudsman's report identified that in August 2016 only 62 out of 152 councils had promulgated the Model Asbestos Policy as directed by the Office of Local Government, which forms the basis of the Blue Mountains Asbestos Management Plan;*
5. *That the Council delegate authority to the Mayor and the General Manager to make any alterations necessary to the submission, without altering its intent or substance, and the delivery of the final submission to the Minister by 5.00pm on 20 December 2017;*
6. *That the Council endorses the publication of this Mayoral Minute and the submission to the Minister, which may include distribution to the media as appropriate;*
7. *That the Council writes to NSW Councils and local government bodies, including Local Government NSW and the Regional Organisations of Councils, providing a copy of the Council's submission; and*
8. *That the Council writes to all members of the NSW Parliament providing a copy of the Council's submission.*

(Minute no. 485).

The Council's submission comprehensively addresses your concerns outlined in the notice. We believe it clearly demonstrates that the Council has been taking deliberate steps to address the management of asbestos since May 2017, when deficiencies in policy and practice became apparent to management. The Council has worked with SafeWork NSW and the Environmental Protection Authority to address these issues and now has in place strengthened internal governance and accountability structures and processes to improve the safety of its workers and the community.

Should you require any further information to assist with your full consideration of the Council's submission, this will be provided promptly on request.

We look forward to hearing from you.

Yours faithfully,



Mark Greenhill OAM
Mayor



Chris Van der Kley
Deputy Mayor



20 December 2017

Office of the Mayor

Reference File: 17/267203

The Hon Gabrielle Upton MP
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

Notice to Blue Mountains City Council – Section 438K of the *Local Government Act, 1993* (the Act) – Notice of Intention to Issue Order to Suspend Councillors

1. This letter forms part of the submission made by Blue Mountains City Council (Council) in response to your Notice of Intention (Notice) served on the Council on Wednesday 13 December 2017, and addresses the role of the governing body of the Council, having regard to the relevant provisions of the Act.
2. The Councillors now holding civic office were elected at the ordinary Council election held on 10 September 2016.
3. With effect from August 2016 the Act was amended (2016 amendment) to incorporate new provisions, which included the following:

s223	Role of governing body
s226	Role of Mayor
S232	The role of a Councillor

These provisions describe the roles of the Mayor and of the elected Councillors as members of the governing body.

4. The nature of the role of the governing body is explained in the Councillor Handbook 2017, issued by the Office of Local Government (OLG), in passages which include the following:

"Councillors comprise the governing body of a council in the same way that a Board of Directors is the governing body of a corporation. The Local Government Act, 1993 prescribes the collective role of a council's governing body"

"Councillors must work as a team to make decisions and policies that guide the activities of the Council. Policies can be defined as the principles and intent behind the programs that a council implements."

This includes setting the broad, strategic direction for the local community. To do this, Councillors have to understand their community's characteristics and needs and the types of services required to meet these needs."

5. The Councillors do not manage the Council on a day-to-day basis. As the governing body, Councillors exercise a role involving the setting of policies and strategies, exercising oversight and requiring organisational accountability. The professional staff, under the leadership of the General Manager, are responsible for the day-to-day operations of the Council.
6. Those day-to-day operations include the conduct of the Council in accordance with all applicable legal requirements, including the *Work, Health & Safety Act, 2011* (WHS Act) and the *Work, Health & Safety Regulation, 2011* (WHS Regulation).
7. The elected Councillors, as the governing body, do not and cannot know the fine detail of the statutory obligations that apply to the Council in its various operations. However, as governing body the Councillors do appropriately seek confirmation from the professional staff that all applicable statutory obligations are being observed.
8. Your Notice of Intention includes the following paragraph:
 - "● *It is acknowledged that the Council is taking steps to respond to both SafeWork NSW and the EPA, including through appointment of a new A/General Manager. However, the elected body remains unchanged. I am of the preliminary view that the issues identified in the recent regulatory action taken by SafeWork NSW and the EPA are indicative of a systemic problem at Council in managing asbestos which has not been adequately proactively addressed to date. This is particularly given that Improvement Notices with respect to asbestos management were issued by SafeWork NSW in 2015 and May 2017 (see list of notices in Item 3 of Schedule)."*
9. Section 4.0 of the Council's submission responds to your concerns in relation to the SafeWork notices that were issued in 2015 with respect to the Council's Blaxland Waste Management Facility (BWMF). It is relevant to note that these notices were issued during the term of the Council elected in 2012 and that the notices related to an operational matter, which was resolved to the satisfaction of SafeWork at that time, and which was not reported to the then governing body.
10. The Councillors, acting as the current governing body, had no reason to suspect that there might be any inadequacies in the Council's management of asbestos until May 2017, when the SafeWork inspection at the Springwood depot took place, and Improvement Notices were served.
11. The elected Councillors were immediately briefed by the responsible staff. The Councillors accept that the responsible staff gave advice in good faith to the governing body concerning the way in which the issues identified by SafeWork were being addressed and the way in which Council's existing systems and procedures for the management of asbestos were being enhanced.

12. The submission prepared by the General Manager details the briefings and reports provided to the elected Councillors in the period from May 2017 to date.
13. The elected Councillors submit to you as Minister that, within the framework of the Act, the governing body acted entirely appropriately to seek assurances from the professional staff in relation to the Council's management of asbestos and in accepting the assurances that were given in good faith.
14. For example, at the meeting of the Audit and Risk Committee of the Council held on 6 July 2017 a Councillor member of that Committee was assured that strong controls for the management of asbestos had been introduced and that these controls would be strengthened over the next two months. The Committee members were also informed that Council staff would cease to be involved in the removal of asbestos from the Council's properties as a measure to ensure the safety of the workforce. This work would in future be undertaken by external professionals.
15. The governing body of the Council understood that all required measures had been taken to address asbestos management. That understanding continued until early November 2017 when newspaper and radio commentary on the Council's asbestos management began.
16. As Minister, you will be aware that the governing body of a council meets on pre-determined dates. The governing body of this Council meets on a four weekly cycle, unless an emergency meeting is called.
17. The first meeting of the governing body, after the broadcast media attacks on the Council began on Wednesday 8 November 2017, was convened on 14 November 2017. At that meeting the governing body acted to secure the appointment of independent investigators to investigate two matters. The first of those investigations related to the allegations made against the Council in relation to its management of asbestos in Council-owned properties, and all related issues.
18. Mr Michael Tooma, solicitor, of Clyde & Co, was appointed as the investigator. Mr Tooma is recognised across Australia as an authority on work, health and safety legislation and issues. The Council acted immediately to identify, collate and make available to Mr Tooma the documents required for his investigation.
19. This investigation was initiated by the governing body to inform itself of the facts and matters that had given rise to the allegations made against the Council and to secure independent recommendations concerning the systems and procedures for the management of asbestos that the Council should introduce.
20. The investigation was initiated by the governing body to ensure that it received a report prepared by an acknowledged expert, equipped to conduct an investigation and acting entirely independently of the Council. Without reflecting in any way on the Council's professional staff, the governing body considered that the allegations were so serious that they merited a rigorous external investigation.

21. The Office of Local Government (OLG) was notified of the Council's decision and received a copy of the Terms of Reference of the investigation. The OLG expressed no concern about the course that the Council was following. On the contrary, a representative of the OLG attended at the Council's Katoomba offices to note the availability of the OLG to provide counsel and advice as required.
22. The governing body also acted to appoint Dr Rosemary Dillon as the Acting General Manager, following the retirement of the previous General Manager. Over the following weeks, the governing body observed and assessed Dr Dillon's performance, noting the very positive response by staff in general and by the United Services Union (USU) to Dr Dillon's readiness to engage with the USU on behalf of its members, in relation to asbestos issues.
23. Throughout November and December the Council's professional staff continued to work with SafeWork NSW. The elected Councillors were kept informed of developments, including the service by SafeWork of additional notices, and the service by the Environment Protection Authority (EPA) of notices directed to materials held in a Council depot at Lawson and the alleged removal of materials from that depot and the use of those materials in other locations.
24. The governing body again responded to these developments.
25. At the next scheduled meeting on 12 December 2017, acknowledging the challenges faced by the Council and seeking to provide the stable leadership sought by the staff, community and the USU and, as the Councillors understand the position, by the OLG, the governing body appointed Dr Dillon as temporary General Manager, for the maximum term permitted under s251 of the Act. Dr Dillon will now hold office as General Manager for a term of up to 12 months, expiring on Sunday 18 November 2018. That appointment was warmly welcomed by the USU and was supported by the OLG.
26. The governing body also made two important decisions in relation to Mr Tooma's investigation. First, to broaden and publically release the Terms of Reference for that investigation. Secondly, to designate Mr Tooma's investigation as an "open" investigation, with his report to be publically released.
27. That step was taken in recognition that SafeWork does not conduct open investigations. SafeWork is a regulator. SafeWork, in accordance with the WHS Act, will investigate incidents or alleged breaches of legislation.
28. SafeWork investigations do not result in publicly available investigation reports. Rather, SafeWork will determine at the end of an investigation whether to foreshadow enforcement action and, if so, the level of action that it will foreshadow.
29. In response to the Council's decisions, Mr Tooma has given to the Council a program for the conduct of his investigation. All aspects of his investigation will be concluded by 31 March 2018, with a final and comprehensive report delivered at that time. Mr Tooma may prepare and deliver interim reports addressing matters such as the Lawson depot and Lawson stockpile.

30. Throughout this period, the Mayor and the General Manager have been in close contact. They have often reviewed and responded to issues on a day-to-day basis. The members of the governing body have been kept informed of developments by both the Mayor and the General Manager.
31. All of the governing body, the elected Councillors and the Mayor have acted in precisely the way that is required by ss223, 226 and 232 of the Act.
32. There is another important point to note. Reflecting the intention of the New South Wales Parliament, the elected Councillors are not professional officers of the Council. The elected Councillors hold civic office and fulfil their duties on a part time basis.
33. The elected Councillors are diligent and dedicated to the performance of their duties. Attendance at Council meetings is a high priority, as the attendance records indicate. Councillors attend briefings on a weekly basis. Councillors attend committee meetings in addition to ordinary meetings and Councillor briefings. The elected Councillors make every effort to fulfil their duties under the Act and the public record demonstrates that fact.
34. In the submission of the governing body there is nothing to be gained and much to be lost by the suspension of the elected Councillors.
35. The governing body was elected by the residents of the City in September 2016. Four of the total twelve Councillors took office for the first time at that election.
36. Your Notice of Intention focuses on asbestos management issues. In the submission of the governing body there is no reason, against the background already given, for you to conclude that the governing body has acted inappropriately or tardily in any way in relation to those issues. The governing body has taken all action that you could as Minister reasonably expect it to take in response to the challenges that the Council faces.
37. The suspension of the elected Councillors will mean the loss to the City of its elected representatives. The Council is financially sound. The Council has been recognised as "*fit for the future*".
38. The governing body submits that the suspension of the elected Councillors would not be a response that is targeted to the issues identified in your Notice of Intention. The residents of the City should not lose the benefit of representation by their Councillors because of the issues identified in your Notice. The loss of the elected Councillors will mean that many issues of great importance to the residents of the City will come before an unelected Ministerial appointee for determination.
39. Matters of significance to the Blue Mountains community should not be determined by an unelected Ministerial appointee. Those matters should be determined by the elected Councillors who, in the words of the Councillor Handbook 2017, *understand their community's characteristics and needs and the types of services required to meet those needs*.
40. An appropriate response to the issues identified in your Notice of Intention would be action under Chapter 13 Part 6 of the Act, not under Chapter 13 Part 7.

41. You would appropriately give a Performance Improvement Order (PIO) to the Council in relation to the management of asbestos. At the same time, you could appropriately appoint a specialist advisor to the Council in relation to asbestos management.
42. This letter confirms the Council's appointment of Mr Michael Tooma as an independent investigator, as previously reported to the OLG. Mr Tooma's expertise in the field of work health and safety is well known.
43. In response to your Notice, the governing body proposes that Mr Tooma's role be expanded. The Council invites you to make a Performance Improvement Order under s438A of the Act and to appoint Mr Tooma as the temporary advisor to the Council, having the role and the functions designated in the Performance Improvement Order.
44. The elected Council attaches to this letter for your consideration a draft Performance Improvement Order that, in the Council's submission, would appropriately be made by you as Minister in accordance with s438A.
45. If the proposed Order was made by you, you could be confident that Mr Tooma would comprehensively address the past actions of the Council as an organisation, identify any deficiencies in the Council's systems and actions and work with the Council to develop an implementation plan acceptable to you (relating to the Council's asbestos management systems and procedures) that addresses the findings and recommendations of the temporary advisor's report.
46. In summary, the independent investigation will make recommendations but will also identify the action required to be taken by the Council to improve performance, in accordance with s438A(3)(b) of the Act. In consultation with Mr Tooma, acting as temporary advisor, the Council would develop an implementation plan acceptable to you. That plan will address the findings and recommendations made in Mr Tooma's final report and would, at a minimum, incorporate the elements identified under the heading "*Action required to improve performance – section 438A(3)(b)*" of the Schedule to the draft Order.
47. A PIO, drawn in the terms of the document attached to this letter, would fully address the concerns expressed by you in the Notice but would also ensure that the residents of the City retain their elected representatives and have the benefit of that representation as matters unrelated to asbestos management come before the Council for determination.
48. Finally, the governing body of the Council stands ready and willing to enter into an enforceable undertaking with SafeWork NSW, following the completion of Mr Tooma's investigation. That enforceable undertaking would bind the Council to adopt and implement the recommendations of the independent investigation.
49. In conclusion, the elected Councillors submit to you that they have acted strongly and decisively to address the allegations made against the Council, and to discharge their duties as the governing body of the Council, in relation to asbestos management issues. The governing body's oversight responsibilities were promptly and appropriately exercised by the appointment

of Mr Michael Tooma as independent investigator, reporting to the governing body, after the allegations were made in early November 2017 in relation to the Council's management of asbestos

50. In all of these circumstances, the governing body should remain in office. The suspension of the governing body would not be an appropriately focused response to recent events in relation to asbestos management issues and would deny to the residents of the City the opportunity to have important issues addressed and determined by their elected representatives.

Yours faithfully,



Cr Mark Greenhill OAM
Mayor, City of Blue Mountains



Cr Chris Van der Kley
Deputy Mayor, City of Blue Mountains

ATTACHMENT TO BMCC SUBMISSION LETTER DATED 20 DECEMBER 2017

DRAFT TERMS OF PERFORMANCE IMPROVEMENT ORDER FOR MINISTER'S CONSIDERATION**Local Government Act 1993****Order under section 438A**

I, the Minister for Local Government, issue this Performance Improvement Order to the Council and/or persons specified in Schedule 1 to undertake the actions described in Schedule 2 within the period specified in Schedule 2.

I hereby appoint the person specified in Schedule 3 as a temporary adviser to Council to exercise the functions, and for the term, specified in Schedule 3.

This Order takes effect upon service on the Council.

Dated:

The Hon Gabrielle Upton MP
Minister for Local Government

SCHEDULE 1

Blue Mountains City Council

SCHEDULE 2

Reasons for Order – section 438A(3)(a)
<ol style="list-style-type: none"> 1. There are questions as to whether the Council has complied with its legislative responsibilities, standards or guidelines with respect to the management of asbestos. 2. It is necessary for an independent investigation to be undertaken by a health and safety expert as an additional intervention action. That investigation must make factual findings about what has occurred in relation to asbestos management at the Council and provide recommendations for corrective actions if necessary. 3. I believe the appointment of a temporary adviser to assist the Council in meeting the actions required is reasonably necessary in the circumstances.
Action required to improve performance – section 438A(3)(b)
<ol style="list-style-type: none"> 1. That Council utilise the services of the temporary adviser appointed under Schedule 3 to conduct an independent investigation into Council's systems and processes for asbestos management. 2. That Council fully co-operate with the investigation conducted by the temporary advisor appointed under Schedule 3. 3. Upon receipt of the Final Report of the temporary advisor, the Council must develop

ATTACHMENT TO BMCC SUBMISSION LETTER DATED 20 DECEMBER 2017

<p>an implementation plan acceptable to the Minister that addresses the findings and recommendations of the temporary advisor's final report.</p> <p>4. The implementation plan must:</p> <ol style="list-style-type: none"> Demonstrate how Council will address the findings and recommendations in the Report. Demonstrate how Council will address any additional risks and areas of non-compliance in Council's controls and processes. Identify specific completion dates. Identify the person/s responsible for implementation activities. Identify what, if any, additional resources are required to give effect to the plan. <p>5. If the plan is satisfactory to the Minister, the Council is to adopt the plan and commence its implementation.</p>
Period for compliance with Order
<ol style="list-style-type: none"> Temporary Advisor's Asbestos Investigation Report: Council must provide the Minister with a copy of the temporary advisor's final report within 7 days of Council's receipt of the report. Council's Response to Asbestos Investigation Report: Council must provide the Minister with a report containing an implementation plan within 4 weeks from the date of Council's receipt of the temporary advisor's Asbestos Investigation Report. Implementation Plan Progress Update Report: Council must provide the Minister with a written report on its progress against the implementation plan within 12 weeks of the Minister indicating to the Council satisfaction with the implementation plan.
Evidence to be provided for the above items
<ol style="list-style-type: none"> Temporary Advisor's Asbestos Investigation Final Report. Council's Response to Asbestos Investigation Report: A copy of Council's implementation plan. Implementation Plan Progress Update Report: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the implementation plan.

SCHEDULE 3

Appointment of temporary adviser
<p>Pursuant to section 438G of the <i>Local Government Act 1993</i>, that Michael Tooma of the law firm Clyde & Co be appointed as a temporary advisor to Blue Mountains City Council for the period up to the Council's submission of the final report to the Minister.</p> <p>The temporary adviser shall have the following functions:</p> <ol style="list-style-type: none"> to conduct an independent investigation into asbestos management at the Council; to investigate the matters listed in the Terms of Reference dated 13 December 2017; to consult with SafeWork NSW and the United Services Union at regular intervals during the investigation; to seek written and oral submissions from interested parties on matters related to the Council's management of asbestos; to review all relevant documents and interview all relevant persons who may have information relevant to the investigation; to provide Council with an investigation report containing findings and recommendations on the matters listed in the Terms of Reference by 31 March 2018;

ATTACHMENT TO BMCC SUBMISSION LETTER DATED 20 DECEMBER 2017

- (vii) to provide advice and assistance to Council for the purpose of ensuring that it complies with the Performance Improvement Order;
- (viii) to undertake a review and evaluation of Council's implementation plan responding to the temporary advisor's report; and
- (ix) to provide assistance to Council in identifying any additional issues associated with Council's systems, plans, registers, processes and practices for asbestos management.

The temporary adviser is appointed for the period until the Minister is provided with the implementation plan for responding to the temporary advisor's investigation report.

Pursuant to section 438G(7) of the *Local Government Act 1993*, the temporary adviser shall be paid from the Council's funds for the period of the appointment.



Submission to the Minister for Local Government Addressing the Notice of Intention to Suspend Blue Mountains City Council

Blue Mountains City Council

20 December 2017

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Executive Summary

Introduction

On 12 December 2017, the Hon Gabrielle Upton MP, Minister for Local Government, issued a notice of intention to Blue Mountains City Council (the Council) giving notice of the Minister's intention to suspend the elected councillors of the Council. The Minister's intention is to issue an order to suspend the Council for a period of three months and appoint an interim administrator.

This notice has been given because the Minister has formed the preliminary belief that appointment of an interim administrator is necessary to restore both the proper and effective functioning of the Council for the following five reasons:

- The Council has failed to comply with its statutory obligations under the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.
- There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos.
- The issues identified in the recent regulatory action taken by SafeWork NSW and the NSW Environment Protection Authority are indicative of a systemic problem at Council in managing asbestos which has not been adequately proactively addressed to date.
- Community confidence in the Council's capacity to address the asbestos management issues needs to be restored.
- Council requires a period of independence governance to oversee the investigation of past actions and the implementation of future strategies to ensure that Council meets its legislative responsibilities in relation to asbestos management.

The Minister has invited the Council to make a submission in respect of the proposed suspension and provide a written response within seven days of the date of the notice, which is Wednesday 20 December 2017. This document comprises the submission to the Minister and is structured so that each of the Minister's reasons for giving notice of intention to issue a suspension order are specifically addressed. In addition, an alternate proposal is put forward to address the matters raised by the Minister.

Council response

In response to the Minister's five reasons for issuing the notice of intention, the Council's response is as follows:

1. The Council has failed to comply with its statutory obligations under the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*

Since the *Work Health and Safety Act 2011* (the WHS Act) was introduced, Council has taken responsible and proactive measures to ensure that it has met the requirements of the legislation. This has included a gap analysis undertaken in 2012 of the Council's then occupational health and safety standards against the new WHS Act as well as a review of safety management in 2015 which resulted in a Safety Improvement Project. This project was the impetus behind the development of the Council's systematic safety governance structure for the organisation, improved safety incident reporting and refreshing of policies which comprise the Council's existing Safety Management System.

In relation to asbestos management, the 2012 gap analysis identified the need to conduct an asbestos survey of all Council buildings constructed prior to 2000. Surveys were completed by AirSafe for Council in March and December 2014 and November 2015.

In 2016, council embarked on a major project to improve its existing safety management system. The roadmap for this project was established by a maturity assessment review that was conducted by Willis Australia in August to October 2015. This project in its initial phase concentrated on the revision of the Council's suite of safety policies and procedures, improving incident reporting, refreshing safety consultation throughout the organisation and the introduction of a new governance structure for safety management. These changes were designed to produce a more systematic approach to the management and oversight of safety and better align the system to AS4801.

On 27 April 2017, the Chair of Council's Governance & Risk Steering Group (GRSG) requested a review on asbestos and elevated the issue to the next meeting of Council's Peak Safety Steering Group (PSSG). At the PSSG meeting of 2 May 2017, a document titled *Asbestos Procedure* was submitted for review. However, prior to the document being further considered, it was requested that an *Asbestos Procedure Action Plan* be documented, asbestos register requirements be clarified and that managerial responsibilities regarding these matters also be clarified. The revised document was to be reviewed prior to the next PSSG meeting, which was scheduled for 29 May 2017. A cross directorate working group subsequently met on Wednesday, 10 May 2017 to determine appropriate actions in relation to asbestos registers and their distribution to sites, labelling of sites, training and communication in general. SafeWork NSW conducted an inspection of the Springwood Depot on Monday, 15 May 2017.

On 22 May 2017, the initial improvement notice from SafeWork NSW (SafeWork) required Council to have an *Asbestos Management Plan* in place by 21 July 2017. The notice was subsequently extended at the suggestion of SafeWork, to the 20 October 2017 in recognition of the complexity of the task. Within this timeframe the Council completed preparation of an *Asbestos Management Plan* in consultation with an expert external consultancy. The *Asbestos Management Plan* provides the policy framework for meeting the Council's obligations in relation to asbestos.

Following endorsement of the *Asbestos Management Plan* by SafeWork, the Council's executive adopted the *Asbestos Management Plan* on 20 October 2017 following ongoing collaboration and extensive review within the organisation.

SafeWork subsequently issued a further notice on 10 November requiring Council to continue with the implementation of the *Asbestos Management Plan* with a compliance date of 16 February 2018. This was in recognition of the time that it would take to train a large workforce in the detail of the plan and embed it into business practice. The Council is currently working well to meet this target.

The issuing of improvement and prohibition notices indicates non-compliance for specific sites. However, the Council can demonstrate clear intent and action in responding to requirements and improving its performance to meet its statutory obligations. Council has moved beyond this, being proactive in not only addressing the notices, but establishing a wider program of risk based assessment and voluntary clean-up under the *Protection of the Environment Operations Act 1997* (see 2. below).

In the past month the Council has had licenced assessors inspect over 27 sites and facilities and is currently remediating or closing these sites as necessary. Once knowledge of the extent of the problem emerged, the Council's efforts have been directed to responding to the regulators' concerns about individual facilities as a priority. In addition, the Council supplemented its response by engaged some of the best asbestos investigators in NSW. All of these activities were and continue to be directed to meeting Council's WHS Act obligations.

2. There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos

The concern regarding Council facing significant reputational, legal and public health and safety risks in respect of its management of asbestos has been addressed in section 3.0 of this submission.

In regards to the EPA clean-up notices and the SafeWork notices, Council is on track to meet all timeframes set by the regulators, and has in place resources and expert advice to ensure that Council continues to meet and complete notice requirements.

In regards to the investigations by both the EPA and SafeWork, these investigations are at an early stage of information gathering. It is not possible at this early stage to make a determination on the legal risk associated with these investigations.

Council has commissioned extensive voluntary inspections and clean-up where required. This has gone beyond buildings to also look at recreational areas and walking trails in addition to previous work on illegal dumping.

3. The issues identified in the recent regulatory action taken by SafeWork NSW and the Environment Protection Authority are indicative of a systemic problem at Council in managing asbestos which has not been adequately proactively addressed to date

The Minister specifically refers to a 2015 improvement notice in relation to asbestos management at Council's Blaxland Waste Management Facility (WMF) as indicative that Council has not been proactive in addressing asbestos at a systemic level. In that case, issues were confined to that particular site and were resolved at an operational level to the satisfaction of SafeWork. This included amending the Council's relevant asbestos procedure for that WMF and related practices.

That issue did not give rise to either SafeWork or Council requiring a complete review of the asbestos framework in the Blue Mountains. The initial May 2017 improvement notice was the legal impetus for the review of asbestos practices, following concerns from the staff and the United Services Union (USU) about suspected presence of asbestos in Council-owned facilities.

The Council's immediate priority as of May 2017 was the development of its *Asbestos Management Plan* which was subsequently endorsed by SafeWork. However, in working with the regulator, SafeWork indicated on 10 and 29 November 2017 that it was concerned about the Council's internal governance and accountability structures and processes to deal with scale of the emerging asbestos finds in Council owned properties.

In reply, the Council informed SafeWork on 30 November 2017 of the initiatives that had been developed to strengthen accountability. This includes the appointment of a Chief

Safety Officer (CSO) reporting directly to the General Manager with the principal accountability of leading the asbestos response and the implementation of the Council's *Asbestos Management Plan* and the training of staff.

Under the close direction of the CSO, an Asbestos Management Taskforce (the Taskforce) has been created to ensure a systematic and coordinated whole of organisational approach to asbestos management now and into the future. The Taskforce, which through the CSO reports directly to the General Manager of the Council has at its core the Asbestos Response Team. This team is the council's first point of contact for asbestos reports and is positioned to assess and respond in a timely and authoritative manner. Supporting the efforts of the Asbestos Response Team are council's Corporate Safety Team and Project Management Office. The latter is a mature capability within council, resourced and equipped to execute major projects, including major asbestos remediation projects should the need arise. Working closely with the Asbestos Management Taskforce is a range of third party experts such as licenced asbestos assessors and licenced asbestos removalists.

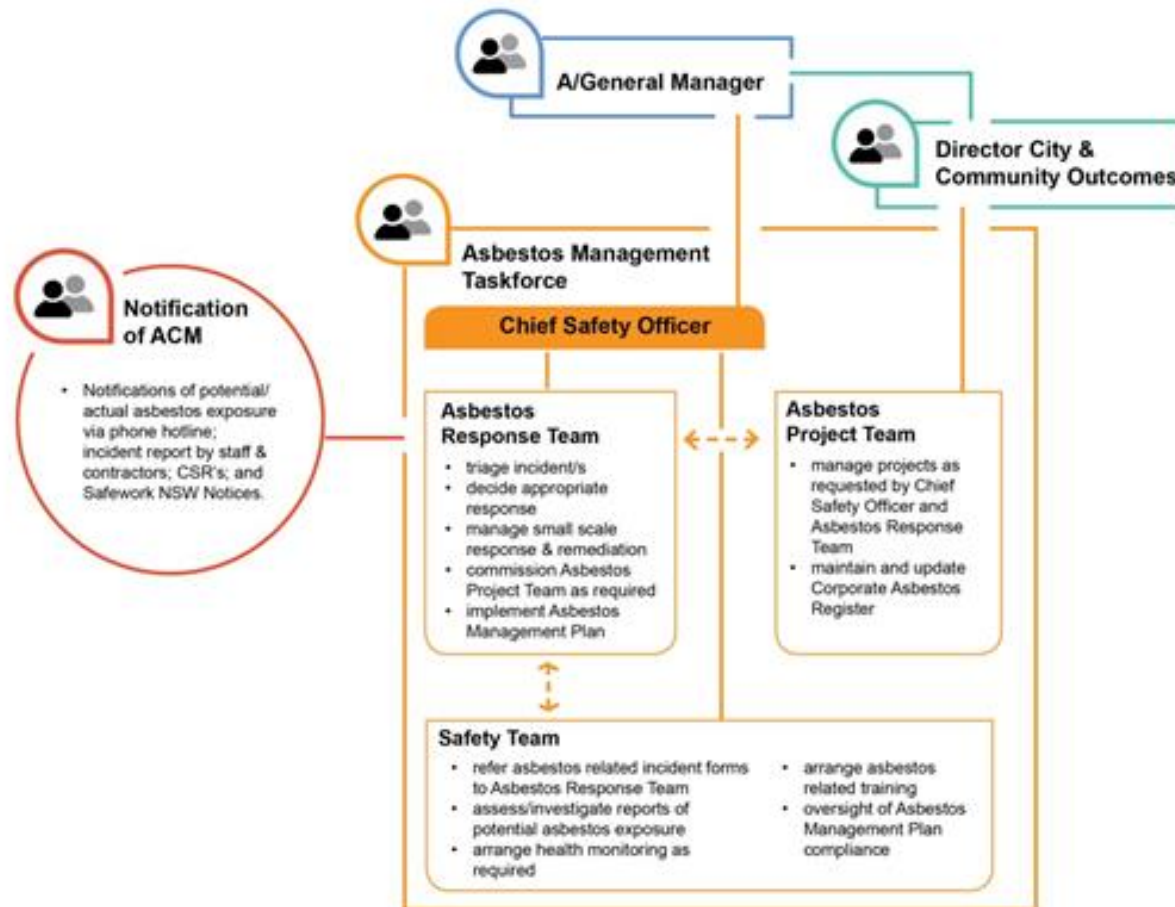
On 4 December 2017, SafeWork acknowledged and commended this approach, noting the seriousness with which the Council has responded to the concerns and questions of SafeWork.

On 12 December 2017, the Council resolved to direct \$528,200 to asbestos management capital works projects from the deferral of 2017/18 Assets Works Program projects. In addition, the Council allocated up to \$350,000 from Council's Risk Reserve to fund the provision of expert assistance on asbestos and hazardous material management.

The Council has introduced an asbestos phone hotline for better enable notifications by staff of asbestos find and timely coordination of appropriate response.

Beyond that immediate contingency, the Council has been systematically working to embed safety systems and a response to asbestos issues. A chronology of activity is included in Section 4 of this submission.

BMCC Asbestos Management Taskforce Structure



November 2017

4. Community confidence in the Council's capacity to address the asbestos management issues needs to be restored

The Minister states that the media coverage of the recent regulatory action against BMCC reflects an understandable level of community concern about the ineffective asbestos management by Council. Further, the Minister is of the view that community confidence in the Council's capacity to address the asbestos management issues needs to be restored.

The Council is of the view that much of the media coverage of Council's management of asbestos has presented an inaccurate account of events, which has led to a detrimental impact on procedural fairness for the Council in addressing concerns of the NSW Government.

Building and improving confidence and trust with all internal and external stakeholders is a major focus of the organisation. The Council has clearly demonstrated its responsiveness to community concerns in relation to asbestos management evidenced by its regular and open communication with the community, stakeholders and employees to ensure appropriate awareness of Council's activities in relation to asbestos management.

Further, Council's existing Asbestos Management Plan, Asbestos Management Policy and Implementation Plan, include actions relating to communications, stakeholder consultation, and the provision of information and training that will allow Council to move to a stage where we have regular, consistent, informative and positive communications.

The Council is generally held in high regard with a recognised record of achievement. Community response to the notice to suspend indicates support for the current Council and significant concern for procedural fairness and democratic principles. The Council is well positioned to meet the expectations of its community and stakeholders and the Minister to restore and maintain community confidence in the Council's capacity to address asbestos management issues.

Council considers that any change in the leadership of the Council at this time would be detrimental to community confidence in Council's capacity to not only address the asbestos management issues but all of the Council's functional responsibilities.

5. Council requires a period of independent governance to oversee the investigation of past actions and the implementation of future strategies to ensure that Council meets its legislative responsibilities in relation to asbestos management

There are currently a number of investigations into Council's asbestos management underway.

The Minister's notice makes reference to the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017. The Minister's Notice does not specifically refer to the independent investigation, being conducted by Mr Michael Tooma, which was initiated by the Council by resolution on 14 November 2017.

SafeWork is the regulator created under the WHS Act. That Act does not provide for the conduct of open investigations by SafeWork, which result in a publicly available report relating to an incident or incidents.

Acting as regulator, SafeWork will investigate matters and will, on the basis of the results of a particular investigation, determine whether to take enforcement action. SafeWork does not

conduct, and is not equipped to conduct, an investigation of the type that Mr Tooma will undertake.

Mr Tooma's investigation will result in the preparation and submission to the elected body of an independent report on the Council's asbestos management practices as well as specific site matters. That report will include recommendations concerning the systems and procedures that the Council should adopt (if it has not already adopted all of the systems and procedures recommended by Mr Tooma) to regulate the Council's management of asbestos.

An interim administrator appointed by the Minister will be in no better position than the elected Councillors to "oversee" the SafeWork investigation or for that matter the Tooma investigation or the EPA investigation.

Given the rigorous steps taken by the elected Councillors, acting as governing body, including the initiation of Mr Tooma's investigation, there is no reason to believe that the elected Councillors cannot, in response to Mr Tooma's report, and in response to SafeWork's ultimate decision in relation to enforcement action, take any further steps that are required to ensure that appropriate systems and procedures for the Council's management of asbestos and asbestos related risks are put in place. Indeed, as this submission points out, that action is being taken and will continue to be taken.

Alternative approach to suspension

This submission sets out an alternative approach for the NSW Government to consider for managing this issue. The Minister's concerns are about performance and are confined to asbestos management, not the general function of the Council. In such a circumstance, it is considered that a more targeted and effective approach is warranted, and one that does not suspend the elected body and its representation of the local community. Elected representatives deal with very broad range of functions over and above functions and responsibilities in relation to asbestos management:

- In other circumstances, the Minister has issued Performance Improvement Orders against other councils pursuant to Part 6 (Performance management), Chapter 13 of the Local Government Act (LG Act). With such an Order in place, the Minister may also appoint a temporary advisor to the Council. The Council, councillors and members of staff, are required by law to co-operate with and provide any reasonable assistance to exercise their functions, including their compliance reporting to the Minister. Importantly, the temporary advisor can bring the requisite skills to manage asbestos and safety systems, rather than an interim administrator required to manage all of the broad functions of a Council, **and/or**
- In ensuring ongoing compliance obligations are met, and given the seriousness of asbestos management, it is also recommended that the Council endorse in principle entering into an "Enforceable Undertaking" with SafeWork NSW, being an approach adopted by Liverpool City Council to manage their response to asbestos.

The proposed alternative approach appropriately acknowledges the serious concerns of the Minister, but also ensures continued focus on SafeWork and EPA compliance requirements. An enforceable undertaking is proposed over the longer term to embed best practice in asbestos management in the Blue Mountains.

1.0 Introduction

1.1 Notice of intention to issue a suspension order

On 12 December 2017, the Minister for Local Government, the Hon Gabrielle Upton MP, issued a notice of intention to Blue Mountains City Council (the Council) giving notice of the Minister's intention to suspend the Council.

This notice was given in accordance with section 438K of the *Local Government Act 1993* (the Act). The Minister's intention is to issue an order to suspend councillors of the Council for a period of three months and appoint an interim administrator under section 438M of the Act. The Minister may suspend a council under section 438I of the Act if the Minister reasonably believes that appointment of an interim administrator is necessary to restore the proper or effective functioning of the Council.

The Minister has invited the Council to make a submission in respect of the proposed suspension and provide a written response within seven days of the date of the notice, being Wednesday 20 December 2017.

1.2 Reasons provided by Minister

The Minister has considered clause 413E of the Regulation and formed the preliminary belief that appointment of an interim administrator is necessary to restore both the proper and effective functioning of the Council for the following reasons:

- The Council has failed to comply with its statutory obligations under the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.
- There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos.
- The issues identified in the recent regulatory action taken by SafeWork NSW and the NSW EPA are indicative of a systemic problem at Council in managing asbestos which has not been adequately proactively addressed to date.
- Community confidence in the Council's capacity to address the asbestos management issues needs to be restored.
- Council requires a period of independence governance to oversee the investigation of past actions and the implementation of future strategies to ensure that Council meets its legislative responsibilities in relation to asbestos management.

1.3 Council's framework for managing Work Health and Safety and asbestos management

Council has developed a safety model to implement its organisational value of *Work Safe, Home Safe*. The model incorporates four pillars supported by a foundation. The pillars represent:

- Consultation
- Risk Management
- Incident management
- Analysis and reporting

The foundation is built up through policy and procedures supported by safety leadership and underpinned by the relevant legislation.

On 15 July 2016 the Council established a Peak Safety Steering Group (PSSG) which meets on monthly basis to implement the safety model above and to oversee safety across the organisation. The PSSG is administered by the Governance & Risk Branch and is chaired by the General Manager.

The charter of the PSSG includes:

- Compliance
- Targeted safety reduction
- Investment in safety and
- Continuous improvement and enhancements in key areas

Monthly analysis of enterprise safety is reported to the PSSG. This provides a snapshot of safety performance and an on-going assessment of the extent to which safety is maturing.

In supporting the PSSG meetings, the Governance & Risk Branch specifically focuses on:

- data analysis
- enterprise safety risks assessment
- assurance
- investigation
- action tracking
- report preparation
- training (needs and design)
- advisory
- safety maturation
- maintenance and enforcement of the SMS

1.4 Structure of submission

The submission is structured to address each of the Minister's reasons for giving notice of intention to issue a suspension order. In addition, an alternative proposal is put forward for the consideration of the Minister that the Council believes will more effectively address the concerns raised.

2.0 Compliance with statutory obligations under the Work Health and Safety Act and Regulation

2.1 Issue raised by the Minister

The Minister is of the view that the Council has failed to comply with its statutory obligations under the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011, as evidenced by the improvement notices and prohibition notices issued by SafeWork NSW in November and December 2017 (see list of notices in items 1 and 2 of the Schedule of the Minister's notice).

2.2 Discussion

The Minister states that the Council has failed to comply with its obligations under the *Work Health and Safety Act 2011* (WHS Act).

The Council is of the view that it has taken action to comply with the WHS Act.

In April 2012 the Council engaged Willis Australia Limited to perform a gap analysis on the Council's then occupational health and safety standards against the new WHS Act, which was enacted on 1 January 2012. SafeWork was provided with this analysis which demonstrated compliance for 2012/13 and Council's commitment to the new legislative obligations.

From this time, the Council conducted a review of Council buildings for asbestos containing material, which was completed by AirSafe, an accredited asbestos specialist, in March and December 2014 and in November 2015.

Safety management was reviewed in 2015, which was the basis of the 2016 Safety Improvement Project as part of improving Council's alignment to the WHS Act. This project was the impetus behind the development of Council's systematic safety governance structure for the organisation, improved safety incident reporting and refreshing of policies.

For several years, the Council has maintained an Audit and Risk Committee with an external chair, with community, audit and councillor representatives (discussed separately below).

Also the Council has a Peak Safety Steering Group (PSSG) which was established with the General Manager as chair in July 2016. The PSSG provides a venue for the chairs of the Council's three safety committees to provide reports and ask questions of senior management. For example, at the PSSG meeting on 29 May 2017, the safety committee chairs provided feedback on localised asbestos management and received a brief on Council's corporate response to asbestos and its response to the SafeWork NSW improvement notice that had been issued on 21 May 2017.

The PSSG is also a venue for new safety documentation to be discussed and highlighted. During the first 18 months of the PSSG's life, over 50 pieces of safety related documentation has been prepared to improve the safety management system in line with the WHS Act. Safe operating practices are being documented across the functional areas of the Council and training undertaken.

Concerns from some staff about asbestos management were raised by the Chair of the Council's Governance and Risk Steering Group on 27 April 2017. The meeting also considered that although asbestos registers were in place, these were not always readily available to workers on sites. It was also acknowledged that the Council did not have an up to date *Asbestos Management Plan*. It forwarded the matter of organisational concerns relating to asbestos management for consideration of the PSSG.

At the PSSG meeting of 2 May 2017, two documents, Asbestos Procedure and First Aid Procedure were submitted for review. The minutes for the meeting record that prior to the documents being further considered, an Asbestos Procedure Action Plan be documented, asbestos register requirements be clarified and that managerial responsibilities regarding these matters also be clarified. The revised documents were to be reviewed by two senior officers prior to the next PSSG meeting, which was scheduled for 29 May 2017.

On 21 May 2017, the initial notice from SafeWork led to the preparation of the Council's *Asbestos Management Plan* (provided at the end of submission) by an expert consultancy. It was adopted on 20 October 2017 following ongoing collaboration with SafeWork, staff and extensive review within the organisation.

The *Asbestos Management Plan* provides the policy framework for meeting the Council's obligations in relation to asbestos. Despite previous testing and amelioration works, deficiencies emerged in particular facilities, which were identified by the regulators in November and December 2017. This has resulted in improvement or prohibition notices to bring the facilities into line with the required standards. The Council is working to comply with each of these statutory notices and has had some notices lifted by the regulators.

Importantly, SafeWork issued a subsequent improvement notice on 10 November 2017 requiring the *Asbestos Management Plan* to be fully implemented by 16 February 2018. This reflected the breadth of work reasonably expected by an organisation the size of the Council to implement such a plan. It is also worth noting that council re-engaged its specialist WHS consultant on 2 November 2017 to complete the training and implementation of its *Asbestos Management Plan* over the coming months.

Council staff resources and specialist consultants have been directed to ensure proper compliance and improvement in the Council's asbestos management over the past six months. The Council continues to revise its Asbestos Register and the Council is in the final stages of implementing a quality assured document. Information about Council buildings and facilities on the register continues to be updated.

The Council has provided for health checks of 168 of its staff, the priority action once potential risks were identified. Council staff are being trained in implementing the *Asbestos Management Plan*, and Safe Operating Practices (SOPs) have been updated and improved. The Council resolved on 14 November 2017 to establish a major independent investigation to improve asbestos management practices, led by a pre-eminent work health and safety legal specialist (Michael Tooma).

The issue of notices and orders indicates non-compliance in those instances of particular sites, but the Council can demonstrate clear intent and action in responding to requirements and improving its performance to meet its statutory obligations. Council has moved beyond this, being proactive in not only addressing all notices within the compliance period, but also establishing a wider program of assessment and voluntary remediation under the *Protection of the Environment Operations Act 1997*.

In the past month the Council has had licenced assessors inspect over 27 sites and facilities and is currently remediating these sites or closing them as necessary. In that period Council has had 3-4 teams of assessors in the field each day inspecting and commissioning remediation. The status of each of these sites forms part of the Council's submission.

Once knowledge of particular asbestos management and concerns emerged, the Council's efforts were directed to responding to staff concerns as well regulators' requirements for individual facilities and sites. Following deficiencies identified with previous specialists, and the technical capability of staff, the Council engaged some of the best asbestos investigators in NSW. All of these activities were and continue to be directed to Council's WHS Act obligations.

2.3 Council response

A key item relating to asbestos management was identified in the 2012 gap analysis which was to conduct an asbestos survey of all Council buildings constructed prior to 2000. Surveys were completed by AirSafe for Council in March and December 2014 and November 2015.

In 2015, Council commissioned an independent review of safety management in Council. As a result, in May 2016 Council initiated a Safety Improvement Project (the Project) in further recognition of the need to complete the realignment of its existing Safety Management System with the WHS Act. The Project accomplished this goal by building a more effective and systematic safety governance structure for the organisation (see **Diagram** below), improving safety incident reporting and refreshing the policies and procedures that constituted the existing Safety Management System

This resulted in the following material changes and additions:

- The establishment of the Peak Safety Steering Group in July 2016, which meets monthly and is chaired by the General Manager;
- The reinvigoration of 'across the organisation' safety consultation, including the establishment of three fully active staff safety committees and the training of additional Health & Safety Representatives (HSRs) to provide and ensure complete coverage for the organisation;
- Formalisation of safety incident reporting, including the implementation of new reporting forms and workflows;
- The implementation of a new Work Health & Safety Policy, which is available to all staff on the intranet;
- The implementation of ten new safety procedures, which are available to all staff on the intranet;
- The implementation of twenty new Safety Operational Practices, which are available to all staff on the intranet;
- The implementation of five new reporting documents related to various types of safety inspections, which are available to all staff on the intranet;
- The implementation of six new injury/incident investigation and notification forms, which are available to all staff on the intranet;

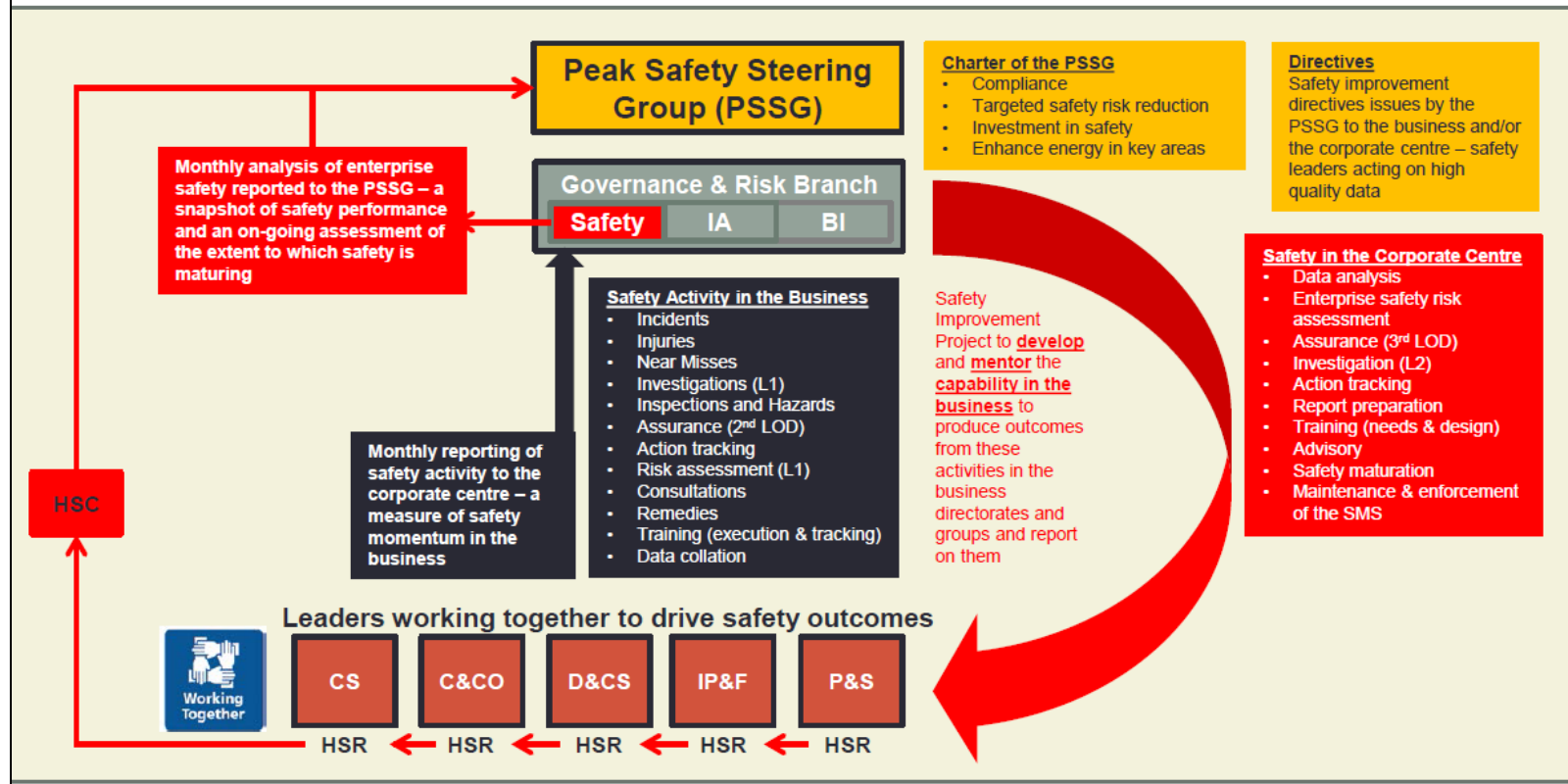
In summary, as part of this project over the last 18 months, Council has created 61 new pieces of safety related documentation to bring its Safety Management System fully into line with the WHS Act and Regulations. This was in addition to the significant work that had been

undertaken to the respond to the actions that arose from the third party asbestos audits conducted in 2014 and 2015.

Vision – the plan



Compliance (6 months) → Sustainable Excellence (3 years)



3.0 Reputational, legal and public health and safety risks

3.1 Issue raised by the Minister

It is the view of the Minister that there are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos. These arise from the issues identified in the SafeWork notices, as well as in clean up notices issued by the EPA in December 2017, and the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017.

3.2 Discussion

The Minister's concerns relate to a number of matters, including:

- Safe Work Notices;
- EPA clean-up notices;
- Safe Work investigation; and
- Voluntary Clean-up by BMCC.

These matters are addressed in the following sections.

Safe Work and EPA Notices for Council owned properties / Facilities and their Status

The Table below provides a summary overview of SafeWork and EPA notices that the Council has received and their status. A more detailed table is provided at the end of Section 3.0.

Site	Type of Notice	Status
Development of Asbestos Management Plan	Improvement Notice	Complied with – a copy of the plan is provided at the end of this submission.
Implementation of organisation wide Asbestos Management Plan	Improvement Notice	Due 16.2.18 Ongoing
Lawson stockpile depot, 2 Park Street, LAWSON NSW 2783	Improvement Notice	Complied with
Lawson stockpile depot, 2 Park Street, LAWSON NSW 2783	Improvement Notice	Complied with
Lawson stockpile depot, 2 Park Street, LAWSON NSW 2783	Clean Up Notice (EPA)	Due 27.1.18 Ongoing
Lawson stockpile depot, 2 Park Street, LAWSON NSW 2783	Improvement Notice	Due 19.1.18 Ongoing
22 Currawong Avenue, Valley Heights, NSW 2777	Clean Up Notice (EPA)	Complied with. Ongoing pending remediation Agreement with EPA regarding remediation timing
Heather Brae Building, 1 Benang St, Lawson	Improvement Notice	Completed

Site	Type of Notice	Status
Katoomba Child Care, 34 Lett St, Katoomba	Improvement Notice	Complied with
Katoomba Child Care, 34 Lett St, Katoomba	Improvement Notice	Complied with.
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	Improvement Notice	Due 20.12.17 Ongoing
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	Improvement Notice	Due 20.12.17 Ongoing
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	Clean Up Notice (EPA)	Due 28.01.18 Ongoing
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	Improvement Notice	Due 31.01.18 Ongoing
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	Prohibition Notice	Remediation action plan submitted 15.12.17 Ongoing
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	Prohibition Notice	Remediation works due to be completed by 19.12.17 Ongoing
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	Prohibition Notice	Remediation works commenced Ongoing
Lawson Library building, 1 Loftus St, Lawson	Improvement Notice	Completed
Springwood Depot, 2 Lawson Rd, Springwood	Improvement Notice	Complied with.
Springwood Depot, 2 Lawson Rd, Springwood	Improvement Notice	Due 22.12.17 Ongoing
Warrimoo Citizens Hall	Improvement Notice	Complied with.
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	Improvement Notice	Completed
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	Improvement Notice	Completed

Site	Type of Notice	Status
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	Improvement Notice	Completed
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	Prohibition Notice	Completed

Council is in regular contact with SafeWork inspectors. A weekly meeting has been established between SafeWork inspectors and BMCC asbestos management technical staff and licensed asbestos assessors to review progress in meeting all notice requirements. Council staff have actively supported and facilitated SafeWork site inspections and provision of any required information relative to site visits.

As can be seen from the above summary table, and from the more detailed table at the end of this section, the Council has complied with all agreed timeframes for these notices. Moreover, a majority of these notices have now been completed or substantially completed or are on target for completion in accord with notice timelines.

An Asbestos Management Project Team has been established and resourced with Council staff as well as expert assistance from licenced asbestos assessors. These include Regional EnviroScience and also SLR Consulting. The expert assistance is supporting capacity building and strengthening of the skills of Council staff, whilst providing quality assessment and advice on required action to address asbestos management and ensure notice timelines are met.

EPA Clean-up Notices

Council has received a number of clean-up notices from EPA for properties listed below:

- Clean-up notice for site at 2 Park Street Lawson, including ceasing transport of material to the site, securing the site, minimise the generation of dust and remove all asbestos impacted waste at the premises by 27 January 2018.
- Currawong Avenue Valley Heights.

The Council has scheduled with the EPA remediation of the site at Currawong Avenue Valley Heights, as required under the clean-up notice, on Tuesday 19 December 2017.

Council is managing, as per advice from SLR, the Lawson stockpile site at Park Street. In particular, the Council is preparing remediation management plans for agency approval, undertaking procurement of remediation services and will be organising to remediate the site in early to mid-January 2018 within the required timeframe of the clean-up notice.

Safe Work and EPA Investigations

Council has received advice that the following investigations have commenced:

- SafeWork Investigation. This investigation is related to 'possible contravention of section 19 of the WHS Act (SafeWork NSW). The investigation related to 'workers possibly exposed to asbestos contaminated material at Lot 2 Park Street, Lawson between November 2016 and November 2017' (Safe Work NSW).

- EPA investigation. This investigation is in regards to 2-6 Park Street Lawson whether there has been any contravention of the *Protection of the Environment Operations Act* and is in regards to taking action in regards to any such contraventions. Council has received a notice from the EPA to provide information and/or records by 22 December 2017.

In regards to the SafeWork investigation, this is limited to possible exposure at 2 Park Street (Lawson stockpile site). To date Council has cooperated in preliminary investigations with SafeWork inspectors and is now in receipt of a notice, under s.155(4), issued on 12 December 2017 to provide information. This information is required to be provided to Safe Work by 19 January 2018.

In regards to the EPA investigation, Council will be writing to the EPA with the initial provision of records requested. Council will also seek approval for the timing for detailed information to be provided following the independent investigation (and resulting interviews) being conducted by Council to provide comprehensive information to assist the EPA.

Voluntary clean-up & inspection program

Council has, in the last three weeks, initiated a comprehensive program of inspecting sites that have been raised in media reports, reports by staff and also in letters from the United Services Union. This has been undertaken to confirm information within Council's Asbestos Register, to review information provided to Council from Air Safe Consulting where applicable, to broaden assessment to consider hazardous materials (including wider HAZMAT assessment of other hazardous materials including asbestos) and to identify the scope of works for any removal and remediation of asbestos required.

The properties that have been the subject to this program include:

- Springwood Council Depot
- Katoomba Sport and Recreation Centre
- Glenbrook Pool
- Blackheath Pool
- Katoomba Falls Tourist Park
- Katoomba Showground Facility
- Knapsack Park Amenities and Carpark
- Lawson Oval and Amenities
- Wentworth Falls Preschool
- Katoomba-Leura Preschool
- Katoomba Falls Kiosk
- Mt Riverview Hall
- Winmalee Community Hall
- Blackheath Park - Installation of Rocket - ground testing
- Waratah St Lawson
- Fire Trail Pipes - Nth Lawson Park
- Summerhayes Park - Amenities and Carpark
- Summerhayes Park Clubhouse Ceiling
- Glenbrook Community Theatre
- Mt Victoria Hall
- Lomatia Park Clubhouse Springwood
- Katoomba Neighbourhood Centre
- Springwood Arts Centre

- Upper Mountains Youth Centre Katoomba
- St Johns Oval Amenities Block
- Residence Cambridge Street Valley Heights
- Old Blackheath landfill site (see below)

The survey and assessment by Regional EnviroScience licenced asbestos assessors was completed on Friday 15 December 2017, and laboratory testing and finalisation of reports is underway. Council is also commissioning clean-up, remediation and removal as identified by these assessments.

Council has established an Asbestos Project Team to ensure the rapid completion of this voluntary inspection, clean-up and remediation program. This has been undertaken with expert assistance in inspection by Regional EnviroScience as well as advice on implementation by SLR Consulting and remediation work by qualified contractors.

Council has also inspected the old Blackheath landfill site, identified asbestos, contained access points into the site, and has commenced clean-up of asbestos. Further clean-up is proposed, as is the commissioning of expert advice on landfill remediation to ensure that any further remediation of this site from a waste management perspective. The site is currently closed to public access, and has been since de-commissioning in 1989.

Council has also voluntarily closed a number of walking trails where there has been known or suspected asbestos, and Council is currently in the process of removal and clean-up overseen by SLR Consulting.

3.3 Council response

The concern regarding Council facing significant reputational, legal and public health and safety risks in respect of its management of asbestos has been addressed in the above discussion.

In regards to the EPA clean-up notices and the SafeWork notices, Council is meeting timeframes set by the regulators, and has in place resources and expert advice to ensure that Council continues to meet and complete outstanding notice requirements. The majority of notices received have now either been completely addressed or are on track for being addressed within required timeframes.

In regards to the investigations by both the EPA and SafeWork relating to the Lawson stockpile site, these investigations are at an early stage of information gathering. Given that the investigations are not yet complete, it is not possible to make any determination at this stage on the associated legal, public health and safety risks.

Finally, it should be noted that the Council has on its own initiative over the past few months commissioned extensive voluntary inspections and clean-up where required. This has gone beyond buildings to also look at recreational areas and walking trails in addition to previous work on illegal dumping.

Status of Notices as at 20 December 2017

Project Name	Notice number	Notice Type	Date Received	Completion Date	Required Tasks	Status Update
Springwood Depot, 2 Lawson Rd, Springwood (Develop organisation wide Asbestos Management Plan)	7-306943	Improvement Notice	22/05/2017	21/07/2017	Develop organisation wide Asbestos Management Plan	Struck down and replaced by 7-309918
Springwood Depot, 2 Lawson Rd, Springwood (Develop organisation wide Asbestos Management Plan)	7-309918	Improvement Notice	20/07/2017	20/10/2017	Develop organisation wide Asbestos Management Plan	Complied
2 Civic Place, Katoomba	7-316426	Improvement Notice	10/11/2017	16/02/2018	Implement organisation wide Asbestos Management Plan	Ongoing
2 Park Street, LAWSON NSW 2783: Lawson stockpile depot	7-316754	Improvement Notice	16/11/2017	15/12/2017	<p>1. You must ensure the health & safety of persons working in, or adjacent to, the Lawson stockpile site by engaging a suitably qualified independent specialist to provide appropriate technical advice to ensure the site is made safe with adequate control measures that eliminate or minimise the release of airborne dust from the site. Control measures may include, but not be limited to:</p> <ul style="list-style-type: none"> - Clearly identifying all areas/stockpiles that are contaminated with asbestos, - Covering or stabilising identified locations of asbestos or asbestos containing materials (ACM), - Conducting regular inspections to ensure control measures are maintained, - Clearly identifying access/egress ways that are free of asbestos contamination, - Installing sufficient number of approved asbestos warning signs at the site, - Develop & implement Safe Work Procedures for accessing and working at the site. <p>2. You must ensure the exposure standard for asbestos is not exceeded, by undertaking environmental air monitoring to ensure the control measures implemented are effective and maintained.</p>	<p>Complied</p> <p>*Regular provision of air monitoring results every 3 days to-date (initially daily).</p> <p>*Council complying with point 1 including register of access to site and restricted access key – ongoing until remediation.</p>

Project Name	Notice number	Notice Type	Date Received	Completion Date	Required Tasks	Status Update
2 Park Street, LAWSON NSW 2783: Lawson stockpile depot	7-316743	Improvement Notice	16/11/2017	15/12/2017	<p>1. You must, so far as is reasonably practicable, ensure the health and safety of workers and others working in and/or around the Lawson stockpile site between 1/11/2016 and 21/9/2017, by engaging a suitably qualified independent specialist to provide Council with an appropriate documented technical report detailing;</p> <p>a) A timeline for the material contaminated with asbestos and ACM arriving at the site,</p> <p>b) The nature of the work undertaken to process the material contaminated with asbestos and ACM, and the impact this may have had on the condition of the asbestos and ACM.</p> <p>c) The extent of asbestos and ACM on the site is identified and clearly mapped,</p> <p>d) The current condition and type of any such asbestos and ACM is specified.</p>	<p>Complied</p> <p>* Documentation to comply has been forwarded to Safe Work 15/12/2017.</p> <p>* Remediation Plan has been provided to SafeWork and EPA by due date 15/12/17.</p> <p>* Remediation work on track for completion for 27/01/17.</p> <p>* Technical report completed SLR</p>
2 Park Street, LAWSON NSW 2783: Lawson stockpile depot		Clean-up notice (EPA)		27/01/2018		<p>Ongoing</p> <p>* SLR completed remediation action plan</p> <p>* Remediation proposed to commence on 9 January 2018.</p>
2 Park Street, LAWSON NSW 2783: Lawson stockpile depot	7-316748	Improvement Notice	16/11/2018	19/01/2018	<p>1. You must ensure the health & safety of persons who may have worked on, or accessed, the Lawson stock pile site between 1/11/2016 and 21/9/2017, by identifying all those persons and provide each person with a health risk assessment to determine what, if any, future health monitoring is required due to the potential for exposure to airborne asbestos. The health risk assessment must take into consideration, but not be limited to;</p> <p>a) The nature of work the affected workers were undertaking at the site,</p> <p>b) The potential and frequency of exposure to asbestos or ACM,</p> <p>c) The duration of the work being undertaken at the site,</p> <p>d) The type (friability) of asbestos identified at the site,</p> <p>e) Environmental conditions at the site during the above period, and</p> <p>f) That no asbestos management controls were implemented during the above timeframe</p> <p>2. You must ensure that all workers/other persons who have been identified are notified of their potential exposure to asbestos at the site and are advised of medical counselling/employee assistance line opportunities and the existence of the National Asbestos Exposure Register.</p>	<p>Ongoing</p> <p>* Commenced health monitoring based on risk assessment basis – ongoing</p> <p>* Council to submit comprehensive report on health monitoring plan – as per agreement with Safe Work.</p>
Lawson Library building, 1 Loftus St, Lawson	7-317888	Improvement Notice	1/12/2017	15/12/2017	<p>1. You must secure the storeroom to prevent unauthorised entry.</p> <p>2. You must engage a suitably licensed asbestos contractor to remove asbestos fragments and asbestos contaminated dust/debris from the storeroom and provide an asbestos clearance certificate from a licensed asbestos assessor.</p> <p>3. You must provide a copy of the clearance certificate to inspector N. Wood.</p>	<p>Complied</p> <p>* Survey work completed by EnviroScience.</p> <p>* Remediation works completed on 14/12/17</p> <p>* Clearance Certificate issued by SLR and forwarded to SafeWork on 15/12/17.</p> <p>* SafeWork confirmed that notice requirements have been complied with 15/12/17</p>

Project Name	Notice number	Notice Type	Date Received	Completion Date	Required Tasks	Status Update
Heather Brae Building, 1 Benang St, Lawson,	7-317886	Improvement Notice	1/12/2017	15/12/2017	1. You must secure the main playroom to prevent unauthorised entry. 2. You must engage a licensed asbestos assessor to inspect the main playroom and take representative dust samples of the fireplace area, have those samples analysed at a NATA accredited laboratory for asbestos and prepare a report identifying controls and a clean-up scope of work if required. 3. You must provide a copy of the report to Inspector N. Wood. 4. You must implement controls and clean-up scope of work in accordance with the said report.	Complied * SafeWork have cleared and improvement Notice has been lifted.
Katoomba Child Care, 34 Lett St, Katoomba	7-318019	Improvement Notice	1/12/2017	15/12/2017	1. You must engage a competent person to inspect the workplace for asbestos containing material and ensure the workplace asbestos register is reviewed and as necessary revised. 2. The asbestos register must be readily available for inspection at the workplace.	Complied *Report send to Safe Work on 15/12/2017.
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	7-317646	Improvement Notice	29/11/2017	15/12/2017	1. You must ensure the workplace asbestos register is reviewed and as necessary revised upon compliance of Prohibition Notice 31989. 2. The asbestos register must be readily available for inspection at the workplace.	Complied SafeWork confirming all notices in relation to Wentworth Falls Preschool have been complied with (4.37 pm 15/12/2017) * All reports complete. * All remediation complete. * Post removal air test complete. * Clearance Certificate attained.
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	7-317647	Improvement Notice	29/11/2017	15/12/2017	1. You must ensure must ensure that: (a) the presence and location of asbestos or ACM identified at the workplace under clause 422 is clearly indicated, and (b) if it is reasonably practicable to do so, indicate the presence and location of the asbestos or ACM by a label.	Complied SafeWork confirming all notices in relation to Wentworth Falls Preschool have been complied with (4.37 pm 15/12/2017) * All reports complete. * All remediation complete. * Post removal air test complete. * Clearance Certificate attained.

Project Name	Notice number	Notice Type	Date Received	Completion Date	Required Tasks	Status Update
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	7-318316	Improvement Notice	6/12/2017	22/12/2017	<ol style="list-style-type: none"> 1. This Notice must be read in conjunction with Prohibition Notice 31989. 2. You must secure the workplace and prevent unenthused entry. 3. You must engage a licensed asbestos assessor to undertake a comprehensive assessment of asbestos contamination throughout the building and at building entry/exits points. The assessment must include comprehensive airborne monitoring and surface dust sampling throughout the building and at building entry/exits points. 4. You must ensure sample A17335-S4 is analysed by a competent person using a suitable method to establish the number of respirable asbestos fibres in the sample. Eg Method scanning electron microscope analysis of the sample. 5. You must ensure a report(s) is prepared by a competent person detailing the before mentioned comprehensive assessment and sample analysis. 6. You must provide a copy of the Report(s) to Inspector Nigel Wood. 	<p>Complied</p> <p>SafeWork confirming all notices in relation to Wentworth Falls Preschool have been complied with (4.37 pm 15/12/2017)</p> <ul style="list-style-type: none"> * All reports complete. * All remediation complete. * Post removal air test complete. * Clearance Certificate attained.
Wentworth Falls Kindergarten, 2 Day St, Wentworth Falls, NSW 2782	7-317655	Prohibition Notice	28/11/2017		<ol style="list-style-type: none"> 1. You must immediately cease work at this site 2. You must install barrier controls to prevent access to the site entry on Day St 3. You must engage a licensed asbestos assessor to attend site and inspect all asbestos types material, prepare a report on condition, controls and a scope of work for asbestos removal as required 4. You must provide a copy of the report to Inspector Woods 5. You must implement said controls and removal scope of work as per the before mentioned report 	<p>Complied</p>
22 Currawong Avenue, Valley Heights, NSW 2777	1559348	Clean Up Notice (EPA)	6/12/2017	15/12/2017	<p>A. The EPA directs Council to take the following clean-up action:</p> <ol style="list-style-type: none"> i. Engage a suitably qualified expert to develop a remediation plan for the soil used to backfill the material containing asbestos located at the Premises. ii. Provide the remediation plan required by "A. i." to be provided to the EPA by no later than 5:00 p.m. on Wednesday 13 December 2017. iii. In accordance with the remediation plan required by "A. i." Cause the removal of all asbestos containing material at the Premises from works undertaken by Council, by no later than 5:00 p.m. on Friday 15 December 2017 iv. Council must take into account any comments received from the EPA in regards to the remediation plan developed under direction "A. i." when conducting further works at the Premises. v. All material removed from the Premises must be disposed of as "special waste, asbestos waste" at a place that can lawfully receive that waste. vi. All works at the Premises must be conducted by a suitably qualified and experienced person. vii. Information required by this notice must be provided to Director Waste Compliance, EPA, PO Box A290, Sydney South NSW 1232 or electronically to waste.operations@epa.nsw.gov.au. 	<p>Complied - ongoing pending remediation</p> <ul style="list-style-type: none"> * Agreement with EPA regarding remediation timing * Remediation Plan submitted by SLR * Empire Contracting undertaking remediation 19/12/17.

Project Name	Notice number	Notice Type	Date Received	Completion Date	Required Tasks	Status Update
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	7-317450	Improvement Notice	27/11/2017	20/12/2017	<p>1. You must, so far as is reasonably practicable, ensure the health and safety of workers who have operated, maintained, or cleaned any of the above items of "Plant" by engaging a suitably qualified independent specialist to provide Council with an appropriate documented technical report detailing:</p> <p>a) The extent and nature (friability) of any asbestos contamination found on any of these items of Plant, and</p> <p>b) The exact location(s) of any asbestos contamination on any of these items of Plant.</p> <p>2. Your attention is drawn the Work Health and Safety Regulation, 2017, Clauses; 49, 420, 422, 423, 424.</p>	<p>Ongoing</p> <p>*Commenced health monitoring based on risk assessment basis – ongoing</p> <p>*Council to submit comprehensive report on health monitoring plan – as per agreement with Safe Work.</p>
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	7-317447	Improvement Notice	27/11/2017	20/12/2017	<p>1. You must, so far as is reasonably practicable, ensure the health and safety of workers working in the top level (domestic dumping area) of the Katoomba Waste Management Facility by engaging a suitably qualified independent specialist to provide Council with an appropriate documented technical report detailing:</p> <p>a) The extent and nature (friability) of any asbestos contamination in the top level, and</p> <p>b) The exact location(s) of any such contamination (including a detailed site plan that identifies all such areas of contamination).</p> <p>2. Your attention is drawn the Work Health and Safety Regulation, 2017, Clauses; 49, 420, 422, 423, 424.</p>	<p>Ongoing</p> <p>*Commenced health monitoring based on risk assessment basis – ongoing</p> <p>*Council to submit comprehensive report on health monitoring plan – as per agreement with Safe Work.</p>
Katoomba Child Care, 34 Lett St, Katoomba	7-318018	Improvement Notice	1/12/2017	22/12/2017	<p>1. You must secure the rear yard north east corner area, sand pit to boundary fences approximately 12m x 13m area, from unauthorised access.</p> <p>2. You must engage a licensed asbestos assessor to inspect the whole rear yard to identify any asbestos type material and prepare a report on controls and a scope of work for asbestos removal if required. In particular inspection of the NE corner area must include representative excavation sampling to a depth of approximately 100mm to assess surface soil ACM contamination.</p> <p>3. You must provide a copy of the report to Inspector Wood.</p> <p>4. You must engage a suitably licensed asbestos contractor to implement asbestos controls and asbestos removal scope of work as per the before mentioned report.</p> <p>5. You must gain an asbestos clearance certificate for the whole rear yard and provide a copy to Inspector Wood.</p>	<p>Complied</p> <p>* Soil testing completed with results negative for further materials.</p> <p>* Clearance Certificate was issued to SafeWork 13/12/17.</p>
Springwood Depot, 2 Lawson Rd, Springwood	7-318116	Improvement Notice	4/12/2017	22/12/2017	<p>You must ensure the Springwood depot workplace is inspected by a competent person for asbestos containing material and the asbestos register is reviewed and as necessary revised.</p>	<p>Complied</p> <p>* Survey complete, full HAZMAT. Report submitted to SafeWork 19/12/17</p>

Project Name	Notice number	Notice Type	Date Received	Completion Date	Required Tasks	Status Update
Springwood Depot, 2 Lawson Rd, Springwood	7-318117	Improvement Notice	4/12/2017	22/12/2017	<ol style="list-style-type: none"> 1. You must engage a suitably competent person to inspect the premises and ensure all exposed edges and holes in asbestos containing material (ACM) eg asbestos cement ceilings and wall claddings, are sealed and or the panels are removed. 2. You must ensure the person undertaking the asbestos work is suitable competent and in the event of licensed asbestos removal work the person is suitably licensed. 3. You must contact Inspector N. Wood who will assess compliance. 	Ongoing *cope of works completed by EnviroScience. *Works to be complete week commencing 18/12/17 TBC.
Warrimoo Citizens Hall	7-318317	Improvement Notice	6/12/2017	22/12/2017	You must ensure the Warrimoo Citizens Hall is inspected by a competent person for asbestos containing material and the asbestos register is reviewed and as necessary revised. In doing so you must ensure the register accurately records any site asbestos clearance(s) and the related location.	Complied * Survey complete and submitted to SafeWork 19/12/17. * Remediation works commenced 14/12/17.
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780		Clean Up Notice (EPA)		28/01/2018		Ongoing * Survey complete and scope of works by SLR. *Report submitted by SLR to EPA and SafeWork on 15/12/17. *Top platform remediation proposed to commence 14/01/2018.
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	7-317451	Improvement Notice	27/11/2017	31/01/2018	<ol style="list-style-type: none"> 1. You must ensure that all workers (current and ex-workers, casual workers, Labour hire workers, etc) who have worked in, or accessed, the Katoomba Waste Management facility since the Council started accepting Building and Demolition waste at this site are provided with Asbestos Health Monitoring. 2. You must ensure that this health monitoring is supervised by a registered medical practitioner with relevant experience. 3. You must ensure that all information regarding the extent and duration of possible exposure is provided to the registered medical practitioner. 4. You must ensure that every person tested is provided with a copy of their individual health monitoring report. 5. Your attention is drawn the Work Health and Safety Regulation, 2017, Clauses; 435 - 444. 	Ongoing *Commenced health monitoring based on risk assessment basis – ongoing *Council to submit comprehensive report on health monitoring plan – as per agreement with Safe Work.
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	32407	Prohibition Notice	24/11/2017		<ol style="list-style-type: none"> 1. You are directed to immediately cease operations on the “platform” area of the facility. 2. You must ensure the “Platform” is remediated and the asbestos and ACM removed by a licensed asbestos removalist. 3. You must ensure the site is assessed by a licensed Asbestos Assessor and a Clearance Certificate is issued. 4. When this direction has been complied with contact Inspector Maddaford for him to determine compliance with this notice. 	Ongoing * Platform remediation action plan submitted 15/12/17 to EPA and Safe Work.

Project Name	Notice number	Notice Type	Date Received	Completion Date	Required Tasks	Status Update
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	32408	Prohibition Notice	24/11/2017		<ol style="list-style-type: none"> 1. You are directed to immediately cease use of this road. 2. You must ensure the road is remediated and the asbestos and ACM removed by a licensed asbestos removalist. 3. You must ensure the road is assessed by a licensed Asbestos Assessor and a Clearance Certificate is issued. 4. When this direction has been complied with contact Inspector Maddaford for him to determine compliance with this notice. 	Ongoing * Scope of works developed by SLR. * Remediation works completed by 19/12/17
Katoomba Waste Management Facility 49 Woodlands Road, KATOOMBA NSW 2780	32409	Prohibition Notice	24/11/2017		<ol style="list-style-type: none"> 1. You are directed to immediately cease all work in the Waste Transfer Station building. 2. You must ensure the asbestos and ACM is removed from the building by a licensed asbestos removalist. 3. You must ensure the building is assessed by a licensed Asbestos Assessor and a Clearance Certificate is issued. 4. When this direction has been complied with contact Inspector Maddaford for him to determine compliance with this notice. 	Ongoing * Scope of works developed by SLR * Remediation works commenced 12/12/17 - ongoing

4.0 Systemic problems with management of asbestos

4.1 Issue raised by the Minister

The Minister acknowledges that the Council is taking steps to respond to both SafeWork NSW and the EPA, including through the appointment of a new A/General manager. However, the elected council body remains unchanged. The Minister is of the preliminary view that the issues identified in the recent regulatory action taken by SafeWork NSW and the EPA are indicative of a systemic problem at Council in managing asbestos which has not been adequately proactively addressed to date. This is particularly given that improvement notices with respect to asbestos management were issued by SafeWork NSW in 2015 and May 2017 (see list of notices in item 3 of Schedule of the Minister's notice).

4.2 Discussion

The Minister acknowledges that the Council is taking steps to respond to SafeWork and the EPA including through the appointment of a General Manager. On 12 December 2017 the Council approved the appointment of Rosemary Dillon as the General Manager for a period of up to 12 months. As the Government and SafeWork know, stability of leadership is fundamental to addressing concerns around asbestos, both within the culture of an organization and in the broader community. The newly appointed General Manager has taken decisive action, endorsed by the governing body, to ensure sound governance structure and resourcing of asbestos management, including appointment of a Chief Safety Officer.

The Minister is concerned that the "elected Council body remains unchanged". The basis for such an expectation is not identified. The governing body does not manage the Council on a day-to-day basis. The elected councillors rely on the information that is put before it by the Council's professional staff. A review of Council's asbestos management, which is primarily an operational matter, confirms the view that the governing body understood, on the basis of the good faith reporting of the staff, that asbestos issues were being managed and addressed. As detailed in the Table below showing *Chronology of Asbestos Response - Activities Summary as at 18 December 2017*, from late May 2017 to the present time there has been briefing of Councillors on asbestos management. Between 31 May 2017 and 12 December 2017 a total of seven briefings / updates were made by staff to councillors on asbestos management progress and a total of four Council reports.

Councillor engagement and consultation on asbestos management also occurred through the Council's quarterly Audit and Risk Committee meeting in July and December 2017 respectively. The Minutes of the 6 July 2017 meeting of the Audit and Risk Committee record that a range of asbestos issues were considered including: work with SafeWork on development of the Asbestos Management Plan and its implementation, the strengthening of asbestos management controls and contracting out of asbestos removal to ensure staff safety.

When 2GB allegations in relation to asbestos management emerged from 8 November 2017 (including a non-stop concerted daily campaign over a 5 week period) the Council took immediate steps and resolved through Mayoral Minutes to conduct independent investigations and resource the response, as indicated below:

Since May 2017, Councillor briefings were provided on:

- 6 June 2017 - asbestos management of fire damaged buildings,

- 4 July 2017 - Asbestos Management Project Team
- 24 October 2017 on the Asbestos Management Plan
- 31 October 2017 on Lawson stockpile
- 21 November 2017 – asbestos investigations update
- 28 November 2017 – asbestos investigations update

Council reports dealing with asbestos have been presented to Ordinary Meetings of the Council on:

- 30 May 2017 – Mayoral Minute on asbestos in residential properties
- 14 November 2017 – Mayoral Minute on the establishment of an independent review into asbestos allegations – resulting in subsequent engagement of Michael Tooma of Clyde and Co firm to conduct the review
- 12 December 2017 – Mayoral Minute on the independent review into asbestos allegations
- 12 December 2017 – Report on funding of asbestos and hazardous materials projects (as provided at the end of this section)

It is suggested that the basis for suspending the councillors does not accord with the level of engagement and resolutions made by the elected body to address the asbestos management challenges. This informs the alternative approach of performance management with a temporary advisor, rather than suspension, to address the concerns of the Government. Part 7.0 outlines an alternative approach to achieving performance management of the Council without suspension of the elected body.

The preliminary view of the Minister is that recent regulation by SafeWork of the specific sites revealed or suggests a systemic problem. The Council has acknowledged that past practices around site and facilities needs improvement. Previous inspection work did not adopt a zero risk tolerance approach in all cases, which now informs the Council's responses around asbestos risk management.

However, the Minister points specifically to an October 2015 notice on Blaxland Waste Management Facility (WMF) and that Council had not been proactive in addressing asbestos at a systems level. In that case, issues were confined to that site and were resolved at an operational level, not a councillor level. It related to an unexpected asbestos finds protocol and was resolved to the satisfaction of SafeWork. This included amending the Council's relevant asbestos procedure for that WMF and related practices.

That issue did not give rise to either SafeWork or Council requiring a complete review of the asbestos framework in the Blue Mountains, in contrast to the outcome of SafeWork's approach from May 2017. For Blaxland WMF, SafeWork was satisfied with the following:

1. Council updating its current procedure for "Handling and disposal of asbestos waste to landfill" to include a more detailed management response to unexpected detection of asbestos.
2. Council engaging Pickford & Ryder Consultants to undertake air monitoring for the operating environment and personnel from November 2015.
3. Personal protective equipment (PPE) including coverall and disposable half face respirators were provided to staff at the landfill tip face and also at the site office for backup or additional staff that may require PPE when working on site.
4. Asbestos awareness training being provided for all staff that may be handling asbestos or the potential for exposure through Alert Force in November 2015.

5. All plant used for the management of asbestos burial being fitted with air conditioned and filtered operator cabins for employees. If detected, professional specified filtration systems will be installed to manage the workplace environment and eliminate the risk exposure.
6. Health checks being incorporated as a part of Council's workplace pre-employment medical check and follow up examinations will be undertaken by Council should the air quality reports recommend it through monitoring of site employees.

There can be no suggestion or inference that either SafeWork or the Council identified the need for a system-wide review of asbestos in 2015. Had SafeWork had that expectation it would have informed the regulatory response at that time.

It was the initial May 2017 order which was the legal impetus for the review of asbestos practices, following concerns from the staff and the Union about facilities. The Council focused its attention on preparing and implementing the *Asbestos Management Plan* since that time.

4.3 Council response

The Council's immediate priority since May 2017 has been the implementation of the *Asbestos Management Plan*, which was accepted as satisfactory by SafeWork. In May 2017 an officer of SafeWork NSW had attended a Council-owned premises to inspect that premises for the presence of asbestos. SafeWork directed, by way of an improvement notice, that the Council prepare an organisational asbestos management plan.

Council acted immediately to action that Improvement Notice. Council also determined at that time to conduct a review of asbestos management across the organisation. As part of this review, on 24 May 2017 Council engaged Centium, which provides specialist workplace health and safety services. As an interim step, Centium reviewed the Register and other documents made available by the Council. Centium elected to prepare an "Immediate Actions" report identifying properties which were recommended for further review (to confirm their actual ACM status) and within which work may be required.

However, in working with the regulator, Safe Work indicated on 10 and 29 November 2017 that it was concerned about the Council's internal governance and accountability structures and processes to deal with scale of the emerging asbestos problem in the Blue Mountains. This was informed by specific non-compliances in facilities.

In reply, the Acting General Manager wrote to SafeWork on 30 November 2017 outlining in detail the initiatives that had been developed to strengthen accountability. In summary, this response included the appointment by the Council of a highly qualified and experienced Chief Safety Officer (CSO) reporting directly to the General Manager. The CSO has taken up the role with the Council on 11 December 2017 and has the principal accountability of leading the asbestos response and the implementation of the Council's *Asbestos Management Plan* and the training of staff. A report by the CSO to the General Manager on action and observations from first week of service is provided at the end of this section.

The response to SafeWork also detailed the following approach adopted including:

- Council establishment of an Asbestos Response Team, with an internal recruitment process being finalised for the appointment of a Program Leader and several support staff, building capacity within the organisation, and

- Council's establishment of an Asbestos Project Team within the Council's existing Project Management Office with required capability and skills to deliver the more complex asbestos management projects.
- Integration of the Council's existing safety team into the asbestos management process.

In addition, as detailed in Section 6.0, the governing body of the Council has initiated an independent investigation of the Council's asbestos management on 14 November 2017. This process includes mechanisms for staff to provide input on a confidential or other basis.

On 4 December 2017, SafeWork acknowledged this approach, noting the seriousness with which the Council has responded to the concerns and questions of SafeWork.

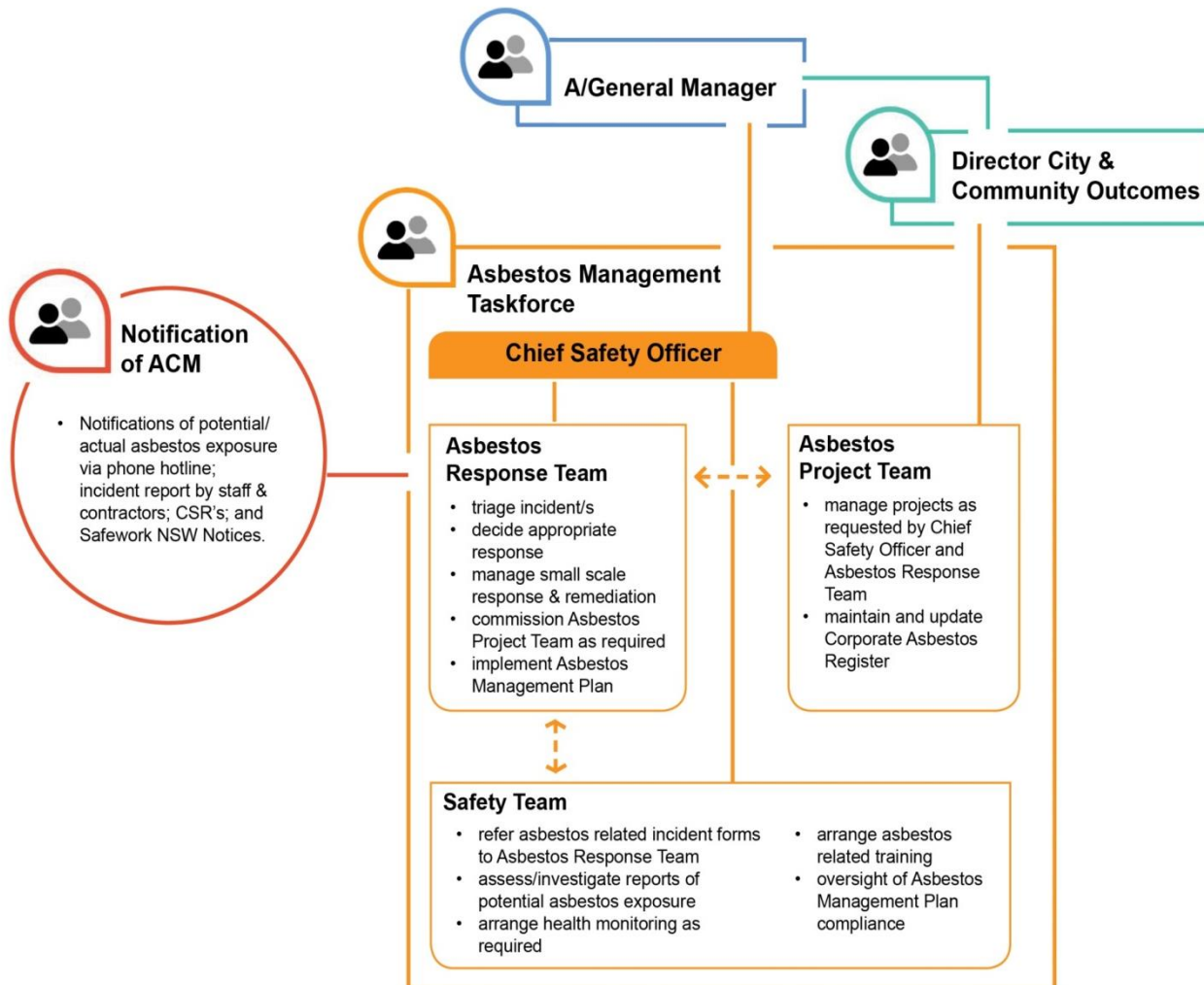
On 12 December 2017, the Council resolved to direct \$528,200 to asbestos management capital works projects from the deferral of 2017/18 Assets Works Program projects. In addition, the Council allocated up to \$350,000 from Council's Risk Reserve to fund the provision of expert assistance on asbestos and hazardous material management.

In coming weeks the Council will have introduced an asbestos hotline for the staff to co-ordinate finds and asbestos response.

Beyond that immediate contingency, the Council has been systematically working to embed safety systems and a response to asbestos issues.

The **chronology** below in this section identifies the steps taken by the Council since 2011, with regular audits and reviews, demonstrating the heightened response since May 2017 to the asbestos problem across all relevant functional areas of the Council.

BMCC Asbestos Management Taskforce Structure



November 2017

Chronology of Asbestos Response - Activities Summary as at 18 December 2017

Date	File	Discussion Description	Type	Comment / Additional info
December 2007		Audit of built infrastructure conducted by third party specialist	Internal Activity	
April 2012		WHS Act 2011 Gap Analysis conducted by Willis Australia. Report to Council prepared dated April 2012.	External	<p>The report identified "Management of asbestos" as a high risk (page 2) and had a section on Asbestos (pages 30-31) with 3 recommendations:</p> <ul style="list-style-type: none"> - That an asbestos survey is conducted on all buildings within BMCC which have been constructed after [sic] 2000. - Once the asbestos survey has been undertaken, the register needs to be maintained. Assets have been custodian of the initial register and this should continue. In addition Assets will need to ensure that updates are provided to register holders. - Once the asbestos survey has been undertaken, the AMP will be developed. Assets should be the custodian of the AMP and ensure that updates are provided to register holders .
6 March 2014		Audit (part one) of built infrastructure conducted by third party specialist	Internal Activity	Audit report used to inform Corporate Asbestos Register and on-going Remediation Actions.
19 December 2014		Audit (part two) of built infrastructure conducted by third party specialist	Internal Activity	Audit reports used to inform Corporate Asbestos Register and on-going Remediation Actions.
25 November 2015		Audit (part three) of built infrastructure conducted by third party specialist	Internal Activity	Audit reports used to inform Corporate Asbestos Register and on-going Remediation Actions.
23 October 2015		SafeWork NSW Improvement Notice issued on Blaxland waste Management Facility – Specifically in relation to unexpected asbestos finds	External activity	Council amended its protocol for asbestos handling at Blaxland WMF and altered work practices. SafeWork agreed with the approach and Improvement Notice lifted.
August to October 2015		Safety Management System Review conducted by Willis Australia	External	Assess maturity of the Safety Management System – established roadmap for the improvement of the existing WHS System, aligned to AS4801

Date	File	Discussion Description	Type	Comment / Additional info
2016		Safety Management Improvement Project (Phase One)	Internal Activity	Addressed issues that arose from the Safety Management System Review conducted by Willis Australia
2017		Safety Management Improvement Project (Phase Two)		Yet to be completed. Focused on the introduction of automated (computer based) reporting and analysis for safety management.
27 April 2017		Chair of the Governance & Risk Steering Group requested a review on asbestos (for council's assets) procedure and approach at the next PSSG meeting.	Internal Activity	
2 May 2017	17/11 0310	Peak Safety Steering Group (PSSG) – Issues raised by Governance and Risk Steering Group relative to the Council's asbestos management were considered. The Council's proposed Asbestos Procedure was submitted for first review at the meeting. The minutes for the meeting record that prior to the document being further considered, an Asbestos Procedure Action Plan was to be documented, and asbestos register reviewed and requirements clarified and that managerial responsibilities regarding these matters also be clarified. The revised document to be further considered at the next PSSG meeting, which was scheduled for 29 May 2017	Internal Activity	<p>This shows the existing governance structure of the organisation relative to risk and safety working with:</p> <ul style="list-style-type: none"> - Governance and Risk Steering group elevating asbestos management for the action of the Peak Safety Steering Group. - PSSG determining a course of action including review of asbestos management procedures, response and action plan.
10 May 2017	17/89 151	Meeting titled <u>Ongoing Asbestos Inspections</u> occurred. Discussed Asbestos Registers, training, communications action plan and next steps.	Internal Activity	

Date	File	Discussion Description	Type	Comment / Additional info
		Discussed seeking further guidance from ELT.		
15 May 2017		WorkSafe NSW conducted an inspection of the Springwood Depot	External	
22 May 2017	17/99 039	SafeWork NSW issue improvement notice (7-306943) regarding Springwood Depot and a requirement to develop an asbestos management plan.	External	
24 May 2017	17/14 9263	Centium contracted to assist in the development of the Asbestos Management Plan and Immediate Action Plan	Internal Activity	
29 May 2017		Monthly Peak Safety Steering Group (PSSG) delivered briefing on asbestos management issues and received reports from chairs of the three safety committees.	Internal Activity	
31 May 2017		Weekly meeting GM and Mayor – GM raised the issue of asbestos management to the attention of Mayor. The Mayor requested GM updates Councillors as priority at next weekly Councillor briefing.	Internal Activity	
2 June 2017		Council received Centium report on Asbestos Management Plan: Immediate Actions Report for BMCC	Internal Activity	Interim audit of Blue Mountains Asbestos Register and recommendations to address identified outstanding matters from this register. The report identified 19 high risk buildings/locations for immediate action.
6 June 2017		Councillor Briefing: – GM provided verbal update to Councillors on asbestos management challenges identified - Director DC&S briefed Councillors on <i>Asbestos Management – Fire Damaged Buildings</i>	Internal Activity	

Date	File	Discussion Description	Type	Comment / Additional info
7 June 2017	17/11 5173	Special ELT Meeting - Adoption of Centium Asbestos Management Immediate Actions Report	Internal Activity	
8 June 2017	17/11 5177	All Staff Notification: Commencement of BMCC Asbestos Management Project Team		The primary objective of the project team was the creation of the Asbestos Document Suite, comprising the Asbestos Management Policy, Asbestos Management Plan & applicable Safe Operating Procedures
8 June 2017	17/11 5278	Directive To Cease Intrusive Works on Buildings/Facilities sent to ELT		
27 June 2017	17/12 4553	Asbestos Management Project Team - Health Monitoring - Staff Communication	Internal Communication	
4 July 2017		Councillor Briefing – Item on Asbestos Management Plan. Purpose: To brief Councillors on Council implementation of the Asbestos Management Plan.	Councillor Briefing	
4 July 2017	17/13 1918	Asbestos Management Intranet Page - All Staff Announcement	Internal Communication	
4 July 2017		Health Monitoring of Staff by iCare	Internal Activity	
5 July 2017		Health Monitoring of Staff by iCare	Internal Activity	
6 July 2017	F10533	Audit & Risk Committee Meeting 2016-2017 Quarter 4 - Range of asbestos issues considered including work with SafeWork on development of Asbestos Management Plan and contracting out of asbestos removal to ensure staff safety.	External Meeting	Excerpts from Minutes page 3 state: <ul style="list-style-type: none"> - Councillor representative stated: "Other issue is the audit on the asbestos. Comfortable that the issue is now well-in-hand as it is a major health concern to staff and the public." - Management stated: "We have introduced strong controls which will only get stronger over the next 2 months." - Management stated: "as part of the AsMP we are also working with SafeWork NSW. Council determined that our own staff won't be involved in the removal for safety purposes and will only be undertaken by external professionals."

Date	File	Discussion Description	Type	Comment / Additional info
20 July 2017	17/14 6218	SafeWork NSW Improvement Notice 7-309918		Issued in response to a request for an extension to Improvement Notice 7-306943. A replacement Improvement Notice No: 7-309918 with a compliance date of 20/10/2017 was issued. This was suggested by SafeWork NSW in their recognition of the complexity of the task.
5 August 2017		Asbestos Register extracts provided to external tenants	External	
10 August 2017	17/15 7424	Asbestos Management Plan (AMP) Ideal workflow – consultation with key workgroups, including Safety Team, Facilities & Property Management, Environment & Culture, Natural Area Management, Civil & Traffic, Bushfire & Emergency Management, Parks & Support Services, Information Solutions, Natural Area Management (SD), Leisure & Visitor Info, Civil & Traffic (SD), Asset Manager – Resource Recovery & Contracts, with Waste Services Coordinator,	Internal Meeting	Extensive consultation with the business to determine the most effective and efficient way for asbestos related issues to be reported and actioned in the business including attention to capability building and the most appropriate means of oversight and senior reporting.
14 August 2017	17/15 7424	Consultation With: HSRs/Committees and Subject Matter Experts on 'Safe Work Practices'. Asbestos Related Work	Internal Meeting	
14 August 2017	17/15 7424	Consultation With: HSRs/Committees and Subject Matter Experts on 'Safe Work Practices'. Dumped Waste	Internal Meeting	
14 August 2017	17/15 7424	Consultation With: HSRs/Committees and Subject Matter Experts on 'Safe Work Practices'. ACM at Waste Facilities	Internal Meeting	

Date	File	Discussion Description	Type	Comment / Additional info
14 August 2017	17/15 7424	Consultation With: HSRs/Committees and Subject Matter Experts on 'Safe Work Practices'. Incidents & Emergencies	Internal Meeting	
29 August 2017	17/19 0632	Health Monitoring of Staff by iCare	Internal Activity	
30 August 2017	17/19 0632	Health Monitoring of Staff by iCare	Internal Activity	
14 September 2017		Briefing on Asbestos Project	Internal Meeting	Updated the committee on asbestos management commenting that work is progressing well.
21 September 2017		Adoption of Asbestos Management Policy	Policy Adoption	
20 October 2017		Adoption of Asbestos Management Policy	Policy Adoption	
20 October 2017		Adoption of Asbestos Management Plan	Policy Adoption	
24 October 2017		Councillor Briefing - Asbestos Update. Purpose: To provide Councillors with the final report regarding the Asbestos Management Plan.	Councillor Briefing	
2 November 2017		Engaged Centium to conduct 'train the trainer' training in the plan and assist with the further implementation of the Asbestos Management Plan and SOPs	Internal Activity	
8 November 2017		Detailed planning meeting with Centium and invitations sent out for first rounds of 'train the trainer' training in the plan.	Internal Activity	
8 November 2017		2GB Ray Hadley commences allegations against BMCC	External	
10 November 2017	17/23 4687	SafeWork NSW issue improvement notice 7-316426 with a compliance date of 16 February 2018 regarding the continued implementation of the	External	

Date	File	Discussion Description	Type	Comment / Additional info
		Asbestos Management Plan		
14 November 2017		BMCC Council Meeting – Resolution to commence independent investigation of the Council's management of asbestos with focus on Lawson stockpile and Blackheath tip and ability to extend Terms of Reference / scope as required	Internal	
21 November 2017		Councillor Briefing – Update on Asbestos Management investigation by Acting General Manager and Mayor	Internal	
28 November 2017		Councillor Briefing – Update on Asbestos Management investigation by Acting General Manager and Mayor	Internal	
29 November to 15 December 2017		Recruitment of Asbestos Response Team – email to staff seeking Expressions of Interest	Internal	
5 December 2017		Written update to Councillors on status of Asbestos Management and related matters	Internal	
12 December 2017		Written update to Councillors on status of Asbestos Management and related matters	Internal	
11 December 2017		Chief Safety Officer appointed	External	
13 December 2017		2.5 hour' Asbestos Management Plan Awareness	Internal Activity	To date 72 trainers have been trained, with 6 remaining. These trainers as of 6 December 2017 had administered tool box talks on asbestos management to 252 staff.
13 December 2017		Asbestos Management Plan Awareness Toolbox Talks (x2)	Internal Activity	
14 December		Audit & Risk Committee Meeting Quarter 2 – Full		Acting GM provided ARC with copy of Asbestos Management

Date	File	Discussion Description	Type	Comment / Additional info
2017		update provided by Acting General Manager on Asbestos investigations underway, governance, structure and resourcing established to support asbestos management and work with SafeWork including status of all Improvement Notices and Prohibition Orders.		Fact Sheet outlining Asbestos Project Team and Asbestos Response Team and Safety Team roles under Chief Safety Officer. ARC was briefed on engagement of Chief Safety Officer with extensive experience managing asbestos in complex operating environments. ARC was provided with a table of latest information on status of all SafeWork NSW Improvement Notices and Prohibition Orders – all of which have either been met or are on target to be met.
18 December 2017		Arrangements made for the asbestos hotline for staff reporting of asbestos finds and notifications.	Internal Activity	

ITEM NO: S1

SUBJECT: FUNDING OF ASBESTOS AND HAZARDOUS MATERIALS PROJECTS

FILE NO: F10395 - 17/255878

Delivery Program Link

Principal Activity: Civic Leadership

Service: Finance Management

Recommendations:

1. *That the Council endorses the deferral of the 2017/18 Asset Works Program projects, listed in this report;*
 2. *That the Council includes the deferred asset works projects, listed in this report, for consideration within the 2018/19 Asset Works Program;*
 3. *That the Council endorses the reallocation of \$528,200, resulting from the deferral of the 2017/18 Assets Works Program projects, to be available to fund asbestos and hazardous materials capital works projects in 2017/18;*
 4. *That the Council endorses the allocation of up to \$350,000 from Council's Risk Reserve to be available to fund the provision of expert assistance on asbestos and hazardous material management, including the preparation of remediation plans for major sites;*
 5. *That the Council notes that Acting General Manager has used the emergency provision under Section 55(3)(k) of the Local Government Act 1993 to engage Regional EnviroScience and SLR Consulting to assist Council with the management of asbestos and hazardous materials; and*
 6. *That the Council receives a further update report on funding for asbestos and hazardous materials remediation projects in the first quarter of 2018.*
-

Report by Acting General Manager:**Reason for report**

This report is seeking Council endorsement to reallocate resources in the 2017/18 operational plan and budget, to ensure that Council provides an effective response to the issues relating to management of asbestos within the LGA. This includes the deferral of a number of asset works projects from the 2017/18 AWP, and the re-allocation of funds to asbestos related capital works, including remediation.

The report also notes that the Acting General Manager has used the emergency provision under Section 55(3) (k) of the *Local Government Act 1993* to engage Regional EnviroScience and SLR Consulting to assist Council with the management of asbestos and hazardous materials. This additional expert assistance was directly advised by SafeWork due to their concerns regarding the current capability within Council in regards to asbestos management.

Background

Council's management of asbestos and hazardous materials has required a significant increase in resourcing for both expert assessment, and the resulting remediation works, to allow Council to respond to concerns by SafeWork NSW and the EPA regarding asbestos management.

This has involved a reallocation of staff time and 2017/18 budget funding, to ensure that this work is prioritised. This has and will allow capacity for a significant number of asbestos-related projects to be progressed, including remediation of sites such as the Lawson stockpile site, the old Blackheath landfill site and a program of extensive inspections of Council-controlled sites by licensed asbestos assessors and the resulting remediation works.

A team of infrastructure, project management and community facilities officers have been re-tasked and are now working on asbestos and hazardous material projects. As a consequence, a number of Asset Works Program (AWP) projects planned for 2017/18 will not now be able to be progressed, and will need to be deferred until 2018/19.

Establishment of Projects Team

Council has established a full-time Asbestos and Hazardous Material Projects Team to manage a number of specific asbestos and hazardous materials assessment and remediation projects. These include projects such as the remediation of the Katoomba Resource Recovery Centre, the Lawson stockpile, Old Blackheath landfill and the Wentworth Falls preschool. They include the management of asbestos in buildings as well as within bushland and parkland areas.

The members of this team come primarily from the Infrastructure / Major Projects team who are responsible for managing the delivery of Council's 2017/18 AWP. In addition, the team is supported from staff from the Recreation & Facilities team and the Natural Areas Management team. The ongoing make-up and structure of this team will be reviewed following the completion of the current projects.

As a result, this will have an impact on the delivery of the AWP and it is proposed that the following 2017/18 AWP projects be deferred, and be recommenced with funding from the 18/19 budget:

- Implementation of Lawson Town Centre Car parking (s.94), subject to detailed planning (AWP 5);
- Implementation of the Hazelbrook Masterplan - Village Centre Carpark Upgrade (AWP 13);
- Springwood Town Centre Parks – Upgrade of Manners Park and establishment of Parklet (AWP 15); and
- Upgrade Blue Mountains Theatre and Community Hub tiered seating (AWP 19); and
- Warrimoo Oval Carpark (carry over from 2016/17 AWP).

Funding for asbestos management

It is proposed to reallocate funding from the 2017/18 budget to make funding available to better and more effectively deal with asbestos management.

The deferral of the AWP projects will result in \$528,200 of SV1, SV2 and reserve funds earmarked for these projects being available in 2017/18. It is proposed that this funding be reallocated to fund asbestos and hazardous materials capital works projects within the AWP. The deferred projects would be considered for inclusion in the 2018/19 AWP as part of the 2018/19 budget process.

In addition, funds are required for the provision of expert advice on asbestos management and remediation. Council has procured the services of Regional EnviroScience and SLR

Consulting to provide expert assistance on asbestos and hazardous material management, including the preparation of remediation plans for major sites. The procurement of these two companies has been done under Section 55(3) (k) of the *Local Government Act 1993*.

It is proposed that a provisional sum of up to \$350,000 be allocated from Council's risk reserve to fund the provision of expert advice, including the preparation of remediation plans for major sites, in 2017/18.

Detailed work on project planning and the development of remediation plans is currently underway. In addition, an extensive program of site assessment is also underway and will lead to further remediation requirements. As a result, the level of funding required to address immediate asbestos management projects is not able to be accurately defined at this stage. The sums proposed for expert advice and also for remediation and capital works are therefore provisional only, and a further report will be provided in February with updated budget estimates.

Council had proposed under SV2 to allocate funding to asbestos remediation in facilities in 2018/19, and it is proposed to also consider whether this funding needs to be brought forward into 2017/18.

In regards to waste related projects – including any future remediation of the Katoomba Waste Management Facility and the Old Blackheath Landfill, funding will be allocated from the Waste Reserve for any works required. Currently this Waste Reserve is being used to fund the expansion of the Blaxland Waste Management Facility Cell (increasing capacity of the site), which has a budget of \$2 million. Limited funding is available in 2017/18 from this Reserve.

Sustainability Assessment

Effects	Positive	Negative
Environmental	Council funds are allocated to the management of asbestos and hazardous materials in the LGA	Nil
Social	Council funds are allocated to the management of asbestos and hazardous materials in the LGA	Some AWP projects planned for 2017/18 will be deferred for consideration for inclusion in the 2018/19 AWP
Economic	Council funds are allocated to the management of asbestos and hazardous materials in the LGA	Some AWP projects planned for 2017/18 will be deferred for consideration for inclusion in the 2018/19 AWP
Governance	Council is responsibly managing the resource and financial implications of managing asbestos and hazardous materials in the LGA	Nil

Financial implications for the Council

Council's management of asbestos and hazardous materials requires additional funding. This report proposes that a number of 2017/18 AWP projects are deferred and \$528,200 of SV1, SV2 and reserve funds earmarked for these projects be reallocated to fund asbestos and hazardous materials capital works projects. These projects would be included in the 2018/19 AWP as part of the 2018/19 budget process.

In addition, it is proposed that \$300,000 be allocated from Council's risk reserve to fund the provision of expert advice including the preparation of remediation plans for major sites. Funds not required would be returned to the risk reserve.

Finally, funding from the Waste Reserve will be allocated as required for the remediation works at waste management facilities.

Legal and risk management issues for the Council

Section 55 of the *Local Government Act 1993* requires Council to invite tenders prior to entering into any contractual agreement for the provision of services, goods or material or to undertake any work on behalf of Council. Section 55(3) sets out instances where Council is not required to adhere to the requirements set out in Section 55, specifically Section 55(3) (k) which relates to contracts made in the case of an emergency.

Council has used the emergency provision under Section 55(3) (k) of the *Local Government Act 1993* to respond in an appropriate manner to the series of prohibition orders and verbal directions issued by SafeWork NSW.

External consultation

There has been no external consultation in the preparation of this report.

Conclusion

Council's management of asbestos and hazardous materials assessment and remediation projects is currently not funded and is impacting on staff available to deliver AWP projects planned for 2017/18, meaning they will not be progressed.

This report therefore recommends that a number of 2017/18 AWP projects be reconsidered for inclusion in the 2018/19 AWP and that the resulting savings of \$528,200 be reallocated to fund asbestos and hazardous materials capital works projects. In addition, it is recommended that up to \$350,000 be reallocated from Council's risk reserve to fund the provision of expert assistance on asbestos and hazardous material management including the preparation of remediation plans for major sites.

Council has used the emergency provision under Section 55(3) (k) of the *Local Government Act 1993* to engage two companies to assist Council with the management of asbestos and hazardous materials.

* * * * *

Blue Mountains City Council: Chief Safety Officer Report

For Week Ending 15 December 2017

For the Attention of the General Manager, Rosemary Dillon

Please accept my Actions & Observations Report for week ending Friday 15th December 2017. This is an inaugural report covering the management of issues within the sphere of responsibility afforded to the Chief Safety Officer position, commencing operations on Monday 11th December 2017.

Key Actions:

The following key actions were undertaken by the Chief Safety officer within the reporting period.

1. Received asbestos issues briefings from senior BMCC management.
2. Received and reviewed all pertinent data associated with the progress of BMCC in addressing requirements of WorkSafe NSW Prohibition and Improvement Notices.
3. Attended meeting with WorkSafe NSW Director of Construction & Asbestos Services, Worksafe NSW Inspectorate Officers and senior BMCC management to discuss the progress of BMCC response to issues identified within Prohibition and Improvement Notices.
4. Met with WorkSafe NSW Inspectorate team, and senior BMCC Managers to facilitate a comprehensive review of all extant issues and the progress made to date by the BMCC in addressing identified issues as housed within Prohibition and Improvement Notices.
5. Conducted interviews for the purpose of appointing personnel to supervisory and officer positions within the BMCC Asbestos Response team.
6. Reviewed Asbestos Management Plan and associated Standard Operating Procedures, inclusive of health surveillance and training programs.
7. Met with senior managers attached to the Asbestos Project Team and reviewed extant and intended future processes associated with communication and management of Asbestos issues.
8. In cooperation with senior Asbestos Project Team personnel, reviewed all data prior to submission of BMCC response to seven Improvement Notices and 2 Prohibition in association with the Friday 15th December deadline.
9. Reviewed extant files and folders associated with the management of asbestos issues and associated permissions and data collation conduits.
10. Managed the BMCC response to potential asbestos contamination issue within the Katoomba Senior Citizens centre (commercial kitchen area).
11. Met with GM for the purposes of affording a comprehensive brief on all actions taken to date and to initiate discussion on a strategic HSEQ Plan going forward, with the intention of ensuring the BMCC is best placed to meet extant and future challenges.

Blue Mountains City Council: Chief Safety Officer Report

For Week Ending 15 December 2017

Key Observations:

In my capacity as Chief Safety Officer I have afforded detail below on Key Observations I have made in the first week of serving the BMCC.

Safety Ethos

1. All BMCC staff I have engaged with, including the Executive Management Team, have been exceedingly positive of the Chief Safety Officer role and have been very responsive to my direction, guidance and advice.

Systems & Processes

1. It would be my opinion that the creation and implementation of the BMCC Asbestos Management Taskforce, in terms of resourcing and structure is a balanced and entirely appropriate response. The Taskforce has proven successful in managing multiple internal and external key stakeholders and administering significant amounts of remedial repair work required to mitigate identified issues to the satisfaction of the regulating authority.
2. It is my opinion that the Asbestos Management Plan and associated Standard Operating Procedures are entirely appropriate in respect to the work activities undertaken with the BMCC.
3. It would be my opinion that works undertaken thus far in respect to employee health monitoring and asbestos management training and awareness is entirely appropriate.
4. It would be my opinion that the creation and implementation of an Asbestos Reporting Hotline is best practice WHS communication and is likely to be mimicked within other operationally complex and geographically dispersed workplaces.

Key Directions:

BMCC General Manager Rosemary Dillon has afforded a number of Key Directions to the Chief Safety Officer for priority action:

1. The Chief Safety Officer shall consider appropriate strategic planning and implementation methodologies in respect to the holistic management of Health, Safety, Environment and Quality (HSEQ).
2. In reference to the Direction above the Chief Safety Officer shall consider the complexity and scope of BMCC work environments, the nature of work activities performed.
3. The Chief Safety Officer shall consider the non-delegable legislative and regulatory responsibilities awarded to the PCBU and Officers of the Corporation in reference to the BMCC and the requirements for HSEQ Due Diligence and Governance structures.

In undertaking the Directions of the General Manager, the Chief Safety officer shall include a comprehensive gap analysis for the purpose of identifying areas of HSEQ management which are not currently in place or are not affording a level of service to the council required to meet extant and future legislative and regulatory requirements and such a review encapsulate all areas of HSEQ management.



Alan Harris
CHIEF SAFETY OFFICER
Blue Mountains City Council
18th December 2017

5.0 Community confidence in Council to manage asbestos issues

5.1 Issue raised by the Minister

The Minister is of the view that media coverage of the recent regulatory action reflects an understandable level of community concern about the ineffective asbestos management by Council evidenced in the notices issued by SafeWork in November 2017 and the EPA in December 2017; as well as the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017. This is particularly in circumstances where some of the identified sites of contamination are in community areas such as a preschool and waste depot. I am of the present view that community confidence in the Council's capacity to address the asbestos management issues needs to be restored.

5.2 Discussion

The Minister states that the media coverage of the recent regulatory action against BMCC reflects an understandable level of community concern about the ineffective asbestos management by Council.

Community concern in relation to asbestos exposure and public safety is well placed given the prevalence of asbestos containing material in buildings and natural landscapes, and potential health risks. Asbestos is widely accepted as a legacy issue common to all councils and communities across Australia.

However, with the exception of local media coverage in the Blue Mountains Gazette on some matters pertaining to asbestos-related matters, metropolitan media coverage was limited to the Ray Hadley Morning Show on 2GB commercial radio for a period of five consecutive weeks prior to the announcement by the Minister for Better Regulation, the Hon Matt Kean MP, on Monday 11 December, of a SafeWork NSW investigation into Blue Mountains City Council in relation to asbestos related matters.

Ray Hadley's commentary in relation to asbestos management by Blue Mountains City Council was made without the necessary context of what is a complex subject matter that demands a high level of accuracy in any public reporting. Throughout the commentary, Hadley made a number of unsubstantiated claims about the organisation, the elected body, the Mayor and many council staff.

It is well documented that such a media setting exerts a significant influence on public opinion and public agenda. This standard of media practice is considered to have had a detrimental impact on procedural fairness for the Council in addressing concerns of the NSW Government.

The Minister is of the view that community confidence in the Council's capacity to address the asbestos management issues needs to be restored.

As evidenced in this submission, the Council has been taking deliberate steps to address the management of asbestos since May 2017, when deficiencies in policy and practice became apparent. The efforts and activities of the Council have been widely communicated to the Blue Mountains community, and employees of Council, to ensure appropriate awareness of Council's position and activities in relation to asbestos management.

Extensive and regular communication with BMCC employees and Councillors has occurred since May 2017 in relation to:

- A. The Council's interactions with SafeWork following the inspection at the Springwood depot and the steps taken by the Council, with the knowledge of SafeWork both to comply with the May 2017 Improvement Notice and to change the Council's practices and systems;
- B. The completion and adoption of Council's Asbestos Management Plan in the period up to and including 27 October 2017;
- C. The completion and distribution of a compliant Asbestos Register, including the steps taken to inform front-line staff of the existence of the Asbestos Register.

This communication was delivered in a variety of ways, including: monthly team briefs; email to all staff and/or relevant directorates; staff intranet content; regular staff newsletters; corporate position statements; fact sheets; customer contact procedures; staff meetings; Councillor email updates; Councillor briefings.

Further, Council staff proactively communicated with external stakeholders, for example, tenants, clients, regular hirers, at the time of local media coverage in July 2017 in relation to an independent review of Council's Asbestos Register. Similarly, Council staff have gone to considerable effort to communicate with those stakeholders directly impacted by more recent asbestos management related activities in November 2017 onwards.

Broad public communication was also provided via media release, media statements, corporate website updates, monthly Mayor's column, and social media.

Council is of the view that community confidence in the Council's capacity to address the asbestos management issues would be best served by undertaking the following: maintaining open communications with internal and external stakeholders, consistent with recent communication activities; allowing the respective investigations to reach their conclusion with the necessary steps taken thereafter; continuing to demonstrate timely compliance with regulatory requirements; and further strengthening Council's governance of, and response to, asbestos management.

The Council is concerned that the suspension of the elected Council would destabilise the organisation further unnecessarily, potentially affecting the ability of the organisation to continue to deliver these activities, which may in fact diminish, rather than restore, community confidence in the Council.

Blue Mountains City Council is a regional Council, with a relatively small population and limited resources. Despite those limitations the Council has a record of achievement and has been widely recognised as a well-managed and financially sound local government authority.

The Council was recognised by the previous Minister as being "*Fit for the Future*". The Council recently received a clear audit report.

The Council has introduced many innovative programs in the City. We have paid down our debt. We have made very significant progress in undertaking core infrastructure works and introducing new community facilities. The Council has enjoyed wide community support.

Positive social media coverage of this matter in the few days since the Council was issued with a Notice of Suspension on Wednesday 13 December, and unprecedented attendance of community members at the Council's Extraordinary Council Meeting on Friday 15 December in support of BMCC, is an indicator of the high regard in which Blue Mountains City Council is held; its record of achievement, and concern for procedural fairness and democratic principles.

We strongly believe that any change in the leadership of the Council at this time would be detrimental to community confidence in Council to address the asbestos management issues.

5.3 Council response

The Council is of the view that much of the media coverage of Council's management of asbestos has presented an inaccurate account of events, which has led to a detrimental impact on procedural fairness for the Council in addressing concerns of the NSW Government.

Building and improving confidence and trust with all internal and external stakeholders is a major focus of the organisation. The Council has clearly demonstrated its responsiveness to community concerns in relation to asbestos management evidenced by its regular and open communication with the community, stakeholders and employees to ensure appropriate awareness of Council's interaction with regulatory agencies; its own corporate and governance initiatives; and associated impacts on service delivery.

Council capably delivers a broad range of communication and engagement activities guided by its Corporate Communication Strategy relating to its organisational priorities, now and in the future. The Council successfully implements both public and internal communications using a variety of appropriate media that is consistent with our objectives and is responsive to the needs of different stakeholders and any changing operational circumstances.

Further, Council's existing Asbestos Management Plan, Asbestos Management Policy and Implementation Plan, include actions relating to communications, consultation, and the provision of information & training. In particular, the Implementation Plan (the roll out of the Asbestos Management Plan) addresses the need for effective stakeholder communication, including the task of developing an Asbestos Management Plan Roll out Communications Strategy.

We are in the process of developing the Asbestos Management Communications Plan. This will address the complexity of communications needed in three key areas (a) moving forward implementing the Asbestos Management Plan (b) dealing with historical and current issues such as incidents/finds and (c) responding to community concerns about incidents/finds and press coverage. Such a Communications Plan will allow Council to move to a stage where we have regular, consistent, informative and positive communications on (a)-(c) above.

Notwithstanding the community concerns in relation to current asbestos management matters, the Council has a record of achievement and has enjoyed wide community support. Therefore, the Council is well positioned to meet the expectations of its community and stakeholders and the Minister to restore and maintain community confidence in the Council's capacity to address asbestos management issues.

6.0 Independent governance to oversee investigation of past actions and implementation of future strategies

6.1 Issue raised by the Minister

Council requires a period of independent governance to oversee the investigation of past actions and the implementation of future strategies to ensure that Council meets its legislative responsibilities in relation to asbestos management.

6.2 Discussion

The Minister's Notice refers to the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017. However, the Council understands that the final issue identified by the Minister is intended to relate to a broad "*investigation*" of the Council's past actions (as an organisation) in relation to asbestos management and to the consideration and implementation by the Council of future strategies in relation to asbestos management.

On the first issue, the Council has not been content to initiate internal assessments of the Council's past actions and understandings. Instead, the Council has appointed Mr Michael Tooma to conduct an independent investigation, which will address the history of the Council's asbestos management, decisions taken by the Council from time to time and, the reasons for past inadequacies in systems and management. Mr Tooma will make recommendations concerning strategies, systems and procedures that the Council should implement.

Mr Tooma's investigation will result in a publicly available report. The Council considered that an external and independent investigation was required to ensure that the governing body received such a report, to allow it to make decisions that were soundly based, on the best available legal and technical advice.

As the Minister is aware, any investigation conducted by SafeWork NSW under the WHS Act will be conducted by SafeWork as regulator. The WHS Act does not provide for the conduct of open investigations by SafeWork which result in publicly available investigation reports.

As noted in Section 7.0 of this submission, it is proposed that the Council also invites the Minister to make a Performance Improvement Order (PIO) under s438A of the Act. A Draft PIO is put forward for the Minister's consideration within Section 7.0.

The Draft PIO would result in Mr Tooma's appointment as technical advisor to the Council, and would require the Council to fully cooperate with Mr Tooma in the conduct of his open investigation. In that investigation Mr Tooma will liaise with the regulators. The investigation will result in a report that will be delivered to the Council no later than 31 March 2018. That report will be given to the Minister and will be publicly available.

Mr Tooma's role as investigator, and as technical advisor appointed under the proposed PIO, will be totally independent of the Council. If the Minister responds to the Council's invitation, and makes the proposed PIO, then she can be certain that all of the facts and matters relevant to the Council's asbestos management history will be publicly available. No information will be put aside or suppressed.

Mr Tooma, acting as independent investigator and technical advisor, will bring to bear on all relevant issues his independent consideration, his independent recommendations and his oversight of the implementation of those recommendations, all within the framework of an enforceable PIO made by the Minister under s438A.

In this proposed submission, the Minister's final issue and concern will be comprehensively addressed through the mechanisms proposed by the Council. Further, given that Mr Tooma's report will be completed in a little over three months time, the Council's action will be prompt as well as effective.

6.3 Council response

Given the rigorous steps taken by the elected Councillors, acting as governing body, including the initiation of Mr Tooma's investigation, and the Council's invitation to the Minister that she considers making a performance improvement order, there is no reason to believe that the elected Councillors cannot and will not take all steps that are required to ensure that past actions and events are appropriately investigated and that appropriate systems and procedures for the Council's management of asbestos and asbestos related risks are put in place.

7.0 Alternative proposal to address matters raised by Minister

7.1 Framework of Council response to asbestos management

This report has set out the measures that the Council is taking to improve its management of asbestos. Those measures include:

- appointment of a Chief Safety Officer.
- strengthening of the Council's governance and structure for managing asbestos
- reallocating the Council's financial and staff resources to ensure its safety obligations are met.
- adopting an *Asbestos Management Plan*, which has been accepted by SafeWork, which provides an appropriate framework for implementation by February 2018.
- working to adhere to the compliance framework set by the appropriate regulators
- under direction of GM and CSO, the organisation is implementing methodologies in respect of Health, Safety, Environment and Quality (HSEQ).

With each of these elements in play, this submission seeks a measured response from the NSW Government in supporting the processes that are in place.

7.2 Alternate mechanisms to manage Council performance

One of the concerns raised by the Minister is that although steps have been taken to respond to SafeWork and the EPA, the "elected council body remains unchanged". It is unclear on what basis such a change is contemplated. Beyond obligations of the governing body, the Minister does not identify any actions of the elected body in relation to asbestos management that would warrant suspension. This is moreover the case as the Council is working to adhere to the compliance periods set by the regulators.

Asbestos management deals primarily with operational matters and maintenance of assets. The Council acknowledges that improvements to policy, systems and resourcing are required to meet the standards for asbestos management. In such an instance, the performance management provisions of the *Local Government Act 1993* provide an alternate and appropriate mechanism.

Against this background, the Minister seeks to suspend the councillors and appoint an administrator. An administrator would not only be required to resolve operational matters about asbestos, but would become responsible for all functions of the elected body. The question for the Council and the community is whether suspension of the governing body is a proportionate response.

7.3 Performance Improvement order proposal

Alternatively, the concerns of the Minister about the performance of the Council in its management of asbestos, which is the sole issue identified by the Government, could be addressed by other mechanisms under the Act. This involves the retention of the elected body and appointment by the Minister of a temporary advisor.

Part 6 (Performance Management) of Chapter 13 provides for performance improvement order under the *Local Government Act 1993*. This is a more targeted response compared to suspension of the elected body. It makes provision for a compliance framework, which can be integrated with the regime of clean-up notices or prohibition notices. The Act also provides for a temporary advisor to be appointed by the Minister, with such a position to be

funded by the Council. The elected body and the staff would be required by the Act to co-operate with the temporary advisor in carrying out their duties to improve performance around asbestos management.

Without responsibility for governing all functions of the City, the temporary advisor could have the requisite specialist skills to administer safety system and culture within the organisation.

A document titled "*DRAFT TERMS OF PERFORMANCE IMPROVEMENT ORDER FOR COUNCIL CONSIDERATION*" (Draft PIO) is provided below. It is recommended that the Council considers the Minister to make an order pursuant to s438A of the Act either in terms of the Draft PIO or in such other terms as you consider to be appropriate.

The Draft PIO is comprehensive. If the Minister did make an order in the suggested terms then she could be confident that all of the actions required to improve the Council's performance in relation to asbestos management, and the introduction of new systems and processes, would be fully implemented.

Under the draft PIO the Council would also be required to fully cooperate with Mr Michael Tooma in the conduct of his independent investigation. That investigation was established by resolutions of the Council passed at the meeting on 14 November 2017, with the Terms of Reference revisited and broadened at the Ordinary meeting held on 12 December 2017.

Mr Tooma has the qualifications, experience and capacity to conduct a comprehensive independent investigation, make findings and recommendations to the Council and provide expert advice to the Council, as temporary advisor proposed to be appointed under the Draft PIO.

Mr Tooma has proposed a timetable for the conduct of his independent investigation, which will see the investigation finalised, and his final report delivered to the Council by 31 March 2017. Under the Draft PIO a copy of that final report would be available to you within 7 days of the receipt of the report by the Council.

7.4 Enforceable Undertaking with SafeWork NSW.

The Council stands ready to enter into an enforceable undertaking with SafeWork. While expressing its commitment to take that step, subject to the agreement of SafeWork, the Council acknowledges that the conclusion of an enforceable undertaking is at this stage premature. That step should await the outcome of Mr Tooma's independent investigation.

The Minister will be aware that this step was taken by Liverpool City Council (LCC), with the agreement of SafeWork, to manage LCC's response to asbestos issues.

This further step would also appropriately respond to your serious concerns as Minister, while ensuring the Council's continued focus on SafeWork compliance requirements.

An enforceable undertaking would be directed over the longer term to embedding best practice in asbestos management by the Council. With such a framework in place between the NSW Government and Blue Mountains City Council, the regulators and the Council can focus on asbestos management and the safety of the Council's staff and the community.

In understanding the scale of the Liverpool asbestos problem, some \$13 million had been expended in 18 months. This was followed by \$4 million, then \$3 million per year. By way

of comparison, the Council has allocated \$800,000 this year to ensure a full response to the identified asbestos issues before the Council.

The challenge of asbestos management

In making its submission to the Minister, the Council draws the Minister's attention to the NSW Ombudsman's April 2017 Report into "Asbestos: How NSW Government Agencies deal with the problem" which identifies some of the challenges faced by the local government sector in asbestos management. The Ombudsman's report identifies that in August 2016 only 62 out of 152 councils had promulgated the Model Asbestos Policy as directed by the Office of Local Government, which forms the basis of the Blue Mountains *Asbestos Management Plan*.

The approach of SafeWork to a possible enforceable undertaking is set out at the end of this section. The asbestos management challenge faced by the Council lends itself to the structured approach set out by SafeWork for enforceable undertakings, and will enable the Council to work with SafeWork to set best practice models for asbestos management .

7.5 Timeframes and key deliverables

The duration of the performance improvement order, and tenure of the temporary advisor, could be for three months or for such longer period as is required to comply with the improvement, clean-up and prohibition notices issued by the appropriate regulators.

An enforceable undertaking between Blue Mountains City Council and SafeWork could be finalised after Mr Tooma's report is received, taking into account the contents of that report and the then prevailing circumstances of the sites involved and the stage reached in the regulatory investigations then underway.

One key deliverable of the performance improvement order and enforceable undertaking will remain the full and ongoing implementation of the Council's *Asbestos Management Plan* and its integration into the organisation.

ATTACHMENT TO BMCC SUBMISSION LETTER DATED 20 DECEMBER 2017

DRAFT TERMS OF PERFORMANCE IMPROVEMENT ORDER FOR MINISTER'S CONSIDERATION**Local Government Act 1993****Order under section 438A**

I, the Minister for Local Government, issue this Performance Improvement Order to the Council and/or persons specified in Schedule 1 to undertake the actions described in Schedule 2 within the period specified in Schedule 2.

I hereby appoint the person specified in Schedule 3 as a temporary adviser to Council to exercise the functions, and for the term, specified in Schedule 3.

This Order takes effect upon service on the Council.

Dated:

The Hon Gabrielle Upton MP
Minister for Local Government

SCHEDULE 1

Blue Mountains City Council

SCHEDULE 2

Reasons for Order – section 438A(3)(a)
<ol style="list-style-type: none"> 1. There are questions as to whether the Council has complied with its legislative responsibilities, standards or guidelines with respect to the management of asbestos. 2. It is necessary for an independent investigation to be undertaken by a health and safety expert as an additional intervention action. That investigation must make factual findings about what has occurred in relation to asbestos management at the Council and provide recommendations for corrective actions if necessary. 3. I believe the appointment of a temporary adviser to assist the Council in meeting the actions required is reasonably necessary in the circumstances.
Action required to improve performance – section 438A(3)(b)
<ol style="list-style-type: none"> 1. That Council utilise the services of the temporary adviser appointed under Schedule 3 to conduct an independent investigation into Council's systems and processes for asbestos management. 2. That Council fully co-operate with the investigation conducted by the temporary advisor appointed under Schedule 3. 3. Upon receipt of the Final Report of the temporary advisor, the Council must develop

ATTACHMENT TO BMCC SUBMISSION LETTER DATED 20 DECEMBER 2017

<p>an implementation plan acceptable to the Minister that addresses the findings and recommendations of the temporary advisor's final report.</p> <p>4. The implementation plan must:</p> <ol style="list-style-type: none"> Demonstrate how Council will address the findings and recommendations in the Report. Demonstrate how Council will address any additional risks and areas of non-compliance in Council's controls and processes. Identify specific completion dates. Identify the person/s responsible for implementation activities. Identify what, if any, additional resources are required to give effect to the plan. <p>5. If the plan is satisfactory to the Minister, the Council is to adopt the plan and commence its implementation.</p>
Period for compliance with Order
<ol style="list-style-type: none"> Temporary Advisor's Asbestos Investigation Report: Council must provide the Minister with a copy of the temporary advisor's final report within 7 days of Council's receipt of the report. Council's Response to Asbestos Investigation Report: Council must provide the Minister with a report containing an implementation plan within 4 weeks from the date of Council's receipt of the temporary advisor's Asbestos Investigation Report. Implementation Plan Progress Update Report: Council must provide the Minister with a written report on its progress against the implementation plan within 12 weeks of the Minister indicating to the Council satisfaction with the implementation plan.
Evidence to be provided for the above items
<ol style="list-style-type: none"> Temporary Advisor's Asbestos Investigation Final Report. Council's Response to Asbestos Investigation Report: A copy of Council's implementation plan. Implementation Plan Progress Update Report: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the implementation plan.

SCHEDULE 3

Appointment of temporary adviser
<p>Pursuant to section 438G of the <i>Local Government Act 1993</i>, that Michael Tooma of the law firm Clyde & Co be appointed as a temporary advisor to Blue Mountains City Council for the period up to the Council's submission of the final report to the Minister.</p> <p>The temporary adviser shall have the following functions:</p> <ol style="list-style-type: none"> to conduct an independent investigation into asbestos management at the Council; to investigate the matters listed in the Terms of Reference dated 13 December 2017; to consult with SafeWork NSW and the United Services Union at regular intervals during the investigation; to seek written and oral submissions from interested parties on matters related to the Council's management of asbestos; to review all relevant documents and interview all relevant persons who may have information relevant to the investigation; to provide Council with an investigation report containing findings and recommendations on the matters listed in the Terms of Reference by 31 March 2018;

ATTACHMENT TO BMCC SUBMISSION LETTER DATED 20 DECEMBER 2017

- (vii) to provide advice and assistance to Council for the purpose of ensuring that it complies with the Performance Improvement Order;
- (viii) to undertake a review and evaluation of Council's implementation plan responding to the temporary advisor's report; and
- (ix) to provide assistance to Council in identifying any additional issues associated with Council's systems, plans, registers, processes and practices for asbestos management.

The temporary adviser is appointed for the period until the Minister is provided with the implementation plan for responding to the temporary advisor's investigation report.

Pursuant to section 438G(7) of the *Local Government Act 1993*, the temporary adviser shall be paid from the Council's funds for the period of the appointment.

SAFework ENFORCEABLE UNDERTAKINGS

We may accept an enforceable undertaking (also known as a work health and safety undertaking), as an alternative to prosecution through the courts.

An enforceable undertaking is a legally binding agreement between us and the person who proposed the undertaking. The person is obliged to carry out the specific activities outlined in the undertaking. The activities may be substantial.

An enforceable undertaking cannot be accepted for a contravention or alleged contravention for a category one offence.

An enforceable undertaking (rather than a prosecution) will only be accepted if it demonstrates three main principals:

- benefits to the workplace
- benefits to their industry
- benefits to the community

When a proposed enforceable undertaking is accepted, any legal proceedings connected to the alleged contravention are discontinued. Where legal proceedings have not been started, acceptance of the undertaking means no proceedings will be started (as long as the undertaking is not contravened).

We are not compelled to accept a proposal for an undertaking.

An example of an enforceable undertaking might be:

We have alleged WHS breaches on a construction site following a worker falling from scaffolding and being injured. Rather than facing a prosecution through the courts, we agree with the business that they will carry out substantial activities so that the incident does not happen again and to improve its overall safety performance.

These activities include:

- developing online induction training and toolbox talk sessions on safety rules for high risk activities, including working on scaffolding
- delivering a safety leadership training program for managers and supervisors
- increasing resources for supervisors to assist in effective supervision
- developing a due diligence program and supporting documentation for senior management
- presenting the lessons learnt from the incident and safety improvements to an industry forum
- funding a work placement for a student
- sharing safety knowledge through a small business assistance program
- sharing knowledge on safety awareness through a community education program

- committing to third party audits of the company's occupational health and safety management system

This is only an example of the types of activities which might be agreed. Every enforceable undertaking is different.

Benefits of an enforceable undertaking

An enforceable undertaking:

- provides for significant and on-going commitments that aim to achieve improved WHS and compliance
- provides an opportunity for organisational reform
- provides an opportunity for the person to communicate to their industry peers and the community generally about the consequences of unsafe work practices and the opportunities that putting in place safe work practices can bring

What makes up an enforceable undertaking

An enforceable undertaking must contain this information:

- particulars about the person proposing the enforceable undertaking
- details of the contravention or alleged contravention
- an acknowledgment that the regulator has alleged a contravention has occurred
- a statement of assurance about future WHS behaviour
- a statement of regret that the incident occurred

The enforceable terms include:

- commitment to publish the enforceable undertaking
- commitment to cease the behaviour that led to the contravention or alleged contravention
- a commitment to the ongoing effective management of WHS risks
- providing details of long term, sustainable and measurable work health and safety initiatives that will be delivered to benefit workers, industry and the community
- agreement to disseminate information about the undertaking within the workplace
- where required, implement and maintain an acceptable occupational health and safety management system (OHSMS)
- where required, undertake auditing of the OHSMS by a suitably qualified third party auditor, forward reports arising from the audits to the regulator, and implement the agreed actions arising from the report

PROCESS OF AN ENFORCEABLE UNDERTAKING

An undertaking may be proposed by a person, who has or is alleged to have contravened the [Work Health and Safety Act 2011](#) (WHS Act 2011).

To find out more about enforceable undertakings or to engage our pre-proposal advisory service, email enforceable.undertakings@safework.nsw.gov.au.

Evaluation of an enforceable undertaking

The evaluation process takes into account:

- the circumstances surrounding the incident
- the proposed enforceable undertaking's merits and benefits
- the person's financial ability to meet the terms of the proposed undertaking
- the significance of the commitment compared to the capability of the person
- the person's compliance history
- the support the person has provided to injured person/s
- the input from injured person/s
- the likely outcome should the matter be dealt with through legal proceedings
- if the incident involves a fatality or a very serious injury, any exceptional circumstances detailed by the proposer

Proposals are considered on a case-by-case basis.

Verification of an enforceable undertaking

If we accept an enforceable undertaking, an inspector will be allocated to work with the person/business to verify that the specific activities outlined in the undertaking have been completed.

This will involve:

- regular dialogue between the inspector and the person/business who proposed the undertaking with a particular focus on clarifying and resolving issues at the earliest opportunity
- the person/business providing periodic updates and evidence to the verifying inspector outlining progress and demonstrating completion of the specific activities contained in the undertaking
- consultation and agreement with SafeWork prior to the release of all public facing content (e.g. manuals, external forums/conferences or advertising campaigns).

Varying or withdrawing an enforceable undertaking

Undertakings may be withdrawn at any time before being accepted by us. After being accepted however, the WHS undertaking may only be varied or withdrawn with prior written agreement.

PENALTIES FOR NON COMPLIANCE

If an accepted WHS undertaking is not complied with, we may apply for a court order to enforce compliance or to discharge the undertaking. The court may impose a financial penalty.

The maximum penalty for failure to comply is up to \$250,000. We may also seek to prosecute the original contravention or alleged contravention.

8.0 Conclusion

The Minister has served a notice of intended suspension of the elected Councillors of Blue Mountains City Council. In response to the invitation of the Minister, the Council has addressed each of the five reasons which have informed her preliminary belief that an interim administrator is required to restore the proper functioning of the Council in the management of asbestos.

The Council acknowledges the seriousness of asbestos management and that performance of the Council needs to be improved to protect workers and the broader community. As an alternative, the Council suggests that a Performance Improvement Notice under the LG Act is an appropriate response. Such orders also make provision for a temporary advisor to be appointed by the Minister, which would more appropriately support the Council's commitment and delivery of the asbestos response.

The Council has worked to improve the overall management of asbestos in Council-owned facilities and in the workplace, particularly since May 2017. In response to recent notifications of asbestos containing material on worksites and community buildings, Council has acted in a timely, cooperative, open and appropriate manner to respond to not only SafeWork requirements, but also additional requirements set by Council's independent expert consultants. All notifications have either been addressed or are on target to be addressed within timeframes set by SafeWork.

In this submission, the Council documents the deliberate steps being taken to address compliance requirements of SafeWork and the EPA. But more than this, it is proposed that the Council also commit in principle to work with SafeWork to enter into an Enforceable Undertaking with the regulator to ensure compliance.

In taking account of the responses by the Council, and the governance arrangements now in place, together with any alternative measures that could be imposed by the Minister, the Council will be in a position to restore the confidence of its staff, the community and Government in its capacity to address asbestos management issues.

Corporate Procedures

ASBESTOS MANAGEMENT PLAN



ASBESTOS MANAGEMENT PLAN

Procedure Objective

These procedures are designed to implement the *Asbestos Management Policy* (policy reference no. 274).

The objective of this procedure is to provide a plan of management for how asbestos or asbestos containing materials (ACM) will be managed at council workplaces to protect the health and safety of our workers, our customers and members of the community.

Policy Ref. No:	274	Peak Safety Steering Group Endorsement Date:	N/A
HPE Records Manager Record No:	17/213993	PCT Endorsement Date:	N/A
Distribution:	<i>Internal</i>	ELT Meeting Date:	19 December 2017
Status:	<i>Adopted</i>		
Scope:	<i>This plan applies to workers associated with council including employees, contractors, tenants, consultants, and volunteers (as defined by the NSW Work Health and Safety Act 2011).</i>	Governing Policy:	Asbestos Management Policy (policy reference no. 274)
Lifespan:	<i>4 years or following legislative changes</i>	Responsible Directorate/Group:	Governance & Risk
Next review:	<i>4 years from adoption</i>	Contact Position:	Manager, Governance & Risk

Version History

Version	Adoption Date	Reason for Change
July 2017	23 June 2017 (ELT)	Initial version
September 2017	26 September /2017	BMCC consultation/review completed
October 2017	20 October 2017 (ELT)	Final Adopted Version
December 2017	19 December 2017 (ELT)	Revision to reflect Asbestos Management Taskforce arrangements

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1. Definitions and Abbreviations

Term	Definition
AC	Asbestos-containing
Airborne asbestos	Any fibres of asbestos small enough to be made airborne. For the purposes of monitoring airborne asbestos fibres, only respirable fibres are counted.
AMP	Asbestos Management Plan
Asbestos	The asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals, including actinolite asbestos, grunerite (or amosite) asbestos (brown), anthophyllite asbestos, chrysotile asbestos (white), crocidolite asbestos (blue) and tremolite asbestos.
Asbestos containing material (ACM)	Any material or thing that, as part of its design, contains asbestos.
Asbestos-contaminated dust or debris (ACD)	Dust or debris that has settled within a workplace and is (or assumed to be) contaminated with asbestos.
Asbestos register	A document that lists all identified (or assumed) asbestos in BMCC workplaces, assets, facilities and buildings.
Asbestos-related work	<p>Work involving asbestos (other than licensed asbestos removal work). For BMCC this is likely to include:</p> <ul style="list-style-type: none"> • Sampling of ACM • Maintenance of, or service work on, non-friable asbestos or ACM • Management of in situ asbestos (e.g. sealing, encapsulation) • Urgent removal of <10m² of non-friable asbestos • The transport and disposal of asbestos and asbestos waste <p>Refer to s.419 of the <i>NSW Work Health and Safety Regulation 2017</i> for other forms of asbestos-related work.</p>
Asbestos removalist	A person conducting a business or undertaking who carries out asbestos removal work.
Asbestos removal work	<ul style="list-style-type: none"> • Work involving the removal of asbestos or ACM, or • Class A asbestos removal work or Class B asbestos removal work. <p><i>Note. 'Removal' of asbestos or ACM includes removal of fixed materials as well as broken or damaged pieces which are not be affixed to a structure.</i></p>
ASQA	Australian Skills Quality Authority
BMCC	Blue Mountains City Council

Term	Definition
Competent person	A person who has acquired, through training, qualification or experience, the knowledge and skills to carry out the task. This may be: <ul style="list-style-type: none"> • A licensed contractor listed on the Staff Intranet, or • A trained council staff member (refer to s.6 of this Plan for competency requirements).
CSR	Customer Service Request
Duty Holder	A person who has a duty in relation to a matter under the NSW Work Health and Safety Act 2011.
AEP	Employee Assistance Program
ELT	Executive Leadership Team (BMCC)
In-situ asbestos	Asbestos or ACM fixed or installed in a structure, equipment or plant but does not include naturally occurring asbestos.
Friable asbestos	Material that is in a powder form or that can be crumbled, pulverised or reduced to a powder by hand pressure when dry, and contains asbestos.
LEV	Local Exhaust Ventilation
Licensed asbestos removal work	Asbestos removal work carried out by a Class A or Class B licensed asbestos removalist.
NATA	National Association of Testing Authorities
Naturally occurring asbestos (NOA)	The natural geological occurrence of asbestos minerals found in association with geological deposits including rock, sediment or soil.
NEPM	National Environmental Protection Measure
Non-friable asbestos	Material containing asbestos that is not friable asbestos, including material containing asbestos fibres reinforced with a bonding compound.
NSW WHS Regulations	Refer to both the <i>NSW Work Health and Safety Act 2011</i> and <i>NSW Work Health and Safety Regulations 2011</i> .
PPE	Personal Protective Equipment
RPE	Respiratory Protective Equipment
RTO	Registered Training Organisation
SOP	Safe Operating Practice
Worker	People conducting work associated with council including employees, contractors, consultants, and volunteers (as defined by clause 7 of the <i>Work Health and Safety Act 2011</i> (NSW)).
WRR	Work Request Register
WHS	Work Health and Safety

2. Related Documents

This document should be read in conjunction with:

- *Blue Mountains City Council Asbestos Management Policy* (policy reference no. 274)

2.1 Related Legislation and Codes of Practice:

For management of asbestos in the workplace:

- Work Health and Safety Act 2011 (NSW)
- Work Health and Safety Regulation 2017 (NSW)
- How to Manage and Control Asbestos in the Workplace Code of Practice (SafeWork NSW, September 2016)
- How to Safely Remove Asbestos Code of Practice (SafeWork NSW, September 2016)

Council has regulatory responsibilities under the following legislation, policies and standards in situations where it is the appropriate regulatory authority or planning authority:

- Contaminated Land Management Act 1997 (NSW)
- Environmental Planning and Assessment Act 1979 (NSW)
- Environmental Planning and Assessment Regulation 2000 (NSW)
- Heritage Act 1977 (NSW)
- Heritage Regulation 2010 (NSW)
- Local Government Act 1993 (NSW)
- Protection of the Environment Operations Act 1997 (NSW)
- Protection of the Environment Operations (General) Regulation 2009 (NSW)
- Protection of the Environment Operations (Waste) Regulation 2014 (NSW)
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy No. 55 – Remediation of Land

3. Introduction

3.1 About This Plan

Blue Mountains City Council (BMCC) is committed to managing risk associated with asbestos and asbestos containing material (ACM) at the workplace to eliminate or minimise risk of exposure. This Asbestos Management Plan (AMP) details BMCC's approach towards managing asbestos hazards by documenting procedures designed to minimise the risk of exposure to asbestos for workers, customers and the public.

This Plan applies to all BMCC workplaces including:

- BMCC owned or leased premises where BMCC conducts work,
- BMCC owned buildings provided under lease or agreement to other parties (e.g. child care centre, fire station),
- Community facilities such as sporting facilities, amenities blocks and shelters,
- BMCC facilities and assets such as machinery sheds and cottages, and
- Places which become a BMCC workplace when work is conducted there (e.g. work in, on or near Telstra pit tops and stormwater pit tops, clean-up of orphaned/dumped asbestos waste, building inspections, scene of emergency, discovery of asbestos-cement pipes during maintenance works).

BMCC is guided in its management of asbestos by the NSW *Work Health and Safety Regulation 2017* (Chapter 8) which specifies obligations for the management of asbestos at workplaces, and is supported by the following SafeWork NSW Codes of Practice:

- How to Manage and Control Asbestos in the Workplace Code Of Practice (Sept 2016)
- How to Safely Remove Asbestos Code Of Practice (Sept 2016)

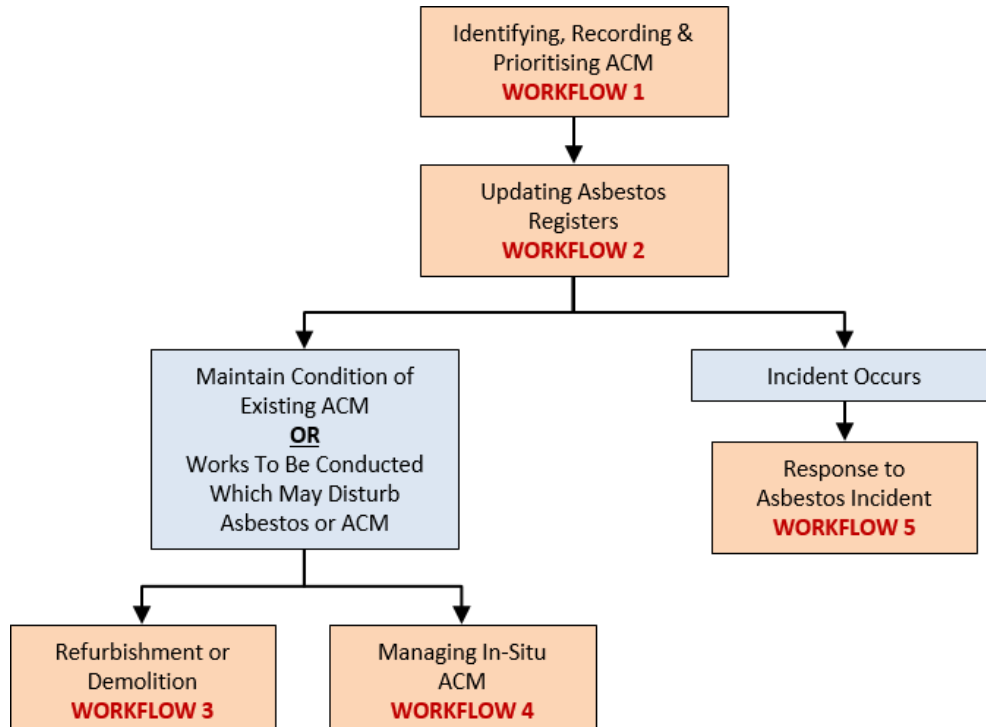
When addressing asbestos matters, staff shall ensure that all relevant approvals have been obtained prior to works commencing (e.g. Part 5 EP&A Act, Heritage Act, National Parks & Wildlife).

A 'Model Asbestos Policy for NSW Councils' was issued in November 2012 by Department of Premier and Cabinet as Director General's guidelines under section 23A of the NSW *Local Government Act 1993*. These guidelines have been taken into account in the development of this Asbestos Management Plan (AMP).

Refer to www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos for additional information.

3.2 Asbestos Management Plan Workflows

This Plan defines key workflows for managing asbestos and ACM at BMCC. A summary of the workflows is provided below. Full workflows (flowcharts) are included in Appendix 1 of this Plan.



4. Responsibilities

Position	Responsibilities
General Manager	<ul style="list-style-type: none"> • Approve this Plan. • Ensure sufficient resources are provided and maintained to ensure compliance with the requirements of this Plan.
Executive Leadership Team (ELT)	<ul style="list-style-type: none"> • Endorse this Plan for GM Approval. • Provide organisational leadership and feedback on council-wide asbestos matters.
Peak Safety Steering Group	<ul style="list-style-type: none"> • Endorse the Asbestos Management Plan.
Manager, Governance & Risk	<ul style="list-style-type: none"> • Develop, implement and maintain this Plan. • Include periodic audits of this Plan in the BMCC Assurance Plan. • Review, maintain and provide content to ensure the asbestos page(s) on the Staff Intranet are kept up-to-date. • Arrange and coordinate asbestos training activities. • Develop, implement and maintain Asbestos SOPs in line with SafeWork NSW requirements. • Implement the health monitoring requirements of this Plan. • Notify SafeWork NSW of health monitoring results as required.
Manager, Community & Economic Outcomes	<ul style="list-style-type: none"> • Resource Maintain and update the Master Asbestos Register. • Work with BMCC business areas to establish and maintain suitable communication mechanisms to facilitate update of the Corporate Asbestos Register. • Issue updated extracts of the Corporate Asbestos Register in a timely manner after changes to the Master Asbestos Register. • Ensure links to current versions of the Corporate Asbestos Register and extracts are maintained on the Staff Intranet. • Implement controls for management of refurbishment and demolition work as required by this Plan. • Ensure community and tenancy agreements, leases, contracts or other legally binding instruments include conditions related to prohibited works and activities to minimise the likelihood of disturbing asbestos or ACM. • Ensure that any actual or potential reported damage to asbestos or ACM in leased/tenanted facilities is reported as an incident to facilitate update of the Corporate Asbestos Register.
Manager, Development & Customer Services	<ul style="list-style-type: none"> • Assess development applications for approval under the NSW Environmental Planning and Assessment Act 1979. • Set conditions of consent for renovations, alterations, additions, demolitions or other developments requiring consent and which may involve disturbance of asbestos containing materials. • Monitor compliance with development conditions. • Apply conditions relating to development involving friable and

Position	Responsibilities
	<p>non-friable asbestos material under the relevant legislation and planning codes and as outlined in the AMP.</p> <ul style="list-style-type: none"> • Approve demolition under the NSW Environmental Planning and Assessment Act 1979. • Arrange for Council certifiers approve development as complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
Manager, Libraries & Customer Service	<ul style="list-style-type: none"> • Ensure asbestos-related scripts are maintained for call-centre staff using the CSR system.
Asset Managers	<ul style="list-style-type: none"> • Arrange for survey, identification and sampling of suspect asbestos containing materials. • Establish and maintain communication mechanisms to facilitate update of the Master Asbestos Register after changes to the condition or presence of ACM. • Ensure that any contractors engaged to undertake asbestos-related work or asbestos removal work are appropriately licensed. • Arranging labelling or signage to indicate the presence of asbestos or ACM for their assets.
Asset Condition Inspectors	<ul style="list-style-type: none"> • Conduct visual inspections of the asbestos and ACM listed in the asbestos register as part of asset inspections. • Communicate details and records of changes to condition or accessibility of ACM noted in inspections to the Manager, Community & Economic Outcomes to facilitate update of the Corporate Asbestos Register.
Program Leaders, Managers (incl. Facility Managers) and Supervisors	<ul style="list-style-type: none"> • Ensure all staff and contractors working under their control are aware of and comply with this Plan. • Arrange for survey, identification and sampling of suspect asbestos containing materials. • Provide their workers with ready access to PPE required for asbestos-related work or work where asbestos may be disturbed. • Ensure all contractors working on ACM are aware of, and have access to, the asbestos register for the workplace. • Ensure an up-to-date copy of hardcopy asbestos register extracts are maintained at workplaces under their control (or in a suitable location for assets/facilities where work is not regularly undertaken). • Ensure updates to asbestos register extracts are communicated to workers under their control in a timely manner. • Ensure contractors engaged to undertake removal of asbestos for council are appropriately licensed. • Communicate details and records of asbestos-related work and licensed asbestos removal work to the Manager, Community & Economic Outcomes to facilitate update of the Corporate Asbestos Register.

Position	Responsibilities
All Workers	<ul style="list-style-type: none"> • Comply with the procedures contained in this Plan to identify, manage and remove asbestos containing material. • Not impact on any confirmed or suspect asbestos or ACM without complying with this Plan. • Use provided PPE in accordance with information, training and instruction provided. • Bring to the attention of their Manager or Supervisor any suspect material(s) or asbestos incidents and report incidents as per the BMCC Incident Reporting and Investigation Procedure.

5. Identifying and Recording Asbestos and ACM

5.1 Identifying Asbestos and ACM

5.1.1 Asbestos Surveys

The Manager, Governance & Risk has arranged for council-wide asbestos surveys of existing and acquired BMCC workplaces, assets, buildings and facilities by a specialist contractors to ensure that reliable baseline asbestos identification data is available. This information will be used by the Manager, Community & Economic Outcomes to develop and maintain the Corporate Asbestos Register.

It is the ongoing responsibility of the Asset Managers listed on the BMCC 'Asbestos' page on the Staff Intranet to ensure, so far as is reasonably practicable, that asbestos surveys are conducted at workplaces and residences under their control if suspect material is found and it is not included on the Corporate Asbestos Register or extracts for individual locations. The Manager, Governance & Risk will review, maintain and provide content to ensure the asbestos page(s) on the Staff Intranet are kept up-to-date.

When engaging a specialist company to conduct asbestos surveys, the scope of works should seek to ensure that condition and risk assessment processes are consistent with the risk levels defined in s.5.4 of this Plan where possible. This will assist in ensuring timely update of the Corporate Asbestos Register.

A list of asbestos and ACM found in residential and commercial/industrial settings is included in Appendix 2 to this Plan to assist Asset Managers in determining the likelihood of asbestos being present in specific assets. Further guidance may be obtained from s.2 of the SafeWork NSW *How to Manage and Control Asbestos in the Workplace* Code of Practice (Sept 2016).

Note. As per s.422 of the WHS Regulation 2011, 'persons with management or control of a workplace' have a duty to identify asbestos and ACM in the workplace. As such, there may be more than one person in the workplace responsible for this duty (e.g. BMCC Asset Manager or Facility Manager, non-residential tenants or property managers). It is important that all duty holders consult, cooperate and coordinate with each other. Refer to s.7.3 of this Plan for further information on consultation with other duty holders.

5.1.2 Assuming Asbestos or ACM is Present

In all instances, BMCC workers will assume the material is asbestos or ACM if it cannot be identified (and has not been identified in asbestos registers) and it is believed it may be asbestos or ACM. If there is uncertainty as to whether asbestos is present, workers can either assume asbestos is present or have a sample analysed (refer to s.5.2 below), however in some cases (e.g. removal of small amounts of friable or non-friable asbestos) it can be more cost effective to assume the presence of asbestos and have the material removed, than to have a sample taken and analysed.

For the purposes of identifying asbestos and creating asbestos registers, BMCC can assume asbestos or ACM is not present as long as this assumption is based on reasonable grounds, which may include:

- A workplace is constructed post 1990 and there is no plant or equipment made prior to 2004, or
- Pre-2004 buildings where the building is constructed (including the roof) wholly of metal, brick or concrete, and has no internal walls that are made of fibro, gyprock or similar cladding (e.g. corrugated iron shed or a colorbond type warehouse building constructed of double brick with bare brick internally).

This section does not apply to naturally occurring asbestos (refer to s.10 of this Plan for details).

5.1.3 Inaccessible Areas

In many cases, asbestos surveys do not cover inaccessible areas identified during the inspection. These may include wall cavities, ceiling voids, height restricted areas, service shafts, ducts, internal areas of equipment and machinery, areas concealed within the building structure, or energised services such as electrical switchboards. The locations of inaccessible areas identified in surveys is recorded in the Corporate Asbestos Register. Asbestos will be presumed to be present in all inaccessible areas until removed or confirmed through testing that it does not, in fact, contain asbestos. Works carried out in these areas which may disturb asbestos will require an asbestos survey to be carried out prior to works.

5.2 Material Sampling and Analysis

BMCC may choose to identify asbestos or asbestos containing material by arranging for a sample (e.g. a small piece) to be analysed. Only a trained council staff member or licensed contractor may take the samples because of risk of fibres being released during the process. If the sampling process is conducted incorrectly, it can be more hazardous than leaving the material alone.

Where BMCC arranges sampling of asbestos containing material, this will be undertaken by:

- A trained BMCC staff member in accordance with documented procedures consistent with Asbestos SOP 1: Asbestos Sampling, or
- A licensed contractor.

Analysis of any samples taken will be carried out by a National Association of Testing Authorities (NATA) accredited laboratory or one that is approved or operated by SafeWork NSW.

A list of trained staff, licensed contractors and local NATA accredited labs is maintained on the Staff Intranet.

Records of sampling by BMCC staff and contractors will be retained in HPE Records Manager.

5.3 Asbestos Registers

5.3.1 Corporate Asbestos Register

The Manager, Community & Economic Outcomes will develop and maintain a BMCC-wide Corporate Asbestos Register. The Corporate Asbestos Register will collate:

- Results of historical asbestos surveys carried out prior to initial issue of this Plan,
- Results of asbestos surveys carried out where further asbestos or ACM is identified, and for newly acquired assets/facilities/buildings,
- Updates to condition, accessibility or status resulting from incidents or works undertaken where asbestos is removed from, disturbed, sealed or enclosed,
- Updates to condition, accessibility or status noted in asset condition inspections, and
- Orphaned/dumped waste in bushland areas, parks and community facilities under control of BMCC (excluding kerbside and waste management facilities).

The Manager, Community & Economic Outcomes will maintain electronic versions of the Corporate Asset Register in HPE Records Manager, with a link to the current version on the Staff Intranet.

Note: An asbestos register is not required for asbestos locations in BMCC operated landfill cells, or when:

- *The facility is a building that was constructed after 31 December 2003,*
- *No asbestos has been identified at the facility, and*
- *No asbestos is likely to be present at the facility from time to time (e.g. from reused building materials, from automotive or equipment components).*

5.3.2 Keeping Asbestos Registers Up-To-Date

At BMCC there are numerous sources of inputs to the Corporate Asbestos Register (e.g. after discovery of ACM in a building, changes to the condition of ACM in BMCC assets/facilities/buildings resulting from works or incidents. The Manager, Community & Economic Outcomes will work with relevant business units to develop and implement documented workflows, procedures and practices for communication of information and records from these sources necessary to facilitate update of the Corporate Asbestos Register:

- Incidents involving asbestos,
- Changes to the status, condition or accessibility of ACM resulting from works undertaken, and
- New ACM being identified in the workplace or asset.

The Manager, Community & Economic Outcomes will ensure changes to risk levels identified from asbestos surveys, inspections and asbestos-related work are communicated to the relevant Asset Manager where required, who shall arrange for any works to be undertaken consistent with the risk levels defined in s.5.4 of this Plan.

Details of any works undertaken on asbestos (including relevant forms, reports and/or clearance certificates) must be sent to the Corporate Asbestos Register group email at asbestosregister@bmcc.nsw.gov.au as per Workflow 2: Updating Asbestos Registers (see Appendix 1).

5.3.3 Extracts from the Corporate Asbestos Register

The Manager, Community & Economic Outcomes will use the Corporate Asbestos Register, together with relevant results of asbestos surveys, to develop site-specific extracts (i.e. site-specific asbestos registers). Extracts will be developed for each workplace or facility actively managed by a Facility Manager or other party, and where asbestos has been identified or assumed (including tenanted facilities or other assets/buildings under commercial or community agreements/leases).

Extracts may include the following, depending on the audience:

- Cover page with introduction/purpose/explanation, facility name, address/location,
- Simple statement regarding asbestos hazards and safety of persons if asbestos is not disturbed.
- Date(s) the asbestos or ACM was identified,
- Summary of the Corporate Asbestos Register specific to the location, including photographs to visually show the location of the asbestos or ACM,
- For BMCC workplaces, a link to the Staff Intranet where an electronic copy of register can be located,
- Statement that, according to the NSW WHS Regulation 2011, the register must be readily available to workers, their health and safety representatives and other persons such as contractors who will perform work where there is a risk of disturbing ACM,
- Details of any inaccessible areas which are assumed to contain asbestos (this information should be available from the asbestos survey),
- Contact details for the reader to obtain further information regarding the asbestos register for the site (this will differ depending on whether the audience is a BMCC workplace or a leased/community agreement asset/facility/building),
- Version history, and
- Instructions to destroy the previous version and replace with the updated version.

Changes to the Corporate Asbestos Register where further asbestos or ACM is identified at the workplace, or updates where asbestos is removed from or disturbed, sealed or enclosed at the workplace will trigger an update to extracts.

The Manager, Community & Economic Outcomes will arrange for initial and updated copies of extracts to be distributed to each location for which they are prepared. Recipients may include, but are not limited to:

- Asset Manager
- Facility Manager
- Lessee and/or property agent,
- Community agreement holders, and/or
- Placed in a suitable location in buildings occupied by third parties under agreement, such as community halls.

The Facility Manager (or equivalent) should ensure previous hardcopy versions of extracts are removed from use after updates are issued. Electronic versions of extracts will be maintained in HPE Records Manager. For BMCC workplaces, a link to the current version will be included on the Staff Intranet. It is important to note that the 'controlled' version of extracts are maintained by the Manager, Community & Economic Outcomes, and they should be contacted to clarify any confusion regarding the currency of a version.

5.3.4 Reviewing and Revising Asbestos Registers (Asset Inspections)

Manager, City Presentation will develop and implement an annual program of asset/facility/building condition inspections for entries on the Corporate Asbestos Register. The frequency of inspection shall be consistent with the current risk level for the asset/building/facility in the Corporate Asbestos Register and the frequencies defined in s.5.4 of this Plan. The Manager, City Presentation will obtain endorsement of inspection programs from the Manager, Community and Economic Outcomes prior to commencement of each year's program.

When conducting condition inspections at each location, inspectors will carry out a visual inspection of the asbestos and ACM listed in the asbestos register to reassess its condition (including any labels) and accessibility. The Manager, City Presentation will ensure timely completion of inspection programs. Inspections results will be documented, with photos included where any changes to the condition of the asbestos or ACM when compared with the current asbestos register is noted. Manager, City Presentation will ensure records of inspections where changes to condition or accessibility are noted must be sent to the Corporate Asbestos Register group email at asbestosregister@bmcc.nsw.gov.au to enable update of the register. Information provided shall be comprehensive (e.g. inspection results, photos, notes), legible and traceable to the inspection.

The Manager, Community & Economic Outcomes will ensure changes to risk levels identified from inspections are communicated to the relevant Asset Manager where required, who shall arrange for any works to be undertaken consistent with the risk levels defined in s.5.4 of this Plan. The Manager, City Presentation will consult with the Manager, Community & Economic Outcomes regarding potential impacts of works, and communications with user groups, prior to undertaking actions resulting from asbestos related asset inspections.

5.4 Risk Assessment and Reasons for Management Decisions

Where practicable, consideration will be given to the removal of ACM during renovation, refurbishment, and maintenance, rather than other interim control measures such as enclosure (only for non-friable asbestos), encapsulation (when the original asbestos bond is still intact) or sealing (where the sealed material is unlikely to be subject to mechanical damage).

A risk assessment is carried out as part of the asbestos survey process (refer s.5.1 of this Plan) to assess the associated risks of the identified ACM. The risk assessment takes account of the condition of the ACM (e.g. whether they are friable or bonded and stable, and whether they liable to damage or deterioration), the likelihood of exposure, and whether the nature or location of any work to be carried out is likely to disturb the ACM. Decisions about control measures to protect workers, and re-inspection frequency, are made based on the assessed risks to health.

The control measures used in the BMCC Corporate Asbestos Register are:

Level	ACM Classification	ACM Condition & Accessibility	Control Measures	Inspection Frequency
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Level	ACM Classification	ACM Condition & Accessibility	Control Measures	Inspection Frequency
1	Friable	Not in a stable condition (including in soil) and there is a risk to health from exposure	Removal by licensed asbestos removalist as soon as practicable	Six-monthly
	Non-friable	N/A	N/A	
2	Friable	Stable condition and accessible	Remove as soon as practicable. If removal is not immediately practicable, short-term control measures such as sealing and enclosure will be used until removal is possible	Annual
	Non-friable	Bonded but broken, damaged, in unstable condition or at risk of disturbance due to work activities		
3	Friable	N/A	N/A	3 Years
	Non-friable	Bonded, in good/stable condition and accessible	Minimise disturbance and re-seal or encapsulate.	
4	Friable	N/A	N/A	4 Years
	Non-friable	Any remaining ACM, accessible or inaccessible	Clearly label, where practicable, and regularly inspect to ensure they are not deteriorating or otherwise contributing to an unacceptable health risk	

The control measures defined in this Plan reflect the following hierarchy of controls, consistent with the NSW *Work Health and Safety Act 2011*:

1. Elimination/removal (most preferred);
2. Isolation/enclosure/sealing;
3. Engineering controls;
4. Safe Operating Practices (administrative controls); and
5. Personal Protective Equipment (PPE) (least preferred).

5.5 Labelling and Signage

Asset Managers (or equivalent) will arrange labelling or signage for their assets/facilities/buildings to indicate the presence of asbestos or ACM for their assets. Labelling and signage will be consistent with the requirements of this section of the Plan.

5.5.1 Non-Public Areas

Self-adhesive labels or other signage will be installed in prominent positions on or near asbestos or ACM located in non-public areas where maintenance/trades personnel may

operate from time-to-time, or where there is a risk of disturbance due to activities carried out there. Such areas typically include plant rooms, ceiling spaces and other inaccessible areas, service ducts, storage sheds and server rooms. The purpose of such labelling is to immediately bring to the attention of such personnel the presence of asbestos to avoid the inadvertent mechanical disturbance of the material via maintenance or other works.

The location of labels will be consistent with the location of the asbestos or ACM listed in the Corporate Asbestos Register. If asbestos may be disturbed or people are likely to be exposed and it is not reasonably practicable to label asbestos directly, a prominent warning sign will be posted in its immediate vicinity. For example, if floor tiles have been identified as containing asbestos, an appropriate warning sign may be displayed on an adjacent wall.

Examples of labels or signs that can be used to indicate the location or presence of asbestos or ACM are provided in Appendix B of the SafeWork NSW 'How to Manage and Control Asbestos in the Workplace' Code of Practice (Sept 2016).

Where direct marking of asbestos is not appropriate, identifying the presence and location of asbestos to contractors such as plumbers, electricians and carpenters will be achieved by provision of the asbestos register for the site to the contractor prior to any work which may involve disturbance of asbestos.

5.5.2 Public Areas, Community Facilities and Leased Facilities

The primary means of identifying asbestos is the requirement to review the site's asbestos register prior to commencing any work that may disturb asbestos.

In some public areas, community facilities and leased facilities, labelling and signage may not be suitable due to public interest considerations or the potential for vandalism. Areas where labelling and/or signage may not be suitable include:

- Public areas of BMCC workplaces (e.g. customer service areas),
- Public areas of BMCC owned buildings provided under lease or agreement to other parties (e.g. child care centre, fire station), or
- Community facilities such as halls, shelters, sporting facilities and amenities blocks.

The relevant manager will have discretion regarding the installation of labelling in public areas, community facilities and leased facilities. Labelling and/or signage should be installed in these areas if there is a significant risk of disturbing asbestos due to the nature of the activities carried out. In these instances, labelling and/or signage may be needed to bring to the attention of users the presence of asbestos, and to facilitate appropriate and timely response in the event of accidental disturbance.

6. Training and Competency

As required by the NSW WHS Regulations, BMCC will:

- Provide any information, training, instruction or supervision that is necessary to protect all persons at the workplace from risks to their health and safety arising from work carried out as part of the conduct of BMCC business, and
- Ensure workers who BMCC reasonably believes may be involved in asbestos removal work or asbestos-related work are trained in the identification, safe handling and suitable control measures for asbestos and ACM.

Competencies required of BMCC staff performing asbestos-related work are defined in s.8.1.1 of this Plan. Training will be arranged by the Manager, Governance & Risk as follows:

Subject/Topic	Audience	Content/Details
Induction	New staff	Overview of asbestos management at BMCC, including asbestos registers and the Asbestos Management Plan and Policy. Delivered as part of on-boarding process.
Asbestos Management Plan Awareness	All staff	Overview of asbestos management at BMCC, including asbestos registers and the Asbestos Management Plan. Delivered as needed via toolbox talks, presentations, briefings, BMCC Team Brief and group instruction.
Asbestos Awareness	Trades/maintenance staff, asset inspectors and others who may come across ACM in their work activities.	Delivered by an external provider, this training course must cover sources of ACM, health risks, legal obligations, safe work requirements and emergency procedures. <i>Note. This course is not needed if Class B or Asbestos Removal Supervisor courses have been completed.</i>
Safe Operating Practices (SOPs)	Staff (and relevant contractors) performing asbestos-related work and other works to which the SOPs apply.	This training may be one, or a combination, of face-to-face training, toolbox talks and/or fact sheets, and may be tailored to suit the audience (e.g. by including department-specific procedures and requirements which apply to the safe operating practices).
Asbestos Removal (Class B)	Staff involved in urgent asbestos removal work as per s.8.1 of this Plan.	Class B Asbestos Removalist training course (generally 1 day) delivered by a registered training organisation (RTO) registered by the Australian Skills Quality Authority (ASQA) and approved by SafeWork NSW.
Asbestos Sampling	Staff involved in asbestos sampling as per s.8.1 of this Plan.	Staff conducting asbestos sampling are required to hold the competencies required of: a) A Class B asbestos removalist (see row above), b) An Asbestos Removal Supervisor (which requires completion of a SafeWork NSW approved removal course which includes the 'Assessor: CPCCBC5014A – Conduct asbestos assessment associated with removal' competency unit), or c) Asbestos Removal Supervisor (which requires completion of a SafeWork NSW approved removal course which includes the 'Supervisor: CPCCBC4051A – Supervise asbestos removal' unit of competency.

Records of training and competencies will be retained in HPE Records Manager and the online LEARN system.

7. Consultation and Communication

7.1 Consultation With Workers

Consultation with workers on work health and safety matters is carried out according to the *BMCC Workplace Health & Safety Consultation Procedure*.

7.2 Communications

Mechanisms utilised by BMCC to communicate on the requirements of this Plan and other asbestos-related matters include:

- Training and competency activities (refer to s.6 of this Plan for details)
- Staff Intranet
- Emails
- Team Briefs
- Standard Operating Practices/Procedures
- Pre-start meetings and toolbox talks
- Safe Work Method Statements

Extracts of the Corporate Asbestos Register will be communicated as per s.5.3 of this Plan. Links to BMCC asbestos-related documents are included on the Staff Intranet.

The Staff Intranet is maintained to provide information on asbestos management and a tool to assist with effective implementation of this Plan. Content for this page is provided and controlled by Governance & Risk Branch and/or Manager, Community & Economic Outcomes.

7.3 Consultation With Other Duty Holders

As required by the NSW WHS Regulations, BMCC will consult, cooperate and coordinate asbestos management activities with tenants, landlords and property managers/agents so far as is reasonably practicable. Communicating and consulting with these people helps to increase the awareness of the potential health and safety risks of asbestos, and may include consultation prior to labelling, as part of asbestos-related work carried out at the workplace or as part of a refurbishment project.

Refer to s.9 of this Plan for details on consultation required for licensed asbestos-removal work.

8. Asbestos Management and Control

8.1 Asbestos-Related Work

8.1.1 Conducting Asbestos-Related Work

The NSW *Work Health and Safety Regulation 2017* allows work to occur on asbestos in certain circumstances: this is referred to as 'asbestos-related work'. At BMCC, trained staff are permitted to perform the following types of asbestos-related work if the work is carried

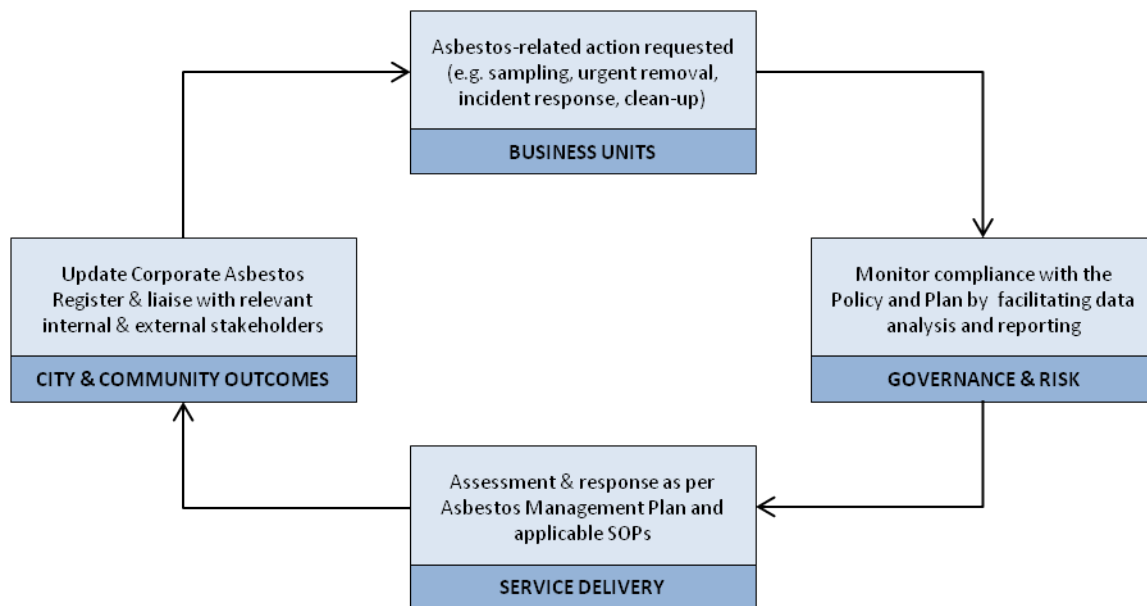
out according to the requirements in the table below, and any relevant BMCC Asbestos Safe Operating Practices (refer to s.8.4 of this Plan).

Asbestos-Related Work Permitted by Council Staff	Examples	Competencies, Workflows & SOPs
Sampling and identification of asbestos or ACM	<ul style="list-style-type: none"> • Taking samples of a wall sheet to send for analysis. • Identification of asbestos in a workplace or in orphaned (dumped) waste. 	<p>Staff conducting sampling must hold the competencies required by s.6 of this Plan.</p> <p>Sampling must be conducted in accordance with Asbestos SOP 1: Asbestos Sampling.</p>
Management of In-Situ ACM (including maintenance of, or service work on, non-friable asbestos or ACM, fixed or installed before 31 December 2003)	<ul style="list-style-type: none"> • Repairs to damaged asbestos sheeting. • Enclosure, encapsulation or sealing of asbestos sheeting. • Small incidental tasks that are of short duration that can be done quickly and safely within minimal control measures required to ensure safety - examples include cutting a small hole into an asbestos-containing eave to install a cable, removal of an asbestos-containing vinyl tile to install a plumbing fixture, hand-drilling a few holes into an asbestos-containing sheet to attach a fitting or the partial dismantling of a structure or plant to remove ACM such as gaskets or brake components for the purpose of cleaning or repair. 	<p>Where practicable, removal of ACM is preferred. Asbestos Management Plan Workflow 4: Managing In-Situ ACM (included in Appendix 1 of this Plan) must be applied to all decisions involving potential disturbance of ACM for management/maintenance works.</p> <p>Staff conducting these management/maintenance tasks must have completed Asbestos Awareness Training and training in relevant Asbestos SOPs (refer to s.6 of this Plan for details).</p>

Asbestos-Related Work Permitted by Council Staff	Examples	Competencies, Workflows & SOPs
<p>Urgent asbestos removal of:</p> <p>a) Less than 10m² of non-friable asbestos or ACD associated with the removal of that amount of non-friable asbestos, or</p> <p>b) ACD that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination</p>	<p>Removal is considered 'urgent' where there is:</p> <ul style="list-style-type: none"> • An immediate or likely exposure risk present for workers, customers or community members, and the area cannot be suitably or effectively isolated from access until a licensed asbestos removalist can be arranged, or • Timely removal is necessary to ensure ongoing business continuity. <p>Urgent removal may only be undertaken by BMCC staff where sufficient resources (trained personnel, equipment and PPE) are available to effect clean up/remediation.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Removal of damaged asbestos from community facility after vandalism. • Removal of orphaned (dumped) waste from kerbside or bushland adjacent to major walking trail. 	<p>Removal must be undertaken in accordance with Asbestos SOP 5: Asbestos-Related Work Requirements.</p> <p>Staff conducting this removal work must hold the competencies required by a Class B removalist and training in relevant Asbestos SOPs (refer to s.6 of this Plan for details).</p>
<p>Transport and disposal of asbestos and asbestos waste</p>	<p>Transport of asbestos or ACM by vehicle to a licensed disposal location after asbestos-related work, urgent removal work or incidents/emergencies involving asbestos or ACM.</p>	<p>Transport and disposal must be undertaken in accordance with Asbestos SOP 15: Asbestos Waste Containment and Disposal.</p> <p>Staff performing this work must have completed Asbestos Awareness Training and training in relevant Asbestos SOPs (refer to s.6 of this Plan for details).</p>

Appropriately licensed contractors may also be engaged to perform the asbestos-related work listed above. All other asbestos-related work and asbestos removal work must be carried out by a licensed contractor. A list of trained staff and licensed contractors is maintained on the 'Asbestos' page on the Staff Intranet.

Key operational responsibilities for asbestos-related work which can be performed by trained council staff are shown in the diagram below.



8.1.2 Air Monitoring and Clearance Certificate Requirements

A competent and independent contractor must be engaged to carry out air monitoring of the work area where asbestos-related work is being carried out if there is uncertainty as to whether the exposure standard is likely to be exceeded (refer to the Staff Intranet for details of competent contractors). As a minimum this will include the following circumstances:

- All works carried out by external contractors which will disturb asbestos or ACM (including unlicensed and licensed removal work and any work involving friable asbestos),
- Asbestos-related work or urgent asbestos removal work performed by BMCC staff where:
 - There is a significant risk of breaking asbestos sheeting, or ACM such as concrete pipes, during the removal or clean-up operations,
 - There is asbestos-containing dust (ACD) present which may be disturbed, or
 - There is friable asbestos present.

Whenever air monitoring is carried out, an independent contractor (may be the same contractor) must be engaged to perform clearance monitoring after the works have been completed to ensure that the work area is free of asbestos fibres prior to being certified for reoccupation. Clearance monitoring shall be carried out as per the requirements for licensed asbestos removal work (refer to Appendix 3 of this Plan for details).

8.1.3 PPE Requirements

PPE will need to be used, in combination with other effective control measures as defined in the Asbestos SOPs, when working with or around asbestos.

The ease of decontamination should be one of the factors considered when choosing PPE. For PPE that is not clothing and cannot be disposed of, it must be decontaminated and kept in a sealed container until it is reused for the purposes of asbestos-related work. As such, disposable PPE is preferred.

Program Leaders of business units where staff may be required to perform asbestos-related work, and where workers may be required to isolate/barricade areas containing suspected asbestos, must provide ready access to PPE via kits in vehicles or other suitable means.

Further information on PPE requirements is included in Asbestos SOP 4: Personal Protective Equipment (PPE).

8.2 Prohibited Work Activities

BMCC staff are not permitted to perform:

- Class A licensed asbestos removal work (note that any asbestos cement products that have been subjected to weathering, or damaged by hail, fire or water blasting, are considered to be friable asbestos), or
- Class B licensed non-friable asbestos removal work in quantities greater than 10m².
- Transport of asbestos in loads greater than 100kg or 10m².

High-pressure water spray and compressed air must not be used on asbestos or ACM as they can cause asbestos to become friable. However, high-pressure water spray can be used for firefighting or fire protection. Power tools, brooms and any other equipment or tool that may release airborne asbestos in the workplace may only be used if it is controlled by it being:

- Enclosed,
- Designed to capture or suppress airborne asbestos, and/or
- Used in a way that is designed to capture or suppress airborne asbestos safely.

8.3 Initiating Works Which May Disturb ACM

8.3.1 Work Request Register (WRR) and Customer Service Requests (CSR)

The primary work request systems used at BMCC will include an automated flag, pop-up or other notification to remind workers to review the site's asbestos register to ascertain whether any ACM may be disturbed prior to starting work. Asbestos or ACM may be only be disturbed under the circumstances defined in s.8.1 and 8.2 of this Plan.

Where practicable, the automated notice will:

- Be linked to the Corporate Asbestos Register such that requests raised for a specific assets/buildings/facilities specify whether the site contains asbestos or ACM, and
- Require an input from the person completing the request indicating they have reviewed the asbestos register for the site.

The Manager, Libraries & Customer Service will develop and maintain the following for asbestos-related queries received via the customer service request line:

- Scripts for phone operators to ensure a clear, consistent, correct message is delivered, and
- Routing instructions so that the enquiry can be forwarded to an appropriate person for action.

8.3.2 Works Commissioned Outside WRR/CSR Systems

For works commissioned without use of the WRR/CSR systems identified in Workflow 2 to this Plan (see Appendix 1), it is the responsibility of the person who commissions the works (e.g. City Projects Program [works], Asset Manager, Facility Manager, tenant or property

agent) to ensure an Asbestos Assessment Form (Doc Id 17/169473) is completed prior to works commencing and at the completion of works. The use of this form will prompt users to:

- Review the site's asbestos register to ascertain whether any ACM may be disturbed prior to starting work.
- Verify competencies of persons performing any works which will disturb asbestos or ACM.
- Complete required clearance requirements prior to reoccupying the workplace after works which disturb asbestos.

8.3.3 Refurbishment and Demolition

8.3.3.1 How This Plan Applies

This section of the Plan applies to the demolition or refurbishment of a structure or plant constructed or installed before 31 December 2003. Demolition and refurbishment work does not include minor routine maintenance work, or other minor work.

Examples of demolition may include:

- Complete dismantling of a decommissioned industrial plant,
- Total destruction of a building or part of a building, or
- Total destruction of an old boiler for the purpose of disposal.

Examples of refurbishment may include the partial dismantling of:

- A boiler for the purpose of cleaning and repairing,
- Large plant in order to access and remove asbestos-containing gaskets for the purpose of replacement with non-asbestos-containing gaskets,
- A building by removing sections of an asbestos cement roof, or
- Part of a building for the purpose of renovation.

Asbestos Management Plan Workflow 3: Refurbishment and Demolition must be applied to all works to which this part of the Plan applies (included in Appendix 1 of this Plan).

8.3.3.2 Prior to Refurbishment or Demolition Works

The Asset Manager, or person who commissions the work, will ensure following will be carried out by BMCC prior to commissioning demolition or refurbishment works:

- The asbestos register for the site will be reviewed to ascertain whether identified or assumed asbestos is likely to be disturbed,
- The scope of works (or equivalent) will specify any asbestos-related work or any asbestos removal work to be carried out as part of the works,
- A copy of the asbestos register will be provided to the contractor carrying out the demolition or refurbishment work, and
- Ensure asbestos that is likely to be disturbed is identified and, so far as is reasonably practicable, removed¹.

In many cases, asbestos surveys carried out on buildings which were in use at the time of inspection have only used non-destructive sampling techniques. As such, the survey would not be intended for use or referral for the purpose of demolition, refurbishment, renovations or structural alterations. In the event of demolition, refurbishment, renovation or

¹ The NSW WHS Regulations allow for the demolition of part of a structure or plant in order to access in situ asbestos so it can be removed. For example, part of a wall may be demolished to access asbestos located in the wall cavity so it can be removed prior to further demolition.

structural alterations to these buildings further investigation, which may entail destructive testing, may be required unless the material is assumed and treated as asbestos or ACM.

If there is no asbestos register for the workplace, the contractor carrying out the demolition or refurbishment work must not commence work until a licensed contractor determines whether asbestos or ACM is fixed to or installed in the structure or plant (refer to s.5.1 of this Plan for details on identifying or assuming the presence of asbestos).

8.3.3.3 After Refurbishment or Demolition Works

The Asset Manager, or person who commissions the work, will ensure:

- Air monitoring and clearance certificate requirements are implemented consistent with s.8.1.2 of this Plan.
- Details of changes to the condition or presence of asbestos or ACM resulting from the works are sent to the Corporate Asbestos Register group email at asbestosregister@bmcc.nsw.gov.au to enable update of the register as per s.5.3 of this Plan. Information provided shall be comprehensive (e.g. scope of works, updated floor plans, clearance certificates), legible and traceable to the refurbishment or demolition works.

The Manager, Community & Economic Outcomes will ensure changes to risk levels identified from the works are reflected in the Corporate Asbestos Register in a timely manner.

8.3.3.4 Emergencies Requiring Demolition Work

If an emergency occurs and a structure or plant (including domestic premises) constructed or installed before 31 December 2003 requires demolition work to be undertaken, the responsible Manager, Program Leader or Asset Manager will ensure:

- A procedure is developed for the works before the demolition work starts. The procedure will outline how to minimise the risk of exposure of workers and persons in the vicinity of the demolition site and ensure the exposure standard is not exceeded, so far as is reasonably practicable, and
- WorkCover NSW is notified immediately in writing after BMCC becomes aware of the emergency and before demolition is commenced. Notification forms and lodgement details are available from <http://www.safework.nsw.gov.au/licences-and-registrations/notifications-and-permits/asbestos-notifications>. The SafeWork NSW asbestos and demolition hotline number is 1800 672 718.

8.3.4 Communicating the Asbestos Register

Prior to any work by staff or contractors (e.g. plumbers, electricians, carpenters) which may disturb asbestos, the Asset Manager or Facility Manager (or equivalent) must ensure person is provided with a copy of the extract of the Corporate Asbestos Register for the facility to ensure the person(s) performing the work are aware of the locations of asbestos at the premises.

For non-occupied assets with no extract of the Corporate Asbestos Register (e.g. fixed plant, community shelters, public bathrooms, storage sheds), an extract from the Corporate Asbestos Register will need to be reviewed by employees and contractors performing asbestos related work or asbestos removal work.

A link to the current version of the Corporate Asset Register and extracts is included on the Staff Intranet.

See also s.9 of this Plan for details on communications required for licensed asbestos removal work.

8.4 Asbestos Safe Operating Practices (SOPs)

8.4.1 Accessing and Using Asbestos SOPs

This Plan includes a set of Safe Operating Practices (SOPs) for tasks performed by BMCC staff that may disturb asbestos. These Asbestos SOPs include control measures to eliminate or minimise exposure to airborne asbestos during these works. Development of any business unit, department or activity-specific procedures for work activities involving asbestos or ACM (e.g. safe work method statements, procedures, checklists) must be consistent with the SOPs referenced in this Plan.

The BMCC Asbestos SOPs are maintained by the Manager, Governance & Risk. Current versions of the SOPs can be located on the Staff Intranet.

8.4.2 Selecting Appropriate Asbestos SOPs

It is important that safe operating practices are in place when carrying out asbestos-related work. Wherever possible, dry asbestos should not be worked on. Techniques that prevent or minimise the generation of airborne asbestos fibres include:

- The wetting of asbestos using surfactants or wetting agents, such as detergent water,
- The use of thickened substances, pastes and gels, including hair gel and shaving cream, to cover the surfaces of asbestos being worked on (these substances should be compatible with the conditions of use, including the temperature, and should not pose a risk to health),
- The use of shadow vacuuming (i.e. vacuuming with an asbestos vacuum cleaner as work is completed), and
- Performing the task in a controlled environment (for instance, a ventilated enclosure).

When selecting the best technique, the work should first be assessed for any electrical hazards that might result from the use of water or other liquids. If an electrical hazard exists, primary consideration should be given to removing the asbestos, rather than relying on dry work methods.

Whatever the control method used, it should be effective in making relevant workers, customers and community members aware of the presence of asbestos and preventing any work activity that might expose them, or others nearby, to airborne asbestos. Particular attention should be paid to controlling work activities that affect inaccessible areas listed in the asbestos register, such as wall cavities and ceiling spaces.

The following guidance material available through Local Government NSW website at <http://www.lgnsw.org.au/policy/asbestos/resources-and-case-studies> should also be used where relevant:

- Guidelines for Cutting, Handling and Disposal of Asbestos Pipes: Guidance material from the Water Directorate on cutting, handling and disposing of asbestos cement pipes, designed to assist local water utilities.
- Asbestos and Telstra Communication Pits: Advice (prepared for NSW councils in response to inquiries regarding asbestos in Telstra communication pits).

8.5 Community Agreements, Leases and Other Instruments

The Manager, Community & Economic Outcomes and Manager, Libraries & Customer Services will ensure booking request forms, hire contracts, leases, service agreements, users guides and other instruments used to define requirements and conditions for use of BMCC assets/facilities/buildings include the following where relevant:

- A requirement to report damage and methodology for how this is done,
- Reference to where a copy of the asbestos register/extract for the premises can be located (if asbestos or ACM has been identified at the premises),
- A statement to the effect that works that cause damage to the building and its fixtures and fittings such as drilling holes, nails and tacks are not permitted without authorisation from BMCC, and
- A statement to the effect that the use of adhesive tape on the walls, ceiling or floor is not permitted.

The Manager, Community & Economic Outcomes and Manager, Libraries & Customer Services will ensure that any actual or potential reported damage to asbestos or ACM is communicated to the Manager, Community & Economic Outcomes to facilitate update of the Corporate Asbestos Register (refer to s.5.3 of this Plan for details).

8.6 Asbestos in the Local Government Area

8.6.1 Contaminated Land

8.6.1.1 Responsibilities for Contaminated Land

Responsibility for cleaning up contaminated land lies with the person responsible for contaminating the land or the relevant landowner. Council may issue a clean up notice to the occupier of premises at or from which Council reasonably suspects that a pollution incident has occurred, or is occurring, requiring asbestos waste to be removed (under part 4.2 of the Protection of the Environment Operations Act 1997).

Council may also issue prevention notices (under part 4.3 of the Protection of the Environment Operations Act 1997) to ensure good environmental practice. If a person does not comply with a prevention notice given to the person, Council employees, agents or contractors may take action to cause compliance with the notice.

Any reasonable costs incurred by Council in monitoring or enforcing clean up and prevention notices may be recovered through a compliance cost notice (under part 4.5 of the Protection of the Environment Operations Act 1997). Council shall keep records of: tasks undertaken; the hours Council employees have spent undertaking those tasks; and expenses incurred.

During site redevelopment Council will consider contamination with asbestos containing materials in the same way as other forms of contamination as stipulated by the Environmental Planning and Assessment Act 1979. That is, Council will apply the general requirements of State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land and the Managing Land Contamination: Planning Guidelines SEPP 55 – Remediation of Land.

Council provides information about land contamination on planning certificates (issued under section 149 of the Environmental Planning and Assessment Act 1979) as outlined in s.8.6.1.2 of this Plan.

For sites that are 'significantly contaminated' and require a major remediation program independent of any rezoning or development applications, the EPA and SafeWork NSW are the lead regulatory authorities.

8.6.1.2 Finding out if Land is Contaminated

A person may request from Council a planning certificate containing advice on matters including whether Council has a policy to restrict the use of land due to risks from contamination. Certificates are issued under section 149(2) of the Environmental Planning and Assessment Act 1979.

Factual information relating to past land use and other matters relevant to contamination may also be provided, even when land use is not restricted. When Council receives a request for a certificate under section 149(2), it may also inform applicants of any further information available under section 149(5). Council may also use section 149(5) certificates to record other information, particularly anything else of a factual nature about contamination which Council deems appropriate (such as details of land history, assessment, testing and remediation).

Council records can only indicate known contaminated sites. Any site may potentially be contaminated.

Council may issue notices to land owners or occupiers requiring information about land it has reason to believe may be contaminated by asbestos using section 192 and section 193 of the Protection of the Environment Operations Act 1997.

8.6.1.3 Duty to Report Contaminated Land

A person whose activities have contaminated land or a landowner whose land has been contaminated is required to notify the EPA when they become aware of the contamination (under section 60 of the Contaminated Land Management Act 1997). Situations where this is required are explained in the document: Guidelines on the duty to report contamination under the Contaminated Land Management Act 1997.

The EPA will inform Council of contaminated land matters relating to the LGA as required under section 59 of the Contaminated Land Management Act 1997.

8.6.2 Derelict Buildings

Concerns regarding potential health risks from derelict properties may be directed to Council. Derelict properties include abandoned buildings, fire damaged buildings and otherwise dilapidated buildings. Where derelict properties contain friable asbestos and asbestos is exposed, either from human activities or weathering, this poses a potential risk to public health.

Council may:

- Respond to derelict properties that pose a demonstrable public health risk using a range of regulatory tools according to the particular circumstances.
- Issue a clean-up notice or prevention notice and compliance cost notice as noted in section 6.1.

- Order a person to demolish or remove a building if the building is so dilapidated as to present harm to its occupants or to persons or property in the neighbourhood (under section 121B 2(c) of the Environmental Planning and Assessment Act 1979). An order may require immediate compliance with its terms in circumstances which the person who gives the order believes constitute a serious risk to health or safety or an emergency (under section 121M of the Environmental Planning and Assessment Act 1979). If a person fails to comply with the terms of an order, Council may act under section 121ZJ of the Environmental Planning and Assessment Act 1979 to give effect to the terms of the order, including the carrying out of any work required by the order.

If the derelict building is on a site that is a workplace then SafeWork NSW is the lead agency responsible for ensuring that asbestos is removed by appropriately licensed removalists.

8.6.3 Council's Process for Changing Land Use

Council recognises the need to exercise care when changing zoning for land uses, approving development or excavating land due to the potential to uncover known or unknown asbestos material from previous land uses (for example, where a site has been previously been used as a landfill or for on-site burial of asbestos waste).

State Environmental Planning Policy No. 55 – Remediation of Land states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.

8.6.4 Council's Process for Assessing Development

8.6.4.1 Introduction

This section applies to development applications assessed under the Environmental Planning and Assessment Act 1979 and complying development applications assessed under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or Council's complying codes. This includes alterations and additions to residential development, which may include internal work as well as extensions to the existing main structure, or changes to outbuildings, sheds or garages.

This section also covers renovations that do not require development consent or a complying development certificate. Development consent is not required to maintain an existing structure. For example, the replacement of windows, doors and ceilings may involve the removal of asbestos but is categorised as exempt development under the Environmental Planning and Assessment Act 1979 and does not require development consent. In these instances, Council has an educative role in providing owners and occupiers with advice and information about the identification and safe management of asbestos.

8.6.4.2 Responsibilities for Approving Development

Council is the consent authority for the majority of development applications in the LGA. The Joint Regional Planning Panel (JRPP) is also consent authority for certain local or regional development. Council may have representation on the JRPP.

Council or the JRPP may impose conditions of consent and a waste disposal policy to a development consent to ensure the safe removal of asbestos, where asbestos has been identified or may be reasonably assumed to be present.

Either Council or a private certifier may assess a complying development certificate. Where a private certifier is engaged to assess a complying development certificate, the private certifier is responsible for ensuring that the proposed development activities include adequate plans for the safe removal and disposal of asbestos.

This also applies to the demolition of buildings. Certifiers are able to issue a complying development certificate under the Demolition Code of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Further information on demolition is provided in s.8.3.3 of this Plan.

When a private certifier issues a complying development certificate and is appointed as the Principal Certifying Authority for the development it is the certifier's responsibility to follow up to ensure that works including asbestos handling, removal and disposal if present, are carried out appropriately in accordance with the Environmental Planning and Assessment Regulation 2000 (clause 136E). Compliance is covered in s.8.6.5 of this Plan.

8.6.4.3 Conditions of Consent

The Manager, Development & Compliance Services will maintain a list of suitable development consent conditions for inclusion in development consents.

8.6.5 Compliance and Enforcement

A private certifier has powers under the Environmental Planning and Assessment Act 1979 to issue construction certificates, compliance certificates, complying development certificates, occupation certificates and to carry out mandatory inspections. Councils will not always be the principal certifying authority. When a Council is not nominated as the principal certifying authority for a complying development certificate or development application, the Council may not have any knowledge of the asbestos matter. Accordingly, coordination of compliance and/or enforcement actions between the Council and the private certifier will be required.

Council may take action on any development for which Council has issued the development consent, even when not appointed as the principal certifying authority to ensure enforcement. Where Council receives a complaint about a development for which Council is not the principal certifying authority, Council should consider whether Council is the appropriate authority to resolve the matter. Complaints that warrant action by Councils because of their greater enforcement powers include:

- Urgent matters, for example, a danger to the public or a significant breach of the development consent or legislation.
- Matters that are not preconditions to the issue of the occupation/subdivision certificate.

Where Council becomes aware of illegal work involving asbestos or asbestos containing materials, Council will notify SafeWork NSW if the site is a workplace.

The Environmental Planning and Assessment Act 1979 empowers Council to issue orders to direct specific work be undertaken to comply with a development consent.

Council may need to issue an order under the Local Government Act 1993 (section 124) to direct a person to 'do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition'.

Council may also issue a clean-up notice or prevention notice under the Protection of the Environment Operations Act 1997.

Council may audit asbestos-related demolition works which Council has recently approved by using a legal notice under section 192 of the Protection of the Environment Operations Act 1997 to require developers to provide information and records regarding disposal of their asbestos waste.

9. Licensed Asbestos Removal and Disposal

9.1 About Licensed Asbestos Removal Work

All asbestos removal work, with the exception of urgent removal work permitted by s.8.1 of this Plan, will be conducted by suitably licensed asbestos removalist contractors.

There are two types of licences: Class A and Class B. The type of licence required will depend on the type and quantity of asbestos or ACM that is being removed at a workplace as per the table below.

Type of licence	What asbestos can be removed?
Class A	Can remove any amount or quantity of asbestos or ACM, including: <ul style="list-style-type: none"> any amount of friable asbestos or ACM, any amount of ACD, or any amount of non-friable asbestos or ACM.
Class B	Can remove: <ul style="list-style-type: none"> any amount of non-friable asbestos or ACM, or ACD associated with the removal of non-friable asbestos or ACM.

9.2 Arranging Licensed Asbestos Removal

Prior to entering a contract or agreement with the licensed asbestos removalists, BMCC will:

- Require the licensed asbestos removalist to provide the following documentation prior to carrying out asbestos removal work:
 - Asbestos removalist licence details (where necessary, licence details will be verified with SafeWork NSW),
 - Asbestos removal control plan,
 - Public liability certificate of currency with \$20M minimum coverage,
 - Workers compensation certificate of currency, and
 - Copy of the SafeWork NSW notification for the works.
- Provide a copy of the site specific asbestos register to the licensed asbestos removalist (this does not apply if the asbestos removal work is to be carried out at residential premises, for example cleaning up asbestos that has been illegally dumped at a residential premises),

9.3 Requirements for Licensed Asbestos Removalists

A summary of the requirements applicable to licensed asbestos removal work is included in Appendix 3 of this Plan to assist persons commissioning licensed asbestos removal to ensure contractors are meeting applicable legal requirements. Further details on licensed

asbestos removal work requirements can be found in the relevant sections of the SafeWork NSW 'How to Safely Remove Asbestos' Code of Practice (Sept 2016) listed in Appendix 3.

9.4 Asbestos Notifications

9.4.1 Stakeholder Notifications for Licensed Asbestos Removal

Before commencing licensed asbestos removal work, the licensed asbestos removalist must inform the manager with control of the workplace (e.g. Asset Manager) that licensed asbestos removal work is to be carried and when the work is to commence. For BMCC operated assets/buildings/facilities, notification to the person/manager with overall control of the facility will also be required (e.g. Facility Manager). For leased facilities this will be the tenant, landlord and/or property manager/agent.

Before commencing removal work, the person(s) with control of the workplace must notify the following persons that licensed asbestos removal work is to be carried out, and when the work is to commence:

- Workers and any other persons at the workplace, and
- The person who commissioned the asbestos removal work (if not the same person).

This person must also take all reasonable steps to ensure that the following persons are also notified that licensed asbestos removal work is to be carried and when the work is to commence:

- Anyone conducting a business or undertaking at, or in the immediate vicinity of, the workplace, and
- Anyone occupying premises in the immediate vicinity² of the workplace.

9.4.2 SafeWork NSW Notifications for Licensed Asbestos Removal

A licensed asbestos removalist must notify SafeWork NSW in writing at least five days before commencing licensed asbestos removal work. Notification is required to be made on a day that is not a Saturday, Sunday, public holiday or bank holiday. Notification is to be undertaken online at <https://notifications.workcover.nsw.gov.au/Login.aspx>.

It may not be possible to provide five days notice, and removal work may commence immediately in the following limited circumstances:

- A sudden expected event that may lead to a situation where there is a risk of exposure, for example a burst pipe that was lagged with asbestos or a forklift crashing into an asbestos cement sheet wall, or
- An unexpected breakdown of an essential service that requires immediate rectification, for example gas, water, sewerage or telecommunications services.

Where immediate removal is required, the licensed asbestos removalist must telephone SafeWork NSW on 13 10 50 immediately and provide the following information:

- Name of the licensed removalist,
- Address of the workplace where the asbestos is to be removed, and
- Reason for the immediate need to remove the asbestos.

² 'Immediate Vicinity' is taken to be premises either side of the workplace, the premises behind the workplace and the premises immediately across the road. For orphaned (dumped) asbestos waste, this is taken to be the subject premises and the premises either side (for extended dumps/spills this will need to include all premises for the length of the dump/spill).

9.4.3 SafeWork NSW Notification of Respirable Asbestos Fibre Levels

A licensed asbestos removalist carrying out the removal work must immediately notify WorkCover when air monitoring indicates respirable asbestos fibre levels exceed the exposure standard (i.e. 0.02 fibres/ml) in the removal area. Refer to Appendix 3 for further details.

9.5 Clearance Certificates After Licensed Asbestos Removal

After any licensed asbestos removal work, BMCC will ensure the licensed asbestos removalist provides a copy of the relevant clearance certificate(s). The person commissioning the work must ensure the certificates are sent to asbestosregister@bmcc.nsw.gov.au to enable update of the Corporate Asbestos Register as per s.5.3 of this Plan.

10. Managing Naturally Occurring Asbestos

Geographic information system maps have been developed by NSW Trade and Investment, locating high, medium and low probability areas of naturally occurring asbestos (NOA). Review of NOA mapping indicates that there is very little or no potential for naturally occurring asbestos (NOA) in the Blue Mountains City Council Local Government Area (LGA). Refer to <http://www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos/naturally-occurring-asbestos> for further information.

11. Health Monitoring

11.1 About Asbestos Health Monitoring

Where a worker is at risk of exposure to asbestos due to work activities, or has potentially been exposed to asbestos, health monitoring will be undertaken. The Manager, Governance & Risk will coordinate the identification of these workers and implement health monitoring as required by the BMCC Health Surveillance Procedure. The need for health monitoring for these workers will be determined on the basis of:

- the potential for exposure,
- the frequency of potential exposure, and
- the duration of the work being undertaken.

Additional guidance for councils on health monitoring is available from Local Government NSW at <http://www.lgnsw.org.au/policy/asbestos/resources-and-case-studies>.

11.2 Asbestos Health Monitoring Requirements

Asbestos-related health monitoring will be carried out by a registered medical practitioner with the relevant competencies consistent with the Part 1.4 of the SafeWork NSW 'How to Manage and Control Asbestos in the Workplace' Code of Practice (Sept 2016) and Part 8.5 of the NSW *Work Health and Safety Regulation 2017*. A summary of requirements is provided below:

- Health monitoring must include a medical examination to provide an initial baseline medical assessment and must include:
 - Consideration of the worker's demographic, medical and occupational history,

- Consideration of records of the worker's personal exposure, and
- A physical examination of the worker with emphasis on the respiratory system.
- Workers must be informed of any health monitoring requirements before the worker carries out work that may expose them to asbestos.
- If a worker is carrying out asbestos related-work, the health monitoring must be conducted prior to the worker commencing the work. Health monitoring should also be provided to the worker at regular intervals after commencing the asbestos-related work but at least once every two years.
- BMCC must pay all expenses relating to health monitoring.
- BMCC must provide certain information to the registered medical including a description of the work the worker is, or will be, carrying out that has triggered the requirement for health monitoring, whether the worker has started the work or, if the worker has commenced carrying out the work, how long this has been for.
- BMCC must take all reasonable steps to obtain a report from the registered medical practitioner as soon as practicable after the monitoring is carried out. The report must include information specified by the NSW WHS Regulations.
- BMCC must give a copy of the report to the worker, and the regulator if the report contains: any test results that indicate the worker may have contracted a disease, injury or illness as a result of the work that triggered the need for health monitoring, or any recommended remedial measures, including whether the worker can continue to carry out the work.
- Reports must be kept as a confidential record for at least 40 years after the record is made and identified as a formal record for the particular worker.
- Adverse health monitoring results must be reported to SafeWork NSW as required by s.11.4 of this Plan.

11.3 Employee Assistance Program

Health counselling may be appropriate where a heightened sense of concern exists for individuals possibly exposed to elevated levels of airborne asbestos fibres. BMCC's Employee Assistance Program (EAP) is an independent, confidential and free professional counselling service to support the health and wellbeing of its employees.

For further information, contact the BMCC Work Health and Safety team. BMCC's EAP providers can also be contacted directly (refer to Staff Intranet for contact details).

11.4 Notifying SafeWork NSW of Health Monitoring Results

The Manager, Governance & Risk will provide a copy of a worker's health monitoring report to SafeWork NSW if the report contains:

- Any test results that indicate the worker may have contracted a disease, injury or illness as a result of the work that triggered the need for health monitoring, or
- Any recommended remedial measures, including whether the worker can continue to carry out the work.

12. Incidents Involving Asbestos or ACM

12.1 Incidents Involving Asbestos or ACM

An incident involving asbestos is most likely to entail a scenario where ACM has been inadvertently disturbed through actions of staff, clients, maintenance contractors, out-of-hours vandalism or damage due to severe weather conditions (e.g. hail damage).

Other examples of incidents involving ACM, or potential ACM, include:

- Damage to ACM listed in asbestos register (e.g. wall damaged, accidental penetration).
- Work completed in an inaccessible area listed in an asbestos register without identification of asbestos prior to access.
- Near-misses such as:
 - Suspected asbestos found in building/facility and not listed on the Corporate Asbestos Register, or
 - Suspected asbestos found during kerbside pickup or in a recreational area, bushland or community/public area.

12.2 Responding to Incidents Involving Asbestos or ACM

In the event of an incident at a BMCC asset/facility/building or public lands where identified or suspected asbestos or ACM is found, it is important to ensure correct response to minimise the potential for exposure. Incident response requirements are defined in:

- BMCC Incident Reporting and Investigation Procedure (for all incidents), and
- Asbestos Management Plan Workflow 5: Response to Asbestos Incident (included in Appendix 1 of this Plan).

For community-based incidents and emergencies where asbestos or ACM is suspected or confirmed present (e.g. major collapses, cyclones, explosions, fires, storms, or vandalism), refer to:

- Asbestos SOP 6: Responsibilities in the Clean up After an Emergency or Incident.
- Asbestos SOP 7: Residential and Commercial Asbestos Pollution Response.

For orphaned (dumped) asbestos in bushland areas, parks and community facilities under control of BMCC (excluding kerbside and waste management facilities), refer to Asbestos SOP 3: Orphaned (Dumped) Asbestos.

12.3 Incident Reporting

Incidents involving asbestos or ACM can be reported in a number of ways as follows:

- Asbestos Reporting Hotline (staff and contractors – 24 hours, 7 days – Ph. 4780 5392)
- Asbestos Incident Report Form (staff or contractors complete in hardcopy and email to asbestosresponseteam@bmcc.nsw.gov.au)
- BMCC Customer Service Request line (community and contractor reports - Ph. 02 4780 5000)
- Notification from SafeWork NSW, NSW EPA or other regulatory agency

All incoming incident reports are routed to the Asbestos Response Team via asbestosresponseteam@bmcc.nsw.gov.au. The Asbestos Response Team will coordinate the following:

- a) Monitoring of the asbestosresponseteam@bmcc.nsw.gov.au email address and triage of incidents.
- b) Forward copy of any 'potential exposure' incident reports to the Safety Team for follow-up at safetyteam@bmcc.nsw.gov.au.
- c) Determine appropriate initial response.
- d) Management of small scale response and remediation.

- e) Commission the Asbestos Project Team to coordinate an appropriate response to the incident if needed.
- f) Communicate incident details, including ACM status changes, to the Asbestos Project Team to facilitate update of the Corporate Asbestos Register.

13. Record Keeping

Documents and records relating to asbestos matters will be maintained on HPE Records Manager and retained in accordance with the general retention and disposal authority for Local Government Records (GA39) as published by NSW State Archives and Records.

Records relating to asbestos include, but are not limited to:

- Asbestos surveys and risk assessments,
- Asbestos Management Plan,
- Corporate Asbestos Register (and extracts),
- Asset inspection records and photos,
- Contractor details (including name and details of licensed asbestos removalists and insurance details),
- Details of maintenance work carried out on BMCC assets/buildings/facilities,
- WRR and CSR records,
- Details of refurbishment and removal/demolition works,
- Actions taken as a result of accidental breakage of asbestos material or in response to an incident or emergency.
- Results of consultation with workers on asbestos matters;
- Asbestos notifications to SafeWork NSW, workers and others
- Air monitoring reports and clearance certificates,
- Incident/hazard reports, and
- Audit reports.

14. Auditing the Asbestos Management Plan

Audits are an essential component of the BMCC governance and risk framework, and assist in implementing a systematic approach to management of asbestos risks. The Manager, Governance & Risk will include periodic audit(s) of this Asbestos Management Plan in its assurance plan. The assurance plan will define the scope, criteria, frequency and responsibilities for conducting audits of the Plan sufficient to assess conformance with the various requirements of the Plan. Audits will be planned, conducted and managed in accordance with BMCC internal auditing procedures.

15. Review and Update of the Asbestos Management Plan

The Manager, Governance & Risk will ensure this Asbestos Management Plan is reviewed, and if necessary revised, every four years or when:

- The Plan is no longer adequate for managing asbestos or ACM at the workplace,
- Actions arising from internal audits require the Plan to be revised, or
- A health and safety representative requests a review if they reasonably believe that any of the matters listed above affect, or may affect, the health and safety of a member of their work group and the Plan was not adequately reviewed.

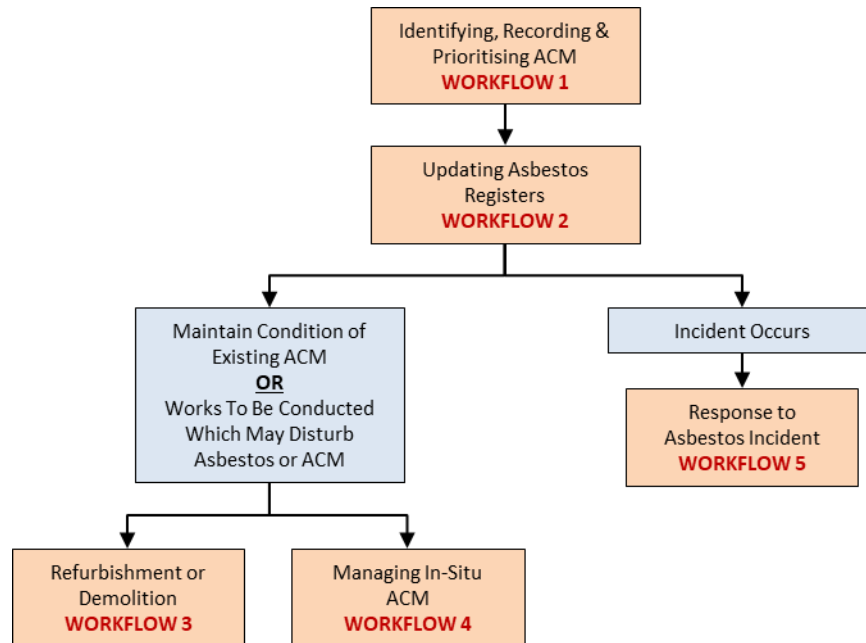
BMCC reserves the right to review, vary or revoke this Plan. The General Manager may allow variations to the policy for minor issues in individual cases.

16. Limitations

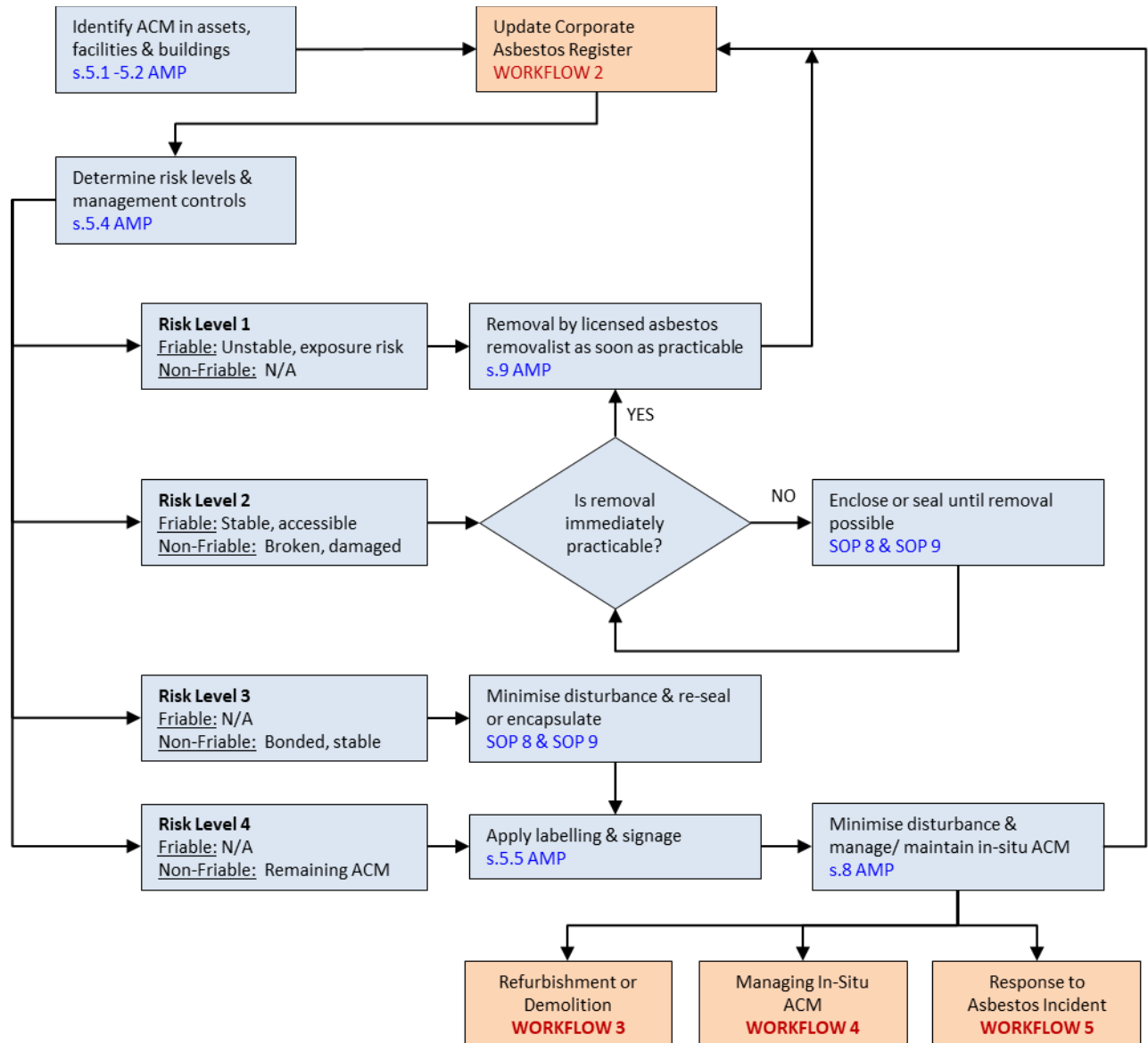
The Model Asbestos Policy for NSW Councils (November 2015) produced by Local Government NSW and the NSW Government has been used to assist in the development of this Plan. It should be noted that Parts 6-11 of the Policy are grouped under the heading 'Asbestos in the Local Government Area: Information for the community' and focus on how the council interacts with, and regulates, residents and the community with regards to asbestos. These parts are not represented in this Plan.

Appendix 1: Asbestos Management Plan Workflows

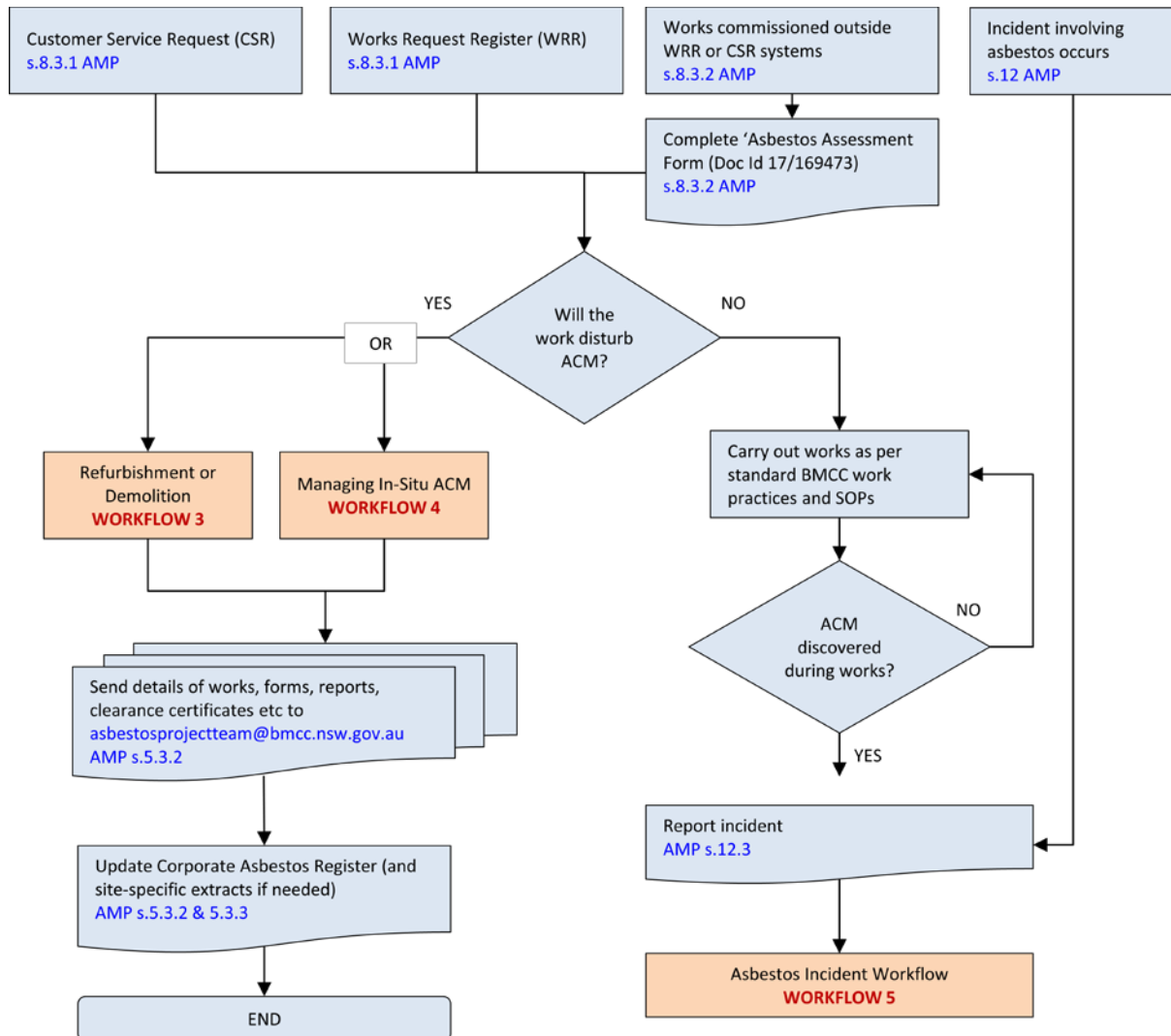
WORKFLOW OVERVIEW



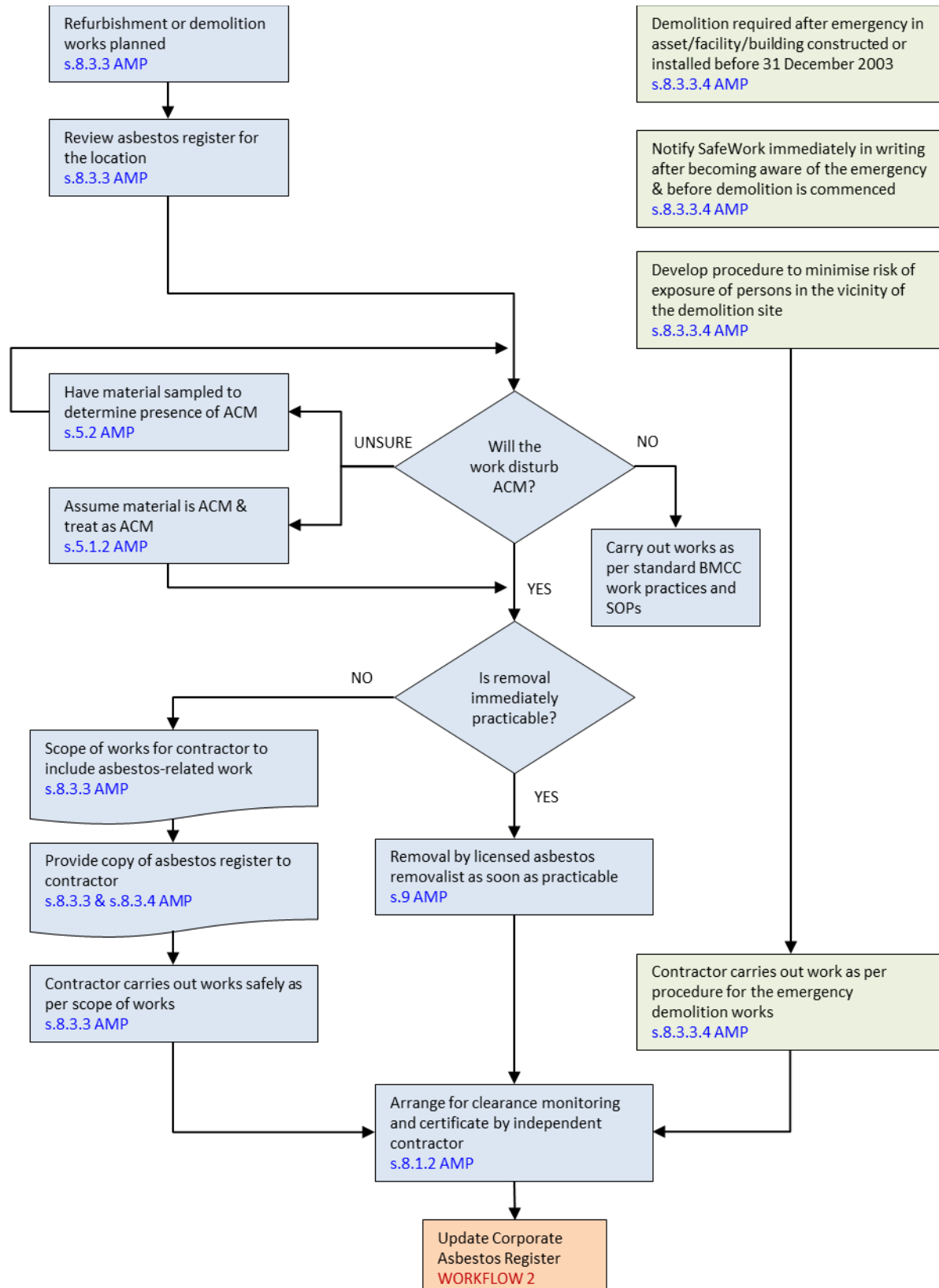
WORKFLOW 1: IDENTIFYING, RECORDING & PRIORITISING ACM



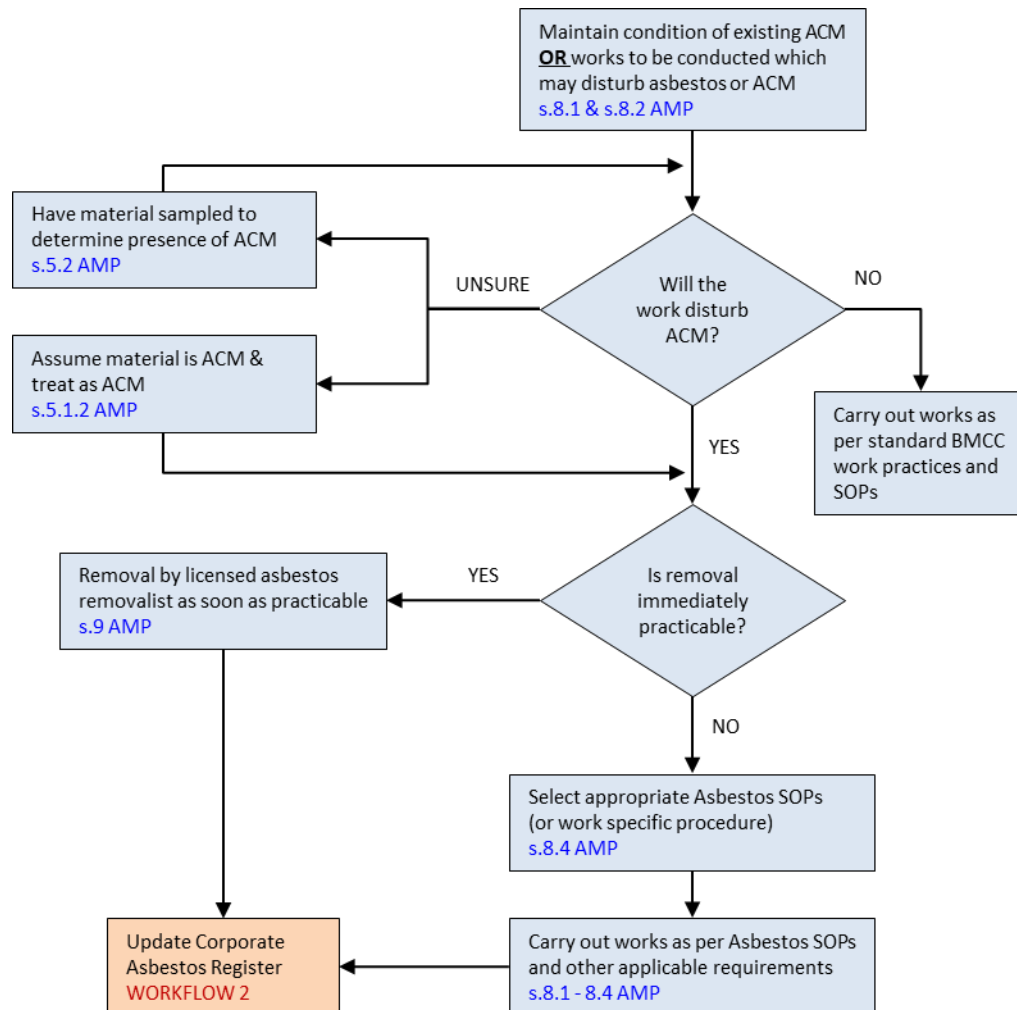
WORKFLOW 2: UPDATING ASBESTOS REGISTERS



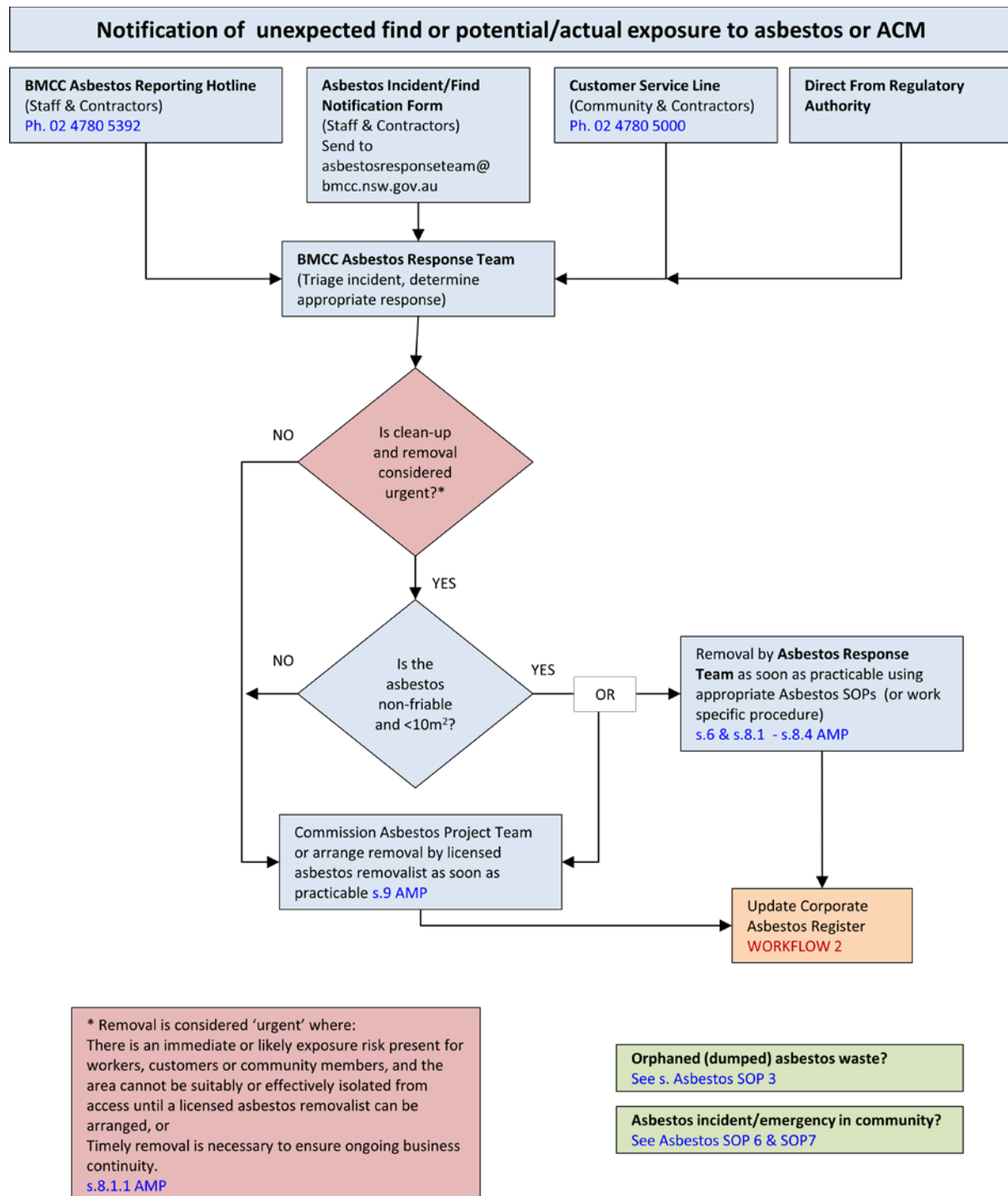
WORKFLOW 3: REFURBISHMENT & DEMOLITION



WORKFLOW 4: MANAGING IN-SITU ACM



WORKFLOW 5: ASBESTOS INCIDENT WORKFLOW



Appendix 2: Asbestos and ACM in Residential and Commercial/Industrial Settings

Part 1: Residential

Some asbestos containing materials found in New South Wales residential settings (non-exhaustive list).

Asbestos containing materials	Approximate supply dates
Cement sheets	Imported goods supplied from 1903 locally made 'fribrolite'
Cement roofing / lining slates	Imported goods supplied from 1903 locally made 'fribrolite'
Mouldings and cover strips	Available by 1920s and 1930s
Super-six (corrugated) roofing	Available by 1920s and 1930s – 1985
'Tilex' decorative wall panels	Available by 1920s and 1930s
Pipes and conduit piping	Available by 1920s and 1930s
Motor vehicle brake linings	Available by 1920s and 1930s
Striated sheeting	Available from 1957
'Asbestolux' insulation boards	Available from 1957
'Shadowline' asbestos sheeting for external walls, gable ends and fences	Available from 1958 – 1985
Vinyl floor tiles impregnated with asbestos	Available up until 1960s
Asbestos containing paper backing for linoleum	Available up until 1960s
'Durasbestos' asbestos cement products	Available up until 1960s
'Tilex' marbletone decorative wall panels	Available from early 1960s
'Tilex' weave pattern decorative wall panels	Available from early 1960s
'Hardiflex' sheeting	Available from 1960s – 1981
'Versilux' building board	Available from 1960s – 1982
'Hardiplank' and 'Hardigrain' woodgrain sheeting	Available from mid 1970s – 1981
Loose-fill, fluffy asbestos ceiling insulation	Supplied from 1968 – 1978 by a Canberra contractor and believed to be generally restricted to houses in the Australian Capital Territory with some materials supplied to the Queanbeyan area and some south coast towns
Asbestos rope gaskets for wood heaters. Heater and stove insulation	Dates of supply availability unknown but prior to 31 December 2003
Compressed fibro-cement sheets	Available from 1960s – 1984
Villaboard	Available until 1981
Harditherm	Available until 1984
Highline	Available until 1985
Coverline	Available until 1985
Roofing accessories	Available until 1985
Pressure pipe	Available until 1987

Part 2: Commercial/Industrial

Alphabetical list of asbestos containing materials that may be found in various settings (non-exhaustive list).

A

Air conditioning duct, in the exterior or interior acoustic and thermal insulation
 Arc shields in lift motor rooms or large electrical cabinets
 Asbestos-based plastics products as electrical insulates and acid resistant compositions or aircraft seats
 Asbestos ceiling tiles
 Asbestos cement conduit
 Asbestos cement electrical fuse boards
 Asbestos cement external roofs and walls
 Asbestos cement in the use of form work for pouring concrete
 Asbestos cement internal flues and downpipes
 Asbestos cement moulded products such as gutters, ridge capping, gas meter covers, cable troughs and covers
 Asbestos cement pieces for packing spaces between floor joists and piers
 Asbestos cement (underground) pit as used for traffic control wiring, telecommunications cabling etc
 Asbestos cement render, plaster, mortar and coursework
 Asbestos cement sheet
 Asbestos cement sheet behind ceramic tiles
 Asbestos cement sheet over exhaust canopies such as ovens and fume cupboards
 Asbestos cement sheet internal walls and ceilings
 Asbestos cement sheet underlay for vinyl
 Asbestos cement storm drain pipes
 Asbestos cement water pipes (usually underground)
 Asbestos containing laminates, (such as Formica) used where heat resistance is required
 Asbestos containing pegboard
 Asbestos felts
 Asbestos marine board, eg marinate
 Asbestos mattresses used for covering hot equipment in power stations
 Asbestos paper used variously for insulation, filtering and production of fire resistant laminates
 Asbestos roof tiles
 Asbestos textiles
 Asbestos textile gussets in air conditioning ducting systems
 Asbestos yarn
 Autoclave/steriliser insulation

B

Bitumen-based water proofing such as malthoid (roofs and floors, also in brickwork)
 Bituminous adhesives and sealants
 Boiler gaskets
 Boiler insulation, slabs and wet mix
 Brake disc pads
 Brake linings

C

Cable penetration insulation bags (typically Telecom)
 Calorifier insulation
 Car body filters (uncommon)
 Caulking compounds, sealant and adhesives
 Cement render
 Chrysotile wicks in kerosene heaters
 Clutch faces
 Compressed asbestos cement panels for flooring, typically verandas, bathrooms and steps for demountable buildings

Compressed asbestos fibres (CAF) used in brakes and gaskets for plant and automobiles

D

Door seals on ovens

E

Electric heat banks – block insulation

Electric hot water services (normally no asbestos, but some millboard could be present)

Electric light fittings, high wattage, insulation around fitting (and bituminised)

Electrical switchboards see Pitch-based

Exhausts on vehicles

F

Filler in acetylene gas cylinders

Filters: beverage wine filtration

Fire blankets

Fire curtains

Fire door insulation

Fire-rated wall rendering containing asbestos with mortar

Fire-resistant plaster board, typically on ships

Fire-retardant material on steel work supporting reactors on columns in refineries in the chemical industry

Flexible hoses

Floor vinyl sheets

Floor vinyl tiles

Fuse blankets and ceramic fuses in switchboards

G

Galbestos™ roofing materials (decorative coating on metal roof for sound proofing)

Gaskets: chemicals, refineries

Gaskets: general

Gauze mats in laboratories/chemical refineries

Gloves: asbestos

H

Hairdryers: insulation around heating elements

Header (manifold) insulation

I

Insulation blocks

Insulation in electric reheat units for air conditioner systems

L

Laboratory bench tops

Laboratory fume cupboard panels

Laboratory ovens: wall insulation

Lagged exhaust pipes on emergency power generators

Lagging in penetrations in fireproof walls

Lift shafts: asbestos cement panels lining the shaft at the opening of each floor and asbestos packing around penetrations

Limpet asbestos spray insulation

Locomotives: steam, lagging on boilers, steam lines, steam dome and gaskets

M

Mastik

Millboard between heating unit and wall

Millboard lining of switchboxes

Mortar

P

Packing materials for gauges, valves, etc can be square packing, rope or loose fibre
 Packing material on window anchorage points in high-rise buildings
 Paint, typically industrial epoxy paints
 Penetrations through concrete slabs in high rise buildings
 Pipe insulation including moulded sections, water-mix type, rope braid and sheet
 Plaster and plaster cornice adhesives
 Pipe insulation: moulded sections, water-mix type, rope braid and sheet
 Pitch-based (zelemite, ausbestos, lebah) electrical switchboard

R

Refractory linings
 Refractory tiles
 Rubber articles: extent of usage unknown

S

Sealant between floor slab and wall, usually in boiler rooms, risers or lift shafts
 Sealant or mastik on windows
 Sealants and mastik in air conditioning ducting joints
 Spackle or plasterboard wall jointing compounds
 Sprayed insulation: acoustic wall and ceiling
 Sprayed insulation: beams and ceiling slabs
 Sprayed insulation: fire retardant sprayed on nut internally, for bolts holding external building wall panels
 Stoves: old domestic type, wall insulation

T

Tape and rope: lagging and jointing
 Tapered ends of pipe lagging, where lagging is not necessarily asbestos
 Tilux sheeting in place of ceramic tiles in bathrooms
 Trailing cable under lift cabins
 Trains: country – guards vans – millboard between heater and wall
 Trains – Harris cars – sprayed asbestos between steel shell and laminex

V

Valve and pump insulation

W

Welding rods
 Woven asbestos cable sheath

Source: *Model Asbestos Policy for NSW Councils* (NSW Dept of Premier and Cabinet, Nov 2012)

Appendix 3: Licensed Asbestos Removal Requirements

Requirement	Summary	Code of Practice Reference
Asbestos removalist supervisor	<p>If the asbestos removal work requires a Class A licence, an asbestos removal supervisor must be present at the asbestos removal area whenever the work is being carried out.</p> <p>If the asbestos removal work requires a Class B licence, an asbestos removalist supervisor must be present or readily contactable and available.</p>	3.1
Certification and training	<p>The asbestos removal supervisor and all workers performing the work must hold appropriate licences. See http://www.safework.nsw.gov.au/licences-and-registrations/licences/asbestos-licences for further details.</p> <p>Training in the asbestos removal control plan must be provided to workers performing removal work. Records of training must be readily accessible at the asbestos removal area.</p>	3.2
Informing parties	<p>Prior to any licensed asbestos removal work being carried out at a workplace, the licensed asbestos removalist must inform the person in control of the workplace.</p> <p>The person in control of the workplace must inform workers and others.</p> <p>Refer to s.9.4 of this Plan for details.</p>	3.3
Obtaining the asbestos register	Before commencing the work, the licensed asbestos removalist must obtain a copy of the asbestos register for the workplace.	3.4
Asbestos removal control plan	<p>The licensed asbestos removalist must prepare an asbestos removal control plan for the work. The plan is similar to a job safety analysis (JSA) or safe work method statement (SWMS), and identifies specific control measures in use to ensure workers and other persons are not at risk when asbestos removal work is being conducted.</p> <p>A copy of the plan must be given to the person who commissioned the work, and the plan must be readily accessible on-site for the duration of the work.</p>	3.5
Notifying SafeWork NSW	A licensed asbestos removalist must notify the regulator before the work commences. Refer to s.9.4 of this Plan for details.	3.6
Access restrictions, signs and barricades	The licensed asbestos removalist must install signage to indicate where the asbestos removal work is being carried out and barricades to delineate the area. Access to the removal area must be limited to workers carrying out the work, other people who are associated with the work (e.g. asbestos removal supervisor) and SafeWork/emergency personnel.	3.7 4.2

Requirement	Summary	Code of Practice Reference
Decontamination	Licensed asbestos removalists must ensure decontamination facilities are available for the asbestos removal work area, any plant used in that area and workers carrying out the asbestos removal work.	3.8 4.6
Waste containment and disposal	The licensed asbestos removalist must ensure that asbestos waste, including contaminated PPE, is contained and labelled before the waste is removed from the asbestos removal area. It must be disposed of as soon as is practicable at a site licensed to accept asbestos waste.	3.9 4.8
Air monitoring	<p>Air monitoring involves sampling airborne asbestos fibres to assist in assessing exposure to asbestos and the effectiveness of implemented control measures. Air monitoring requirements will vary depending on the type of asbestos being removed, the location and position of the asbestos, if an enclosure is used and whether the asbestos removal work is within a building or outside.</p> <p>The person who commissioned the licensed asbestos removal work must ensure the results of the air monitoring are given to workers at the workplace, health and safety representatives and tenants/lessees. As such, BMCC should commission independent air monitoring to ensure results and reports are provided direct to BMCC (i.e. allowing the contractor to engage an independent air monitoring company can delay receipt of reports).</p> <p>The licensed asbestos removalist must immediately notify WorkCover when air monitoring indicates respirable asbestos fibre levels exceed exposure levels. Refer to s.9.4 of this Plan for details.</p>	3.11
Clearance inspection	<p>The person commissioning the licensed asbestos removal work must ensure that a clearance inspection is carried out once the work has been completed, and a clearance certificate is issued to BMCC before the workplace can be re-occupied.</p> <p>To be independent, the contractor carrying out the inspection must not be involved in the removal of asbestos for that specific job.</p>	3.10 App. C
Removing friable asbestos	When a licensed asbestos removalist is removing friable asbestos (requiring a Class A licence), specific requirements such as enclosure, work methods and air monitoring must be met. Refer to the relevant sections of the Code of Practice for details.	3.12 4.3 Ch. 6 7.2



The Hon. Gabrielle Upton MP
 Minister for the Environment
 Minister for Local Government
 Minister for Heritage

Ref:
 Doc ID:A577382

Clr Mark Greenhill OAM
 Mayor
 Blue Mountains City Council
 Locked Bag 1005
 KATOOMBA NSW 2780

By email: mgreenhill@bmcc.nsw.gov.au

Dear Clr Greenhill

Thank you for your letter of 20 December 2017 responding to my notice of intention to suspend Blue Mountains City Council (Council) under section 438I of the *Local Government Act 1993* (the Act).

I have considered Council's submission in response to that notice and I have decided not to issue a suspension order.

I remain seriously concerned that the safety of your community and work force has been compromised by inadequate processes to deal with asbestos and Council must take urgent action. For the reasons set out below I consider that a Performance Improvement Order may assist the Council to address these deficiencies.

Therefore, in accordance with section 438C of the Act I hereby give notice of my intention to issue a Performance Improvement Order to Council under section 438A of the Act requiring action to be taken to improve the performance of Council.

Section 438B(2) of the Act requires me to consider the performance improvement criteria prescribed by clause 413D of the Local Government (General) Regulation 2005 before issuing a Performance Improvement Order:

- (a) whether the council concerned has failed to comply with its legislative responsibilities, standards or guidelines,
- (b) whether there are significant risks facing the council that are not being addressed,
- (c) whether previous intervention attempts have failed,
- (d) whether council business is being disrupted and the council failing to exercise its functions,
- (e) repealed,
- (f) whether there is a pattern of poor or inappropriate behaviour, either by one or more councillors or members of staff of the council, that has not been rectified,

- (g) any other matter that, in the opinion of the Minister, is relevant to the issuing of the order.

I have considered each of those criteria before issuing this notice of intention.

The reasons why I propose to issue the proposed performance improvement order

In its submission to me Council has acknowledged that the investigations instituted by EPA and SafeWork are incomplete. Council has also acknowledged that community concerns in relation to asbestos exposure and public safety is well founded. Having regard to the criteria, I have formed the preliminary belief that the issue of a Performance Improvement Order is necessary to improve Council's performance for the following reasons:

1. On the available information, Council may have failed to comply with relevant statutory obligations insofar as improvement notices and prohibition notices issued by SafeWork in November 2017 indicate that the Council may have contravened provisions of the *Work Health & Safety Act 2011* and the *Work Health and Safety Regulation 2011*.
2. On the available information, Council may have failed to comply with relevant statutory obligations under the *Protection of the Environment Operations Act 1997* insofar as clean up notices were issued by the Environment Protection Authority (EPA) in December 2017 in respect of various properties owned or controlled by the Council.
3. There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos, including potential prosecution/liability issues. These arise from the issues identified in the SafeWork notices, as well as in clean up notices and notices to provide information and/or records issued by the EPA in December 2017, and the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017.
4. Ongoing action and monitoring needs to be taken by the Council to ensure that its governance and asbestos management practices comply with regulatory obligations.
5. Council has, in its response to the notice of intention to suspend Council, indicated that I should issue a Performance Improvement Order as an alternative to suspending the elected council.

The terms of the proposed performance improvement order

The attached draft Performance Improvement Order (the draft order) is intended to form part of this notice.

As required by section 438C(2)(a) of the Act, the terms and the period for compliance with the order, are specified in the draft order. As required by section 438A(3)(b) of the Act, the actions required to be taken to improve the performance of the Council are also specified in the draft order.

The actions that may be taken if a performance improvement order is not complied with (section 438C(2)(c)).

If a Performance Improvement Order is not complied with, I may consider measures including the following:

1. Issuing Council with a further Performance Improvement Order; and/or
2. Temporarily suspending Council under Chapter 13, Part 7 of the Act.

Invitation to Council to make submissions

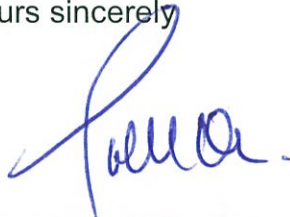
I hereby invite Council to make submissions to me in respect of the proposed Performance Improvement Order. Any submissions must be provided to me no later than **Friday 19 January 2018**.

As required by section 438C(5) of the Act, I will have regard to any submission made to me by Council during this period before deciding whether to issue a Performance Improvement Order.

It is recommended that Council tables this notice at an open Council meeting and provides its submissions by way of resolution of the Council.

I have attached an information sheet about the process for the issuing of Performance Improvement Orders.

Yours sincerely



Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

22-12-17

Local Government Act 1993

Section 438A

Performance Improvement Order

I, the Honourable Gabrielle Upton MP, Minister for Local Government, do, by this order pursuant to section 438A of the *Local Government Act 1993*, require Blue Mountains City Council, for the reasons specified in schedule 1 below, to undertake the actions described in schedule 2 below within the period specified in schedule 2.

This order takes effect upon service on the Council.

Dated this.....day of.....20...

DRAFT
The Hon. Gabrielle Upton, MP.
Minister for Local Government

SCHEDULE 1

Reasons for Order – section 438A(3)(a)
<ol style="list-style-type: none"> 1. On the available information, Council may have failed to comply with relevant statutory obligations insofar as improvement notices and prohibition notices issued by SafeWork in November 2017 indicate that the Council may have contravened provisions of the <i>Work Health & Safety Act 2011</i> and the <i>Work Health and Safety Regulation 2011</i>. 2. On the available information, Council may have failed to comply with relevant statutory obligations under the <i>Protection of the Environment Operations Act 1997</i> insofar as clean up notices were issued by the Environment Protection Authority (EPA) in December 2017 in respect of various properties owned or controlled by the Council. 3. There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos, including potential prosecution/liability issues. These arise from the issues identified in the SafeWork notices, as well as in clean up notices and notices to provide information and/or records issued by the EPA in December 2017, and the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017. 4. Ongoing action and monitoring needs to be taken by the Council to ensure that its governance and asbestos management practices comply with regulatory obligations. 5. Council has, in its response to the notice of intention to suspend Council, indicated that I should issue a Performance Improvement Order as an alternative to suspending the elected council.

SCHEDULE 2

Action required to improve performance – section 438A(3)(b)

1. Council identifies and implements measures that strengthen reporting to the governing body which enables Council to give leadership on implementing all recommendations arising from the independent investigations initiated by Council by resolution on 14 November 2017 and the investigations being undertaken by SafeWork and the EPA.
2. Following consideration of the recommendations from the investigations, Council develops improvement plans which include appropriate milestones. In doing so Council:
 - a. Utilise the services of an appropriately qualified consultant to assist Council in assessing the adequacy or otherwise of the existing system of internal control and reporting to the governing body
 - b. Provides all necessary resources to ensure the improvement plans are fully implemented
 - c. Require for the next 12 months the General Manager to report in writing to the monthly meeting of Council on progress against the improvement plans
 - d. Engage accredited experts to provide training to the governing body on its obligations under work health and safety, and environmental protection legislation.
3. Council ensures that there is an adequate mechanism in place which requires the General Manager to take action so that all concerns and incidences of possible contravention of relevant Work Health and Safety, and environmental protection legislation are reported immediately to the relevant regulatory agencies.
4. The improvement plans must be acceptable to SafeWork NSW and the Environmental Protection Authority (EPA).
5. Council liaises with SafeWork NSW as to whether or not it would be appropriate in the circumstances for Council to give an "Enforceable Undertaking" regulating Council's ongoing management of asbestos.
6. Councillors undertake training on their role and responsibilities as members of the governing body.

Period for compliance with Order

1. Compliance report 1: Council reports on outcome of its liaison with SafeWork NSW in regard to the giving of an Enforceable Undertaking within 1 month of the date of the Order.
2. Compliance report 2: Copies of all investigation reports must be provided to the Minister within 7 days of Council's receipt of each report.
3. Compliance report 3: Council's improvement plans along with evidence of acceptance of the improvement plans by SafeWork NSW and EPA must be provided to the Minister within 4 weeks from the date of Council's adoption of the plans.
4. Compliance report 4: Council must provide the Minister with a written report on the training undertaken by councillors on their role and responsibilities within 2 months of the date of this Order.
5. Compliance report 5: Council must provide the Minister with a written report on its progress against the improvement plans within 2 months of the improvement plans being sent to the Minister.
6. Final Compliance report: Council must provide the Minister with a written report on its progress against the improvement plans within 3 months of the improvement plans being sent to the Minister.

Evidence to be provided with the compliance report

1. Compliance report 1: Copy of the Enforceable Undertaking if entered into or advice from SafeWork NSW if an Enforceable Undertaking is not entered into.
2. Compliance report 2: Investigation reports.
3. Compliance report 3: A copy of Council's improvement plans. Evidence from SafeWork NSW and EPA of their acceptance of Council's improvement plans.
4. Compliance report 4: Documentary evidence that councillors attended the training, the outline of that training and any outcomes from the training.
5. Compliance report 5: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the improvement plans.
6. Final Compliance report: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the improvement plans.



Thursday 18 January 2018

OUR REFERENCE: F11235 – 18/14753
18/4134
18/4127

The Hon. Gabrielle Upton MP
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

SUBJECT: Response to Notice of Intention to Issue Blue Mountains City Council with a Performance Improvement Order

Thank you for your letter of 22 December 2017 and your consideration of Council's submission of 20 December 2017. The Council agrees that action to deal with asbestos management issues is a critical priority and that processes defined within the proposed Performance Improvement Order will assist the Council to further improve its asbestos management performance.

The Council acknowledges that whilst investigations instituted by the Council, SafeWork NSW and the Environmental Protection Authority (EPA) are incomplete, significant work has been completed by the Council in meeting Improvement Notices issued by SafeWork NSW and the EPA in recent weeks, and that the Council continues to work in close cooperation with both agencies to strengthen its asbestos management.

The Council would like to work closely with the Office of Local Government (OLG) as it progresses full implementation of the proposed Performance Improvement Order. To this end the Council will be seeking a regular fortnightly teleconference with relevant senior OLG staff able to offer appropriate guidance and support.

The Council's response to the proposed Performance Improvement Order is detailed in Attachment A, which responds directly to Schedule 2 of the proposed Performance Improvement Order.

A number of revisions and clarifications to the Order are respectfully requested for the consideration of the Minister. However, if the Minister is of the view that the Performance Improvement Order should be as originally proposed, then the Council will accept that outcome and work to fully implement the order imposed.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Mark Greenhill".

Mark Greenhill OAM
Mayor, City of Blue Mountains

A handwritten signature in black ink, appearing to read "Dr Rosemary Dillon".

Dr Rosemary Dillon
General Manager

Attachment A:
BMCC Response to Schedule 2 of Proposed Performance Improvement Order

CC: Tim Hurst, Acting Chief Executive, Office of Local Government



ATTACHMENT A

BMCC Response to Schedule 2 of Proposed Performance Improvement Order

Table 1: BMCC Response to Proposed Action Required to Improve Performance - Section 438A(3)(b)

	Action Required to Improve Performance	BMCC Response
1.	Council identifies and implements measures that strengthen reporting to the governing body which enables Council to give leadership on implementing all recommendations arising from the independent investigations initiated by Council by resolution on 14 November 2017 and the investigations being undertaken by SafeWork and the EPA.	<p>Agreed.</p> <p>The Council will identify and implement measures to strengthen reporting to the governing body so as to enable the Council to provide leadership in implementing all recommendations arising from the Tooma, SafeWork NSW and Environmental Protection Authority (EPA) investigations. These measures will include monthly briefing and reporting to the Council on progress against implementation of improvement plans, developed in response to the recommendations arising from the above investigations.</p>
2.	<p>Following consideration of the recommendations from the investigations, Council develops improvement plans which include appropriate milestones. In doing so Council:</p> <ol style="list-style-type: none"> Utilise the services of an appropriately qualified consultant to assist Council in assessing the adequacy or otherwise of the existing system of internal control and reporting to the governing body Provides all necessary resources to ensure the improvement plans are fully implemented Require for the next 12 months the General Manager to report in writing to the monthly meeting of Council on progress against the improvement plans Engage accredited experts to provide training to the governing body on its obligations under Work Health and Safety, and Environmental Protection legislation. 	<p>Agreed.</p> <p>After considering recommendations from the investigations the Council will develop Improvement Plans which include:</p> <ul style="list-style-type: none"> - Clear milestones and the specific actions to achieve them; - Timeframes for implementation of milestones and actions; - Clear allocation of responsibilities for implementing actions; - Performance / compliance reporting measures (see Table 2 below); - Introduction of reporting mechanisms required by Action Item 3. <p>a. The services of an appropriately qualified consultant will be engaged to assist the Council in assessing and recommending improvements to the existing system of internal controls and reporting to the governing body. In December 2017 the Council engaged the services of a highly experienced Chief Safety Officer who has worked extensively on managing asbestos in complex work environments in the Australian Army, NSW Health, and in the NSW Rural Fire Service.</p>



	Action Required to Improve Performance	BMCC Response
		<p>Request 2.a.(i): Subject to the approval of the Minister, the Council seeks to utilise the Chief Safety Officer as the “appropriately qualified consultant” referenced in 2.a., whilst also engaging other expertise as required or deemed necessary.</p> <p>b. The Council will identify and provide required resources to ensure Improvement Plans are fully implemented.</p> <p>c. Progress in implementing Improvement Plans will be reported to the Council on a monthly basis by the General Manager for the next 12 months.</p> <p>d. The Council will engage accredited experts to provide training to the governing body on its obligations under Work Health and Safety, and Environmental Protection legislation.</p>
3.	Council ensures that there is an adequate mechanism in place which requires the General Manager to take action so that all concerns and incidences of possible contravention of relevant Work Health and Safety and Environmental Protection legislation are reported immediately to the relevant regulatory agencies.	<p>Agreed in principle subject to amending the wording of Action 3 to confirm that the mechanisms to be put in place by the Council will be introduced through the Improvement Plans that the Council will develop in accordance with Actions 2 and 4.</p> <p>Request 3.(i): The Council proposes that Action 3 is reworded to read:</p> <p>"3. Council ensures that there is an appropriate mechanism in place (introduced through the Improvement Plans referred to in Actions 2 and 4, and supporting documents) which requires the General Manager to take action so that all concerns and incidences of possible contravention of relevant Work Health and Safety, and environmental protection legislation are reported immediately to the relevant regulatory agencies."</p>



	Action Required to Improve Performance	BMCC Response
		The Council envisages that the General Manager would authorise a suitably qualified and experienced senior officer, such as the Chief Safety Officer, to oversee the implementation of the reporting mechanism. This step would ensure that an officer specifically charged with this responsibility is available on a day to day basis to deal with issues as they arise.
4.	The improvement plans must be acceptable to SafeWork NSW and the Environmental Protection Authority (EPA).	Agreed. The Council will forward all proposed Improvement Plans to SafeWork NSW and the EPA for their consideration and approval.
5.	Council liaises with SafeWork NSW as to whether or not it would be appropriate in the circumstances for Council to give an "Enforceable Undertaking" regulating Council's ongoing management of asbestos.	Agreed.
6.	Councillors undertake training on their role and responsibilities as members of the governing body.	Agreed. The Council will provide the elected Councillors with further training in their role and responsibilities as members of a governing body.



Table 2: BMCC Response to Proposed Compliance Requirements

	Period for Compliance with Order	Evidence to be provided with Compliance Report	BMCC Response
1.	Compliance Report 1: Council reports on outcome of its liaison with SafeWork NSW in regard to the giving of an Enforceable Undertaking within 1 month of the date of the Order.	Copy of the Enforceable Undertaking if entered into or advice from SafeWork NSW if an Enforceable Undertaking is not entered into.	<p>Compliance Report 1 is agreed.</p> <p>Evidence to be provided relative to Compliance Report 1 is agreed.</p>
2.	Compliance Report 2: Copies of all investigation reports must be provided to the Minister within 7 days of Council's receipt of each report.	Investigation reports.	<p>Compliance Report 2, agreed in principle, but with a requested extension of the 7 day period to 14 days, to allow the governing body of the Council to consider each report and to receive advice on those reports, noting each of the following:</p> <ul style="list-style-type: none"> a. That the independent investigator will provide to the Council reports recording the investigator's findings and recommendations in response to each of the Terms of Reference of the investigation. The Council anticipates that interim reports will be prepared, as the investigation proceeds. b. These reports will be reviewed by the Council, including the elected Councillors. Within fourteen days of the date on which each report is received by the Council from the investigator, the reports will be forwarded to the OLG. c. The investigator may also prepare redacted reports, which exclude material that is not appropriate for public release. For example, the reports may make reference to named individuals.



	Period for Compliance with Order	Evidence to be provided with Compliance Report	BMCC Response
			<p>d. All reports received by the Council from SafeWork NSW and the EPA will also be provided to the OLG within 14 days from date of receipt.</p> <p>Evidence to be provided relative to Compliance Report 2 is agreed with.</p>
3.	<p>Compliance Report 3: Council's Improvement Plans, along with evidence of acceptance of the Improvement Plans by SafeWork NSW and EPA, must be provided to the Minister within 4 weeks from the date of Council's adoption of the plans.</p>	<p>A copy of Council's improvement plans.</p> <p>Evidence from SafeWork NSW and EPA of their acceptance of Council's Improvement Plans.</p>	<p>Compliance Report 3 is agreed noting that it requires the timely cooperation of SafeWork NSW and the EPA to meet required deadlines.</p> <p>Evidence to be provided relative to Compliance Report 3 is agreed.</p> <p>However, the Council has some concern that regulatory agencies may deem it is not their role to give a view, one way or the other, on the Council's Improvement Plans. This circumstance can be addressed, in consultation with the OLG, if and when the issue arises.</p>
4.	<p>Compliance Report 4: Council must provide the Minister with a written report on the training undertaken by councillors on their role and responsibilities within 2 months of the date of this order.</p>	<p>Documentary evidence that Councillors attended the training, the outline of that training and any outcomes from the training.</p>	<p>Compliance Report 4 is agreed.</p> <p>Evidence to be provided relative to Compliance Report 4 is agreed.</p>



	Period for Compliance with Order	Evidence to be provided with Compliance Report	BMCC Response
5.	Compliance report 5: Council must provide the Minister with a written report on its progress against the Improvement Plans within 2 months of the Improvement Plans being sent to the Minister.	Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the Improvement Plans.	<p>Compliance Report 5 is agreed.</p> <p>Evidence to be provided relative to Compliance Report 5 is agreed.</p>
6.	Final Compliance Report: Council must provide the Minister with a written report on its progress against the improvement plans within 3 months of the improvement plans being sent to the Minister.	Documentary evidence to substantiate the actions taken and improvement to Council's performance against the improvement plans.	<p>Final Compliance Report agreed.</p> <p>Evidence to be provided relative to Final Compliance Report is agreed.</p>



The Hon. Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

Ref:
Doc ID: A579199

Clr Mark Greenhill and Dr Rosemary Dillon
Mayor and General Manager
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

By email: council@bmcc.nsw.gov.au

Dear Clr Greenhill and Dr Dillon

I refer to previous correspondence concerning my intention to issue a Performance Improvement Order (PIO) to Blue Mountains City Council under section 438A of the *Local Government Act 1993* (the Act).

In response to my earlier proposal to suspend Council, Council submitted to me that, as an alternative to suspending the elected Councillors, I might consider issuing a PIO as a more targeted and effective response to my concerns about the asbestos management issues facing Council.

On 22 December 2017, I invited Council to make a submission to me in respect of a proposed PIO. That submission was dated 18 January 2018.

I have carefully considered Council's submission, and in particular the suggested revisions and clarifications to the proposed PIO. The terms of the PIO have been amended to respond to matters identified by Council in its submission.

I remain seriously concerned that the safety of the local community and Council's workforce has been compromised by inadequate processes to deal with asbestos. As the Mayor himself has acknowledged, the Council has a serious issue and it must get its response right.

I am also aware that as recently as 11 January 2018, Council has called for a report on other organisational matters relating to workplace culture and safety, people management practices, working relations and business processes between different parts of the organisation. While not commenting on the veracity of these matters, I remain concerned that there may be extensive organisational issues to be addressed by Council, which are the subject of independent investigation.

After careful consideration, I have decided to issue a PIO to assist Council to improve its asbestos management performance and management of other matters that may

arise from the independent investigations currently being undertaken. The Council now must improve its performance, with consequences if it does not do so.

The reasons for my decision to issue a PIO are set out in the body of the Order. In deciding to issue the PIO I have had particular regard to the need to ensure the safety of the community and of Council's workforce, and the need for robust processes to be in place, and adequately resourced, to ensure that Council is in a position to effectively deal with these issues into the future.

I expect that Council will table the PIO at an open Council meeting and place the PIO on Council's website in accordance with section 438D(2) of the Act.

Let me assure you that I will continue to closely monitor Council to ensure the safety of the local community and Council's workforce.

At my request, Mr Grant Gleeson from the Office of Local Government is available on (02) 4428 4136 or grant.gleeson@olg.nsw.gov.au should you wish to discuss any matter relating to the PIO.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G. Upton', written over a faint circular stamp.

Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

22-1-18

Local Government Act 1993

Section 438A

Performance Improvement Order

I, the Honourable Gabrielle Upton MP, Minister for Local Government, do, by this order pursuant to section 438A of the *Local Government Act 1993*, require Blue Mountains City Council, for the reasons specified in schedule 1 below, to undertake the actions described in schedule 2 below within the period specified in schedule 2.

This order takes effect upon service on the Council.

Dated this 22nd day of January 2018



The Hon. Gabrielle Upton, MP
Minister for Local Government

SCHEDULE 1

Reasons for Order – section 438A(3)(a)

1. On the available information, Council may have failed to comply with relevant statutory obligations insofar as improvement notices and prohibition notices issued by SafeWork in November 2017 indicate that the Council may have contravened provisions of the *Work Health & Safety Act 2011* and the *Work Health and Safety Regulation 2011*.
2. On the available information, Council may have failed to comply with relevant statutory obligations under the *Protection of the Environment Operations Act 1997* insofar as clean up notices were issued by the Environment Protection Authority (EPA) in December 2017 in respect of various properties owned or controlled by the Council.
3. There are significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos, including potential prosecution/liability issues. These arise from the issues identified in the SafeWork notices, as well as in clean up notices issued by the EPA in December 2017, and the SafeWork investigation announced by the Minister for Better Regulation on 11 December 2017.
4. Ongoing action and monitoring needs to be taken by the Council to ensure that its governance and asbestos management practices comply with regulatory obligations.
5. Council has, in its response to the notice of intention to suspend Council, indicated that I should issue a Performance Improvement Order as an alternative to suspending the elected council.

SCHEDULE 2

Action required to improve performance – section 438A(3)(b)
<ol style="list-style-type: none"> 1. Council identifies and implements measures that strengthen reporting to the governing body which enables Council to give leadership on implementing all recommendations arising from the two independent investigations initiated by Council by resolution on 14 November 2017 regarding asbestos management and organisational matters and the investigations being undertaken by SafeWork and the EPA. 2. Following consideration of the recommendations from the investigations, Council develops Improvement Plans which include appropriate milestones. In doing so Council: <ol style="list-style-type: none"> a. Utilise the services of an appropriately qualified consultant to assist Council in assessing the adequacy or otherwise of the existing system of internal control and reporting to the governing body b. Provides all necessary resources to ensure the Improvement Plans are fully implemented c. Require for the next 12 months the General Manager to report in writing to the monthly meeting of Council on progress against the Improvement Plans d. Engage accredited experts to provide training to the governing body on its obligations under work health and safety, and environmental protection legislation. 3. Council ensures that there is an adequate mechanism in place which requires the General Manager to take action so that all concerns and incidents of possible contravention of relevant Work Health and Safety, and environmental protection legislation are reported immediately to the relevant regulatory agencies and the Minister. 4. The Improvement Plans must be sent to SafeWork NSW and the Environmental Protection Authority (EPA) for their review. The Improvement Plans must be modified to accommodate any feedback from those agencies. 5. Council liaises with SafeWork NSW as to whether or not it would be appropriate in the circumstances for Council to give an "Enforceable Undertaking" regulating Council's ongoing management of asbestos. If it is deemed appropriate by SafeWork NSW, Council must enter into such an undertaking. 6. Councillors undertake training on their role and responsibilities as members of the governing body.
Period for compliance with Order
<ol style="list-style-type: none"> 1. Compliance report 1: Council reports to the Minister on the outcome of its liaison with SafeWork NSW in regard to the giving of an Enforceable Undertaking within 1 month of the date of the Order. 2. Compliance report 2: Copies of all investigation reports must be provided to the Minister within 7 days of Council's receipt of each report. 3. Compliance report 3: Council develops and adopts Improvement Plans on the outcome of each investigation within 4 weeks of receiving the investigation reports. 4. Compliance report 4: Council's Improvement Plans along with evidence of the review of the Improvement Plans by SafeWork NSW and EPA must be provided to the Minister within 4 weeks from the date of Council's adoption of the plans. 5. Compliance report 5: Council must provide the Minister with a written report on the training undertaken by councillors on their role and responsibilities within 2 months of the date of this Order. 6. Compliance report 6: Council must provide the Minister with a written report on its progress against the Improvement Plans within 2 months of the Improvement Plans being sent to the Minister. 7. Final Compliance report: Council must provide the Minister with a written report on its progress against the Improvement Plans within 3 months of the Improvement Plans being sent to the Minister.

Evidence to be provided with the compliance report

- | |
|---|
| <ol style="list-style-type: none"> 1. Compliance report 1: Copy of the Enforceable Undertaking if entered into or advice from SafeWork NSW if an Enforceable Undertaking is not entered into. 2. Compliance report 2: Investigation Final Reports. 3. Compliance report 3: A copy of Council's Improvement Plans. 4. Compliance report 4: Evidence from SafeWork NSW and EPA of their review of Council's Improvement Plans. 5. Compliance report 5: Documentary evidence that councillors attended the training, the outline of that training and any outcomes from the training. 6. Compliance report 6: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the Improvement Plans. 7. Final Compliance report: Documentary evidence to substantiate the actions taken and any improvement to Council's performance against the Improvement Plans. |
|---|

Angus Broad

From: Rosemary Dillon
Sent: Tuesday, 13 February 2018 3:16 PM
To: 'office@upton.minister.nsw.gov.au'
Cc: Grant Gleeson; Mark Greenhill
Subject: Letter to Minister for LG from BMCC Mayor & GM - Response to 2GB Allegations - Tooma Investigation
Attachments: ltr to OLG.PDF; Letter to Minister Local Govt from Mayor General Manager - response to 2GB allegation - Tooma Investigation.DOCX

Dear Minister,
Please find attached for your consideration:

- A letter from the Mayor and myself in relation to today's 2GB allegations regarding the Tooma Investigation; and
- A letter from the Council's solicitor Trevor Cork in relation to these matters.

Should you require further information or clarification please contact me.

Yours faithfully

Rosemary

Rosemary Dillon | General Manager | t 02 4780 5518 | | e rdillon@bmcc.nsw.gov.au

Blue Mountains City Council • council@bmcc.nsw.gov.au • www.bmcc.nsw.gov.au • Locked Bag 1005 Katoomba NSW 2780



13 February 2018

Reference File: 18/033184

The Hon. Gabrielle Upton MP
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

Dear Minister

SUBJECT: RESPONSE TO 2GB ALLEGATION – TOOMA INVESTIGATION

As Mayor and General Manager of Blue Mountains City Council, we are shocked to have heard the allegation made on the Ray Hadley Breakfast Program this morning relating to undisclosed information by the independent investigator Michael Tooma of Clyde & Co, appointed to conduct the investigation into asbestos management by BMCC.

Please see the attached letter from Council's solicitor, Trevor Cork of McPhee Kelshaw Solicitors to Mr Grant Gleeson at the Office of Local Government.

Should the Minister have residual concerns after reading this letter, further options for consideration may include:

1. Reviewing the status of the Tooma enquiry, assessing whether or not it should be completed by Mr Tooma or someone else as advised; and
2. The appointment of a Special Advisor by the OLG to work with the Council given the challenges before us.

Irrespective of whether Mr Tooma continues in his role as independent investigator, we are of the view that a Special Advisor would assist the Council in providing public confidence as we continue to comply with the requirements of the PIO.

Yours faithfully

A stylized, dark ink signature of Mark Greenhill, consisting of a series of sweeping, connected strokes.

MARK GREENHILL OAM
Mayor, City of Blue Mountains

A stylized, dark ink signature of Dr Rosemary Dillon, featuring a prominent, flowing initial 'R' followed by several connected strokes.

DR ROSEMARY DILLON
General Manager
Blue Mountains City Council

cc: Grant Gleeson, Head of Legal, Office of Local Government



Accredited Specialists Available in:-
 • Property Law • Local Government & Planning Law
 • Family Law
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Our Ref: TC:RP:144112

Your Ref:

13 February 2018

Mr Grant Gleeson
 Director Legal Services
 Office of Local Government
 Locked Bag 3015
 NOWRA NSW 2541

Dear Mr Gleeson,

Blue Mountains City Council - Independent Investigation
Mr Michael Tooma - Clyde & Co

I am instructed by Blue Mountains City Council that Mr Ray Hadley has today made a number of allegations concerning the independent asbestos investigation initiated by resolution of the Council on 14 November 2017.

The Office of Local Government (OLG) is aware that the Council instructed me, under the resolutions passed on 14 November 2017, to appoint an appropriately qualified and experienced person to act as an independent investigator. I recommended that Mr Michael Tooma of Clyde and Co solicitors be appointed to that role and my recommendation was accepted.

Amongst other matters, Mr Hadley has today asserted that Mr Tooma should resign his appointment. The Council understands that Mr Hadley's demand is based on an asserted personal association between Mr Tooma and Mr Mark Mulligan.

In the period August 2016 to November 2016 inclusive Mr Mulligan was engaged by the Council as a Safety Consultant, with a very specific brief. Mr Mulligan was **not** engaged to develop the Council's asbestos management plan or asbestos management policies. He was engaged to review the Council's work, health & safety policies and to make recommendations concerning the review of those policies.

I am instructed that during his engagement Mr Mulligan identified issues relating to asbestos management and policy development that the Council should address. Responsibility for acting on Mr Mulligan's recommendations was delegated to permanent employees of the Council.

Mr Mulligan was employed by the Council as Acting Director Service Delivery with effect from 1 November 2017. Mr Mulligan's employment as Acting Director ceased yesterday, 12 February 2018.

SOLICITORS
**McPHEE
 KELSHAW**
 CONVEYANCERS

PRINCIPALS

PAUL MCPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
 TREVOR GORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
 STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law S20
 CRAIG COCKBURN B.Com., LL.B.
 ANN SCHRALE B.A., LL.B. Acc. Spec. (Family Law)
 AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

CONFIDENTIAL

ANASTASIA DALITZ B.A., LL.B. (Hon)



The OLG is aware that the recent issues relating to the Council's management of asbestos and asbestos related risks emerged following a SafeWork inspection at the Springwood Depot in May 2017. Those events led up to the Council's decision, in November 2017, to appoint an independent investigator to report to the Council on the issues identified in the terms of reference, as varied by the Council in December 2017. A copy of those terms of reference is **attached**.

Also **attached** is a copy of an email received this afternoon (12:36PM) from Mr Tooma, detailing his professional association with Mr Mulligan.

Amongst other matters, Mr Tooma was unaware that Mr Mulligan was working for the Council when Mr Tooma was appointed as investigator. When Mr Tooma subsequently became aware that Mr Mulligan was working as Acting Director, Service Delivery he did not consider that their prior association constituted a conflict of interest or was a matter that required specific disclosure, having regard to the terms of reference of the investigation.

Mr Tooma's prior professional association with Mr Mulligan was not disclosed to the Council when Mr Tooma was engaged as investigator. The Council is informed that there was no such disclosure for the reasons identified by Mr Tooma in his attached email.

One of the matters identified by Mr Hadley in today's broadcast was the preface to a book written by Mr Tooma in 2012 titled "*Due Diligence: Duty of Officers*". That book was re-published in 2017 with a new preface which makes no reference to Mr Tooma's professional association or friendship with Mr Mark Mulligan. A copy of the 2017 preface to Mr Tooma's book is **attached** to this letter.

The Council, acting in good faith, approved the engagement of Mr Tooma as independent investigator on my recommendation. His engagement was welcomed by relevant stakeholders, including the United Services Union.

Mr Tooma's investigation has been detailed and rigorous. Many Council employees have been interviewed, including Group Managers and Directors. The suggestions made today by Mr Hadley, to the effect that senior staff of the Council have not been interviewed, is incorrect.

The Council understands that one possibility under consideration by the Minister is the suspension of the Council, in accordance with Part 7 of the *Local Government Act, 1993*, and the appointment of an Administrator, because of the allegations that have been made today. The Council also understands that should such an appointment be made, the Administrator would act, or would be instructed to act, to end Mr Tooma's investigation.

There are many important matters for the Minister to consider in response to the allegations made in the media today. However, one relevant matter is whether Mr Tooma's investigation has been so detailed and so rigorous that some Council employees may be concerned about the ultimate contents of Mr Tooma's report, particularly given the questions that they have been asked and that they have answered.

I am instructed that the Council will be communicating directly with the OLG and with the Minister's Office concerning the events of today. However, from a legal perspective, there is no basis on which the Minister could conclude that the elected Councillors were

careless or acted inappropriately in approving the appointment of Mr Tooma on my recommendation. Further, given the information provided by Mr Tooma today, and given that Mr Tooma's investigation is being conducted under the terms of reference approved by the Council on 12 December 2017, there is no basis for concluding that Mr Tooma's prior professional involvement with Mr Mark Mulligan disqualifies Mr Tooma from conducting the investigation.

As the OLG is aware, the Council also initiated an independent investigation in relation to, amongst other matters, Mr Mulligan's engagement as a consultant in August 2016 and his appointment as Acting Director, Service Delivery with effect from 1 November 2017. That investigation is being conducted by Ms Scarlet Reid of McCullough Robertson solicitors.

Ms Reid's investigation focuses squarely on the circumstances in which Mr Mulligan was initially engaged and subsequently employed. There is no such focus in Mr Tooma's investigation.

The Council understands that the OLG is now preparing advice to the Minister in relation to the matters disclosed on Mr Hadley's program. In the Council's submission, the Council has taken no action for which it should be subject to criticism by the media or action by the Minister, arising from Mr Tooma's appointment or from the conduct of his investigation.

I am instructed to request that these matters be drawn to the attention of the Minister in any advice that you give to her this afternoon.

Yours faithfully
McPhee Kelshaw



Trevor Cork

cc Dr Rosemary Dillon, General Manager, Blue Mountains City Council;
Councillor Mark Greenhill, OAM, Mayor, City of the Blue Mountains

Attachment 1: AMENDED TERMS OF REFERENCE

FIRST INVESTIGATION

WORK, HEALTH & SAFETY / ASBESTOS ISSUES

1. The conduct of the works at the Lawson car park and at the Lawson Mechanics Institute, including the removal of any soil, rock and other materials from the work site and the relocation of any such materials to other sites.
2. The use of the Lawson depot to receive any materials referred to in paragraph 1 and the storage and subsequent removal of those materials from the Lawson depot to any other work sites within the City.
3. The work undertaken by the Council in the period 2012 to date to compile the Council's Asbestos Register (AR) and to prepare the Council's Asbestos Management Plan (AMP), including any factors which delayed or contributed to the delay in the completion of that work.
4. Whether the presence of asbestos based building materials, or asbestos contaminated soil, within any building or on any properties owned by the Council, in the period 2016 to date, was not appropriately documented, recognised or managed at that time.
5. The identification of asbestos contaminated materials (including fill) within the former Blackheath tip site, including the access allowed to that site (by staff and members of the public) once the presence of asbestos based materials was known.
6. The actions taken by the Council in the period May 2017 to date, in response to any enquiries undertaken by SafeWork NSW (SW) or any notices given by SW to the Council, in relation to the management of asbestos based materials in Council owned properties, the repair of properties containing such materials and the advice given to Council staff in relation to the presence of those materials.
7. Investigations undertaken by the Council in the period 2012 to date to identify asbestos based materials in any building or on any site identified by SW in the period May 2017 to date, and the steps taken by the Council, both before and after May 2017, to record, remediate or render safe asbestos in any such buildings.
8. Whether any disciplinary action was taken or threatened against members of the Council staff arising from information brought forward by those staff members in relation to the Council's management of asbestos issues.
9. The procedures and plans that have been adopted by the Council in the period 2012 to date, and the work practices that have been implemented by the Council over that period, to manage risks associated with asbestos based materials, present within Council owned buildings or on Council owned land.
10. The Council's policies and practices adopted and implemented in the period 2012 to date to ensure that Council staff were informed from time to time of the presence of asbestos based materials in Council owned buildings and on Council owned sites, including information made available to Council staff before work was undertaken at any such building or site.

11. The establishment, role and operation of the Council's Work, Health and Safety Committee.
12. Such other matters as the investigator brings to the Council's attention and recommends as a matter that should be investigated (subject to that recommendation being endorsed by the Council's solicitor).

Preface

Five years have passed since the landmark introduction of the model Work Health and Safety legislation. Although the model legislation is yet to be adopted by Victoria and Western Australia, the experience in the seven jurisdictions that have adopted the reforms is now sufficient to enable us to assess some of the predictions made at the time of the release of the first edition of this Due Diligence series.

This series set out to provide a practical guide to the reforms on the core issues of officer liability, incident management, worker and stakeholder engagement, worker duties, dealing with regulators and the duties of the person conducting a business or undertaking.

In its original edition, each book in the series introduced novel approaches to each of those topics. Whether it was the idea of a safety impact assessment in the first book (*Due Diligence: Duty of Officers*), the concept of a positive investigation in the second book (*Due Diligence: Incident Notification, Management and Investigation*), the use of interface agreements in the third book (*Due Diligence: Horizontal and Vertical Consultation*), the development of a model for worker duties in the fourth book (*Due Diligence: Worker Rights and Duties*), the strategic approach to engaging with regulators in the fifth book (*Due Diligence: Dealing with Regulators*) and PCBU duties in the sixth book (*Due Diligence: Persons Conducting a Business or Undertaking*), each book brought something new to the table, both provoking what were then new thoughts and ideas which are now commonplace in most large workplaces.

The second edition of this series seeks to develop some of these ideas with the benefit of five years' experience in implementing them in various businesses.

The hallmark of this series has been the simple illustrative diagrammatic illustrations of the complex concepts of the legislation and the inclusion of cases, as illustrations of the practical implementation of the principles.

Like its predecessor, the second edition maintains the plain English, practical approach, with an emphasis on the practical rather than the theoretical.

While work health and safety performance has improved over the years, work related deaths and serious injuries remain unacceptably high. According to Safe Work Australia statistics, there were 178 work-related death in 2016. The last major survey of workplace injury experience, the Australian Work-related Injury Experience by Sex and Age, 2009–10, published in 2012, indicates that 638,400 workers reported a work-related injury in the period 2009–10. This equates to an incidence rate of injury of 57.9 per 1,000 workers. I hope that by adopting some of the recommendations in this series, we can maintain our progress in this crucial area.

From: Tooma, Michael <Michael.Tooma@clydeco.com>
Sent: Tuesday, 13 February 2018 12:36 PM
To: Trevor Cork
Cc: Titterton, Alena; Ramona Priestly
Subject: RE: Asbestos Investigation (MPK 144112) [CC-AUS.FID82097]

Trevor

Thanks for your email.

CONFIDENTIAL

I have set out below a complete history of my dealings with Mr Mark Mulligan.

As you will appreciate, I have an extensive health and safety practice. In that capacity, I have acted for many companies in response to serious incidents, particularly fatalities. Essential Energy is one such company. Essential Energy was a client of my former firm Norton Rose Fulbright. In response to a fatal incident to a line worker Mr Goss in Gilgandra NSW, I was engaged by Essential Energy (then Country Energy) to advise in relation to the WorkCover NSW prosecution of Essential Energy. Mr Mulligan was the then Chief Safety Officer. This was not an executive level position at the time. The instructions were referred to me by a then partner of my former firm. I have maintained a professional relationship with Essential Energy since then and they continue to be a client of mine at my current firm. Within a year of my initial involvement, there was a further fatality to another line worker, Mr Eason. And two years later another fatality to another line worker, Mr Howlett. These were significant matters. The Eason matter was a defended prosecution. The Howlett matter the subject to two coronial inquiries and Supreme Court proceedings quashing the initial coronial inquest. Mr Mulligan was a key witness in those matters.

My instructors at Essential Energy varied from matter to matter. However, I became a trusted advisor to Essential Energy and my main contact quickly became the successive Managing Directors. Throughout that period I maintained a strong professional relationship with members of the executive. Mr Mulligan became a member of the executive of that company at some stage but was not initially. I socialised with the executive, mostly around Court hearings or attendances at the Port Macquarie head office. Mr Mulligan was one of those executives that I socialised with. This was in the form of lunches and dinners. This is not uncommon as you know. As some stage in 2008/2009 I took a 10% stake in a country based race horse with a number of the executives. This was disclosed to the Managing Director of Essential Energy at the time. Mr Mulligan was one of the individuals who had a stake in that horse as were a number of the other executives. The horse was sold in late 2009.

When Mr Mulligan left Essential Energy he sought a LinkedIn reference from me. This is not uncommon. I am always happy to recommend employees of companies that I provided professional services for. I am often put down as a referee and, time permitting provide LinkedIn references to individuals at their request. I largely lost contact with Mr Mulligan after his departure from Essential Energy. I believe he started a consultancy providing HSE services. A few years later, our paths crossed briefly in relation to a utility called ActewAGL where he was engaged by them, independently of me, to implement recommendations made by me in a legal compliance report. He called me to clarify one of my recommendations. I had no further involvement with him on that matter. He then called me more recently to ask whether I would be a referee for a position at Blue Mountains City Council based on my observations of him through our interactions at Essential Energy. I don't recall whether I was called for a reference. I was not aware he got the job until my involvement with Blue Mountains City Council.

I note my terms of reference. I also note that a separate investigation is being conducted by Ms Reid in relation to the recruitment matters where Mr Mulligan's very recruitment is an issue. As you know, I declined to be involved in that investigation. That investigation has been conducted separately from my investigation.

I am happy to clarify any aspect of the above history. I am also happy to discuss the content of this email with the Minister's office, the USU and/or SafeWork NSW if my independence is of concern to them.

Regards

Michael Tooma

Partner | Clyde & Co

Direct Dial: +61 2 9210 4578 | Mobile: +61 457 087 952

CLYDE&CO |

Level 15 | 333 George Street | Sydney NSW 2000 | Australia

Main +61 2 9210 4400 | Fax +61 2 9210 4599 | www.clydeco.com

Angus Broad

From: Rosemary Dillon
Sent: Tuesday, 13 February 2018 5:48 PM
To: All Staff
Subject: 2GB Allegation regarding Tooma Investigation

Dear Colleagues

I would like to inform you that an allegation was made on the Ray Hadley Breakfast Program this morning relating to information that was not disclosed by the independent investigator, Michael Tooma of Clyde & Co, appointed to conduct the investigation into asbestos management by BMCC, regarding his past professional interaction with Mark Mulligan, former Acting Director Service Delivery.

I am very surprised to hear of this allegation. It is not been a matter that has been raised with me or the Mayor and Councillors until today.

I am currently investigating the matter and any repercussions for the ongoing conduct of the asbestos investigation, and I will keep staff informed once I know more.

Regards
Rosemary

Rosemary Dillon | General Manager | t 02 4780 5518 | e rdillon@bmcc.nsw.gov.au

Blue Mountains City Council • council@bmcc.nsw.gov.au • www.bmcc.nsw.gov.au • Locked Bag 1005 Katoomba NSW 2780



The Hon. Gabrielle Upton MP
 Minister for the Environment
 Minister for Local Government
 Minister for Heritage

Ref:

Doc ID: A581288



Clr Mark Greenhill
 Mayor
 Blue Mountains City Council
 Locked Bag 1005
 KATOOMBA NSW 2780

By email: mgreenhill@bmcc.nsw.gov.au

Dear Clr Greenhill

Mark

I refer to Council's letter of 13 February, 2018.

In accordance with section 438K of the *Local Government Act 1993* (the Act), I hereby give notice of my intention to issue a suspension order to suspend the Blue Mountains City Council for a period of 3 months and appoint an interim administrator under section 438M of the Act.

By way of background, significant issues regarding asbestos management and recruitment within the Council were raised toward the end of 2017. In response to these allegations, Council arranged for two investigations to be carried out, and commissioned reports to be prepared by the investigators, one in relation to issues in relation to recruitment (the Recruitment Investigation) and one in relation to asbestos (Asbestos Investigation).

Council's resolutions to commission those reports stress the importance of the investigations and the reports being independent. The details of Council's action was provided to Safework and the Office of Local Government, as regulators of safe workplaces and Council conduct more generally, respectively.

Integral to my decision in December 2017 to issue a Performance Improvement Order rather than proceed to suspension was the integrity of the processes Council had initiated, and the capacity of the Council to address the matters confronting it. Both of these considerations have been called into question as a result of a pre-existing relationship, apparently both professional and social in nature, between Mr Michael Tooma of Clyde and Co and the Council's (then) Chief Safety Officer Mr Mulligan which I note from Council's letter was not disclosed to it.

I note the comments made in Mr Cork's letter of 13 February, 2018. I remain concerned that the processes adopted by Council did not ensure that prior associations were disclosed to the Council when engaging Mr Tooma. Clearly they should have been. In that regard I have been advised of the statement made by you to the Chief Executive of the Office of Local Government that both you and the General Manager Ms Dillon have lost confidence in the Investigation. I note that the sudden termination of Council's Chief Safety Officer Mr Mulligan on 12 February 2018 is yet to be explained.

The Council's approach to address the asbestos management problem (including the independent investigations) was a process that was voted on by the Council as an elected


body at the end of 2017. The Council's previous submission in response to the earlier Notice of Intention to Suspend argued that the elected body was not directly involved with what had happened earlier in 2017.

It now appears to be the case that the approach adopted by the Council, as an elected body, has not been robust enough to enable Council to implement a mechanism that satisfactorily addresses the significant risks posed by the asbestos management problem. Governance and probity (conflict of interest) issues of this nature have the potential to erode community confidence in the Council. As such, and noting Council's request that I appoint a special adviser, it seems that Council now accepts that external assistance may be required to assist Council to meet the challenges confronting it. In that context, I consider that a period of external management is also a possible solution.

I am also concerned by the statement in Council's letter of 25 January 2018 to the Office of Local Government that *"the Council does not and will not accept without challenge unfounded allegations made against it in the media or any other assertions that the Council is responsible for the actions of third parties over whom the Council has no lawful authority or who are engaged to carry out specialised work"*. Council should be aware of its obligations under the Act including its express obligation to provide strong and effective leadership, planning and decision-making. In relation to asbestos management, Council has the responsibility to comply with its obligations under the Work Health and Safety Act. Seeking to shift responsibility for failings of the Council on to others does not appear to be consistent with Council's legislative obligations.

I invite Council to make a submission in respect of the proposed suspension. As I consider the suspension is required as a matter of urgency, Council is invited to provide its written response within 7 days of the date of this notice. It is suggested that Council tables the notice of intention at an open Council meeting and provides its submission by way of resolution of the Council.

Yours sincerely


Gabrielle Upton MP
 Minister for the Environment
 Minister for Local Government
 Minister for Heritage
 Encl

14.2.18

Angus Broad

From: Katrina Murray <kmurray@mccullough.com.au>
Sent: Wednesday, 14 February 2018 2:44 PM
To: trevorc@mcphreekelshaw.com.au
Subject: Blue Mountains City Council Investigation - Costs Agreement [MCR-W.FID3474769]
Attachments: 171225-00001 - Costs agreement one-off letter and terms - McPhee Kelshaw.pdf

Dear Mr Cork,

Please find **attached**, our costs agreement in relation to the above matter.

If you have any questions, please do not hesitate to contact us.

Kind regards

Katrina Murray

Katrina Murray
Legal Assistant
T +61 2 8241 5645
E kmurray@mccullough.com.au
McCullough Robertson
Lawyers
Level 32 MLC Centre, 19 Martin Place, Sydney NSW 2000
Brisbane Sydney Melbourne Newcastle
www.mccullough.com.au



Partner Scarlet Reid
 Writer Nathan Roberts
 Direct line 02 8241 5694
 Email nroberts@mccullough.com.au
 Our reference NJR:SAR:171225-00001

Lawyers | **McCullough
Robertson**

14 February 2018

Mr T Cork
 The Old Bakery Arcade
 170 Macquarie Road
 SPRINGWOOD NSW 2777

Email trevorc@mcpheelshaw.com.au

Dear Mr T Cork

Blue Mountains City Council Investigation

We look forward to working with you on this matter and take this opportunity to confirm the scope of the work required and the terms of our engagement.

Our people

Scarlet Reid will be the supervising partner and Nathan Roberts will be your principal contact and will primarily do the Work.

Scarlet Reid
 Partner
 T +61 2 8241 5688
 M +61 416 147 544
 E sreid@mccullough.com.au

Nathan Roberts
 Senior Associate
 T +61 2 8241 5694
 M +61 402 773 008
 E nroberts@mccullough.com.au

Scope of Work

You have asked us to do the following work (Work)

Investigate a number of allegations made against the Blue Mountains City Council in relation to staff recruitment and appointment issues in accordance with resolutions passed by the Council on Tuesday, 14 November 2017.

If you would like us to do any additional work, please let us know and we will provide you with an updated estimate.

This communication (including attachments) is only intended for its addressees and may contain privileged or confidential information. Unauthorised use, copying or distribution of any part of this document is prohibited. If you are NOT an intended recipient please notify us immediately and destroy the communication.

BRISBANE Level 11, 66 Eagle Street Brisbane QLD 4000 GPO Box 1855 Brisbane QLD 4001 T +61 7 3233 8888 F +61 7 3229 9949
 SYDNEY Level 32, 19 Martin Place Sydney NSW 2000 GPO Box 462 Sydney NSW 2001 T +61 2 8241 5600 F +61 2 8241 5699
 MELBOURNE Level 27, 101 Collins Street Melbourne VIC 3000 GPO Box 2924 Melbourne VIC 3001 T +61 3 9067 3100 F +61 3 9067 3199
 NEWCASTLE Level 2, 16 Telford Street Newcastle NSW 2300 PO Box 394 Newcastle NSW 2300 T +61 2 4914 6900 F +61 2 4914 6999
 W mccullough.com.au E info@mccullough.com.au ABN 42 721 345 951

Our Fees and Costs

Our estimated fees to undertake the Work described are approximately \$90,000 (excluding GST).

Our estimated fees are based on the estimated time spent doing the Work. We set out below a more detailed breakdown of our estimate:

Stage	Details	Estimate (including GST)\$
Stage 1	Review Terms of Reference and Initial Brief	
Stage 2	Identify further documents required and employees or former employees to be interviewed	\$15,000
Stage 3	Detailed review of applicable policies and procedures	\$5,000
Stage 4	Preparation of interview questions	\$4,000
Stage 5	Review further documents	\$10,000
Stage 6	Conduct first round of interviews	\$30,000
Stage 7	Conduct second round of interviews (if necessary)	-
Stage 8	Preparation of draft report	\$20,000
Stage 9	Preparation of final report	\$5,000
TOTAL		\$89,000

If we identify factors that may result in this estimate of Fees being exceeded, we will contact you immediately to discuss.

It is very difficult to accurately predict factors which may impact on the costs of the Work, so the amount stated above is an estimate only and does not bind us.

For more explanation see the 'Fees', 'Hourly rates' and 'Costs' clauses.

Scarlet Reid's hourly rate is \$620 excluding GST.

Nathan Roberts' hourly rate is \$515 excluding GST.

If other lawyers or employees do any of the Work they charge the hourly rates set out in clause 2 of the attached Standard Terms.

Our liability is capped

Our liability to you for the Work is capped at \$20 million. This cap may be different if the performance of the Work comes within the *Competition and Consumer Act 2010* (Cth). For more explanation see the 'Other matters' clause. You may wish to seek independent advice about this agreement.

Mr T Cork

**McCullough
Robertson**
LAWYERS

Acceptance

We encourage you to read the Costs Agreement and let us know if you have any questions.

If you are happy with our proposed estimate, please confirm your acceptance by calling us, sending an email or continuing to instruct us. By continuing to instruct us, you will show you accept the Costs Agreement.

Yours faithfully

Scarlet Reid
Partner

Standard terms and your rights

1 Fees

- 1.1 Secretarial and word processing costs are included in the hourly rates unless those services are required outside normal business hours when those services may be charged at \$88 per hour (including GST).
- 1.2 Charging on the basis of time taken to do a task may result in a charge which is different from charging on the basis of a set fee to do that task.
- 1.3 To calculate time charged, we operate on units of six minutes. The cost of each unit is 10% of the hourly rate of the person doing the Work. If the time taken is less than six minutes, one unit (six minutes) is charged. If the time taken is not an exact multiple of six minutes, the time charged is rounded up or down to the next multiple of six minutes.

2 Hourly rates

- 2.1 We charge the following **hourly rates** for the Work:

Position	\$ (including GST)
Partner	\$610.50–\$764.50
Special Counsel, Specialist Agribusiness Lawyer and Consultant	\$506–\$726
Senior Associate	\$330–\$621.50
Lawyer	\$275–\$517
Graduate	\$258.50
Paralegal	\$99–\$385
Trade Marks Attorney	\$313.50–\$396

- 2.2 Our hourly rates generally increase on 1 July each year. We may also, by written notice, increase the hourly rates.

3 Office expenses

- 3.1 We charge the following **office expenses** for the Work:

Item	Charge (including GST)
Document production	16.5 cents per page – black and white, 55 cents per page – colour
Faxes	\$2.20 per page
Outgoing phone calls – STD, mobile and international	At cost (local calls not charged)
Postage	Express post C5 – \$6.60 Express post B4 – \$7.70 Express post 3kg – \$15.40 Parcel – at cost

- 3.2 We may, by written notice, increase the office expenses.

4 What factors may impact our estimate

- 4.1 Significant factors which may impact on the estimate of Fees and Costs include:
- whether you have fully instructed us;
 - whether your instructions change;
 - whether you respond promptly and efficiently to requests for information and instructions;
 - the lawyer and other persons with whom we deal and their level of co-operation;
 - changes in the law;
 - unforeseeable events; and
 - the Work may be more complex than your initial instructions conveyed.
- 4.2 This list is not exhaustive.
- 4.3 These factors can impact on our estimate in different ways. For example, the Work may become more legally complex so more senior employees may be needed. Barrister fees may be higher, e.g. more material may need to be covered. Expert fees may be higher, e.g. a wider range of experts or more highly qualified experts may be needed, or an expert may need to comment on more issues.

5 Costs

- 5.1 You agree to pay all our Costs for doing the Work. We may ask for money to be paid into trust for anticipated Costs.
- 5.2 Unless we advise you otherwise, we will incur GST-free costs as your agent. We may also incur non GST-free costs as your agent, in which case we will give you the tax invoice from the relevant supplier, so you can claim any input tax credits.
- 5.3 Other Costs may be incurred by us other than as your agent, for example:
- expert consultants', accountants', engineers' or medical specialists' fees, when engaged by us;
 - travel and accommodation;
 - search fees, outsourced document production, filing and lodgement fees that are not GST-free; and
 - investigators' and agents' fees.
- 5.4 The amount you pay us for the Costs in clause 5.3 (before adjustment for GST under clause 6) is the amount incurred by us on your behalf, less any GST input tax credits claimable by us.

6 GST

Fees and Costs incurred for the Work are generally subject to GST (which at the date of this document is 10%) if there is a sufficient connection with Australia. If so, we are required to remit GST and (excluding those costs incurred as your agent) we will charge the applicable GST in addition to the GST exclusive amount of those Fees and Costs.

7 Extraordinary items

We will seek your express authority before incurring any cost which is not normally incurred in the performance of work similar to the Work. Some or all of these costs may not be recoverable from another party, even in circumstances when another party may be liable to pay your costs.

8 Accounts

- 8.1 We generally issue accounts on a Monthly basis and at completion of the Work.
- 8.2 You agree to pay the account within 14 days of the date of issue. We reserve the right to charge interest on overdue accounts at the rate equal to the Cash Rate Target set by the Reserve Bank of Australia (as at the date the account was rendered) plus 2%. This is a benchmark rate of interest.
- 8.3 Credit card payments incur a surcharge of 1.29% (Visa, Mastercard) or 2.19% (AMEX).
- 8.4 You authorise us to pay an account from money held in trust on your behalf on account of Fees and Costs, if we notify you in writing that trust money will be transferred from trust to pay the account.

9 Queensland Trust Account

- 9.1 You acknowledge that McCullough Robertson:
 - (a) has sought and obtained the approval of both the Queensland Law Society and the Law Society of New South Wales to maintain one general trust account operated in Queensland; and
 - (b) operates a general trust account in Queensland which is subject to the supervision of the Queensland Law Society and is maintained in accordance with the *Legal Profession Act 2007* (Qld) and *Legal Profession Regulation 2007* (Qld), effective at the time monies are deposited.
- 9.2 You authorise and direct any money received on your behalf by McCullough Robertson to be deposited in the general trust account referred to in clause 9.1 operated by McCullough Robertson in Queensland.

10 Your rights

You have the right to:

- (a) negotiate a Costs Agreement with us;
- (b) negotiate the billing method with us;
- (c) receive a bill from us;
- (d) request an itemised bill after you receive a bill from us that is not itemised or only partially itemised; and
- (e) seek the assistance of the Legal Services Commissioner in a dispute about legal Fees and Costs.

11 Multiple clients

- 11.1 When acting for more than one person in doing the Work, we act in the best interests of each person. If that becomes impracticable or impossible, we will advise each person to seek separate advice.

- 11.2 When instructions are requested, we must seek the instructions of all persons, except:
 - (a) on relatively insignificant matters, when we may act on the instructions of one person; or
 - (b) when we receive instructions from one person, and that person indicates that those are the instructions of all persons.
- 11.3 If a letter of advice is sent to one person, and that advice applies equally to the other person or persons, we send a copy of that letter to the other person or persons.
- 11.4 All persons are jointly and severally responsible for our Fees and Costs. That means all persons are responsible for the whole amount but also, each person is individually responsible for the whole amount. Although you may decide the proportion that each person must pay for the Fees and Costs, we are not bound by any decision or agreement between you.

12 Duties

- 12.1 Your duties are:
 - (a) to give us full, frank and timely disclosure of all information which might influence our decision to act for you;
 - (b) to not deliberately withhold information about the Work from us;
 - (c) to be prompt and thorough in providing instructions to us;
 - (d) to keep us informed of your contact details and notify us of any changes to those details; and
 - (e) to ensure that at all times you, or someone with knowledge of your matters, is available to give instructions and to meet with us, particularly at key milestones in the performance of the Work.
- 12.2 Our duties are:
 - (a) to carry out the Work with professional skill and diligence;
 - (b) to keep you informed of the progress of the Work, and give a progress report when asked; and
 - (c) to advise you of any substantial change to the Costs Agreement.

13 Termination

- 13.1 You may terminate the Costs Agreement at any time by giving written notice to us.
- 13.2 We may terminate the Costs Agreement by giving at least seven days written notice to you for any reason, including if:
 - (a) you breach the Costs Agreement;
 - (b) you instruct us to act unlawfully or unethically;
 - (c) you do not give us adequate instructions or make material misrepresentations about facts relevant to the Work;
 - (d) you tell us that you have lost confidence in us;
 - (e) you lose legal capacity;
 - (f) you do not pay accounts or pay money into our trust account on account of anticipated fees and costs when requested to do so; or
 - (g) we have an interest in a matter for another client that is adverse to your interests.

- 13.3 If the Costs Agreement is terminated, you agree to pay us any outstanding Fees and Costs for the Work done up to and including the date of termination. We may retain possession of your file until all outstanding Fees and Costs have been paid.

14 Australian advice only

- 14.1 We are only responsible for the legal advice we give about Australian laws and regulations.
- 14.2 During the term of our engagement you may require us to obtain advice from law firms in non-Australian jurisdictions about laws and regulations in those jurisdictions. We do not accept any responsibility for the content of that advice.

15 Qualified advice

- 15.1 If the advice given by us to you is based on assumptions, qualifications or both, those assumptions or qualifications will be set out in the advice.
- 15.2 Once the advice is given, we are not liable for any part of the advice that is then found to be incorrect due to a later change in events, further information being given, further assumptions being made or assumptions on which the advice was based proving incorrect.

16 Reliance on advice

- 16.1 Our advice is given exclusively to you.
- 16.2 We are not responsible to anyone else, whether in negligence or otherwise, for any loss suffered by them as a result of them relying on our advice to you.

17 Other matters

- 17.1 This document is an offer to enter into a Costs Agreement.
- 17.2 You acknowledge you are advised, and have had the opportunity, to seek independent advice about the Costs Agreement.
- 17.3 You also acknowledge you may be able to retain other solicitors who may charge lower fees than the ones set out in the Costs Agreement.
- 17.4 To the extent permitted by law, if we are liable to pay damages to you and if you or any other person (including other advisers to you) have contributed to the loss you suffered, the damages payable by us shall not exceed the amount that would ultimately be payable by us if:
- (a) the damages payable by us were reduced by the amount that they would be if legislation providing for apportionment of damages in the case of contributory negligence applied to your claim;
 - (b) no exemption or limitation of liability applies to that person; and
 - (c) you joined every person who was liable to pay you damages in respect of your loss, we obtained an order for contribution against each of them and they paid you the full amount of their contribution.

For the purpose of this clause, 'you' includes any person to whom we are liable to pay damages and 'damages' includes any similar liability (such as an obligation to pay compensation).

- 17.5 Subject to clause 17.7, you agree that our liability for any loss or damage you may suffer in connection with the Work (however

caused, including by our negligence) is capped at \$20 million. This cap applies to any single or cumulative claims by you, and you agree we may plead this limitation of liability in defence to any claims you may bring against us for any such loss or damage.

- 17.6 The *Competition and Consumer Act 2010* (Cth) (**CCA**) provides that there are certain non-excludable guarantees in relation to supply of services to consumers. However, in certain circumstances, the CCA permits suppliers of services to limit their liability for failing to meet such a guarantee to supplying the services again, or paying the cost of having the services supplied again. If we supply you services in circumstances where the CCA permits us to limit our liability in this way, then you agree that our liability for failing to meet a guarantee is limited (at our election) to supplying you the services again or paying you the cost of having those services supplied again.
- 17.7 Clause 17.6 only applies to guarantees under the CCA and does not affect your ability to make a claim against us for breach of contract or negligence, in which case the limitation in clause 17.5 applies.

18 Retention of records

- 18.1 We will retain your file for seven years after completion of the Work, after which it will be destroyed unless otherwise directed by you in writing.
- 18.2 You authorise us to retain a copy of your file, if you ask for the original file or part of it, including us retaining a copy of any confidential information or intellectual property that may be on the file.

19 Privacy collection statement

- 19.1 We may collect, use and disclose personal information about you.
- 19.2 We collect personal information directly from you as part of performing the Work for you and from third parties who assist us with our business.
- 19.3 We use and disclose personal information collected about you for the purposes of doing the Work for you, facilitating internal business operations (including the fulfilment of any legal and regulatory requirements) and giving you other information that may be of interest to you.
- 19.4 We may also disclose your personal information to our related entities, affiliated organisations, service providers and other agencies (**Providers**) who assist us in providing the services in clause 19.3 to you. Some Providers may be based overseas or use overseas infrastructure (in countries including United States of America, South Africa and India) to perform services for us.
- 19.5 If personal information given to us is incomplete or inaccurate, it may delay our internal business operations and we may not be able to effectively work with you or perform the Work.
- 19.6 Our privacy policy contains detailed information about how:
- (a) we use, disclose and secure your personal information;
 - (b) you access and seek correction of your personal information;
 - (c) you complain about privacy related matters; and
 - (d) we respond to complaints.
- 19.7 You may obtain a copy of our privacy policy from our website or by contacting the Privacy Officer at McCullough Robertson on +61 7 3233 8888.

20 Promotional material

You authorise us to disclose that we act for you in our promotional material.

21 Problems or complaints

- 21.1 If you experience a problem with the performance of the Work, wish to discuss legal costs or wish to make a complaint about an account, contact the supervising lawyer named in this document on +61 who will escalate the problem or complaint if necessary.
- 21.2 If you are not satisfied with the way the problem or complaint has been handled under clause 21.1, you may contact the Chairman at McCullough Robertson on +61 7 3233 8888.
- 21.3 If you are still not satisfied with the way the problem or complaint has been resolved, you may contact the New South Wales Law Society on +61 2 9926 0333 or 170 Phillip Street, Sydney, New South Wales 2000, Australia.
- 21.4 We suggest you obtain independent legal advice about remedies in a dispute about the Costs Agreement.

22 Notice

- 22.1 This clause applies to any notice or communication that the Costs Agreement requires to be in writing.
- 22.2 You or we may only give a notice or communication to each other that is:
- signed by or on behalf of the sender;
 - addressed to the recipient at their address or fax number listed in this document or otherwise notified in writing to the sender; and
 - sent by one of the methods listed in clause 22.3.
- 22.3 When is a notice or communication given:

If a notice is	It is given and received on
Delivered by hand or sent by fax	<ol style="list-style-type: none"> that day, if delivered by 5.00pm on a Business Day; or the next Business Day, in any other case.
Sent by post	<ol style="list-style-type: none"> three Business Days after posting, if sent within Australia; or seven Business Days after posting, if sent to or from a place outside Australia.

23 General

- 23.1 The Costs Agreement is governed by the laws of New South Wales.

- 23.2 Each party irrevocably submits to the exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.
- 23.3 A clause or part of a clause of the Costs Agreement that is illegal or unenforceable may be severed from the Costs Agreement and the remaining clauses or parts of the clause continue in force.

24 Definitions

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

Costs means the costs set out in clauses 3 and 5;

Costs Agreement means this document;

Fees means the amount charged by McCullough Robertson for professional services;

GST has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and

Work means the work described in this document.

25 Interpretation

- 25.1 A reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Costs Agreement and references to the Costs Agreement include any schedules or annexures.
- 25.2 A reference to a party to the Costs Agreement or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns.
- 25.3 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 25.4 A reference to a document or agreement (including a reference to the Costs Agreement) is to that document or agreement as amended, supplemented, varied or replaced.
- 25.5 A reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- 25.6 If any day on or by which a person must do something under the Costs Agreement is not a Business Day, then the person must do it on or by the next Business Day.
- 25.7 A reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity.
- 25.8 A reference to 'month' means calendar month.
- 25.9 A reference to 'us', 'our' or 'we' is a reference to McCullough Robertson.
- 25.10 A reference to 'you' or 'your' is a reference to McPhee Kelshaw.
- 25.11 A reference to '\$' means Australian dollars unless specified otherwise.

Blue Mountains Council faces suspension

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Minister Gabrielle Upton. Picture: Gene Ramirez.

Local Government Minister Gabrielle Upton has moved to suspend Blue Mountains City Council for the second time following serious questions being raised about its apparently independent investigation into asbestos management.

Ms Upton today issued a notice of intention to suspend the council for three months and appoint an interim administrator after suggestions of a serious conflict of interest have emerged in relation to the council's independent investigation.

- **Scroll down for updates**

“In November last year the council commissioned independent investigations into asbestos management and staff recruitment practices after serious allegations were made against it,” Ms Upton said.

“It has now emerged that an independent investigator engaged to oversee the investigation into asbestos management appears to have had links to one of the council's senior staff members subject to investigation.

It has now emerged that an independent investigator engaged to oversee the investigation into asbestos management appears to have had links to one of the council's senior staff members subject to investigation

Local Government Minister Gabrielle Upton

"This independent investigation is critical to addressing the serious issues facing this council. However, it seems that the relationship between the independent investigator and the senior staff member was not just professional, they were friends.

"This relationship would be a serious conflict of interest and brings into question the council's governance and due diligence practices.

"I have also been informed that the council has now ended its contract with the senior staff member.

"The council's poor record on asbestos management, failure to protect its community and the serious questions on the broader operation of the council are deeply concerning."

Under the Local Government Act the Minister is required to provide the council with the opportunity to make any submissions before making a final decision. The council now has seven days to respond to the notice.

Mayor, Councillor Mark Greenhill, in response, said: "I am at a loss to understand how it is that the actions of an independent solicitor, not engaged directly by the council, can lead to the suspension of democracy in the Blue Mountains.

I am at a loss to understand how it is that the actions of an independent solicitor, not engaged directly by the council, can lead to the suspension of democracy in the Blue Mountains

Mayor Mark Greenhill

"There has been an ongoing campaign against Blue Mountains City Council.

"The council has complied with everything asked of it by SafeWork NSW. I don't believe this is justified. We are reviewing our position."

UPDATE: Statement from Michael Tooma, chief investigator.

Chief investigator Michael Tooma was approached for a comment by the *Gazette* after his "good friend" Director of Service Delivery Mark Mulligan was let go by the general manager Rosemary Dillon on Tuesday.

Mr Tooma, a partner in the global law firm Clyde and Co, claims his personal relationship with Mr Mulligan did not interfere into his investigation into asbestos management at Blue Mountains City Council.

He issued the following statement: "I have been engaged to conduct an investigation in relation to very specific terms of reference. Those terms span conduct by the council over a

15 year period. I was first contacted in relation to that investigation on 9 November 2017 by McPhee Kelshaw.

“The incidents at the centre of my investigation occurred prior to November 2017; in some cases, some years prior. All my terms of reference relate to matters which occurred prior to 1 November 2017. My investigation is limited to council conduct and not the conduct of third parties such as the numerous consultants engaged over the previous 15 years in relation to asbestos issues.

“Mr Mulligan was employed by council on 1 November 2017. My terms of reference do not and have never extended to his conduct.

“I note Mr Mulligan's recruitment both as a consultant and as an employee is the subject of a separate investigation by another firm. I have had no involvement in that investigation.

“I have conducted a thorough and detailed investigation in relation to the matters in my terms of reference. I have interviewed 42 witnesses and reviewed over 2,500 documents. That investigation has been conducted in a transparent manner with regular briefings to SafeWork NSW and the USU. No doubt some regard the investigation as too thorough which is why they have gone to such lengths to derail it.

“It would be a real shame if the affected workers are robbed of the opportunity to have the findings of this investigation as a result of inaccurate and misconceived allegations.”

“It would be a real shame if the affected workers are robbed of the opportunity to have the findings of this investigation as a result of inaccurate and misconceived allegations.”

Michael Tooma

Mr Tooma called Mr Mulligan a “good friend” in the foreword to one of his textbooks. He also gave him a glowing endorsement on a professional social networking service. The information was revealed by radio station 2GB. Mr Toomey did not respond to further requests by the *Gazette* to comment on the council suspension notice.

A hotline has been set up to allow anyone with information or concerns about Blue Mountains City Council to report it directly to the Office of Local Government. Reports can be made anonymously.

The hotline number is 1800 291 051. Some residents were already flooding social media to complain calls were going unanswered due to demand.

Ms Dillon said the decision on Tuesday to cease the employment of the acting director was made “effective close of business today ... as part of the review of the current and future needs” of the council. It was made “in consultation” with Mr Mulligan and Ms Dillon thanked him for his work.

Ms Dillon told staff “in light of current asbestos and safety issues I am also as a priority working on interim measures to improve alignment of buildings and parks – maintenance, asset management, customer liaison and planning”.

UPDATE from The Greens councillor Kerry Brown:

The Greens will continue to push for reform, good governance and transparency following the news that Blue Mountains Council has received its second suspension notice.

Blue Mountains Greens Councillor Kerry Brown said: “From day one the Greens’ concern has been to ensure council becomes a safe place to work and our community facilities are safe for everyone to use.

“Staff and local residents have repeatedly raised concerns about asbestos contamination and what have been some very poor council processes.

“I have always treated these concerns as worthy of support and investigation.

“There’s a pretty clear lesson here for Labor’s Blue Mountains councillors, when an informed and passionate Greens councillor is raising real concerns about transparency and poor process, you should listen and act.

Greens Local Government spokesman David Shoebridge

“The ‘we have done nothing wrong’ attitude of a number of councillors has meant that Blue Mountains council has been caught in a reactive rather than proactive role.

“It not acceptable to have our waste facilities closed because they’re dangerous, staff put at risk when working and now to find out that the Katoomba Grandstand is structurally unsound.

“When you add in the latest debacle with the “independent” asbestos inquiry organised though council’s lawyers it really has been a sorry twelve months on the part of council.

“BM Greens councillors are committed to keeping council in local hands and, if the council is suspended, we will be working with our colleagues in State Parliament to get us back up and running as soon as possible,” Clr Brown said.

Greens MP and Spokesperson for Local Government David Shoebridge said: Labor can learn from this “lesson”

“It’s always a blow to lose a democratically elected council but the threat of suspension can’t be used to prevent transparency or to silence informed criticism of the council.

“I have to declare how proud I am of the Blue Mountains Greens Councillors who nine months ago made the first clear demand for fundamental changes in the culture and accountability of the council.

‘It was Greens Councillor Kerry Brown who first moved to adopt the highest standards of work health and safety as a policy of council. Unfortunately that was voted down by the majority Labor councillors.

“Kerry called for the asbestos investigations to be driven by a tri-partite group of councillors representing all political parties to ensure it wasn’t done behind closed doors. That too was voted down by the majority Labor councillors.

She repeatedly moved for terms of reference and mayoral minutes related to the asbestos management to be in debated in open rather than closed session and was voted down.

“There’s a pretty clear lesson here for Labor’s Blue Mountains councillors, when an informed and passionate Greens councillor is raising real concerns about transparency and poor process, you should listen and act.

“If council is suspended then I will be urging the Minister for Local Government to keep the period of suspension as brief as possible to enable the elected representatives to resume control of a reformed council,” Mr Shoebridge said.

Extraordinary meeting at council on Tuesday

Council will hold an extraordinary meeting next Tuesday February 20. The purpose of the meeting is to make a submission in response to the Minister for Local Government’s notice of intended suspension of the elected councillors of Blue Mountains City Council.

The meeting will be held at 7.30pm in the council chambers, Civic Place, Katoomba.

The business paper will comprise a single Mayoral Minute. In accordance with Council’s Code of Meeting Practice, members of the public are unable to address the council on Mayoral Minutes, unless the council resolves otherwise. However, members of the public may speak on matters relating to the council report.

The business paper for the extraordinary council meeting will be available late Monday 19 January 2018 at www.bmcc.nsw.gov.au/yourcouncil/councilmeetings/2018meetings and printed copies will be available at the council meeting.



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Our Ref: TC:JB:144112

Your Ref:

16 February 2018

Dr Rosemary Dillon
General Manager
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

and

Councillor Mark Greenhill
Mayor
City of Blue Mountains
Locked Bag 1005
KATOOMBA NSW 2780

358

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CONVEYANCERS

PRINCIPALS

PAUL McPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)

TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)

STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law SAB

CRAIG COCKBURN B.Com., LL.B.

ANN SCHRALE B.A., LL.B. Acc. Spec. (Family Law)

AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hons)

Confidential and Privileged

Dear Dr Dillon and Councillor Greenhill,

Independent Asbestos Investigation - Mr Michael Tooma

1. This email has been prepared to record the events relating to the engagement of Mr Michael Tooma as independent investigator in relation to the Council's management of asbestos and asbestos related risks and to assist the Council to consider the letter dated 14 February 2018 forwarded to Council by the Minister for Local Government, the Honourable Gabrielle Upton.
2. The possibility of initiating an independent investigation in relation to asbestos issues (asbestos investigation) was first canvassed with me on either 8 November 2017 (late in the day) or 9 November 2017. On the latter date I was involved in a full day client conference.
3. I was initially requested by the then General Manager, Robert Greenwood, to consider persons who could be appointed by the Council to the role of independent investigators for two separate investigations. One investigation was to relate to

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asbestos management issues. The other was to relate to staff and consultant recruitment matters.

4. My co-principal, Mr Steven Nicholson, drew to my attention Mr Michael Tooma in relation to the proposed investigation into asbestos related issues. Mr Tooma was known to Mr Nicholson through Mr Tooma's publications. I agreed that his profile was outstanding, and that he was a leader in the field of work, health and safety law.
5. I requested that Mr Nicholson make contact with Mr Tooma and ascertain whether he would be prepared to consider appointment as an investigator, if that role was offered to him by the Council.
6. **Attached** to this letter and marked "A" is an exchange of emails dated 9 November 2017 passing between Mr Nicholson and Mr Tooma. Mr Nicholson's email (8.07 AM) provided a very short description of the proposed investigation as follows:

"Our client needs a person to independently investigate recent asbestos related incidents. The matter is urgent."

7. On the same day I forwarded to the Council (under cover of my email sent at 12.17PM) a copy of the letter which is attachment "B". That letter confirms the contact made with Mr Tooma and the fact that he was conducting a conflict of interest check. That check was described in the following terms:

"Mr Tooma and Clyde & Co are now conducting a conflict of interest check, to ensure that there are no existing relationships which would prevent their acceptance of our instructions. Mr Tooma considers that this is unlikely."

8. At 12.41PM on 9 November 2017 Mr Tooma forwarded an email to Steven Nicholson. That email stated: *"I can confirm that there are no conflicts."*
9. During my discussions with Mr Tooma, in the period leading up to his engagement, Mr Tooma informed me that he had met the Mayor of the City of Blue Mountains, Councillor Mark Greenhill. Mr Tooma explained that he had encountered Councillor Greenhill in the course of legal proceedings. I was aware that Councillor Greenhill works as a senior HR manager and that he had previously worked for Networks NSW (as it then was).
10. There was no suggestion that Mr Tooma had ever accepted instructions (as a solicitor) from Councillor Greenhill on behalf of Networks NSW or any other organisation. There was similarly no suggestion that Mr Tooma had any personal relationship with Councillor Greenhill. Rather, Mr Tooma as an expert legal advisor in the work, health and safety field had come across Councillor Greenhill in his role as senior HR manager.
11. In my assessment, the matters noted by Mr Tooma, in relation to his encounters with Councillor Greenhill, did not raise any issues which would lead me to conclude that

Mr Tooma should not be engaged as independent investigator on behalf of the Council.

12. At this point, it is important to note each of the following matters:

- (1) Mr Tooma had received at this time only a very general outline of the nature of the investigation and of his instructions.
- (2) Mr Tooma had not seen any Terms of Reference for the proposed investigation.
- (3) Mr Tooma had not been formally engaged as investigator.
- (4) Mr Tooma did not know the precise issues to be addressed or the identity of the employees of the Council whom he may be called upon to interview.
- (5) Mr Tooma's pre-investigation relationship with Mr Mark Mulligan is described in Mr Tooma's email to me dated 13 February 2018, which is attachment "C" to this letter.

13. On 9 November 2017 Clyde & Co forwarded to McPhee Kelshaw an engagement letter in relation to the asbestos investigation. Again, that letter was forwarded before the precise terms of the investigation were known.

14. A copy of the Clyde and Co letter is attachment "D" to this letter. The Clyde & Co letter identified the scope of work for the investigation as follows:

"Scope of Work

We have been instructed by your firm, who are acting on behalf of Blue Mountains City Council, to conduct an independent investigation into recent asbestos related incidents involving the Blue Mountains City Council."

15. The Clyde & Co letter includes the following paragraph:

"9. Conflicts of interest

Clyde & Co adheres to the conflict and confidentiality rules that apply in New South Wales. To the extent that there are matters which are not covered by the local ethical rules and guidelines, Clyde & Co will adhere to those of the Solicitors Regulation Authority of England and Wales. Clause 13 of our Terms of Business contains important information regarding our approach to managing conflicts and confidentiality which we ask you to review carefully."

16. The letter also attached that firm's Terms of Business for NSW (Terms). Part 13 of those Terms is titled "Confidentiality and Conflicts".

17. Within Part 13 of the Terms the following statement is made:

“13.3 We adhere to the conflict and confidentiality rules which apply in NSW. To the extent where there are matters which are not covered by the Local Ethical Rules and Guidelines, we will adhere to those of the Solicitors Regulation Authority of England and Wales.”

18. Mr Tooma was not at that time engaged by the Council. However, I was satisfied that the issue of possible conflicts had been appropriately addressed by Mr Tooma and that he was confident that no conflicts then existed. I was also satisfied that the issue was appropriately addressed in the Clyde & Co standard letter of engagement and in the Terms.
19. At the same time as the dialogue between McPhee Kelshaw and Mr Tooma was continuing, I was also required to consider the second possible investigation in relation to staff recruitment matters. In that regard, a number of prospective investigators were considered.
20. The fact of the second investigation was noted in my discussions with Mr Tooma, but not in detail.
21. My graduate assistant, who has come to our firm from a senior HR position, brought to my attention Ms Scarlet Reid. My assistant provided details of Ms Reid's background and experience. Having regard to that information I determined to approach Ms Reid, which I did.
22. At the ordinary Council meeting on 14 November 2017, before any independent investigator was engaged, the Council considered Mayoral Minutes 3 and 4 (MM3 and MM4). MM4 proposed an independent investigation in relation to staff recruitment and consultant engagement matters. MM3 proposed the appointment of an independent investigator in relation to the Council's management of asbestos and asbestos related risks.
23. The Council resolved to initiate both investigations. Terms of Reference for those investigations were also accepted by resolution of the Council.
24. **Attached** to this letter and marked “E” is a copy of the Terms of Reference attached to MM3. As will be noted, the Terms of Reference do not identify any individuals, whether as the holder of a particular office or as the subject of scrutiny in relation to that person's conduct and decisions in relation to asbestos management.
25. On 15 November 2017 I forwarded to the Council a number of letters, following up the resolutions that had been passed at the meeting on the previous night. In particular, I recommended that the Council appoint Mr Michael Tooma as the independent investigator in relation to the asbestos management and asbestos related issued investigation. At that time, Mr Tooma was to be assisted by one of the Clyde and Co senior associates.

26. I also recommended that the Council appoint Ms Scarlet Reid as the nominated independent investigator in relation to the staff recruitment investigation. That second recommendation was accepted by the Council.

27. Letters confirming the Council's resolutions were forwarded by the Council (as drafted by me) to each of the Office of Local Government (OLG) and the ICAC in relation to the staff recruitment investigation. The Council forwarded a letter to the OLG in relation to the independent investigation in relation to asbestos related issues.

28. **Attached** and marked "F" is a copy of my letter dated 16 November 2017 forwarded to Mr Tooma, confirming his appointment as investigator. With that letter we returned the Clyde & Co letter of engagement, signed by me. In my covering letter, paragraph 11 read as follows:

11. The Council wishes to ensure that all relevant issues are properly investigated and that the Council receives a comprehensive report and appropriate legal advice, based on your findings and any recommendations that you make to our firm on behalf of the Council.

29. The preparation of the documents relating to Mr Tooma's investigation proved to be a very substantial task. That process continued through November and into early December. Mr Tooma did not receive any significant flow of material until 7 December 2017. The documents concerned were uploaded by the Council using a Hightail link, to which we were then provided access. We in turn provided access to Mr Tooma and his Clyde & Co partner, Ms Alena Titterton.

30. In early December I opened discussions with Mr Tooma concerning the process that would be adopted by the Council for inviting submissions to Mr Tooma's independent investigation. For that purpose, the Council wished to provide an accurate but reasonably brief summary of the matters that were being investigated by Mr Tooma. That summary was agreed between myself and Mr Tooma as follows:

(1) Council's management of asbestos risks.

(2) Council's management and maintenance of Council-owned buildings and sites in which asbestos based materials are found or on which soil contaminated with asbestos is found.

(3) Requests for action that have been made by employees to the Council in relation to asbestos risks (including requests to repair damaged buildings or surfaces, where employees were concerned that the materials in the location were asbestos based).

(4) The maintenance of the Council's asbestos register.

(5) The preparation of the Council's Asbestos Management Plan.

(6) The attendance of SafeWork inspectors at the Springwood depot in May 2017.

(7) Any complaints made by Council employees to SafeWork, requesting an inspection of Council-owned properties or sites.

31. At the Ordinary Council meeting on 12 December 2017 the Council passed further resolutions in relation to the investigation. Amongst other matters, the Council adopted amended Terms of Reference. The Council also resolved that the amended Terms of Reference should be made public. A copy of the amended Terms of Reference is attachment "G".
32. On 15 December 2017 Mr Tooma forwarded to me his email of that date (1.17PM) with a Draft Action Plan (for discussion), identifying the proposed interim reports and the timetable for the conduct and completion of the investigation. A copy of that Draft Action Plan is **attached** and marked "H".
33. From that point forward the investigation continued. As instructed by the Council, McPhee Kelshaw facilitated the provision of documents to the independent investigator. Mr Tooma requested the use of the McPhee Kelshaw boardroom to conduct interviews with members of the Council staff (and former Council staff) who were invited to attend those interviews.
34. Mr Tooma, Ms Titterton or their personal assistants forwarded to us from time to time a schedule of prospective interview appointments. My personal assistant arranged bookings for the boardroom to accommodate those interviews.
35. This week allegations have been made against Mr Tooma and his investigation. Those allegations have asserted a conflict of interest, on the basis of Mr Tooma's relationship with Mr Mark Mulligan.
36. It is the fact that Mr Tooma did not disclose to me that he had previously worked with and known Mr Mulligan during the period in which Mr Mulligan worked with Essential Energy. Mr Mulligan's employment at Essential Energy ended in 2012.
37. As noted above, on 13 February 2018 Mr Tooma forwarded to me his email of that date, detailing his previous relationship with Mr Mulligan. (A copy of that email is attachment "C".)
38. Mr Tooma has in his email given an account of the issues that have arisen in relation to Mr Mulligan. In my opinion, it is understandable why Mr Tooma did reach the conclusion that he notes.
39. In relation to Mr Mulligan's appointment as Acting Director, Service Delivery in 2017, I understand that Mr Tooma was not nominated as a referee for Mr Mulligan in his application for appointment to that position. The recruitment process was overseen

by Hays. The two referees nominated by Mr Mulligan, and referred to by Hays in the referee check report to the Council, did not include Mr Tooma.

40. Allegations have been made that Mr Mulligan nominated Mr Tooma as a referee in 2016, when Mr Mulligan was approached by the Council to accept an engagement on a short-term basis as a consultant. I understand that the Council's files relating to Mr Mulligan's engagement as a consultant in August 2016 make no reference to Mr Tooma or to any other referee.
41. Mr Mulligan's work at the Council fell within two distinct periods, with two distinct sets of responsibilities.
42. In or about August 2016 Mr Mulligan was engaged as a third party consultant to provide advice to the Council in relation to the Council's work health and safety policies. I have requested further instructions on that issue. However, on the basis of my enquiries to date, it is the fact that Mr Mulligan carried out significant work for the Council in the period ending 23 December 2016.
43. During his engagement as a consultant, Mr Mulligan reviewed, developed and completed a number of policies in the work, health and safety area. However, my instructions to date do not indicate that Mr Mulligan had any significant role in assisting the Council to develop its policies in relation to asbestos management. Mr Mulligan may have made recommendations to the Council about those policies. That is an issue on which further instructions are required.
44. I am instructed, in relation to Mr Mulligan's engagement as a consultant, that he was approached by the Council, not vice versa. Mr Mulligan did not seek out the engagement. He was approached to provide expert assistance to the Council on short notice, to address problems that the Council was facing with the delivery of a substantial work health and safety project.
45. Mr Mulligan returned to the Council as the temporary Acting Director, Service Delivery with effect from 1 November 2017.
46. On this occasion, Mr Mulligan did apply for appointment to the temporary position. In his application Mr Mulligan nominated Mr Terry Benson, Director, South East Water and Mr Quinten McAlister of Actu AGL. I understand that Mr Tooma was not one of Mr Mulligan's nominated referees.
47. Identification of a perceived conflict of interest is obviously a matter on which like minds may differ. However, the work health and safety legal sector is a confined and specialised area of law. Senior executives working in the HR and WHS space are more likely than not to know and to work with solicitors who specialise in that field, at some point during their working lives.

48. The Minister's letter dated 14 January 2018 includes the following statements:

"Council's resolutions to commission those reports stress the importance of the investigations and the reports being independent ...

Integral to my decision in December 2017 to issue a Performance Improvement Order rather than proceed to suspension was the integrity of the processes Council had initiated, and the capacity of the Council to address the matters confronted it. Both of these considerations have been called into question as a result of a pre-existing relationship, apparently both professional and social in nature, between Mr Michael Tooma of Clyde and Co and the Council's (then) Chief Safety Officer Mr Mulligan which I note from Council's letter was not disclosed to it.

....

I remain concerned that the processes adopted by the Council did not ensure that prior associations were disclosed to the Council when engaging Mr Tooma. Clearly they should have been."

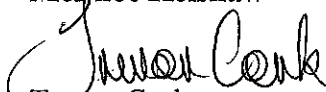
49. In relation to those observations by the Minister, I note the following misunderstandings:

- (1) There is no material available to me and nothing arising from my experience of Mr Tooma's conduct of his investigation to indicate that he has acted in any way other than as a highly qualified independent investigator, and as a person of integrity.
- (2) The Council initiated a process of two independent investigations, and engaged, in relation to the asbestos issues investigation, a person who is one of the most highly respected lawyers in Australia in this area of the law.
- (3) The Council's response to the issues confronting it as at 22 December 2017, when the Minister foreshadowed the making of a Performance Improvement Order (PIO), will be more fully documented in the Council's response to the Minister's recent notice. However, Mr Tooma's investigation was not commissioned as an investigation in relation to the Council's current actions.
- (4) Mr Tooma was engaged to ensure that the governing body of the Council was fully informed of the facts and circumstances which had led to the problems that came before the Council in the period from May 2017 and following. Mr Tooma has been engaged to address, amongst other matters, aspects of the Council's history of asbestos management, to make findings about that history (within the Terms of Reference) and to make recommendations to the Council about future management.

- (5) In the meantime, pending Mr Tooma's report, Council's responses have included the appointment of a full-time Chief Safety Officer, the establishment of a working group with SafeWork and other relevant agencies and the engagement of consultants and contractors who are fairly described as being among the most experienced asbestos advisors currently working in the sector.
- (6) Mr Mulligan was not, and never has been, Chief Safety Officer of the Council. Mr Mulligan was, as noted above, engaged as a consultant to undertake a specific project within a closed period in 2016.
- (7) Mr Mulligan was appointed with effect from 1 November 2017 to be Acting Director Service Delivery. His responsibilities in that position did not include, on my instructions, the development and implementation of the Council's policies in relation to asbestos management.
- (8) The Council's asbestos management plan was finalised and adopted in the period May 2017 to November 2017, with the Council working in close consultation with SafeWork NSW as that process continued. Mr Mulligan played no part in that process.
- (9) Mr Tooma, at the time of his engagement, undertook a specific conflict of interest check in relation to relevant matters, including relationships, that could have precluded his acceptance of my instructions. No such relevant conflicts were identified by him at that time.
- (10) Mr Tooma became aware of the persons that he would interview only during December 2017, as the documents made available to us by the Council were uploaded via Hightail link for Clyde & Co to review.

50. I note that the Council will seek independent legal advice in relation to the steps that were taken to address conflicts of interest, when Mr Tooma was originally engaged as an independent investigator. I am available to speak to the Council's independent solicitors as required and I may be contacted by them on 0414 513 627.

Yours faithfully
McPhee Kelshaw


Trevor Cork

Angus Broad

From: Megan TeBay
Sent: Friday, 16 February 2018 5:04 PM
To: Rosemary Dillon
Cc: Adrienne Murphy
Subject: Mulligan Project Scope
Attachments: Mark Mulligan scope of contract.docx

Hi Adrienne,
Here is some info on Mulligan's brief for project.
I will also send the original docs I sourced this info from for your reference.
Ta.
MT

Megan TeBay | Acting Group Manager, People & Systems| t 02 4780 5673 | e mtebay@bmcc.nsw.gov.au

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Mark Mulligan was engaged as a consultant in the role of Safety Improvement Lead, for a period of 6 months.

The project scope for Marks role was as follows:

“The purpose of this project is to review and improve the Safety management System (SMS) at Blue Mountains City (BMC) in response to the finding of the Willis Review completed in October 2015”

The key recommendation of the Willis report being BMCC to introduce a robust safety management system developed in accordance with an accepted management standard.

The report included recommendations associated with aligning all safety policies with Work Health & Safety Act 2011 and ensuring current codes of practices and legislation are reflected across the organisation.

This included developing processes in regards to hazard identification, risk assessment; improving the WHS goals and objectives for the organisation; implementing safety training and consultation processes. Increase the rigor of WHS investigation methodology, incident reporting and analysis and improve safety audit processes.

In response to the Willis report, the key deliverables of the project were split into 3 Phases.

Phase 1: To be compliant with WHS Act 2011 and regulations

Phase 2: To ensure systematic Risk Management in Safety (AS3100)

Phase 3: To embed continual improvement in Safety (AS/NZS 4801).

During the 6 months Mr Mulligan was contracted to BMCC he commenced Phase 1 of the project. During this time the project deliverable descriptions were:

1. Due diligence at Officer level evidenced through objective and target setting and reporting against performance.
2. Consultation arrangements in place that represent all workers in relation to health and safety matters.
3. Communication mechanisms in place across all workplaces that meet minimum WHS requirements – WHS notice boards; WHS “tab” on Intranet and enhanced Team Brief WHS element.
4. Systematic risk management referenced to legislation; systematic incident response and investigation.
5. Duty of care – risk management – implemented and measured i.e. health surveillance.
6. Induction and training commensurate with risk.
7. Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Teambrief.
8. Leadership performance measures implemented that facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections/interactions objectives and targets).
9. Safety management system that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801.
10. Software application evaluations complete.

As you can see from the project deliverables the role of Mr Mulligan during the 6 months he was contracted as a consultant he was responsible for delivering on the Safety Improvement Program that was broad in its focus and was to improve the Safety Management System SMS of BMCC.

Angus Broad

From: Megan TeBay
Sent: Sunday, 18 February 2018 10:37 AM
To: Rosemary Dillon
Subject: Safety Improvement Program - Tasks
Attachments: Safety Improvement Phase 1 Task Activity Details - November Update.docx; Safety Improvement Phase 1 Task Activity Details - February 2017 Update.docx

Rosemary,

Attached are the 2 documents that show the key deliverables of the project for Phase 1, and the tasks associated with those deliverables. It also shows who was responsible for what.

You can see from the tasks the Safety Improvement program was a broad view of how we manage safety – it was not focused on asbestos. This project was looking at the fundamentals how the organisation manages safety the processes and procedures of how we manage – specifically in response to the Willis report.

The Feb 2017 doc, was presented to PSSG approx. 6 weeks after Mark left the organisation.

MT

Megan TeBay | Acting Group Manager, People & Systems | t 02 4780 5673 | e mtebay@bmcc.nsw.gov.au

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Safety Improvement Phase 1 Task Activity Details – 18 November PSSG update (as at 31 October)

LEGEND

Completed

On Target

At Risk

Behind Target

Ongoing



RESPONSIBILITY

JH – John Hargreaves

TA – Trevor Anderson

MK – Michael Keyes

SB – Scott Buchanan

MM – Mark Mulligan

GMc – Grant McKay

G&R – Governance & Risk Branch

Deliverable Description	Task	Duration	Finish	Resp.
1. Due diligence at Officer level evidenced through objective and target setting and reporting against performance	Re-draft PSSG Committee Charter to reflect WHS Act Obligations and business reporting requirements	1 day	12/10/16	MM
	Draft performance targets (lead and lag) to align with PSSG Charter	3 days	12/10/16	TA
	PSSG approval of revised Charter and performance targets	1 day	21/10/16	MM
	Communication of PSSG Charter and performance targets to staff	1 day	28/10/16	MM
	Ongoing monitoring of Officer due diligence obligations	Ongoing	Ongoing	G&R
2. Consultation arrangements in place that represent all workers in relation to health and safety matters	Consult with ELT and establish Peak Safety Steering Group (PSSG)	4 days	31/07/16	JH
	Meet with managers to establish current and future consultation arrangements	23 days	31/08/16	JH/TA MK
	Support the establishment of new consultation arrangements in branches and across the organisation	20 days	30/09/16	JH/TA MK
	Produce WHS Consultation procedure, obtain PSSG endorsement and communicate to managers and staff	3 days	15/10/16	MM
	Obtain PSSG approval for revised Charter that includes Officer Due Diligence requirements and revised agenda template	1 day	21/10/16	MM
	Communicate PSSG Charter to manager and staff	3 days	31/10/16	MM/TA MK

Deliverable Description	Task	Duration	Finish	Resp.
3. Communication mechanisms in place across all workplaces that meet minimum WHS requirements – WHS notice boards; WHS “tab” on Intranet and enhanced Team Brief WHS element	Safety “tab” provided on Intranet Key Sections Menu	1 day	26/09/16	MK
	Team Brief WHS element enhanced to provide informative commentary on incidents and the Safety Improvement project plan	2 days	26/09/16	TA/MM
	Agree information layout for safety notice boards at participating static sites	2 days	21/10/16	MK
	Source appropriate type of notice board and deploy at all participating sites	10 days	9/12/16	MK
	Appoint responsible person/s at each site for maintaining currency of material	2 days	19/12/16	MK
	Communicate the deployment of safety notice boards via Team Brief	1 day	23/12/16	MM
4. Systematic risk management referenced to legislation; systematic incident response and investigation	Develop incident investigation decision matrix	2 days	21/10/16	MM
	Review and re-draft Incident Reporting and Investigation procedure	2 days	28/10/16	MM
	Review and re-draft Accident Investigation Report form/template	2 days	28/10/16	MM
	Submit documents for review (PSSG required)	2 days	7/11/16	MM
	Communicate procedural changes to relevant staff (teambrief)	1 day	19/12/16	MM
	Publish endorsed documents on Intranet Safety Portal	1 day	23/12/16	TA
5. Duty of care – risk management – implemented and measured i.e. health surveillance	Confirm categories of Health surveillance required at BMCC	3 days	28/10/16	TA
	Develop Health Surveillance spread sheet encompassing all categories and impacted staff	3 days	7/11/16	TA
	Develop draft Health Surveillance procedure and associated forms	3 days	18/12/16	TA/MM
	Submit draft procedure and forms for WHS committee review	1 day	18/12/16	TA/MM
	Communicate procedural changes to relevant staff (safety bulletin or team brief)	1 day	19/12/16	TA
	Publish endorsed documents on Intranet Safety Portal	1 day	23/12/16	TA
6. Induction and training commensurate with risk	Corporate induction material reviewed with regard to statutory WHS requirements and content (Induction checklist and probation review)	2 days	14/10/16	TA/MM
	Consultation undertaken with HR (Scott Buchanan) to incorporate required changes to the Induction Checklist and Probation Review	2 days	21/10/16	TA/MM/SB
	Changes to Induction Checklist and Probation Review implemented	2 days	18/11/16	SB/TA
	WHS Induction Procedure reviewed (including elements of Orientation day)	1 day	18/11/16	TA/SB
	Changes to induction procedure and form communicated to all supervisors and posted on Intranet	1 day	18/11/16	SB/TA

Deliverable Description	Task	Duration	Finish	Resp.
7. Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Teambrief	Develop objectives and targets and propose to PSSG	6 days	18/08/16	TA/JH
	Consult on initial reporting requirements with directors and group managers, consult with staff as required and implement	10 days	30/09/16	TA/JH/MK
	Prepare traffic light report structure for reporting to the PSSG	2 days	14/09/16	TA/JH/MM
	Obtain PSSG endorsement for report structure and lead and lag indicators	1 day	21/10/16	MM
	Implement communication of safety performance via Teambrief	2 days	30/11/16	MM/TA
8. Leadership performance measures implemented that facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections/interactions objectives and targets)	Lead safety objectives/targets/indicators developed and endorsed by PSSG	2 days	21/10/16	TA/MM
	Lead safety objectives/targets/indicators communicated to all managers/supervisors and staff via Team Brief	1 day	4/11/16	TA/MM
	Site Safety/Workplace inspection checklist revised/developed and published	2 days	28/10/16	MK/MM
	Training/coaching of managers and supervisors in utilisation of Site safety/Workplace inspection checklist	60 days	24/02/17	TA/MK/MM
	Lead safety indicators reported to PSSG monthly	Ongoing	Ongoing	TA
9. Safety management system that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801	Complete WHS document mapping register (existing mapped to AS/NZS 4801) what's current, published and what's out of date	2 days	21/10/16	TA
	Review register and determine what documents require updating, reviewing, approval and publishing on Intranet	4 days	11/11/16	TA/MM
	Review, consult and re-publish up to three Policy level documents	6 days	23/12/16	TA
	Review, consult and re-publish up to six Program level documents	12 days	23/12/16	TA/MK
	Review, consult and re-publish up to 20 SOP level documents	40 days	24/02/17	TA/MK
	Review, consult and re-publish all SWMS	Ongoing	Ongoing	MK/TA/MM
	Train staff in revised SOP's and SWMS as required	Ongoing	Ongoing	MK/TA/MM

Deliverable Description	Task	Duration	Finish	Resp.
10. Software application evaluations complete	Undertake "Request for Information" step in evaluation process – 4 suppliers to be engaged: (1) Frontier/Chris 21 (2) K@ SmartSheet (3) Donesafe (4) SAI Global - Cintellate	5 days	30/09/16	JH/TA/ MM/MK /GMc
	Develop Business Requirements document	5 days	31/10/16	MM/TA/ MK/JH
	Create Request for Proposal document	3 days	4/11/16	MM/TA/ MK/JH
	Review supplier responses	4 days	30/11/16	MM/TA/ MK/JH
	Choose if/which software solution responses are suitable – if YES then which supplier to work with	6 days	16/12/16	MM/TA/ MK/JH

Safety Improvement Phase 1 Task Activity Details – 17 February PSSG update (as at 14 February 2017)

LEGEND

Completed
On Target
At Risk
Behind Target
Ongoing



RESPONSIBILITY

JH – John Hargreaves
TA – Trevor Anderson
MK – Michael Keyes
SB – Scott Buchanan
MM – Mark Mulligan
GMc – Grant McKay
G&R – Governance & Risk Branch

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	and posted on Intranet			
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	Review supplier responses	4 days	30/11/16	MM/TA/ MK/JH
	Choose if/which software solution responses are suitable – if YES then which supplier to work with	6 days	16/12/16	MM/TA/ MK/JH

CLYDE & CO

Trevor Cork
McPhee Kelshaw Solicitors and Conveyancers
170 Macquarie Road
Springwood NSW 2777

Clyde & Co
Level 30
420 George Street
Sydney NSW 2000
Australia
Telephone: +61 (0) 2 9210 4400
Facsimile: +61 (0) 2 9210 4599
www.clydeco.com

By Email: trevorc@mcpheekelshaw.com.au

Our Ref:
10087934

Your Ref:
TC:RP143988

Date:
19 February 2018

Dear Mr Cork

**Blue Mountains City Council – Asbestos Investigation
Interview of Mark Mulligan**

We refer to the above matter.

We have been asked by Trevor Cork of McPhee Kelshaw to provide a response to the question of why Mr Mark Mulligan was interviewed during the course of the Asbestos Investigation.

This letter outlines the reasons for interviewing Mr Mulligan during the course of the Asbestos Investigation.

It was apparent to us through the document review that one of the potential issues for the investigation was the organisational structure of the Council and the silos at play in the organisation. A better understanding of how the directorates operated and their roles and responsibilities was crucial to understanding this issue. To that end, we arranged interviews with each of the current Directors.

Mr Mulligan was interviewed on 12 January 2018. He was interviewed in his capacity as the then Council Director, Service Delivery. We interviewed all relevant Directors of Council's key directorates.

Mr Mark Bruhn was the Director, Service Delivery at the time of matters subject of the investigation. By letter to McPhee Kelshaw on 3 January 2018, we indicated that we wished to interview Mr Mark Bruhn. On 4 January 2018 we were informed by Trevor Cork of McPhee Kelshaw by letter (and an excel spreadsheet attachment) that Mr Bruhn was no longer with the Council and he was not available to the investigation.

Yours sincerely


Michael Tooma
Partner
Clyde & Co


Alena Titterton
Partner
Clyde & Co

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**Maddocks**

Lawyers
Angel Place
Level 27, 123 Pitt Street
Sydney NSW 2000
Australia

GPO Box 1692
Sydney New South Wales 2001

Telephone 61 2 9291 6100
Facsimile 61 2 9221 0872

info@maddocks.com.au
www.maddocks.com.au

DX 10284 Sydney Stock Exchange

Advice

To**Confidential & Privileged**

Rosemary Dillon
General Manager
Blue Mountains City Council

Date

19 February 2018

Subject

Blue Mountains City Council - Probity Advice - Engagement of Michael Tooma

Questions

You have asked us to consider on an urgent basis whether:

1. the processes implemented by Council's solicitor, Mr Cork, in engaging Mr Tooma as an independent advisor were adequate and robust enough in the circumstances; and
2. Mr Cork was able to reasonably rely upon the answers given by Mr Tooma.

Summary of advice

Below is a summary of our advice. Please read it in conjunction with the detailed advice that follows.

Based on the information before us it appears that the approach adopted by Mr Cork was reasonable and adequate in the circumstances. In our opinion, Mr Cork acted appropriately in relying on the representations of Mr Tooma as to whether a conflict was present.

Contact

Our Ref: PCW:MMM:7496295

Melissa Mallos
61 2 9291 6223
melissa.mallos@maddocks.com.au

Partner

Prue Burns

Interstate offices
Canberra Melbourne

Affiliated offices around the world through the
Advoc network - www.advoc.com

Detailed analysis

Background

3. We have been provided with a suite of documents over the course of 16, 17 and 18 February 2018 outlining the facts relevant to this advice. A complete list of the documents provided can be found at Schedule A to this advice. The facts are complex and cover a number of different issues. A summary of the facts as relates to the engagement of Mr Tooma is provided below. This advice has been provided on an urgent basis.
4. In November 2017 Blue Mountains City Council (**Council**) was served with a Notice of Intention to Suspend the elected council (**Suspension Notice**) by the Minister for Local Government (**Minister**) on the basis of alleged issues in relation to the management of asbestos (**Asbestos Investigation**) and recruitment. Following receipt of the Suspension Notice Council made submissions to and liaised with the Office of Local Government and the Minister. As part of those submissions, Council committed to commissioning two separate independent investigations to consider the allegations made against Council.
5. In his letter dated 16 February 2018 Mr Cork (Council's solicitor) outlines the facts leading to the engagement of Mr Tooma as the independent investigator for the Asbestos Investigation. We are instructed that Mr Cork's summary is accurate to the best of Council's knowledge. Relevantly:
 - 5.1 On or about 8 November 2017 Mr Cork was approached by Mr Greenwood, the then General Manager of Council, to consider potential candidates for the role of independent investigators for the two investigations.
 - 5.2 Mr Cork discussed the matter with his co-principal, Steven Nicholson who suggested Michael Tooma as investigator for the Asbestos Investigation.
 - 5.3 Mr Cork reviewed Mr Tooma's profile and agreed that Mr Tooma was 'a leader in the field of work, health and safety law'.¹
 - 5.4 On 9 November 2017, Mr Nicholson contacted Mr Tooma by telephone and email. In an email sent at 8:08am on that date, Mr Nicholson describes the scope of work for Mr Tooma as follows:

We confirm we act for Blue Mountains City Council.

Our client needs a person to independently investigate recent asbestos related incidents. The matter is urgent.
 - 5.5 In that same email, Mr Nicholson asks:

Could you please confirm that your firm can act and provide your costs disclosure and terms of engagement.
 - 5.6 At 12:17pm on 9 November 2017, Mr Cork wrote to Council and confirmed that contact had been made with Mr Tooma and that conflict searches were being undertaken.
 - 5.7 At 12:41pm on the same day, Mr Tooma sent an email to Mr Nicholson stating, *inter alia*:

I can confirm there are no conflicts.

¹ Paragraph 4, Letter from Trevor Cork to Rosemary Dillon, dated 16 February 2017

- 5.8 During conversations leading to the engagement of Mr Tooma, Mr Tooma indicated:
- 5.8.1 he had previously met the Mayor of the Council, Councillor Mark Greenhill;
 - 5.8.2 Mr Tooma had encountered Councillor Greenhill in the course of legal proceedings where Councillor Greenhill was acting in his capacity working as a Senior IR Manager for Networks NSW;
 - 5.8.3 Mr Tooma had not received instructions from Councillor Greenhill, nor did he have any personal relationship with Councillor Greenhill.
- 5.9 Based on his conversations with Mr Tooma, Mr Cork concluded that the matters raised by Mr Tooma did not give rise to a suspicion that Mr Tooma had any conflict and should not be engaged as Council's independent investigator.
- 5.10 On 9 November 2017 Mr Tooma sent Mr Cork a letter of engagement (**Engagement Letter**). In that letter, the scope of work to be undertaken by Mr Tooma and his firm, Clyde & Co is described as follows:
- We have been instructed by your firm, who are acting on behalf of Blue Mountains City Council, to conduct an independent investigation into recent asbestos related incidents involving the Blue Mountains City Council.
- 5.11 The Engagement Letter indicates that the 'client' is McPheee Kelshaw Solicitors and Conveyancers, and that the principal point of contact is Trevor Cork. The Engagement Letter outlines the lawyers who will work on the matter, the charges, billing practices, payment of charges, limitation of liability and client identity procedures. Part 9 of the Engagement Letter is headed "Conflicts of Interest" and states:
- Clyde & Co adheres to the conflict and confidentiality rules which apply in New South Wales. To the extent that there are matters which are not covered by the local ethical rules and guidelines, Clyde & Co will adhere to those of the Solicitor Regulation Authority of England and Wales. Clause 13 of our Terms of Business contains important information regarding our approach to managing conflicts and confidentiality, which we ask you to review carefully.
- 5.12 Clause 13 of the Terms of Business is headed 'Confidentiality and conflicts'. That clause relates primarily to the management of sensitive information and acting for two or more clients where the duties owed to those clients conflict and expressly states that Clyde & Co adherer to the confidentiality rules that apply in New South Wales.
- 5.13 In outlining the actions taken by his firm, Mr Cork states:
- Mr Tooma was not at that time engaged by the Council. However, I was satisfied that the issue of possible conflicts had been appropriately addressed by Mr Tooma and that he was confident that no conflicts then existed. I was also satisfied that the issue was appropriately addressed in the Clyde & Co standard letter of engagement and in the Terms.²
- 5.14 On 14 November 2017, Council considered Mayoral Minutes 3 and 4 (**MM3** and **MM4**). The subject of MM3 was stated to be "independent review into asbestos allegations". The recommendations for MM3 included:
- 5.14.1 That Council instructs Trevor Cork of McPhee Kelshaw solicitors to engage an independent investigator to investigate and report on [the asbestos allegations]; and
 - 5.14.2 The Council notes the Terms of Reference for the investigation that are Attachment 1 to this Report.

² Paragraph 18, Letter from Trevor Cork to Rosemary Dillon, dated 16 February 2017

- 5.15 MM3 also contains a section headed 'The Process undertaken by Council' which states:

In order to achieve independence from Council and Council officers during the review, and to ensure that all legal issues, including potential liability issues, are addressed, this report proposes that that (sic) Council engage the Council's solicitor, Trevor Cork of McPhee Kelshaw to manage the referral and investigation.

An independent and appropriately experienced reviewer will be appointed to conduct the investigation.

The Council will ensure open and transparent communication with relevant agencies throughout the process...

- 5.16 The resolution was passed unanimously (**Resolution**).
- 5.17 On 15 November 2017 Mr Cork wrote to Council and recommended that Council engage Mr Tooma as the independent investigator for the Asbestos Investigation. Mr Cork also made a recommendation regarding the independent investigator for the second investigation.
- 5.18 On 16 November 2017 Mr Cork wrote to Mr Tooma to formally engage him on behalf of Council. The letter also provided Mr Tooma with a copy of the Terms of Reference endorsed by the Resolution. Documentation relevant to the Asbestos Investigation was provided to Mr Tooma during the course of November and December 2017.
- 5.19 In early December 2017 Mr Cork and Mr Tooma agreed on a summary of the matters being investigated by Mr Tooma.
- 5.20 On 12 December 2017, Council resolved to adopt amended terms of reference for the Asbestos Investigation, which were provided to Mr Tooma.
- 5.21 On 15 December 2017 Mr Tooma provided Mr Cork with a Draft Action Plan (for discussion) which identified proposed interim reports and the timetable for the conduct of the Asbestos Investigation.
- 5.22 We are instructed that from this point the Asbestos Investigation proceeded as outlined in the Draft Action Plan.
- 5.23 During the week commencing 12 February 2018 allegations were made asserting a conflict of interest on behalf of Mr Tooma. The allegations cite the relationship between Mr Tooma and Mark Mulligan a (now former) employee of Council as the basis of the Conflict. A detailed account of that relationship is set out in an email from Mr Tooma, dated 13 February 2018.

Qualifications and assumptions

6. We have not been asked to provide advice on whether the actions of Mr Tooma were appropriate in the circumstances, nor have we been asked to consider whether a conflict of interest has arisen.
7. Consequently, we have not drawn any conclusions on these matters. We would be happy to consider these issues upon receipt of further instructions.

Legal analysis

8. As outlined above, at the time Mr Tooma accepted the engagement from Mr Cork, Mr Tooma sent the Engagement Letter to Mr Cork. The text of the Engagement Letter and clause 13 of the Terms of Business attached to it both indicated that Clyde & Co adhered to the conflict and confidentiality rules which apply in New South Wales.

9. Those rules as they relate to conflict of duties, are relevantly rules 10,11 and 12 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Rules)*. Rule 11 relates to conflicts of duties concerning current clients. Rule 12 relates to conflicts concerning a solicitor's own interests and states:

12.1 A solicitor must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the solicitor or an associate of the solicitor, except as permitted by this Rule.

...

10. In addition to this, prior to his formal engagement Mr Tooma confirmed that "there are no conflicts". We have not been asked to consider whether Mr Tooma was correct in asserting there was no conflict. Rather, we have been asked whether the processes implemented by Mr Cork were robust enough in the circumstances, and whether it was reasonable for Mr Cork to rely on Mr Tooma's representations.
11. It is usual practice for a solicitor who is seeking to engage an external consultant on behalf of their client to make enquires as to whether that consultant is free from conflict. Such enquiries can be made verbally, in writing or both. In the current circumstances the enquiry was made in writing. It is also usual practice for solicitors to rely upon the responses to such enquiries. It is not common practice for the engaging party to test the veracity of such representations, or to undertake further due diligence in this regard.
12. In the current situation Mr Cork received confirmation from Mr Tooma that there was no conflict in Mr Tooma's email of 9 November 2017. The Engagement Letter also confirmed Clyde & Co's adherence to the Rules and outlined action that would be taken in circumstances where a conflict was identified.
13. Whilst we acknowledge that Mr Tooma was not provided with the terms of reference of the investigation (and the amended terms of reference) until after his engagement, rule 12.1 of the Rules places a continuing obligation on solicitors. It is fair to say, that it was incumbent on Mr Tooma to consider whether a conflict arose at first instance, and then to reconsider the issue at relevant times during the investigation – particularly upon receipt of the terms of reference and the amended terms of reference. Having said this, it would not be reasonable to expect Mr Cork to have to prompt Mr Tooma to reconsider the issue of whether there was a conflict during the course of the investigation. This is particularly so given Mr Tooma is a senior solicitor with 20 years' experience.
14. Based on the information provided to us, and the facts outlined in those documents, it is our opinion that Mr Cork followed a reasonable process in his engagement of Mr Tooma. Further, it is our opinion that it was reasonable in the circumstances for Mr Cork to rely on Mr Tooma's representations that he was free from conflict.

Contact

Please contact Melissa Mallos on 02 9291 6223 or email melissa.mallos@maddocks.com.au if you have any other queries.

Schedule A – Documents provided by Council

1. Email from Rosemary Dillon, General Manager, Blue Mountains City Council to Melissa Mallos, dated 16 February 2018, received at 8:10pm
2. Letter to Rosemary Dillon, General Manager, Council, from Trevor Cork, dated 16 February 2018 and its attachments:
 - 2.1 Email correspondence between Trevor Cork and Michael Tooma date 9 November 2017;
 - 2.2 Letter from Trevor Cork to Robert Greenwood, General Manager, Council, dated 9 November 2017;
 - 2.3 Email from Michael Tooma to Trevor Cork, dated 13 February 2018;
 - 2.4 Engagement Letter from Michael Tooma to Trevor Cork, dated 9 November 2017;
 - 2.5 Attachment to Mayoral Minute MM3 – Terms of Reference – dated 14 November 2017;
 - 2.6 Letter from Trevor Cork to Michael Tooma, dated 16 November 2017;
 - 2.7 Amended Terms of reference – First Investigation;
 - 2.8 Email from Michael Toom to Trevor Cork, dated 15 December 2017 attaching draft action plan for discussion.
3. Letter from Trevor Cork to Grant Gleeson, Director Legal Services, Office of Local Government, dated 13 February 2018
4. Letter from Gabrielle Upton, Minister for Local Government, to Mark Greenhill, Mayor, dated 14 February 2018
5. Submission by Council to the Minister for Local Government dated 20 December 2017
6. Letter from Rosemary Dillon, General Manager, Council and Mark Greenhill, Mayor, to Minister for Local Government, dated 20 December 2017
7. Letter from Rosemary Dillon, General Manager, Council and Mark Greenhill, Mayor, to Minister for Local Government, dated 18 January 2018
8. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
9. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
10. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
11. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 25 January 2018
12. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
13. Letter from Rosemary Dillon, General Manager, Council to Tim Hurst, Acting Chief Executive, Office of Local Government, dated 25 January 2018

14. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 2 February 2018
15. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 8 February 2018
16. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 13 February 2018
17. Mayoral Minutes 3, dated 14 November 2017
18. Letter from Trevor Cork to Robert Greenwood, General Manager Council, dated 15 November 2017



Business Paper Extraordinary Meeting

**Venue: Administrative Headquarters
Civic Place
Katoomba**

Meeting: 7.30pm 20 February, 2018

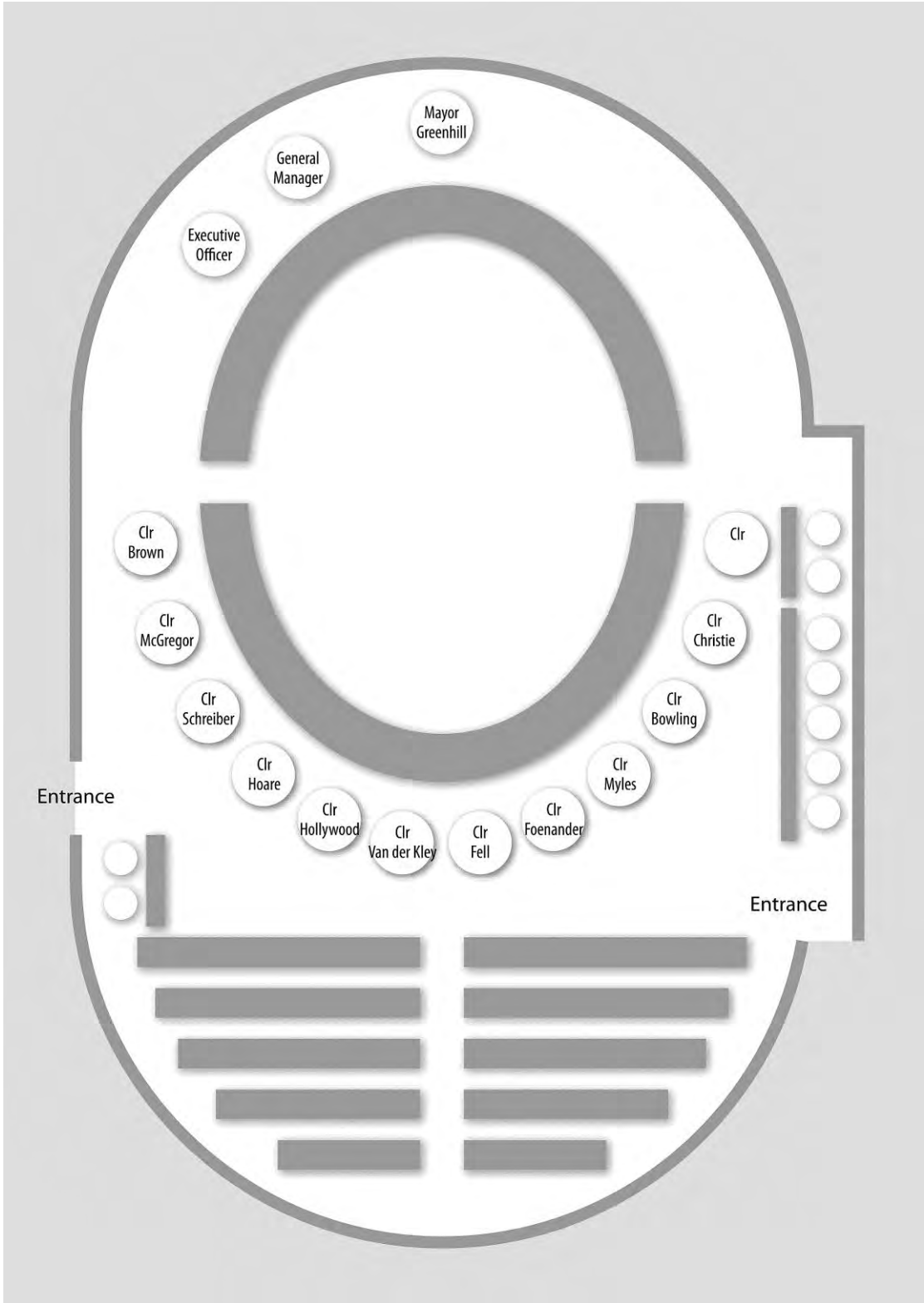


EXTRAORDINARY MEETING

20 FEBRUARY 2018

AGENDA

ITEM NO.	PAGE	SUBJECT	COMMENTS
1	9	<p><u>PRAYER/REFLECTION</u> (and Recognition of the Traditional Owners, the Darug and Gundungurra People)</p> <p><u>APOLOGIES</u></p> <p><u>DECLARATIONS OF INTEREST</u></p> <p><u>MINUTE BY MAYOR</u></p> <p>Submission in response to the Minister for Local Government's notice of intended suspension of the elected Councillors of Blue Mountains City Council <i>Attachments x 7</i></p>	



THE COUNCIL MEETING

Blue Mountains City Council meetings are conducted in accordance with Council's adopted Code of Meeting Practice. This Code is available via the Council website, from Council offices and in Council meetings.

<http://www.bmcc.nsw.gov.au/yourcouncil/councilmeetings>

Councillor Seating Map

While the Councillor and Senior Staff seating map indicates the seating arrangement in most Council meetings, occasionally the seating may change based on the change to the venue or content experts.

Business Papers and Minutes

Before each Council meeting, a Business Paper is prepared detailing the items that are to be presented to the Council meeting. Readers should be aware that the Recommendations and Notices of Motion as set out in the Council Business Paper are simply proposals to the Council for its consideration.

The Council may adopt these proposals, amend the proposals, determine a completely different course of action, or it may decline to pursue any course of action. The decision of the Council becomes a resolution of the Council and is recorded in the Council Minutes. Readers are referred to this separate document.

The Council Business Paper and the Council Minutes are linked by the common Item Numbers and Titles. Minutes from the meeting are confirmed at the following meeting, until then they are presented as draft unconfirmed minutes.

To Register to Speak at a Council Meeting

Members of the public are welcome to address the Council on any items of business in the Business Paper other than:

- Unconfirmed Minutes;
- Minutes by the Mayor;
- Rescission Motions;
- Councillor Reports;
- Questions with Notice;
- Responses to Questions without Notice;
- Responses to Questions with Notice;
- Notices of Motion (including Rescission Motions)
- the Précis of Correspondence; and
- Matters of Urgency.

To address the meeting a speaker's registration form must be completed at the speaker's registration desk on the night of the Council meeting. To pre-register, the speaker's registration form must be emailed no later than 4pm on the day of the meeting to council@bmcc.nsw.gov.au.

DEVELOPMENT APPLICATIONS – MATTERS FOR CONSIDERATION

When determining a development application the Council is required to take certain matters into consideration. These must be relevant to the development application under consideration. These considerations are detailed under s. 79C (1) (Matters for consideration – general) of the Environmental Planning and Assessment Act 1979 and are reproduced below:

79C Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iii) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),
 that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

MINUTE BY MAYOR

ITEM NO: 1

SUBJECT: SUBMISSION IN RESPONSE TO THE MINISTER FOR LOCAL
GOVERNMENT'S NOTICE OF INTENDED SUSPENSION OF THE
ELECTED COUNCILLORS OF BLUE MOUNTAINS CITY COUNCIL

FILE NO: F11178 - 18/35289

Delivery Program Link

Principal Activity: Civic Leadership

Service: Governance and Risk

Recommendations:

1. *That the Council notes this report;*
 2. *That the Council makes a submission to the Minister in response to the Minister's Notice of Intention to Suspend the Council, under the signature of the Mayor and the Deputy Mayor, and in the terms of this Mayoral Minute;*
 3. *That the Council notes the receipt by the Council's solicitor of Mr Tooma's interim report titled 'Asbestos management of Lawson Carpark, Lawson Mechanics Institute and Lawson Depot';*
 4. *That the Council notes that individuals named in the report have been notified of the findings made in the interim report in relation to them and have been allowed time to respond and/or to seek advice, and also notes that the Council's external solicitor, Mr Cork, has facilitated that process;*
 5. *That the Council notes a copy of Mr Tooma's first interim report will be made available for viewing only by Councillors in the period prior to the next Ordinary meeting of the Council;*
 6. *That the Council notes a Mayoral Minute will be submitted to the next Ordinary meeting of the Council recommending the appropriate approach relative to public release of the report and the implementation of all recommendations made in the interim report;*
 7. *That the Council resolves that the recommendations made in Mr Tooma's first interim report be publicly released as a result of this Mayoral Minute for this Extraordinary Council Meeting; and*
 8. *That the Council's external solicitor, Mr Cork, be instructed to provide a copy of Mr Tooma's full interim report, with all annexures, to the Director, Legal of the Office of Local Government by Friday 23 February 2018, in accordance with the Minister's Performance Improvement Order (Compliance Report 2).*
-

Mayoral Minute

This Minute responds to the Notice of Intention from the Minister of Local Government, the Hon. Gabrielle Upton to suspend the elected body of Blue Mountains City Council.

At the outset, I want to make it very clear that there have been serious asbestos issues at Blue Mountains City Council which I and the elected body are determined to continue addressing on behalf of our workers and community. Safety is our highest priority.

On Thursday 15 February 2018, under cover of an email forwarded to the General Manager of the Council, Dr Rosemary Dillon, by Mr Grant Gleeson, Director, Legal of the Office of Local Government (OLG), the Council was served with a letter addressed to me by the Minister for Local Government, the Hon. Gabrielle Upton (Minister).

Attached to this Mayoral Minute is a copy of each of the following:

Attachment 1: Mr Gleeson's email to Dr Dillon.

Attachment 2: The letter from the Minister addressed to me (dated 14 February 2018 but received on Thursday 15 February 2018).

Attachment 3: Standard OLG document titled "*Quick Guide to Suspension Orders PROCESS FOR COUNCILS*".

The Minister's letter is the second Notice of Intention to Suspend the Council (Notice) served by the Minister. The Minister's original Notice was given on 13 December 2017. In response, the Council made detailed submissions to the Minister on 20 December 2017. Ultimately, the Minister determined not to suspend the Council, but to instead issue a Performance Improvement Order (PIO).

The OLG Guide to Suspension Orders

The OLG Guide states that a Notice of Intention to issue a Suspension Order will be given before a council is suspended. That step is required under Part 7 of the *Local Government Act, 1993* (Chapter 13 Part 7).

In the OLG's explanation of the suspension process the second and third bullet point paragraphs read as follows:

- "● *the council will be given no less than 14 days to respond (in urgent circumstances, the response time will be 7 days)*
- *Notices of Intention will outline what is required.*"

The Minister has given the Council 7 days to respond to the Notice. Within that 7 day period the Council must fully consider the grounds upon which the Minister has:

- (a) determined that the suspension of the Council is desirable; and
- (b) determined that the suspension of the Council is urgent.

Given the importance of this matter, the Minister is entitled to receive the Council's fully informed response to her letter. For that reason, this Mayoral Minute identifies each material paragraph included in the Minister's letter (after the two formal opening paragraphs).

Paragraph 3 of the Minister's Letter

Paragraph 3 of the Minister's letter reads as follows:

By way of background, significant issues regarding asbestos management and recruitment within the Council were raised toward the end of 2017. In response to these allegations, Council arranged for two investigations to be carried out, and commissioned reports to be prepared by the investigators, one in relation to issues in relation to recruitment (the Recruitment Investigation) and one in relation to asbestos (Asbestos Investigation).

Elected Councillors are aware that on 8 November 2017 Mr Ray Hadley of the 2GB Morning Program began the first of a series of comments on the Council in relation to alleged issues arising from the Council's management of asbestos and asbestos related risks. Mr Hadley also made allegations in relation to the recruitment of Council staff, including serious allegations about the Council's processes.

The 2GB broadcasts, and associated print media references to the allegations, limited to the Blue Mountains Gazette, were the source of the matters that led the Councillors to resolve to initiate independent investigations. The public allegations did not come to the Council through the OLG, through the ICAC or through any other agency or regulator.

The Council responded by resolving on 14 November 2017 to establish two independent investigations via Mayoral Minutes that were initiatives of the Mayor.

The first investigation relates to the Council's management of asbestos and asbestos related risks over an extended period.

The second investigation has a far more limited scope and relates to the engagement of Mr Mark Mulligan as consultant from October to December 2016 and then as Acting Director, Service Delivery (in the period from 1 November 2017 to 12 February 2018). Allegations were also made against the Council's Group Manager, People and Systems and another named individual.

Paragraph 4 of the Minister's Letter

The fourth paragraph of the Minister's letter to the Council reads as follows:

"Council's resolutions to commission those reports stressed the importance of the investigations and the reports being independent. The details of Council's action were [sic.] provided to SafeWork and the Office of Local Government, as regulators of safe work places and council conduct more generally, respectively."

Attached to this Mayoral Minute (Attachment 4) is the text of the resolutions passed by the Council at the meeting on 14 November 2017. Minute No. 416 related to the establishment of the independent review into asbestos allegations. Minute No. 417 relates to the independent investigation into staff recruitment and consultant engagement matters.

In relation to the independent asbestos investigation Mayoral Minute 3 (MM3) included the following statements:

"The process to be undertaken by Council

In order to achieve independence from Council and Council officers during the review, and to ensure that all legal issues, including potential liability issues, are addressed, this report proposes that Council engage the Council's solicitor, Trevor Cork of McPhee Kelshaw, to manage the referral and investigation.

An independent and appropriately experienced reviewer will be appointed to conduct the investigation.

The Council will ensure open and transparent communication with relevant agencies throughout the process. In the first instance the Council will write to Mr Tim Hurst, Acting Chief Executive, Office of Local Government notifying him of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.

The Council's investigation will be comprehensive and thorough. The Council intends to make no further comment about the recent allegations until the investigation is completed."

In relation to the proposed independent review into publicly made allegations regarding staff appointments, Mayoral Minute 4 (MM4) included the following statements:

"The process to be undertaken by Council

In order to achieve independence from Council and Council officers during the review, and to ensure that all legal issues, including potential liability issues, are addressed, this report proposes that Council engage the Council's solicitor, Trevor Cork of McPhee Kelshaw, to manage the referral and investigation.

An independent and appropriately experienced investigator will be appointed to conduct the investigation.

At the conclusion of the investigation, Mr Cork will provide written advice to the Council concerning all relevant legal issues that arise for consideration, including issues in relation to any prospective liability of the Council to any party.

The Council will ensure open and transparent communication with relevant agencies throughout the process. In the first instance, that the Council will write to Tim Hurst, Acting Chief Executive, Office of Local Government formally notifying the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.

The independent investigation will be comprehensive and thorough. The Council intends to make no further comment about the recent allegations until the investigation is completed."

The primary focus of the Minister's letter dated 14 February 2018 is on the Council's independent investigation in relation to asbestos matters. The Minister correctly notes the concern of the Council that the two investigations be conducted independently of the Council.

The resolutions passed by the Council at the meeting on 14 November 2017 nominated the independence of the investigations and recorded decisions that were made to ensure that each investigation was independent of the elected Councillors and of the Council as an organisation.

Ms Scarlet Reid of McCullough Robertson solicitors has been appointed as independent investigator in relation to the staff recruitment matters. Ms Reid's report will be delivered in accordance with the resolutions passed at the meeting on 14 November 2017.

The focus of this Mayoral Minute is on the independent investigation in relation to asbestos management and asbestos related issues. Mr Michael Tooma of Clyde & Co solicitors was appointed by Mr Cork, under his instructions from the elected Councillors, as the independent investigator in relation to those issues.

Mr Tooma is a senior and experienced solicitor. His reputation and standing in relation to work, health and safety issues is unquestioned. He is recognised across Australia as an expert on work, health and safety law and practice.

When Mr Tooma was recommended by Mr Cork as the independent investigator, the Council accepted that recommendation. Mr Tooma's engagement was a significant step towards informing the elected Councillors of the circumstances in which the asbestos management issues and related issues emerged in 2017. This occurred with no objection from the Office of Local Government which was advised before the engagement.

Paragraph 5 of the Minister's Letter

Paragraph 5 of the Minister's letter reads as follows:

Integral to my decision in December 2017 to issue a Performance Improvement Order, rather than proceed to suspension was the integrity of the processes Council had initiated and the capacity of the Council to address the issues confronting it. Both of these considerations had been called into question as a result of a pre-existing relationship, apparently both professional and social in nature, between Mr Michael Tooma of Clyde & Co and the Council's (then) Chief Safety Officer Mr Mulligan which I note from Council's letter was not disclosed to it.

There are a number of issues at the heart of this paragraph.

Mr Mark Mulligan has never worked for the Council as Chief Safety Officer.

Wide-ranging and unsubstantiated allegations have been made against Mr Mulligan and it is time that those allegations were addressed. For example on 15 February, Ray Hadley 2GB stated the following untrue statement regarding the role of Mark Mulligan:

"He (Tooma) was investigating the asbestos management which fell under the control of the now sacked Mark Mulligan at Blue Mountains City Council..."

"If you are investigating the asbestos management and you aren't prepared to tell the people you are interviewing that you're mates with the contractor responsible for the administration of the Asbestos Management Plan, you are on a very slippery slope."

Mr Mulligan was never responsible for controlling the investigation of asbestos management or for developing the Council's Asbestos Management Plan. In late 2016 the Council was undertaking a major program involving the review of its Safety Management Systems (SMS).

The precise circumstances of Mr Mulligan's engagement as a consultant in October 2016 are the subject of Ms Scarlet Reid's investigation. However, that investigation involves consideration of the Council's procurement processes. Mr Mulligan was not in any way responsible (and could not be responsible) for the processes leading to his engagement.

Unfounded allegations have been made about Mr Mulligan's work (as a consultant, not an employee) in the period October to December 2016. During that period Mr Mulligan worked for the Council for approximately 12 weeks, for 3-4 days per week. The project that he took over was extensive in scope. There was no realistic prospect that the project could be completed during the anticipated period of Mr Mulligan's consultancy, even where the person engaged had the level of experience and professional expertise of Mr Mulligan in the work, health and safety area.

The project scope that Mr Mulligan's consultancy was to address is documented in the Council's records as follows:

"The purpose of this project is to review and improve the Safety Management System (SMS) at Blue Mountains City (BMC) in response to the finding of the Willis Review completed in October 2015."

The key recommendation of the Willis Review was that the Council introduce a robust safety management system developed in accordance with an accepted management standard.

The Willis Review made other recommendations, proposing the alignment of all of the Council's safety policies with the *Work Health & Safety Act 2011* and ensuring that current codes of practice and legislative requirements were understood and observed across the organisation.

The work required to implement the Willis Review included:

- developing processes in regards to hazard identification and risk assessment;
- improving the WHS goals and objectives for the organisation;
- implementing safety training and consultation processes;
- increasing the rigor of WHS investigation methodology, incident reporting and analysis; and
- improving safety audit processes.

In response to the Willis report, the key deliverables of the SMS project were split into three phases.

Phase 1: To be compliant with WHS Act 2011 and Regulations

Phase 2: To ensure systematic Risk Management in Safety (AS3100)

Phase 3: To embed continual improvement in Safety (AS/NZS 4801).

During the limited period in which Mr Mulligan was contracted to provide services to the Council, he commenced Phase 1 of this total project.

The project deliverable descriptions for Phase 1 were:

- (1) Due diligence at Officer level evidenced through objective and target setting and reporting against performance.
- (2) Consultation arrangements in place that represent all workers in relation to health and safety matters.
- (3) Communication mechanisms in place across all workplaces that meet minimum WHS requirements – WHS notice boards; WHS “tab” on Intranet and enhanced Team Brief WHS element.
- (4) Systematic risk management referenced to legislation; systematic incident response and investigation.
- (5) Duty of care – risk management – implemented and measured i.e. health surveillance.
- (6) Induction and training commensurate with risk.
- (7) Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Teambrief.
- (8) Leadership performance measures implemented that facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections/interactions objectives and targets).
- (9) Safety management system that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801.
- (10) Software application evaluations complete.

The deliverables for this project confirm that Mr Mulligan's role during the limited period of his consultancy was focused on progressing development of the Council's overall Safety Improvement Program at a broad level and improving the overall SMS of the Council.

Mr Mulligan was given a very broad project with deliverables that required policy development and identification of issues. It is important for both the Minister and the public to understand that:

- (1) Mr Mulligan's responsibilities as a consultant in 2016 were limited to the above; and

- (2) Mr Mulligan was not responsible for the development and finalisation of the Council's Asbestos Management Plan (AMP).

Mr Mulligan's engagement as a consultant with the Council began on 5 October 2016 and ended on 23 December 2016, in line with the terms of the contract issued to Mr Mulligan in September 2016. The termination of the engagement had nothing to do with the quality of Mr Mulligan's work.

The statements made by the Minister in the third paragraph of her letter inform a misunderstanding of Mr Mulligan's role as a consultant while working at the Council. As a consultant Mr Mulligan was engaged to review high level policies and to make recommendations, again at a high level, about the Council's SMS. Mr Mulligan's role as a consultant for a short period in 2016 should not be seized upon in relation to any deficiencies in the Council's own procedures and performance, as I am advised.

Importantly, Mr Mulligan was not at any time during his 2016 consultancy, a member of any asbestos working group within the Council.

Mr Mulligan was engaged as a temporary employee of the Council with effect from 1 November 2017. Mr Mulligan was then appointed to the temporary role of Acting Director, Service Delivery. Mr Mulligan's role ended, by mutual agreement, on 12 February 2018.

The Minister refers to a "*pre-existing relationship*", between Mr Tooma and Mr Mulligan. That relationship has been identified by Mr Tooma in direct discussions with the Office of Local Government and in a communication with the Council after it was raised on air.

The Council has been informed that Mr Mulligan left Essential Energy in 2012. The professional relationship between Mr Mulligan and Mr Tooma ended at that time. The social relationship (which was part of the professional relationship) also ended at that time. Mr Tooma has been very clear in his statements to that effect.

In common with the Director, City and Community Outcomes, the Director, Development and Customer Services and the Acting Group Manager, People and Systems, Mr Mulligan was interviewed by Mr Tooma because he was the Acting Director, Service Delivery. Mr Tooma has confirmed that the interview with Mr Mulligan was to assist Mr Tooma's understanding of the organisational structure and the interaction of different Directorates. Suggestions have been made that no senior officers of the Council had been interviewed by Mr Tooma as part of his investigation. This is incorrect.

Paragraph 6 of the Minister's Letter

The sixth paragraph of the Minister's letter reads as follows:

"I note the comments made in Mr Cork's letter of 13 February 2018. I remain concerned that the processes adopted by Council did not ensure that prior associations were disclosed to the Council when engaging Mr Tooma. Clearly they should have been. In that regard I have been advised of the statement made by you to the Chief Executive of the Office of Local Government that both you and the General Manager Ms Dillon have lost confidence in the investigation. I note that the sudden termination of Council's Chief Safety Officer Mr Mulligan on 12 February 2018 is yet to be explained."

This paragraph repeats the earlier misunderstanding. Mr Mulligan was not the Chief Safety Officer of the Council on 12 February 2018, nor has he ever occupied that position. The circumstances of Mr Mulligan's departure from the Council have been noted above.

Mr Mulligan was recruited by the Council, through an open recruitment process managed by Hays Recruiting (Hays) to fill the temporary position of Acting Director, Service Delivery for a period of 12 months commencing on 1 November 2017.

The Service Delivery Directorate of the Council is responsible for the conduct of Council works within the City. The Service Delivery team is engaged in building maintenance, road works, repairs and renovations and other physical works across the City. Service Delivery is not responsible for the development of the Council's work, health and safety policies for the organisation.

Mr Tooma was first approached on 9 November 2017 to ascertain whether he would be available to accept appointment as an independent investigator into asbestos management and asbestos related risks, if the Council resolved to establish such an investigation. At that time, the Council's solicitors forwarded an email to Mr Tooma which included the following paragraph:

"We refer to our telephone conversation this morning.

We confirm we act for Blue Mountains City Council.

Our client needs a person to independently investigate recent asbestos related incidents. The matter is urgent.

Could you please confirm your firm can act and provide your costs disclosure and terms of engagement.

Thank you for your assistance."

Following discussions between the Council's solicitors and Mr Tooma, the Council's solicitors forwarded to the Council a letter in the following terms:

"We refer to our first letter of today's date.

As instructed, we have made contact with Mr Michael Tooma of Clyde & Co, to ascertain his availability to conduct the investigation that we have recommended.

*Mr Tooma and Clyde & Co are now conducting **a conflict of interest check, to ensure that there are no existing relationships** which would prevent their acceptance of our instructions. Mr Tooma considers that this is unlikely."*

In response, Mr Tooma forwarded an email to the Council's solicitors as follows:

"I can confirm that there are no conflicts.

We will send through our letter of engagement (will your firm be the client or will it be Blue Mountains City Council?).

In the meantime please send through any relevant background material."

It is very important to note that Messrs Cork and Tooma and their officers engaged in the appropriate checks to ascertain conflict of interest in this type of engagement. Mr Tooma corresponded that he was undertaking this specific review in accordance with the proper process for solicitors. He corresponded on 9 November 2017 with McPhee Kelshaw and confirmed that no such conflicts existed.

The specific, proper and formal conflict of interest process was followed and the engagement of Mr Tooma proceeded specifically on that basis.

Both the Council and Mr Cork are entitled to rely upon the representations made in this process by Mr Tooma and Clyde & Co.

A further review of this issue was undertaken by Maddocks solicitors at the direction of the General Manager. Maddocks confirms the appropriateness of the steps taken. This advice is Attachment 5 to this Mayoral Minute.

Paragraph 7 of the Minister's Letter

The seventh paragraph of the Minister's letter reads as follows:

"The Council's approach to address the asbestos management problem (including the independent investigations) was a process that was voted on by the Council as an elected body at the end of 2017. The Council's previous submission in response to the earlier Notice of Intention to Suspend argue that the elected body was not directly involved with what had happened earlier in 2017."

These statements made by the Minister are correct. The establishment of both independent investigations, including the investigation in relation to asbestos management and related issues, was the subject of resolutions passed by the Council at the meetings held on 14 November 2017 and 12 December 2017.

The Minister is also correct in noting the contents of the Council's submission to the Minister's Notice dated 13 December 2017. The Minister knows that the Councillors are not engaged in the day-to-day operations of the Council and is well aware of the guidance provided to elected Councillors in the OLG publication *Councillor Handbook* issued by the OLG in October 2017 (Handbook). The contents of the Handbook reflect the obligations of Councillors that are identified in the relevant provisions of the LGA.

The Minister's statement is incorrect in one detail. As far as the elected Councillors are concerned, the events of 2017 were the result of events and decisions extending back over a much longer period. The elected Council resolved to establish Mr Tooma's investigation not simply to understand the events of calendar year 2017 but also to understand earlier events and earlier decisions, going back over many years, which brought to the Council the problems, challenges and controversies that emerged in 2017.

Paragraph 8 of the Minister's Letter

The eighth paragraph of the Minister's letter reads as follows:

It now appears to be the case that the approach adopted by the Council, as an elected body, has not been robust enough to enable Council to implement a mechanism that satisfactorily addresses the significant risks posed by the asbestos management problem. Governance and probity (conflict of interest) issues of this nature have the potential to erode community confidence in the Council. As such, and noting the Council's request that I appoint a special advisor, it seems that the Council now accepts that external assistance may be required to assist Council to meet the challenges confronting it. In that context, I consider that a period of external management is also a possible solution.

The opening sentence of this paragraph appears to relate to the Council's management of asbestos matters, not to the independent investigation being conducted by Mr Tooma. However, the Minister may have intended to address both matters, and this Mayoral Minute proceeds on that assumption.

Attachment 6 to this Mayoral Minute provides an overview report on the Council's extensive work and commitment to addressing and improving asbestos management. It has been prepared by the actual Chief Safety Officer of the Council (Mr Alan Harris) and other responsible Council staff, and covers the period December 2017 to 20 February 2018. An overview of key actions implemented from 2012 to 2017 was detailed in the Council's earlier submission to the Minister dated 20 December 2017. On any fair reading, the elected Councillors and the community would conclude that the Council has acted diligently in its response to the identified asbestos management issues.

Amongst other actions, the Council has:

- (1) Engaged highly credentialed consultants and contractors to inspect Council premises, review Improvement Notices (INs) served by SafeWork, identify work required to be done to comply with those INs and then supervise the conduct of that work.
- (2) Created and engaged a full time Chief Safety Officer, initially as a temporary position but now to become a two year appointment as resolved by the Council on 30 January 2018.
- (3) Established the Blue Mountains Multi-Agency Asbestos Management Committee, with agencies including SafeWork, the Environmental Protection Authority (EPA), the Office of Local Government(OLG), the United Services Union (USU), the Mayor, the General Manager and staff representatives all invited to participate. This Committee currently meets on a fortnightly basis to provide advice to the Council in relation to the management of asbestos and to ensure all relevant parties work together constructively and effectively in this regard.
- (4) Worked closely with SafeWork to satisfy SafeWork that all Improvement Notices(Ins) and Prohibition Notices (PNs) have been fully addressed and satisfied and to secure the lifting of those Notices. At the date of this Mayoral Minute, all INs and PNs served on the Council have been satisfied, with the exception of eight ongoing Improvement Notices or Prohibition Orders issued by SafeWork as follows. All works relating the Notices are in progress and in consultation and agreement with SafeWork within the agreed timeframes.

- (5) Closely consulted with the USU in relation to the Council's responses to asbestos management.
- (6) Worked diligently and cooperatively to deliver and progress the meeting of requirements of the Performance Improvement Notice issued to the Council on 22 January 2018.
- (7) Allocated over \$4 million to resource required asbestos remediation and works for expenditure from November 2017 to June 2018.
- (8) Participated in the SafeWork NSW reinspection program in February 2018 at significant cost to both Council and SafeWork. The reinspection program included SafeWork inspectors, USU representatives, Asbestos specialist contractors, BMCC staff - with minimal issues identified.

These steps reflect the Council's response to the management of the asbestos matters. In addition to the steps already identified, the Council will consider the recommendations made by Mr Tooma in his report, concerning the Council's future management of asbestos. Mr Tooma's recommendations will be an important element in the Council's future response, although they will not be the only element.

Mr Tooma's investigation is critical to the identification of past deficiencies in the Council's policies and procedures to identify asbestos and to ensure employee safety.

In the Council's submission, the Council's response to the issues identified by the Minister in the PIO, and to the identified issues in relation to asbestos management, has been robust, detailed and appropriate at every level.

This paragraph in the Minister's letter must be considered in the context of the events commencing on 15 February 2018.

On that date, Mr Ray Hadley made allegations against Mr Tooma and his independent investigation based on Mr Tooma's alleged relationship with Mr Mark Mulligan. These allegations came as a complete surprise to me as Mayor. Further, given the relentless nature of Mr Hadley's allegations, and the attacks that Mr Hadley has made on the Minister for failing to "sack" the Council, it was my preliminary view that the Minister would respond to Mr Hadley's allegations and that the allegations could themselves be taken as a basis for moving to suspend the elected Council.

Materially, I note each of the following:

- (1) After those allegations were first broadcast, the General Manager of the Council received a telephone call from a senior officer in the OLG asking about the allegations.
- (2) No correspondence was forwarded to the Council by the OLG or by the Minister, prior to the Minister's Notice of Intended Suspension, seeking the Council's considered and formal response to the allegations made by Mr Hadley.
- (3) I made contact with the OLG and participated in a telephone conference with the Acting Chief Executive and the Director Legal, in which we discussed the allegations. I stated that my confidence in the investigation had been shaken by the allegations.

- (4) With the benefit of hindsight, I say the following. I had no information from Mr Tooma in response to the allegations. The Council had been given no time to formally seek a response from Mr Tooma or to consider the initial response that was given.
- (5) There has been an opportunity for the Minister or the OLG to seek precise information about the duties of Mr Mark Mulligan when he was engaged as a consultant in the period October to December 2016. Neither the Minister nor the OLG have had occasion to establish whether Mr Mulligan did through his work play any part in the Council's management of asbestos or in the development of the Council's AMP. As already noted, this was not the case.
- (6) Mr Tooma has subsequently confirmed, both in communications with the Council and in direct discussion with the OLG, the nature of his previous professional and associated social relationship with Mr Mulligan. He has also confirmed that this relationship came to an effective end in 2012.

Again with the benefit of hindsight, I would have preferred that Mr Tooma had informed the Council of that previous relationship, though I acknowledge his undoubted professional opinion that no conflict exists.

The Minister makes no suggestion of any fault on the part of the Council other than failing to "adopt" processes that were "robust" when establishing the independent investigation. The Minister is incorrect in that regard. The issue of conflicts of interest was addressed and Mr Tooma concluded that there was no conflict that would prevent Mr Tooma and Clyde & Co accepting engagement as the independent investigator.

The Minister's letter proceeds on the assumption that Mr Mark Mulligan exercised responsibilities in the Council that he never exercised. Mr Mulligan has never been the Council's Chief Safety Officer, nor has Mr Mulligan worked as an employee of the Council with responsibility for the development of the Council's AMP or the Council's response to emerging asbestos issues.

Mr Tooma has confirmed that he was not aware, when he agreed on 9 November 2017 to accept the Council's engagement as independent investigator that Mr Mulligan was working for the Council. The Council accepts that assurance. However, even if Mr Tooma had been aware of that fact, Mr Mulligan was not specifically accountable for any of the matters that are the subject of the terms of reference of the Tooma investigation.

The way to deal with the erosion of public confidence as a result of the spread of false and misleading information, is to identify the truth and to bring the truth to the attention of the broader community. Allegations are easily made. It is not difficult to assert the existence of a conflict of interest where no conflict exists.

It is easy to assert that a named individual had responsibility for matters for which the individual was never responsible. It is far more difficult to refute those incorrect allegations and to put the facts on the table in a way that people can easily understand and accept.

At this point it is necessary to address another source of significant pressure to which the Council as an organisation and the elected Councillors have been subject.

In response to the SafeWork INs, the Council engaged experienced licensed asbestos consultants and contractors to advise the Council and to carry out all required work. That matter is the subject of more detailed review in the attachments to this Mayoral Minute.

When the SafeWork inspection team returned to the Springwood Depot, and reassured Council staff that there were no dangers to their work, health and safety, that assurance was again challenged on radio. In response, the Minister for Better Regulation appeared to question the conclusions reached by SafeWork staff and directed a new team of SafeWork inspectors to attend at the Springwood Depot.

At that time, the second team of SafeWork inspectors (effectively auditing the work of the first SafeWork team) identified a number of new matters and issued PNs. The Council subsequently arranged for Greencap to review the entire Springwood Depot and to produce a very detailed report. I am advised that report confirms no imminent dangers to work, health and safety.

My comment in relation to a possible external adviser was again made in the heat of the emergence of the recent allegations and in the knowledge that the allegations would be relied upon to support demands for the suspension of the elected Councillors and the appointment of an Administrator.

It was in this context that the General Manager and I raised the possibility of the appointment of a special adviser. However, that adviser's role would not be confined to asbestos management, which the Council considers is well under control. Rather, it would assist the Council to navigate the responses to the relentless media campaign, and the reaction of OLG and SafeWork in response, while the Council continues to fully comply with the PIO.

Such a special adviser would have no role (and would need to have no role) in relation to the conclusion of Mr Tooma's investigation. In the Council's submission, that investigation should, given the resources devoted to it to date, go forward in one of three ways.

First, Mr Tooma could be permitted to complete his investigation. Secondly, Mr Tooma has indicated that he is ready (despite his disagreement with the allegations made against him in relation to Mr Mulligan) to stand aside as investigator in favour of his Clyde & Co partner, Ms Alena Titterton.

Ms Titterton is also a very experienced work, health and safety lawyer. Importantly, Ms Titterton has been present with Mr Tooma during all interviews of witnesses conducted during the investigation. Ms Titterton is also fully informed of all documents that have been provided for review and has undertaken reviews of those documents.

Ms Titterton is well equipped to complete Mr Tooma's investigation if the Minister and the OLG consider (despite the absence of substance in the recent allegations) that Mr Tooma should stand aside as investigator.

It is open to the Minister, however, to form the view that an entirely new investigator is appointed, although the organisational impact of this step may be very significant.

Paragraph 9 of the Minister's Letter

The ninth paragraph of the Minister's letter reads as follows:

I am also concerned by the statement in Council's letter of 25 January 2018 to the Office of Local Government that 'the Council does not and will not accept without challenge unfounded allegations made against it in the media or any other assertions that the Council is responsible for the actions of third parties over whom the Council has no lawful authority or who are engaged to carry out specialised work'. Council should be aware of its obligations under the Act including its express obligation to provide strong and effective leadership, planning and decision-making. In relation to asbestos management, Council has the responsibility to comply with its obligations under the Work, Health & Safety Act. Seeking to shift responsibility for failings of the Council onto others does not appear to be consistent with Council's legislative obligations.

There is attached to this Mayoral Minute a full copy of the Council's letter dated 25 January 2018. A review of the entire letter puts the Council's quoted words into proper context.

The quoted words appear in paragraph 3 of the letter, which is appropriately read with paragraph 2. Both paragraphs read as follows:

- "2. The Council has this week been served by the Minister with the PIO. The Council is acting to comply with the PIO in all respects. Where the Council is uncertain about timelines or particular requirements, those matters will be the subject of communication with your Office, as we seek to work with you to ensure that all requirements of the PIO are fully satisfied.*
- 3. The Council stands ready to be judged for its compliance with the PIO and for actions or inaction for which it is responsible. However, the Council does not and will not accept without challenge unfounded allegations made against it in the media or any other assertions that the Council is responsible for the actions of third parties over whom the Council has no lawful authority or who are engaged to carry out specialised work."*

When considered in their totality, these two paragraphs, and the letter as a whole, confirm that the Council was not on 25 January 2018 seeking to "*shift responsibility for failings of the Council onto others*". The Council explicitly stated that it was ready to be judged for its compliance with the PIO and for actions or inactions for which the Council is responsible.

The quoted statement was in fact responding to the relentless 2GB Ray Hadley campaign against the Council, and to unsubstantiated and incorrect allegations which were being made against it in the media. The Council was also responding to criticisms that the Council had failed to comply with or to satisfy the requirements of SafeWork, when the Council had been told by SafeWork inspectors that the Council had complied with and satisfied those requirements.

The events of January 2018 in relation to the Springwood Depot are in part set out in the letter dated 25 January 2018 that included the very limited quotation extracted by the Minister. The Council's letter reviews the events that led up to the dispatch of the Council's letter, including events that occurred in the period from 4 December 2017 to 22 December 2017.

The Council's concerns about the events surrounding the Springwood Depot were detailed in paragraphs 11, 12, 13, 14 and 15 of the Council's letter dated 25 January 2018. To ensure that those matters are fully understood, those paragraphs are set out below.

"11. The Council:

- (a) did not have any input whatsoever into the terms and requirements of IN 7-318117, as issued by the SafeWork inspector after his detailed inspection of the Depot;*
- (b) did not assess (lacking staff qualified to make the assessment) the work that was required to be conducted to fully comply with IN 7-318117;*
- (c) did engage SLR, a consultant and contractor with all required licenses under the WHS Act, to provide the advice and direction that the Council required;*
- (d) did engage Beasy to carry out all asbestos removal work and asbestos related work that was required at the Depot;*
- (e) did make resources available to ensure that this work was promptly carried out by Beasy and to ensure that the work was completed within the time limited by the SafeWork inspector;*
- (f) did direct that SLR and Beasy provide the documentation that would be required by the SafeWork inspector to satisfy himself that IN 7-318117 had been complied with in all respects; and*
- (g) did accept the SafeWork inspector's clearance of the Depot site, based on the documents provided by SLR and Beasy.*

12. On 24 January 2018, on the 2GB Morning Program, new and baseless allegations were made against the Council in relation to the Depot. In the course of an interview, the Minister for Better Regulation announced that SafeWork inspectors would return to the Depot. Subsequently, the Council has received a telephone call from a senior SafeWork inspector advising that there will indeed be a return visit.

13. The Council is at a complete loss to understand these events. If there are any issues in relation to asbestos management and asbestos risks at the Depot then those previously undetected matters and risks do not lie at the Council's door.

14. The Council will seek clarification from SafeWork today concerning the reason for the proposed further inspection of the Depot. However, it would appear that if a new team of SafeWork inspectors do attend today at the Depot, then they will do so to assess the adequacy of their own previous work, including the identification of any asbestos related issues and risks that are presently unknown to the Council, and that SafeWork have previously failed (in a very detailed inspection of the entire Depot) to identify.

15. The Council is being subjected to trial by media. We seek your assurance and the assurance of your Office and the Minister that the Council, and in particular the elected Councillors, as the governing body, will not be judged or be the subject of action by the Minister for matters that are not only operational matters but also matters beyond the control or expertise of even the Council's operational staff."

The Council is not a licensed asbestos removalist. The Council is not an asbestos hygienist. The Council does not claim to have the qualifications, experience and expertise of the contractors that the Council has engaged to work with it to satisfy the requirements of

SafeWork, nominated in discussions with the Council and through the INs and PNs that have from time to time been served by SafeWork.

The Council's statement was directed to a situation that the Council found to be unprecedented. On the one hand, the first team of SafeWork inspectors, responsible for the original INs at the Springwood Depot, cleared the Depot and at an on-site inspection confirmed that those clearances had been appropriately given. On the other hand, a second team of SafeWork inspectors attended at the Depot and reached a different conclusion. That different conclusion has now been called into question by the work of the independent asbestos consultants, Greencap.

The Council has been required to engage multiple consultants at different times. In some cases, consultants have been engaged to review the work of previous consultants. SafeWork apparently considered that it was necessary for the conclusions of SafeWork inspectors to be reviewed by a second team of SafeWork inspectors, in the context of relentless media attacks.

These are (in summary) the circumstances to which the Council was referring in paragraph 3 of the letter dated 25 January 2018.

The appointment of an Administrator or special adviser to the Council will not change this circumstance. Any Administrator will face the same challenge that the Council faces. Can the Council rely upon the conclusions reached by SafeWork inspectors, following the conduct of work nominated in INs or PNs? Is it reasonable for the Council to retain highly experienced and appropriately credentialed consultants and contractors, and then to rely upon their expertise and to accept their advice as to the adequacy of work that has been carried out?

These questions and concerns have nothing to do with the provision of strong and effective leadership by the elected Council, or the elected Council's role in planning and decision-making. The Council has displayed that leadership, that planning and that decision-making through its allocation of very significant financial and staff resources to address all issues relating to historic, current and future asbestos management.

The elected Council's community leadership, its planning and its decision-making are displayed through its resolutions to appoint independent investigators to ascertain the truth about the history of the Council's asbestos management, and to receive, as the governing body of the Council, the reports arising from that investigation. The elected Council considers that it is essential that the truth be fully revealed, freed from unfounded allegations on the Council itself.

Finally, it is important to note that when the Council was referring in its letter dated 25 January 2018 to "*the actions of third parties*" the Council was referring to SafeWork finding errors in their own work, while the media suggested that the Council should be removed as a direct result of decisions by SafeWork to review its own previous findings and decisions.

Paragraph 10 of the Minister's Letter

The tenth paragraph of the Minister's letter reads as follows:

I invite Council to make a submission in respect of the proposed suspension. As I consider the suspension is required as a matter of urgency, Council is invited to provide

its written response within 7 days of the date of this Notice. It is suggested that the Council tables the Notice of Intention at an open Council meeting and provides its submission by way of resolution of the Council.

In accordance with Chapter 13 Part 7 Section 438K, the Minister is required to give notice of intention to suspend a Council. Section 438K(2) provides that the notice is to specify:

- (a) the reasons why the Minister proposes to suspend the Council, and
- (b) the duration of the proposed suspension.

Any notice given by the Minister under s438K must specify a consultation period of not less than 7 days from the date the notice is served on the Council, if the Minister considers that the suspension is required as a matter of urgency. The Minister's notice was served on the Council under cover of Mr Gleeson's email dated 15 February 2018. The 7 day consultation period therefore expires on Thursday 22 February 2018.

Conclusion

The Minister has again provided the minimum possible period for the Council to prepare and submit its response to the Notice. The Minister will be aware that the Council, as an organisation, is facing many current challenges. The provision of such a short consultation period has required the Council to deploy staff from their usual duties to provide the required response, while following the required democratic process. That process has required the convening of an Extraordinary Council meeting at which this Mayoral Minute will be presented.

In the Council's submission dated 20 December 2017, the governing body emphasised the importance of democratic government within the City of Blue Mountains. The Notice indicates that the Minister stands ready and willing to end democratic government for a period of up to six months, based on inadequate information and, in one very material respect, inaccurate information.

In particular, the Minister has not been fully advised about the role of Mr Mark Mulligan as consultant and Acting Director for the Council during the limited periods in which he has been engaged to work for the Council. The Minister has also reached conclusions, based on an incorrect understanding of Mr Mulligan's roles, in respect of Mr Tooma's alleged conflict of interest.

Mr Tooma has delivered to the Council's solicitors his first interim report titled, "*Asbestos Management at Lawson Carpark, Lawson Mechanics Institute and Lawson Depot – February 2018*".

The report is detailed and comprehensive. The report includes Mr Tooma's findings on the matters put before him and makes the following recommendations:

- " 1. Council develop and implement a policy to ensure that Council controlled contaminated sites are remediated as soon as reasonably practicable and immediate steps taken to isolate contaminated sites until such remediation takes place.*
- 2. Council conduct a risk assessment upon the acquisition of any property (whether as a lease or ownership).*

3. Council review the roles, responsibilities and accountabilities in position descriptions of all staff in City & Community Outcomes to ensure they adequately cover Council's obligations in relation to dealing with asbestos contamination in land.
4. Council undertake a training needs analysis and deliver training to all staff in relation to asbestos management.
5. Council develop a staff programme designed to empower staff to stop work for health and safety concerns and encourage staff to report matters directly to the elected Council if necessary.
6. Council undertake a review and assessment of middle management capability to provide adequate supervision to ensure health and safety.
7. Council implement a safety culture programme to improve ownership of safety issues, reporting and learning from incidents.
8. Council implement a safety leadership programme which includes processes for ensuring due diligence by Council senior officers through:
 - a. Training and awareness of relevant legal obligations in relation to asbestos
 - b. Reporting and first hand verification of the implementation of systems and processes
 - c. Assessment and reporting to Council's elected members on the adequacy of resources for discharging safety legal duties regarding asbestos.
9. Council implement a product stewardship approach to stockpile management.
10. Council develop an audit program to verify that the above recommendations have been implemented.

Council may also wish to consider a review of its conflict policy in relation to development consents and to implement robust obligations requiring Council compliance and enforcement to report certain consent conditions breaches involving Council to the NSW Environment Protection Authority."

Mr Tooma has delivered to the Council's solicitors, the first of a number of interim reports. The report is titled "*Asbestos Management at Lawson Carpark, Lawson Mechanics Institute and Lawson Depot – February 2018*". It needs to be noted that these recommendations confirm that Mr Tooma's report does not adversely mention the elected Councillors as the governing body of the Council. The recommendations identify the need for significant improvements in the policies and procedures of the Council. These are matters that the working body will address.

The Council submits that the Minister should pause before taking any action. The Minister should allow sufficient time for the OLG to make appropriate enquiries to ascertain the truth in relation to each of the following matters:

- (1) The role of Mr Mulligan as consultant to the Council in the period from October 2016 to December 2016, while working part time as a consultant.
- (2) The role of Mr Mulligan as Acting Director, Service Delivery for the Council in the period from 1 November 2017 to 12 February 2018.

- (3) The relationship between Mr Tooma (as a solicitor to Essential Energy, working in the work, health and safety field) and Mr Mulligan as a member of the Essential Energy team, including confirmation that this relationship ended in 2012.
- (4) Mr Tooma's role of independent investigator (having regard to the terms of reference of the investigation adopted on 14 December 2017) and Mr Mark Mulligan's role as consultant (2016) and Acting Director (November 2017 to February 2018) for the Council.

The acceptance of unfounded allegations, together with attacks on named individuals, has now led to the current position. Mr Hadley has repeatedly demanded the sacking of the Council. The Minister has been criticised by Mr Hadley for failing to take that action.

Over coming months the Council will be required to consider many important issues. These issues relate to the City Deal project, the Council's Heritage Strategy, the redevelopment of the Council-owned property at 170-174 Leura Mall, Leura and swimming pool services in the City, to name only a few. The Council is also in the middle of introducing mandatory local planning panels and continuity of the existing elected body with this process is important relative to community acceptance of it.

These are matters of great importance to the community of the City of Blue Mountains. These matters should not be decided by an interim Administrator, but rather by the elected body chosen by the Community.

The Minister appears to have been led into error on very important issues in relation to the matters that are the subject of her letter to the Council dated 14 February 2018. We respectfully submit that the Minister should pause, get the facts, enter into a dialogue with the Council and then reconsider these matters before any action is taken.

There is nothing in the material put forward by the Minister to indicate that the governing body of the Council, which the Minister proposes to suspend, played any role in the events that are nominated in the Minister's letter as a basis for action. Once the incorrect statements and misunderstandings in that letter are addressed and corrected, there is no basis for the Minister to suspend the Council.

ATTACHMENTS/ENCLOSURES

1	Attachment 1. Email from Grant Gleeson, Director Legal, Office of Local Government (OLG) to BMCC General Manager - Notice of Intent to Suspend - Service of Documents - 15 Feb 18	18/37578	Attachment
2	Attachment 2. Letter from Minister for Local Government Gabrielle Upton to Mayor Mark Greenhill - Notice of Intent to Suspend - Dated 14 Feb 18 - Served 15 Feb 18	18/37296	Attachment
3	Attachment 3. Standard OLG document - Quick Guide to Suspension Orders - Summary sheet for Councils - November 2017 sent with 14 Feb 18 letter from Minister for Local Government Gabrielle Upton	18/37301	Attachment
4	Attachment 4. Minute 416 & 417 from 14 Nov 17 Council	18/37586	Attachment

	Meeting		
5	Attachment 5 - Maddocks Legal Advice on Probity of Tooma Engagement Processes 19.02.18	18/37588	Attachment
6	Attachment 6. BMCC Progress in Addressing Asbestos Management	18/37540	Attachment
7	Attachment 7. Letter from GM & Mayor BMCC to OLG 25 Jan 18	18/37589	Attachment

* * * * *

Attachment 1 - Attachment 1. Email from Grant Gleeson, Director Legal, Office of Local Government (OLG) to BMCC General Manager - Notice of Intent to Suspend - Service of Documents - 15 Feb 18

Lisa Sampson

From: Grant Gleeson <Grant.Gleeson@olg.nsw.gov.au>
Sent: Thursday, 15 February 2018 9:28 AM
To: Rosemary Dillon
Subject: FW: Multiple Documents - OLG - Blue Mountains
Attachments: A581864 - OLG - Blue Mountains - Tab 6 - draft notice of intention to suspend.PDF;
 Suspension Orders summary sheet for councils - November 2017 copy.docx

Dear Ms Dillon,

refer to our telephone conversation of this morning and note your advice that you are happy to accept service of documents for Blue Mountains City Council by way of email.

Please find attached, by way of service, a letter addressed to the Mayor of Blue Mountains City Council from the Minister for Local Government.

Should you have any queries regarding the same, please let me know.

Regards,

Grant Gleeson | Director Legal
 Accredited Specialist Local Gov't & Planning Law Office of Local Government | Locked Bag 3015, Nowra NSW 2541 p:
 1428 4136 | m: 0411 0399 41
 e: grant.gleeson@olg.nsw.gov.au

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Attachment 2 - Attachment 2. Letter from Minister for Local Government Gabrielle Upton to Mayor Mark Greenhill - Notice of Intent to Suspend - Dated 14 Feb 18 - Served 15 Feb 18



The Hon. Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage

Ref:

Doc ID: A581288



Clr Mark Greenhill
Mayor
Blue Mountains City Council
Locked Bag 1005
KATOOMBA NSW 2780

By email: mgreenhill@bmcc.nsw.gov.au

Dear Clr Greenhill

I refer to Council's letter of 13 February, 2018.

In accordance with section 438K of the *Local Government Act 1993* (the Act), I hereby give notice of my intention to issue a suspension order to suspend the Blue Mountains City Council for a period of 3 months and appoint an interim administrator under section 438M of the Act.

By way of background, significant issues regarding asbestos management and recruitment within the Council were raised toward the end of 2017. In response to these allegations, Council arranged for two investigations to be carried out, and commissioned reports to be prepared by the investigators, one in relation to issues in relation to recruitment (the Recruitment Investigation) and one in relation to asbestos (Asbestos Investigation).

Council's resolutions to commission those reports stress the importance of the investigations and the reports being independent. The details of Council's action was provided to Safework and the Office of Local Government, as regulators of safe workplaces and Council conduct more generally, respectively.

Integral to my decision in December 2017 to issue a Performance Improvement Order rather than proceed to suspension was the integrity of the processes Council had initiated, and the capacity of the Council to address the matters confronting it. Both of these considerations have been called into question as a result of a pre-existing relationship, apparently both professional and social in nature, between Mr Michael Tooma of Clyde and Co and the Council's (then) Chief Safety Officer Mr Mulligan which I note from Council's letter was not disclosed to it.

I note the comments made in Mr Cork's letter of 13 February, 2018. I remain concerned that the processes adopted by Council did not ensure that prior associations were disclosed to the Council when engaging Mr Tooma. Clearly they should have been. In that regard I have been advised of the statement made by you to the Chief Executive of the Office of Local Government that both you and the General Manager Ms Dillon have lost confidence in the Investigation. I note that the sudden termination of Council's Chief Safety Officer Mr Mulligan on 12 February 2018 is yet to be explained.

The Council's approach to address the asbestos management problem (including the independent investigations) was a process that was voted on by the Council as an elected

body at the end of 2017. The Council's previous submission in response to the earlier Notice of Intention to Suspend argued that the elected body was not directly involved with what had happened earlier in 2017.

It now appears to be the case that the approach adopted by the Council, as an elected body, has not been robust enough to enable Council to implement a mechanism that satisfactorily addresses the significant risks posed by the asbestos management problem. Governance and probity (conflict of interest) issues of this nature have the potential to erode community confidence in the Council. As such, and noting Council's request that I appoint a special adviser, it seems that Council now accepts that external assistance may be required to assist Council to meet the challenges confronting it. In that context, I consider that a period of external management is also a possible solution.

I am also concerned by the statement in Council's letter of 25 January 2018 to the Office of Local Government that *"the Council does not and will not accept without challenge unfounded allegations made against it in the media or any other assertions that the Council is responsible for the actions of third parties over whom the Council has no lawful authority or who are engaged to carry out specialised work"*. Council should be aware of its obligations under the Act including its express obligation to provide strong and effective leadership, planning and decision-making. In relation to asbestos management, Council has the responsibility to comply with its obligations under the Work Health and Safety Act. Seeking to sheet responsibility for failings of the Council on to others does not appear to be consistent with Council's legislative obligations.

I invite Council to make a submission in respect of the proposed suspension. As I consider the suspension is required as a matter of urgency, Council is invited to provide its written response within 7 days of the date of this notice. It is suggested that Council tables the notice of intention at an open Council meeting and provides its submission by way of resolution of the Council.

Yours sincerely



Gabrielle Upton MP
Minister for the Environment
Minister for Local Government
Minister for Heritage
Encl

14.2.18

Attachment 3 - Attachment 3. Standard OLG document - Quick Guide to Suspension Orders - Summary sheet for Councils - November 2017 sent with 14 Feb 18 letter from Minister for Local Government Gabrielle Upton



Quick Guide to Suspension Orders PROCESS FOR COUNCILS

Councils are responsible for driving their improvement and are generally best placed to do so. Where councils are dysfunctional or failing to meet their legal obligations, the Minister for Local Government and the Office of Local Government encourage and support councils to act voluntarily to fix the problem. Where this fails, new powers to issue suspension orders may be used.

This is a quick guide to how the process of issuing a suspension order will work.

HOW DOES THE PROCESS WORK?

- Notice of intention to issue a suspension order will be given.
- The council will be given no less than 14 days to respond (in urgent circumstances, the response time will be 7 days).
- Notices of intention will outline what is required.
- The council is encouraged to consider and table the notice of intention at an open council meeting.
- The council should provide its response to the notice of intention by resolution.
- The Minister is required to consider the council's submission when making a decision.
- If a suspension order is to be made it will be published in the Gazette and an interim administrator will be appointed.
- The interim administrator will be asked to table the suspension order at an open meeting and publish the order on the council's website.
- Suspension orders, amendments or extensions to suspension orders and orders appointing interim administrators are published in the Gazette.
- During the suspension period, councillors are suspended from office and as such are not entitled to exercise the functions of civic office or receive any fee or other remuneration.
- The Office of Local Government will monitor the implementation of suspension orders.
- The interim administrator will complete a compliance report on the implementation of any performance improvement order, if one is issued, and/or progress report on the suspension period, if one is required.
- Interim administrators are required to prepare a final written report no less than 14 days before the end of a suspension period.
- Each councillor and the general manager will be advised by the Minister when the suspension period has ended.
- The Office will publish orders, interim administrator reports and monitoring assessments on its website.

Further detail is contained in the Framework for Implementing Performance and Suspension Orders. This document, available at www.olg.nsw.gov.au, provides more detail about who can request an order, the criteria for issuing orders, actions the Minister must take to ensure procedural fairness (e.g. notice requirements) and procedures for implementation, including actions required by councils.

Version: November 2017

Attachment 4 - Attachment 4. Minute 416 & 417 from 14 Nov 17 Council Meeting

Confirmed Minutes:Ordinary Meeting: 14 November 2017

MINUTE NO. 416

The Council noted the report of the Mayor and the Council's response to the allegations made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council.

The Council noted the report of the Mayor and the Council's response to the allegations made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council.

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The Council noted the report of the Mayor and the Council's response to the allegations made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council.

MINUTE NO. 416

MM3. 17/234925. Confidential Business Paper - Independent Review into Asbestos Allegations

A MOTION was MOVED by Councillors Greenhill and Schreiber:

1. That the Council notes over recent days very serious allegations have been made against the Council in relation to the management of asbestos (including asbestos in Council owned properties) by the Council;
2. That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations and any further related matters that the Council solicitor and independent investigator deem merit further investigation;
3. That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;
4. That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;
5. That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;
6. That the Council notes that the Office of Local Government (OLG) has been made

Confirmed Minutes

Ordinary Meeting 14 November 2017

aware of the allegations made in the media; and

7. That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government, notifying him of the process resolved by the Council and including a copy of the Terms of Reference for the review of the allegations.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS.

For	Against
Councillors	Councillors

Greenhill Christie Fell Myles Hollywood Van der Kley McGregor Bowling Brown Foenander Hoare Schreiber	
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MINUTE NO. 417

MM4. 17/234931. Confidential Business Paper - Independent Review Into Publicly Made Allegations - Staff Appointments

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

1. That the Council notes over recent days very serious allegations have been made against the Council and against individual Council officers in relation to the recruitment of staff and consultants;
2. That the Council instructs Trevor Cork of McPhee Kelshaw solicitors, to engage an independent investigator to investigate and report on these allegations any further related matters that the Council solicitor and independent investigator deem merit further investigation;
3. That the Council's solicitors report to and advise the Council on the findings and recommendations made by the investigator at the conclusion of the investigation;
4. That the Council's solicitors communicate with the relevant agencies in relation to the investigation and at the conclusion of the investigation;
5. That the Council notes the Terms of Reference for the investigation that are Attachment 1 to this report;
6. That the Council notes that the Office of Local Government (OLG) and the Independent Commission Against Corruption (ICAC) have been made aware of the allegations made in the media; and
7. That the Council writes to Tim Hurst, Acting Chief Executive, Office of Local Government and The Hon Peter Hall QC, Chief Commissioner, Independent Commission against Corruption, notifying them of the process resolved by the Council and including a copy of the Terms of Reference for the review of the

Ordinary Meeting 14 November 2017

9

Against Councillors

המחלקה לבריאות הציבור

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Figure 1. The study area, showing the location of the study area in the north-east of Iran, and the location of the study area in the north-east of Iran.

Attachment 5 - Attachment 5 - Maddocks Legal Advice on Probity of Tooma Engagement Processes 19.02.18**Maddocks****Advice**

Lawyers
Angel Place
Level 27, 123 Pitt Street
Sydney NSW 2000
Australia

GPO Box 1692
Sydney New South Wales 2001

Telephone 61 2 9291 6100
Facsimile 61 2 9221 0872

info@maddocks.com.au
www.maddocks.com.au

DX 10284 Sydney Stock Exchange

| | |
|--------------------------|--|
| To | Confidential & Privileged

Rosemary Dillon
General Manager
Blue Mountains City Council |
| Date | 19 February 2018 |
| Subject | Blue Mountains City Council - Probity Advice - Engagement of Michael Tooma |
| Questions | <p>You have asked us to consider on an urgent basis whether:</p> <ol style="list-style-type: none">the processes implemented by Council's solicitor, Mr Cork, in engaging Mr Tooma as an independent advisor were adequate and robust enough in the circumstances; andMr Cork was able to reasonably rely upon the answers given by Mr Tooma. |
| Summary of advice | <p><i>Below is a summary of our advice. Please read it in conjunction with the detailed advice that follows.</i></p> <p>Based on the information before us it appears that the approach adopted by Mr Cork was reasonable and adequate in the circumstances. In our opinion, Mr Cork acted appropriately in relying on the representations of Mr Tooma as to whether a conflict was present.</p> |
| Contact | <p>Our Ref: PCW:MMM:7496295</p> <p>Melissa Mallos
61 2 9291 6223
melissa.mallos@maddocks.com.au</p> |

Partner**Prue Burns**

Detailed analysis

Background

3. We have been provided with a suite of documents over the course of 16, 17 and 18 February 2018 outlining the facts relevant to this advice. A complete list of the documents provided can be found at Schedule A to this advice. The facts are complex and cover a number of different issues. A summary of the facts as relates to the engagement of Mr Tooma is provided below. This advice has been provided on an urgent basis.
4. In November 2017 Blue Mountains City Council (**Council**) was served with a Notice of Intention to Suspend the elected council (**Suspension Notice**) by the Minister for Local Government (**Minister**) on the basis of alleged issues in relation to the management of asbestos (**Asbestos Investigation**) and recruitment. Following receipt of the Suspension Notice Council made submissions to and liaised with the Office of Local Government and the Minister. As part of those submissions, Council committed to commissioning two separate independent investigations to consider the allegations made against Council.
5. In his letter dated 16 February 2018 Mr Cork (Council's solicitor) outlines the facts leading to the engagement of Mr Tooma as the independent investigator for the Asbestos Investigation. We are instructed that Mr Cork's summary is accurate to the best of Council's knowledge. Relevantly:
 - 5.1 On or about 8 November 2017 Mr Cork was approached by Mr Greenwood, the then General Manager of Council, to consider potential candidates for the role of independent investigators for the two investigations.
 - 5.2 Mr Cork discussed the matter with his co-principal, Steven Nicholson who suggested Michael Tooma as investigator for the Asbestos Investigation.
 - 5.3 Mr Cork reviewed Mr Tooma's profile and agreed that Mr Tooma was 'a leader in the field of work, health and safety law'.¹
 - 5.4 On 9 November 2017, Mr Nicholson contacted Mr Tooma by telephone and email. In an email sent at 8:08am on that date, Mr Nicholson describes the scope of work for Mr Tooma as follows:

We confirm we act for Blue Mountains City Council.

Our client needs a person to independently investigate recent asbestos related incidents. The matter is urgent.
 - 5.5 In that same email, Mr Nicholson asks:

Could you please confirm that your firm can act and provide your costs disclosure and terms of engagement.
 - 5.6 At 12:17pm on 9 November 2017, Mr Cork wrote to Council and confirmed that contact had been made with Mr Tooma and that conflict searches were being undertaken.
 - 5.7 At 12:41pm on the same day, Mr Tooma sent an email to Mr Nicholson stating, *inter alia*:

I can confirm there are no conflicts.

¹ Paragraph 4, Letter from Trevor Cork to Rosemary Dillon, dated 16 February 2017

- 5.8 During conversations leading to the engagement of Mr Tooma, Mr Tooma indicated:
- 5.8.1 he had previously met the Mayor of the Council, Councillor Mark Greenhill;
 - 5.8.2 Mr Tooma had encountered Councillor Greenhill in the course of legal proceedings where Councillor Greenhill was acting in his capacity working as a Senior IR Manager for Networks NSW;
 - 5.8.3 Mr Tooma had not received instructions from Councillor Greenhill, nor did he have any personal relationship with Councillor Greenhill.
- 5.9 Based on his conversations with Mr Tooma, Mr Cork concluded that the matters raised by Mr Tooma did not give rise to a suspicion that Mr Tooma had any conflict and should not be engaged as Council's independent investigator.
- 5.10 On 9 November 2017 Mr Tooma sent Mr Cork a letter of engagement (**Engagement Letter**). In that letter, the scope of work to be undertaken by Mr Tooma and his firm, Clyde & Co is described as follows:
- We have been instructed by your firm, who are acting on behalf of Blue Mountains City Council, to conduct an independent investigation into recent asbestos related incidents involving the Blue Mountains City Council.
- 5.11 The Engagement Letter indicates that the 'client' is McPhee Kelshaw Solicitors and Conveyancers, and that the principal point of contact is Trevor Cork. The Engagement Letter outlines the lawyers who will work on the matter, the charges, billing practices, payment of charges, limitation of liability and client identity procedures. Part 9 of the Engagement Letter is headed "Conflicts of Interest" and states:
- Clyde & Co adheres to the conflict and confidentiality rules which apply in New South Wales. To the extent that there are matters which are not covered by the local ethical rules and guidelines, Clyde & Co will adhere to those of the Solicitor Regulation Authority of England and Wales. Clause 13 of our Terms of Business contains important information regarding our approach to managing conflicts and confidentiality, which we ask you to review carefully.
- 5.12 Clause 13 of the Terms of Business is headed 'Confidentiality and conflicts'. That clause relates primarily to the management of sensitive information and acting for two or more clients where the duties owed to those clients conflict and expressly states that Clyde & Co adherer to the confidentiality rules that apply in New South Wales.
- 5.13 In outlining the actions taken by his firm, Mr Cork states:
- Mr Tooma was not at that time engaged by the Council. However, I was satisfied that the issue of possible conflicts had been appropriately addressed by Mr Tooma and that he was confident that no conflicts then existed. I was also satisfied that the issue was appropriately addressed in the Clyde & Co standard letter of engagement and in the Terms.²
- 5.14 On 14 November 2017 Council considered Mayoral Minutes 3 and 4 (**MM3** and **MM4**). The subject of MM3 was stated to be "independent review into asbestos allegations". The recommendations for MM3 included:
- 5.14.1 That Council instructs Trevor Cork of McPhee Kelshaw solicitors to engage an independent investigator to investigate and report on [the asbestos allegations]; and
 - 5.14.2 The Council notes the Terms of Reference for the investigation that are Attachment 1 to this Report.

² Paragraph 18, Letter from Trevor Cork to Rosemary Dillon, dated 16 February 2017

- 5.15 MM3 also contains a section headed 'The Process undertaken by Council' which states:

In order to achieve independence from Council and Council officers during the review, and to ensure that all legal issues, including potential liability issues, are addressed, this report proposes that that (sic) Council engage the Council's solicitor, Trevor Cork of McPhee Kelshaw to manage the referral and investigation.

An independent and appropriately experienced reviewer will be appointed to conduct the investigation.

The Council will ensure open and transparent communication with relevant agencies throughout the process...

- 5.16 The resolution was passed unanimously (**Resolution**).
- 5.17 On 15 November 2017 Mr Cork wrote to Council and recommended that Council engage Mr Tooma as the independent investigator for the Asbestos Investigation. Mr Cork also made a recommendation regarding the independent investigator for the second investigation.
- 5.18 On 16 November 2017 Mr Cork wrote to Mr Tooma to formally engage him on behalf of Council. The letter also provided Mr Tooma with a copy of the Terms of Reference endorsed by the Resolution. Documentation relevant to the Asbestos Investigation was provided to Mr Tooma during the course of November and December 2017.
- 5.19 In early December 2017 Mr Cork and Mr Tooma agreed on a summary of the matters being investigated by Mr Tooma.
- 5.20 On 12 December 2017, Council resolved to adopt amended terms of reference for the Asbestos Investigation, which were provided to Mr Tooma.
- 5.21 On 15 December 2017 Mr Tooma provided Mr Cork with a Draft Action Plan (for discussion) which identified proposed interim reports and the timetable for the conduct of the Asbestos Investigation.
- 5.22 We are instructed that from this point the Asbestos Investigation proceeded as outlined in the Draft Action Plan.
- 5.23 During the week commencing 12 February 2018 allegations were made asserting a conflict of interest on behalf of Mr Tooma. The allegations cite the relationship between Mr Tooma and Mark Mulligan a (now former) employee of Council as the basis of the Conflict. A detailed account of that relationship is set out in an email from Mr Tooma, dated 13 February 2018.

Qualifications and assumptions

6. We have not been asked to provide advice on whether the actions of Mr Tooma were appropriate in the circumstances, nor have we been asked to consider whether a conflict of interest has arisen.
7. Consequently, we have not drawn any conclusions on these matters. We would be happy to consider these issues upon receipt of further instructions.

Legal analysis

8. As outlined above, at the time Mr Tooma accepted the engagement from Mr Cork, Mr Tooma sent the Engagement Letter to Mr Cork. The text of the Engagement Letter and clause 13 of the Terms of Business attached to it both indicated that Clyde & Co adhered to the conflict and confidentiality rules which apply in New South Wales.

9. Those rules as they relate to conflict of duties, are relevantly rules 10,11 and 12 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Rules)*. Rule 11 relates to conflicts of duties concerning current clients. Rule 12 relates to conflicts concerning a solicitor's own interests and states:

12.1 A solicitor must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the solicitor or an associate of the solicitor, except as permitted by this Rule.

...

10. In addition to this, prior to his formal engagement Mr Tooma confirmed that "there are no conflicts". We have not been asked to consider whether Mr Tooma was correct in asserting there was no conflict. Rather, we have been asked whether the processes implemented by Mr Cork were robust enough in the circumstances, and whether it was reasonable for Mr Cork to rely on Mr Tooma's representations.
11. It is usual practice for a solicitor who is seeking to engage an external consultant on behalf of their client to make enquires as to whether that consultant is free from conflict. Such enquiries can be made verbally, in writing or both. In the current circumstances the enquiry was made in writing. It is also usual practice for solicitors to rely upon the responses to such enquiries. It is not common practice for the engaging party to test the veracity of such representations, or to undertake further due diligence in this regard.
12. In the current situation Mr Cork received confirmation from Mr Tooma that there was no conflict in Mr Tooma's email of 9 November 2017. The Engagement Letter also confirmed Clyde & Co's adherence to the Rules and outlined action that would be taken in circumstances where a conflict was identified.
13. Whilst we acknowledge that Mr Tooma was not provided with the terms of reference of the investigation (and the amended terms of reference) until after his engagement, rule 12.1 of the Rules places a continuing obligation on solicitors. It is fair to say, that it was incumbent on Mr Tooma to consider whether a conflict arose at first instance, and then to reconsider the issue at relevant times during the investigation – particularly upon receipt of the terms of reference and the amended terms of reference. Having said this, it would not be reasonable to expect Mr Cork to have to prompt Mr Tooma to reconsider the issue of whether there was a conflict during the course of the investigation. This is particularly so given Mr Tooma is a senior solicitor with 20 years' experience.
14. Based on the information provided to us, and the facts outlined in those documents, it is our opinion that Mr Cork followed a reasonable process in his engagement of Mr Tooma. Further, it is our opinion that it was reasonable in the circumstances for Mr Cork to rely on Mr Tooma's representations that he was free from conflict.

Contact

Please contact Melissa Mallos on 02 9291 6223 or email melissa.mallos@maddocks.com.au if you have any other queries.

Schedule A – Documents provided by Council

1. Email from Rosemary Dillon, General Manager, Blue Mountains City Council to Melissa Mallos, dated 16 February 2018, received at 8:10pm
2. Letter to Rosemary Dillon, General Manager, Council, from Trevor Cork, dated 16 February 2018 and its attachments:
 - 2.1 Email correspondence between Trevor Cork and Michael Tooma date 9 November 2017;
 - 2.2 Letter from Trevor Cork to Robert Greenwood, General Manager, Council, dated 9 November 2017;
 - 2.3 Email from Michael Tooma to Trevor Cork, dated 13 February 2018;
 - 2.4 Engagement Letter from Michael Tooma to Trevor Cork, dated 9 November 2017;
 - 2.5 Attachment to Mayoral Minute MM3 – Terms of Reference – dated 14 November 2017;
 - 2.6 Letter from Trevor Cork to Michael Tooma, dated 16 November 2017;
 - 2.7 Amended Terms of reference – First Investigation;
 - 2.8 Email from Michael Toom to Trevor Cork, dated 15 December 2017 attaching draft action plan for discussion.
3. Letter from Trevor Cork to Grant Gleeson, Director Legal Services, Office of Local Government, dated 13 February 2018
4. Letter from Gabrielle Upton, Minister for Local Government, to Mark Greenhill, Mayor, dated 14 February 2018
5. Submission by Council to the Minister for Local Government dated 20 December 2017
6. Letter from Rosemary Dillon, General Manager, Council and Mark Greenhill, Mayor, to Minister for Local Government, dated 20 December 2017
7. Letter from Rosemary Dillon, General Manager, Council and Mark Greenhill, Mayor, to Minister for Local Government, dated 18 January 2018
8. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
9. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
10. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
11. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 25 January 2018
12. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 23 January 2018
13. Letter from Rosemary Dillon, General Manager, Council to Tim Hurst, Acting Chief Executive, Office of Local Government, dated 25 January 2018

14. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 2 February 2018
15. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 8 February 2018
16. Letter from Rosemary Dillon, General Manager, Council to Minister for Local Government, dated 13 February 2018
17. Mayoral Minutes 3, dated 14 November 2017
18. Letter from Trevor Cork to Robert Greenwood, General Manager Council, dated 15 November 2017

Attachment 6 - Attachment 6. BMCC Progress in Addressing Asbestos Management

Attachment 4:**BMCC Progress in Addressing Asbestos Management**

- A. Progress to date in implementing the Performance Improvement Order issued to BMCC on 22 January 2018 by the Minister Local Government (as of 19 February 2018)

| | Action Required to Improve Performance | Comment on Progress to Date |
|----|--|--|
| 1. | Council identifies and implements measures that strengthen reporting to the governing body which enables Council to give leadership on implementing all recommendations arising from the two independent investigations initiated by Council by resolution on 14 November 2017 regarding asbestos management and organisational matters and the investigations being undertaken by SafeWork and EPA. | <p>While the independent investigations have not yet been completed, the following measures have been implemented to date to strengthen reporting to the governing body:</p> <ul style="list-style-type: none"> • Weekly Councillor briefings on the status of the status of all investigations underway and the Council's asbestos management actions have been implemented commencing 21 November 2017 through to 13 February 2018 – with Councillors having access to power point presentations and associated notes supporting them. • A weekly or fortnightly electronic <i>Councillor Information Newsletter: Update on Asbestos Management and Related Matters</i> has been emailed to Councillors. • A Blue Mountains Multi-Agency Asbestos Management Committee has been established with representation from the Mayor or his delegate, the General Manager or her delegate, SafeWork NSW, the EPA, the USU and Council management and staff. |
| 2. | <p>Following consideration of the recommendations from the investigations, Council develops Improvement Plans which include appropriate milestones. In doing so Council:</p> <ol style="list-style-type: none"> Utilise the services of an appropriately qualified consultant to assist Council in assessing the adequacy or otherwise of the existing system of internal control and reporting to the governing body Provides all necessary resources to ensure the Improvement Plans are fully implemented Require for the next 12 months the | <p>Not yet progressed as dependent on outcomes of investigations, which are not yet complete.</p> <p>However work has progressed to support this action occurring including:</p> <ul style="list-style-type: none"> • Relative to a) staff are commencing work on consultant engagement procurement process • Relative to b) resources are being set up to ensure capacity to implement Improvement Plans including: recruitment of a Chief Safety Officer (CSO) for an initial 3 month period; Council resolution on 30 January to recruit the CSO position for a two year period; establishment of an Asbestos Response Team with 4 positions recruited; a Staff Asbestos Training Program is being |

| | Action Required to Improve Performance | Comment on Progress to Date |
|----|--|---|
| | <p>General Manager to report in writing to the monthly meeting of Council on progress against the Improvement Plans</p> <p>d. Engage accredited experts to provide training to the governing body on its obligations under work, health and safety, and environmental protection legislation.</p> | <p>implemented.</p> <ul style="list-style-type: none"> Relative to d) staff are currently working on consultant engagement procurement process. |
| 3. | Council ensures there is an adequate mechanism in place which requires the General manager to take action so that all concerns and incidents of possible contravention of relevant Work Health and safety and environmental protection legislation are reported immediately to the relevant agencies and the Minister. | To date the General Manager has made 6 notifications to the Minister for Local Government on various incidents and concerns of possible contravention dated 23 January, 25 January, 2 February, 8 February and 14 February (2 |
| 4. | The Improvement Plans must be sent to SafeWork NSW and the Environmental Protection Authority (EPA) for their review | Not yet progressed as Investigations not yet completed and Improvement Plans have not yet been developed in response to them |
| 5. | Council liaises with SafeWork as to whether or not it would be appropriate in the circumstances for Council to give an Enforceable Undertaking | <p>As required within one month of the PIO taking effect, the Council has liaised with SafeWork regarding possibility of entering into an Enforceable Undertaking.</p> <p>On 16 February 2018, the Council via our solicitor Mr Trevor Cork, wrote to Mr Rick Bultitude, Director, Investigations and Emergency Response at SafeWork NSW regarding "whether or not it would be appropriate in the circumstances for Council to give an Enforceable Undertaking."</p> <p>On 18 February 2018 the Council received an email from Mr Rick Bultitude, confirming receipt of the correspondence of 16 February and stating: "As mentioned in the letter, the SafeWork NSW investigation remains ongoing. Dialogue between the parties with respect to a WHS Undertaking at this point would not be appropriate."</p> |
| 6. | Councillors undertake training on their role and responsibilities as members of the governing body | This needs to be implemented within 2 months of 22 January, the date that the Performance Improvement Order took effect i.e. by 19 February 2018. Staff are currently progressing procurement of consultants/ contractors to provide the training. |

B. Summary of Other Asbestos Management Activity (as of 19 February 2018)

The Council has over recent months faced very significant challenges in relation to its management, as an organisation, of issues relating to asbestos and asbestos related risks. The Council acknowledges that there have been organisational failures in relation to those matters. However, the Council has acted diligently, and continues to act, to address all identified issues.

The actions of the Council relative to asbestos management are highlighted in its submission to the Minister for Local Government made on 20 December 2017, in response to the notification of intention to suspend the Council. This submission shows the Council acted with intent to strengthen and address asbestos management in a more concerted way from May 2017, and also notes Council's actions since 2012 to improve overall safety and asbestos management.

Since the date of the Council's previous submission to the Minister for Local Government made on 20 December 2017, the Council has taken its management of asbestos to an even higher level in the period from December 2017 to now than it had previously, including the following:

December 2017

1. Appointment of a Chief Safety Officer to oversee the Council's asbestos management response.
2. Blue Mountains City Council received compliance from SafeWork NSW against a majority (77%) of SafeWork NSW Notices with 8 still not yet due to be completed.
3. Initial (first) SafeWork NSW Inspection program was finalised with SafeWork NSW advising Council that a majority of outstanding actions had been completed satisfactorily with additional information submitted for SafeWork NSW review on remaining Notices.
4. Comprehensive Asbestos Management Training & Awareness Program continued with hundreds of Council workers receiving formal training or awareness presentations. The program is continuing with all Council employees to receive training in Quarter 1 of 2018.
5. The Council established a 24 hour staff asbestos hotline to improve the ease of staff notification of potential ACM incidents.
6. The Council has allocated over \$4 million towards asbestos remediation and related activity.
7. The Council developed regular staff and Councillor newsletter updates on both current issues relating to asbestos management and the implementation of the Asbestos Management Plan and procedures.

January 2018

1. Blue Mountains City Council initiated the Asbestos Response Team (ART). A new initiative created to afford Council with its own asbestos response capability and allowing Council to remediate many orphaned (dumped) asbestos scenarios, without the timely and expensive requirement of engaging licensed asbestos removalists. The ART works under strict guidelines established in the NSW Codes of Practice on the Safe Management of Asbestos and the Safe Removal of Asbestos.
2. BMCC Chief Safety Officer commenced reporting to the elected Council on the progress of all asbestos management issues. Such reporting is afforded fortnightly by way of a detailed in person presentation.

3. The Asbestos Response Team responded to and completed 32 asbestos removal activities in a 3 week period, with the first week in January taken up with Team training activities.
4. Council worked in close cooperation with Licensed Asbestos Assessors to ensure all Council workplaces had new and updated Asbestos Registers for each workplace.

February 2018

1. Council engaged with SafeWork NSW and Licensed Asbestos Assessors to undertake a comprehensive (27 Site) re-inspection program, subsequent to comments aired on the 2GB Ray Hadley Morning Program and directions from Minister Kean. The SafeWork NSW re-inspection program was undertaken over a two week period and involved United Services Union representatives, SafeWork NSW Inspectors, Council's Asbestos Response Team and other nominated staff.
2. Subsequent to the finalisation of the re inspection program SafeWork NSW briefed all involved persons and agencies to the effect that no risk to health and safety was identified at any of the re visited workplaces. An amount of maintenance and minor repair was identified and ongoing maintenance programs are in place.
3. Council initiated a multi-agency Asbestos Management Committee in February which brings together all key stakeholders including SafeWork NSW, The Environmental Protection Agency, United Services Union and worker representatives. The Office of Local Government was also formally invited to participate.
4. The Committee has been very successful as a key conduit for updating all involved parties on the progress of asbestos management work and affording an avenue for each represented group to discuss new issues or concerns, and have such concerns discussed and resolved at high level.
5. Council in full consultation with SafeWork NSW undertook a complete review of the Springwood Depot Asbestos Register and will commence remediation work on areas identified in February 2018.
6. Progression of the engagement of a suitably qualified occupational medicine physician with experience in asbestos, to provide further advice and support as well as an information and education program to BMCC employees.

Attachment 7 - Attachment 7. Letter from GM & Mayor BMCC to OLG 25 Jan 18



25 January 2018

Reference File: 18/20697

Mr Tim Hurst
Acting Chief Executive
Office of Local Government
Locked Bag 3015
NOWRA NSW 2541

Dear Mr Hurst

**SUBJECT Blue Mountains City Council – Performance Improvement
Order 22 January 2018 (PIO)**

1. We write to put before you and before Minister Gabrielle Upton recent events of deep concern to the Council.
2. The Council has this week been served by the Minister with the PIO. The Council is acting to comply with the PIO in all respects. Where the Council is uncertain about timelines or particular requirements, those matters will be the subject of communication with your Office, as we seek to work with you to ensure that all requirements of the PIO are fully satisfied.
3. The Council stands ready to be judged for its compliance with the PIO and for actions or inaction for which it is responsible. However, the Council does not and will not accept without challenge unfounded allegations made against it in the media or any other assertions that the Council is responsible for the actions of third parties over whom the Council has no lawful authority or who are engaged to carry out specialised work.
4. On Tuesday 23 January 2018 the General Manger forwarded to the Minister a letter prepared to comply with Action Item 3 (AI 3) of the PIO. That letter identified an incident that had occurred at the Council's Springwood depot, located at 2 Lawson Road, Springwood (Depot). A copy of the letter is **attached**.
5. Your office is aware that on 4 December 2017 a senior SafeWork inspector issued to the Council Improvement Notice 7-318117 (IN 7-318117) in relation to the Depot, a copy of which is **attached** to this letter.
6. IN 7-318117 was issued by SafeWork after the inspector concerned attended at the Depot. The inspector was present at the Depot for the better part of one full day. His inspection of the Depot was detailed, not cursory. IN 7-318117 was issued by the inspector after that detailed inspection.

7. In response to the issue of IN 7-318117 the Council engaged SLR Consulting (SLR) to advise the Council concerning the work to be undertaken. SLR is licensed by SafeWork under the *Work Health & Safety Act, 2011* (WHS Act) and *Work Health and Safety Regulation 2017* (WHS Regulation) to provide such expert advice and to supervise such work.
8. SLR's advice was promptly given. In response to that advice the Council engaged Beasy Pty Limited (Beasy) to carry out all required work at the Depot. That work was completed by Beasy under the supervision of SLR. The completed work was inspected by SLR.
9. SLR prepared a report describing the work that was undertaken and certified to the responsible SafeWork inspector that the requirements of IN 7-318117 had been fully satisfied. In response to that certification, the SafeWork inspector confirmed that the Council had fully complied with IN 7-318117 and cleared the Depot for continued use.
10. All of this action was taken in a period from 4 December 2017 to 22 December 2017, all as required by IN 7-318117.
11. The Council:
 - (a) did not have any input whatsoever into the terms and requirements of IN 7-318117, as issued by the SafeWork inspector after his detailed inspection of the Depot;
 - (b) did not assess (lacking staff qualified to make the assessment) the work that was required to be conducted to fully comply with IN 7-318117;
 - (c) did engage SLR, a consultant and contractor with all required licenses under the WHS Act, to provide the advice and direction that the Council required;
 - (d) did engage Beasy to carry out all asbestos removal work and asbestos related work that was required at the Depot;
 - (e) did make resources available to ensure that this work was promptly carried out by Beasy and to ensure that the work was completed within the time limited by the SafeWork inspector;
 - (f) did direct that SLR and Beasy provide the documentation that would be required by the SafeWork inspector to satisfy himself that IN 7-318117 had been complied with in all respects; and
 - (g) did accept the SafeWork inspector's clearance of the Depot site, based on the documents provided by SLR and Beasy.
12. On 24 January 2018, in the media, new and baseless allegations were made against the Council in relation to the Depot. In the course of an interview, the Minister for Better Regulation announced that SafeWork inspectors would return to the Depot. Subsequently, the Council has received a telephone call from a senior SafeWork inspector advising that there will indeed be a return visit.

13. The Council is at a complete loss to understand these events. If there are any issues in relation to asbestos management and asbestos risks at the Depot then those previously undetected matters and risks do not lie at the Council's door.
14. The Council will seek clarification from SafeWork today concerning the reason for the proposed further inspection of the Depot. However, it would appear that if a new team of SafeWork inspectors do attend today at the Depot, then they will do so to assess the adequacy of their own previous work, including the identification of any asbestos related issues and risks that are presently unknown to the Council, and that SafeWork have previously failed (in a very detailed inspection of the entire Depot) to identify.
15. We seek your assurance and the assurance of your Office and the Minister that the Council, and in particular the elected Councillors, as the governing body, will not be judged or be the subject of action by the Minister for matters that are not only operational matters but also matters beyond the control or expertise of even the Council's operational staff.
16. On behalf of the Council we seek to convene a telephone conference with you later today. We will both participate in that conference as the senior officers of the Council, within our respective spheres of responsibility, being the governing body and the executive of the organisation.
17. Pending your response we will continue our dialogue with SafeWork concerning recent events. If there are any further relevant matters arising from that dialogue then those matters will also be put before you later today.

Yours faithfully



MARK GREENHILL OAM
Mayor, City of Blue Mountains



DR ROSEMARY DILLON
General Manager
Blue Mountains City Council

CC: The Hon. Gabrielle Upton, Minister for Local Government

BLUE MOUNTAINS CITY COUNCIL
MINUTES OF EXTRAORDINARY COUNCIL MEETING

20 February 2018

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Minutes of the Extraordinary Council Meeting of the City of Blue Mountains, held in the Chambers on Tuesday, 20 February 2018, commencing at 7.30pm.

There were present:

The Mayor (Councillor Greenhill) in the Chair, and Councillors Bowling, Brown, Christie, Fell, Foender, Hoare, Hollywood, McGregor, Myles, Schreiber, Van der Kley.

In attendance:

General Manager; A/Director Service Delivery; Director Development & Customer Services; A/Group Manager, People & Systems, A/Group Manager Integrated Planning and Finance; Executive Officer; Chief Safety Officer; Manager Development & Planning Services; Manager Building & Compliance Services; Program Leader Corporate Communications & Marketing; Executive Principal; Meeting & Councillor Support Officer; Coordinator Corporate Marketing; Communications Office; Executive Assistant to the Director D&CS; Senior Environmental Ranger; Environmental Rangers.

Prayer/Reflection:

The Prayer/Reflection was read by the Mayor, as was the acknowledgement of the traditional owners, the Darug and Gundungurra people.

Apologies

Nil

Declarations of Interest – Ordinary Meeting, 20 February 2018

Nil

MINUTE NO. 33

Procedural - Procedural Motion

A MOTION was MOVED by Councillors Fell and Van der Kley:

That the Council endorses Vision TV, following their written request, to use recording devices to film the meeting pertaining to the Item 1 - Submission in response to the Minister for Local Government's notice of intended suspension of the elected Councillors of Blue Mountains City Council, held at the Extraordinary Meeting of 20 February 2018.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

| For | | Against |
|--------------------|--------------|--------------------|
| Councillors | Greenhill | Councillors |
| | Christie | |
| | Fell | |
| | Myles | |
| | Hollywood | |
| | Van der Kley | |
| | McGregor | |
| | Bowling | |
| | Brown | |
| | Foenander | |
| | Hoare | |
| | Schreiber | |

MINUTE NO. 34Procedural - Procedural Motion

A MOTION was MOVED by Councillors Brown and Schreiber:

That the Council adjoins to allow the registration of speakers to speak for three (3) minutes, if more than six (6) speakers are received then speakers are to be drawn from a hat, with up to six (6) speakers permitted.

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

| For | | Against |
|--------------------|-----------|--------------------|
| Councillors | Christie | Councillors |
| | Brown | Greenhill |
| | Hoare | Fell |
| | Schreiber | Myles |
| | | Hollywood |
| | | Van der Kley |
| | | McGregor |
| | | Bowling |
| | | Foenander |

MINUTE NO. 35

1. 18/35289. Submission in response to the Minister for Local Government's notice of intended suspension of the elected Councillors of Blue Mountains City Council

A MOTION was MOVED by Councillors Brown and Schreiber:

- 1. That the Council notes this report;**
- 2. That the Council makes a submission to the Minister in response to the Minister's Notice of Intention to Suspend the Council, under the signature of the Mayor and the Deputy Mayor, and in the terms of this Mayoral Minute;**
- 3. That the Council notes the receipt by the Council's solicitor of Mr Tooma's interim report titled 'Asbestos management of Lawson Carpark, Lawson Mechanics Institute and Lawson Depot';**

4. That the Council notes that individuals named in the report have been notified of the findings made in the interim report in relation to them and have been allowed time to respond and/or to seek advice, and also notes that the Council's external solicitor, Mr Cork, has facilitated that process;
5. That the Council notes a copy of Mr Tooma's first interim report will be made available for viewing only by Councillors in the period prior to the next Ordinary meeting of the Council;
6. That the Council receives a confidential briefing relating to Mr Tooma's first interim report;
7. That the Council notes a confidential briefing relating to Mr Tooma's first interim report will be provided to the appropriate officials of the United Services Union (USU);
8. That the Council notes a Mayoral Minute will be submitted to the next Ordinary meeting of the Council recommending the appropriate approach relative to public release of the report and the implementation of all recommendations made in the interim report;
9. That the Council resolves that the recommendations made in Mr Tooma's first interim report be publicly released as a result of this Mayoral Minute for this Extraordinary Council Meeting;
10. That the Council's external solicitor, Mr Cork, be instructed to provide a copy of Mr Tooma's full interim report, with all annexures, to the Director, Legal of the Office of Local Government by Friday 23 February 2018, in accordance with the Minister's Performance Improvement Order (Compliance Report 2);
11. That the Council delegates to the General Manager, in consultation with the Mayor, the authority to take such further steps, as considered appropriate, based on the advice to the Council, to protect the Council's interests;
12. That the Submission includes acknowledgement that the problems that have arisen are not merely day to day operations but are the result of failures and omission in WHS policy, planning and compliance that Councillors acknowledge are their responsibility and which they are seeking to address;
13. That the Submission acknowledge that without the workers disclosures to the media, many of the serious matters that have come to light would not have been known by councillors and this requires a review of reporting to Councillors as has been proposed by the Minister's Performance Improvement Order and is being addressed by Council;
14. That content be removed or rewritten on pp. 14-17 and on p. 21 of the Submission that suggest that Mr Mulligan's duties as a Safety Management Systems Review consultant did not include asbestos risks and management or that in his recent role as Acting Director of City Services, his friendship with the investigator, is not relevant to staff perceptions of the investigation;
15. That Blue Mountains City Councillors be provided by tomorrow morning with access to
 - a. The cost to Council of the Investigation to date including the cost of engaging McPhee Kelshaw to facilitate the engagement of Clyde & Co.

b. The original terms of reference for both investigations; and

16. That Council meet for an extraordinary meeting tomorrow night to approve the final submission and accompanying documents to be sent to the Minister.

Upon being PUT to the Meeting, the MOTION was LOST, the vote being:

| For | Against |
|-------------|--------------|
| Councillors | Councillors |
| Christie | Greenhill |
| Brown | Fell |
| Hoare | Myles |
| Schreiber | Hollywood |
| | Van der Kley |
| | McGregor |
| | Bowling |
| | Foenander |

MINUTE NO. 36

A MOTION was MOVED by Councillors Greenhill and Van der Kley:

1. That the Council notes this report;
2. That the Council makes a submission to the Minister in response to the Minister's Notice of Intention to Suspend the Council, under the signature of the Mayor and the Deputy Mayor, and in the terms of this Mayoral Minute;
3. That the Council notes the receipt by the Council's solicitor of Mr Tooma's interim report titled 'Asbestos management of Lawson Carpark, Lawson Mechanics Institute and Lawson Depot';
4. That the Council notes that individuals named in the report have been notified of the findings made in the interim report in relation to them and have been allowed time to respond and/or to seek advice, and also notes that the Council's external solicitor, Mr Cork, has facilitated that process;
5. That the Council notes a copy of Mr Tooma's first interim report will be made available for viewing only by Councillors in the period prior to the next Ordinary meeting of the Council;
6. That the Council receives a confidential briefing relating to Mr Tooma's first interim report;
7. That the Council notes a confidential briefing relating to Mr Tooma's first interim report will be provided to the appropriate officials of the United Services Union (USU);
8. That the Council notes a Mayoral Minute will be submitted to the next Ordinary meeting of the Council recommending the appropriate approach relative to public release of the report and the implementation of all recommendations made in the interim report;
9. That the Council resolves that the recommendations made in Mr Tooma's first interim report be publicly released as a result of this Mayoral Minute for this Extraordinary Council Meeting;

10. That the Council's external solicitor, Mr Cork, be instructed to provide a copy of Mr Tooma's full interim report, with all annexures, to the Director, Legal of the Office of Local Government by Friday 23 February 2018, in accordance with the Minister's Performance Improvement Order (Compliance Report 2); and
11. That the Council delegates to the General Manager, in consultation with the Mayor, the authority to take such further steps, as considered appropriate, based on the advice to the Council, to protect the Council's interests.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being:

| For | Against |
|--------------|-------------|
| Councillors | Councillors |
| Greenhill | Christie |
| Fell | Brown |
| Myles | Schreiber |
| Hollywood | |
| Van der Kley | |
| McGregor | |
| Bowling | |
| Foenander | |
| Hoare | |

MINUTE NO. 37

Procedural – Question that Meeting Close

A MOTION was MOVED by Councillors Van der Kley and Hollywood:

That as there was no further business before the Ordinary Meeting of Tuesday, 20 February 2018, the meeting closed at 9:30pm.

Upon being PUT to the Meeting, the MOTION was CARRIED, the vote being UNANIMOUS:

| For | Against |
|--------------|-------------|
| Councillors | Councillors |
| Greenhill | |
| Christie | |
| Fell | |
| Myles | |
| Hollywood | |
| Van der Kley | |
| McGregor | |
| Bowling | |
| Brown | |
| Foenander | |
| Hoare | |
| Schreiber | |

I confirm that these minutes, consisting of this page 6 and the previous 5 pages, were confirmed at the Ordinary Meeting of the Council on 27 February 2018.

Chairman: Mayor Mark Greenhill..... Date 27/2/18...

Angus Broad

From: Megan TeBay
Sent: Thursday, 22 February 2018 1:06 PM
To: Rosemary Dillon
Subject: Mr Muligans Duties including specific dates of his terms of employment.
Attachments: Memo Mr Mulligans Duties GMC Review.docx; Mr Mulligan's duties.zip

Megan TeBay | Acting Group Manager, People & Systems| t 02 4780 5673 | e mtebay@bmcc.nsw.gov.au

Blue Mountains City Council • council@bmcc.nsw.gov.au • www.bmcc.nsw.gov.au • Locked Bag 1005 Katoomba NSW 2780

Memorandum

TO: Rosemary Dillon
COPY TO:
FROM: Megan TeBay
DATE: 21 February, 2018 **FILE:**
SUBJECT: Responsibilities of Mr Mulligan

Rosemary,

As requested below are the details of Mr Mulligan's work with Blue Mountains City Council.

Mark Mulligan was engaged on 2 occasions to work for Blue Mountains City Council (BMCC). The first occasion Mr Mulligan was employed part- time as a consultant for a period of 11 weeks from 5 October 2016 to 23 December 2016. The second occasion Mr Mulligan was employed as Acting Director Service Deliver (SD) for period of 11 weeks from 1 November 2017 to 12 February 2018. Neither of these roles was responsible for the development of the organisation Asbestos Management Plan.

As a consultant Mr Mulligan was responsible for the delivering the initial phase of the Safety Improvement Project as Project Lead. During this phase he was required, to develop the foundational elements of a Safety Management System for the organisation. During this time, the responsibility of the Asbestos Management Plan was undertaken by another Directorate and was not assigned to Mr Mulligan.

The Asbestos Management Plan was not a required deliverable of Mr Mulligan during his time as a Consultant. The Asbestos Management plan was further developed after Mr Mulligan's contract role ended and was completed prior to his Role as Director commenced.

In Mr Mulligan's second role of Acting Group Manager Service Delivery (SD), his key focus was to develop, implement and manage strategies, plans and budgets for the directorate (including Parks & Support Services, Transport & Civil Assets, Waste & Cleaning, Leisure & Visitor Information Centres) to achieve business objectives and meet statutory, customer, community, environmental and obligations to achieve business objectives and meet statutory, customer, community, environmental and obligations.

During the period Mr Mulligan was employed as Acting Director SD, another directorate was responsible for the Asbestos Management Plan.

After Mr Mulligan ceased his contract on 23 December 2016 and prior to him commencing in 1 November 2017, the organisation contracted an external agency to assist in the development of the Asbestos Management Plan for the organisation.

This work associated with the development of the Asbestos Management Plan was conducted by a purpose built project team established in June 2017 and further progressed by a Working Group from October to November 2017. In December 2017 a Task Force was developed that included further development and management of the Asbestos Management Plan. The project team was also responsible for arranging and overseeing the conduct of asbestos remediation using licenced asbestos removalists and assessors. As part of the Task force an Asbestos Response Team was established in December 2017 to respond to reports of asbestos.

At no time was Mr Mulligan a member of these nor were any of these teams located in the Directorate that Mr Mulligan was employed on either occasion neither as a consultant nor as the Director.

Mr Mulligan's only direct involvement was to assist the Chief Safety Officer in interviewing and selecting appropriate staff for the Asbestos Response Team in December 2017.

While all parts of an organisation have accountability of adhering to an Asbestos Management Plan, the oversight and responsibility of managing the Asbestos Management Plan was not that of Mr Mulligan's Directorate.

I consider it is the role as Project Lead that could lead someone without knowledge of the details of the project purpose and deliverables, to consider this is where the responsibility of Asbestos Management Plan could reside. However when you consider the purpose and deliverables of the Safety Improvement Project, you can see in the 11 weeks Mr Mulligan was employed as Project Lead of the Safety Improvement Project, it is quite apparent that he was not responsible for the Asbestos Management Plan, nor was it a required deliverable of the Safety Improvement Project.

Details of Mr Mulligan's responsibilities while employed as Project Lead on the Safety Improvement Project, as evidence in the attached project plan, are as follows:

"The purpose of this project is to review and improve the Safety Management System (SMS) at Blue Mountains City (BMCC) in response to the finding of the Willis Review completed in October 2015"

Mr Mulligan role was to respond to the key recommendation of the Willis report being, BMCC to introduce a robust safety management system developed in accordance with an accepted management standard.

The report included recommendations associated with aligning all safety policies with Work Health & Safety Act 2011 and ensuring current codes of practices and legislation are reflected across the organisation.

The project focused at a high level to ensure the overall fundamentals of a SMS were implemented. This included developing processes in regards to hazard identification, risk assessment; improving the WHS goals and objectives for the organisation; implementing safety training and consultation processes. Increase the rigor of WHS investigation methodology, incident reporting and analysis and improve safety audit processes.

In response to the Willis report, the key deliverables of the project were split into 3 Phases.

Phase 1: To be compliant with WHS Act 2011 and regulations

Phase 2: To ensure systematic Risk Management in Safety (AS3100)

Phase 3: To embed continual improvement in Safety (AS/NZS 4801).

During the 11 weeks Mr Mulligan was contracted to BMCC he commenced Phase 1 of the project.

From the above the details provided in the attachments as listed over, you can see that Mr Mulligan was not at any time responsible for the Asbestos Management Plan while employed as a consultant or as a Director.

Please find attached the following documents:

ATTACHMENT 1.

Letter from Mr Liddell to Mr Mulligan, confirming contract dates of Mr Mulligan's commencing 5 October 2016 terminating on 23 December 2016.

ATTACHMENT 2.

Duties of Mr Mulligan as Safety Lead, Safety Improvement

ATTACHMENT 3.

Mr Mulligans Position Summary and Key Responsibilities, Director Service Delivery (SD)

ATTACHMENT 4.

Safety Improvement Plan provided to Mr Mulligan just prior to commencement

ATTACHMENT 5.

Safety Improvement Plan with Mr Mulligans marked up changes.

ATTACHMENT 6.

Mr Mulligans Safety Improvement Phase 1 Task Activity Details
Dates 18 November PSSG update (as at 31 October)

ATTACHMENT 7.

Mr Mulligans Safety Improvement Phase 1 Tasks Activity Details
Dated 17 February PSSG update (as at 14 February 2017)

ATTACHMENT 8.

WHS Management System Manual developed by Mr Mulligan while employed as Project Lead, Safety Improvement Project October to November 2016.

ATTACHMENT 9.

WHS Working Document Register of all the Documents Mr Mulligans and his team were working on.

ATTACHMENT 10.

Comparison table of terms of reference of the investigation and Mr Mulligans involvement.



MEGAN TEBAY
Acting Group Manager
People & Systems



9 September 2016

Reference File: 16/183288

Mr Mark Mulligan
MA and SE Mulligan
255 Bentinck Street
Bathurst NSW 2795

Dear Mark

SUBJECT Contract Confirmation

Please accept this letter as confirmation of your consulting services for the period October – December 2016; this being 3 days/week: normal days will be Monday, Tuesday, and Wednesday. Start date will be Wednesday, October 5th, with your plan to work Wed/Thu/Fri that first week. The daily rate is agreed at \$1,600.00.

You have also noted your unavailability on Tuesday, November 1st and Tuesday, November 29th.

This arrangement is scheduled to finish on Friday, 23 December 2016.

We look forward to our continued work with you. Please advise if you have any questions regarding this arrangement.

Yours faithfully

Stuart Liddell
Group Manager, People & Systems

ATTACHMENT 1.**MR MULLIGAN'S DUTIES AS SAFETY PROJECT LEAD OF THE SAFETY IMPROVEMENT PLAN.**

During this time the project deliverable descriptions were:

1. Due diligence at Officer level evidenced through objective and target setting and reporting against performance.
2. Consultation arrangements in place that represent all workers in relation to health and safety matters.
3. Communication mechanisms in place across all workplaces that meet minimum WHS requirements – WHS notice boards; WHS “tab” on Intranet and enhanced Team Brief WHS element.
4. Systematic risk management referenced to legislation; systematic incident response and investigation.
5. Duty of care – risk management – implemented and measured i.e. health surveillance.
6. Induction and training commensurate with risk.
7. Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Teambrief.
8. Leadership performance measures implemented that facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections/interactions objectives and targets).
9. Safety management system that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801.
10. Software application evaluations complete.

As you can see from the project deliverables the role of Mr Mulligan during the 11 weeks he was contracted as a consultant he was responsible for delivering on the Safety Improvement Program that was broad in its focus and was to improve the Safety Management System SMS of BMCC. At not time during this project was he responsible for the Asbestos Management Plan.

ATTACHMENT 2.

MR MULLIGANS DUTIES AS**Director****Service Delivery (SD)****POSITION SUMMARY**

The Director Service Delivery is accountable for providing leadership and direction to a large workforce in the delivery of high quality frontline services that will ensure the achievement of business objectives that will improve the well-being of the community and environment.

As a member of the Executive Leadership Team, contribute to the development of strategic plans and corporate policy for the organisation and participate in decision making on critical planning and operational issues ensuring all actions align with the organisation achieving its vision to "build a successful future for the Blue Mountains".

The Director Service Delivery will also lead and champion the organisational values and behaviours of Working Together, Work Safe - Home Safe, Service Excellence, Value for Money, Trust & Respect, and Supporting Community.

KEY RESPONSIBILITIES

1. Develop, implement and manage strategies, plans and budgets for the directorate (*including Parks & Support Services, Transport & Civil Assets, Waste & Cleaning, Leisure & Visitor Information Centres*) to achieve business objectives and meet statutory, customer, community, environmental and obligations.to achieve business objectives and meet statutory, customer, community, environmental and obligations.
2. Develop and maintain strong working relationships with key internal and external stakeholders ensuring the organisation is recognised as responsive and customer focused.
3. Provide policy, planning and operational advice the General Manager and the Council in a responsive and timely manner.
4. Lead and drive the implementation of good governance practices and activities across the directorate, including fiscal and budget management; enterprise risk management; and corporate governance and compliance.

5. Lead and drive a strong customer service culture across the directorate to achieve or exceed relevant internal and external service performance standards.
6. Develop and implement continuous business improvement initiatives and programs to ensure ongoing review and improvement of the directorate.
7. Promote and drive a strong safety culture by ensuring that work is carried out in a safe and environmentally sound manner.
8. Create a working environment that empowers all employees to take ownership of their work, encouraging innovative thinking and a flexible and enthusiastic work culture.
9. Prepare and present position papers and council reports on key business issues of interest to the General Manager Executive Leadership Team and Council to provide accurate and complete information, authoritative analysis, advice and sound recommendations for action.



PROJECT MANAGEMENT PLAN

Safety Improvement Project

DOCUMENT CONTROL

Document Information

| Item | Information |
|------------------|-----------------------------|
| Document Id | ??? |
| Trim Folder Id | F10188: 16/161974 |
| Trim Folder Name | WHSPLA0009 SIP Project Plan |
| Document Owner | John Hargreaves |
| Issue Date | ??? |
| Last Saved Date | 25 August 2016 |

Document History

| Version | Issue Date | Changes |
|---------|------------|----------------------------------|
| 1.1 | 12/08/2016 | Initial Plan using this template |

Document Approvals

This project is approved to proceed to the Implementation Phase.

| Sequence | Role | Name | Signature | Date |
|----------|-------------------|--|-----------|------|
| 1. | Project Oversight | John Hargreaves
Program Leader
Business
Improvement | | |
| 2. | Project Oversight | Grant McKay
Manager,
Governance &
Risk | | |
| 3. | Project Director | Stuart Liddell
Group Manager,
People & Systems | | |
| 4. | Project Sponsor | Robert
Greenwood
General Manager | | |

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1. PURPOSE

The purpose of this project is to review and improve the Safety Management System¹ (SMS) at Blue Mountains City Council (BMCC) in response to the findings of the Willis Review completed in October 2015.

2. CONTEXT

2.1 Background

The centre for safety expertise at BMCC currently resides in the Governance & Risk Branch. This branch is part of People & Systems Group. The Governance & Risk Branch was created in 2014 with the objective of maturing council's risk management framework. Council's SMS was identified as being an area of high risk, due in part to legislative changes that have occurred in recent years; a particular change was the introduction of the WHS² Act 2011, with more stringent compliance obligations.

Council has managed safety in accordance with a 'management system' for a number of years. The ability of this system to facilitate the systematic management of safety risk was unknown (or at least unconfirmed) when Governance & Risk Branch was established in 2014; hence the commissioning of the Willis Review into safety management at BMCC. The ability of the SMS to be integrated with, or dynamically linked to, council's maturing ERM was also unknown.

2.2 Business Drivers

The drivers for this project are:

- The recommendations arising from the Willis Review
- The need for organisational compliance with the WHS Act 2011
- The risks posed by the current system of management of safety
- The need to better integrate the SMS into the maturing Enterprise Risk Management framework of BMCC
- Introduction and monitoring of WHS business improvement practices (cultural change) within the organisation in e.g. Duty of Officers and Managements accountability.

3. PROJECT OUTCOMES

3.1 Vision

The Safety Improvement Project will transition safety delivery from ad hoc to a proactive standardised Safety Management System (SMS) that complies with, and is supported by, Australian Standards, codes and legislation; Safety Leadership will ensure that these standards, codes and legislation are complied with.

A "Work Safe Home Safe" outcome is the vision for all workers at BMCC; this supported by the fundamentals of:

¹ The Safety Management System includes worker safety as well as public safety.

² WHS is an acronym for "Work, Health and Safety."

1. A Safety Management System that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801;

A WHS consultative framework

2. (1) Consultation — that demonstrates leadership commitment and is a mechanism of engagement with all BMCC workers for WHS policy setting, decision making, WHS training needs analysis and WHS communications for all workers where concerns for safety relate to them;

A

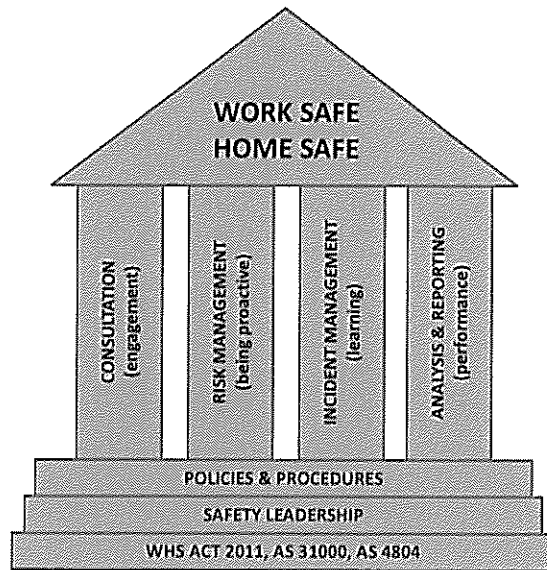
3. (2) Risk Management approach to WHS where — Engagement of all levels of Managers and Coordinators are in a proactive in their approach to response to safety through the systematic compliance with the SMS, manifested by safety leadership via identification of hazards, assessing risk; applying controls assessment of these hazards and putting controls in place to minimize and mitigate the risk and ensuring learnings are shared with all workers;
4. A commitment to pro-active incident management where BMCC strives to understand and learn from the hazards that cause harm to workers and the public through causal factor analysis and where corrective and preventative actions are developed by managers and workers, learnings are shared and continuous improvement becomes the norm action recommendations to improve safety across BMCC, the reactive work done to understand and learn from hazards that have caused harm to people and/or property; and (4) Analysis & Reporting — examination of the performance of the BMCC Safety Management System; and
5. An integrated WHS/Risk Management IT solution that is worker friendly and provides a consistent and easily accessible application for incident reporting and corrective/preventative action management, internal audit and inspection, hazard data base and injury management.

(3) Incident Management — A leadership commitment to understand and learn from the hazards that cause harm to workers and action recommendations to improve safety across BMCC, the reactive work done to understand and learn from hazards that have caused harm to people and/or property; and (4) Analysis & Reporting — examination of the performance of the BMCC Safety Management System;

See the above "vision" represented in the figure below. JOHN – you will need to update your figure below to represent the 5 "pillars" above

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1.27 cm + Indent at: 1.9 cm

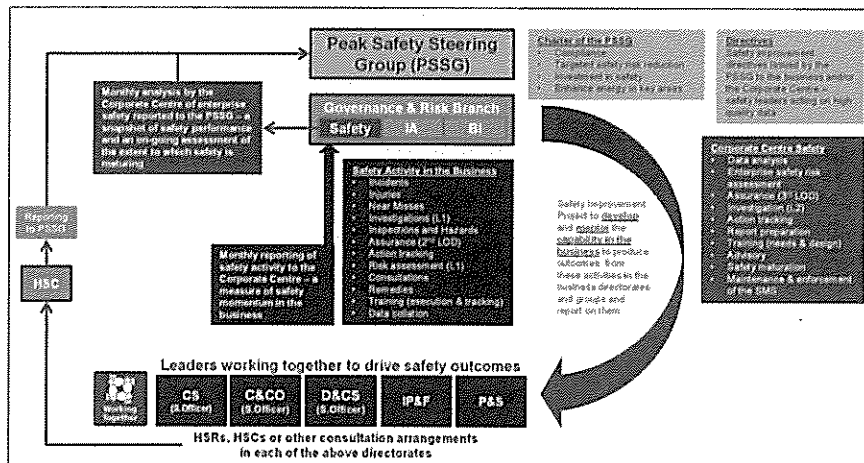
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The following schematic provides an overview of the responsibilities and flow of information foreseen to be place at the end of Phase 1 – Compliance: safety is managed in the business; evidence is supplied by the business; reporting is done via the Corporate Centre and by the central Health & Safety Committee to the Peak Safety Steering Group.

JOHN – I find this schematic very busy and I'm not sure it is adding much value to the plan

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3.2 Objectives/Goals

The objectives for this project are:

- To ensure provide adequate/sufficient safety due diligence to all Officers of BMCC as described under the provisions of the WHS Act 2011 fulfill their due diligence obligations and its management;
- To be fully compliant with WHS Act 2011 & WHS Regulations 2011, Codes and Australian Standards;
- To commit to continuous improvement in WHS and strive for compliance be consistent with AS/NZS 4801: Occupational Health and Safety Management Systems management of risks associated with safety;
- To demonstrate strong and consistent safety leadership at all levels of BMCC management;
- To facilitate the systematic management of WHS at BMCC;
- To mature the capability of the SMS at BMCC – this to be done over all phases of the project; to progressively integrate into the organisation's ERM³;
- To embed WHS processes and functions into the business; make the "business of safety" the responsibility of all workers and including integral to how work is done; management at all levels – Executives, Managers, Supervisors/Team Leaders – taking a leadership role; through accessible and user friendly documentation and IT system support;
- To set meaningful WHS performance targets and provide assurance on WHS performance through a systematic audit and inspection program;
- To increase WHS competency across BMCC through training and communication;
- To assess the potential for WHS and risk management software solutions for safety; and to implement if suitable;
- To continually improve the SMS.

3.43.3 Deliverables

The deliverables for this project are:

| Objective | Deliverable Description |
|--|--|
| Phase 1: To be compliant with the WHS Act 2011 and regulations | Due Diligence at Officer all levels of management evidenced through objective and target setting and reporting documents against performance |
| | Consultation arrangements in place that represent all workers in relation to health and safety matters |
| | Communication mechanisms in place across all workplaces that meet minimum WHS requirements - WHS notice boards, WHS "tab" on intranet and enhanced Team Brief WHS element |
| | Systematic Risk Management referenced to legislation; systematic Incident response and investigation |
| | Duty of Care – risk management – implemented and measured i.e. health surveillance |
| | Induction and Training and induction commensurate with risk |
| | Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Team Brief |
| | Basic Leadership performance measures implemented that allow facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections objectives and targets) |
| | Safety Management System that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801 |
| | Software application evaluations complete |

³ ERM is an acronym for "Enterprise Risk Management."

| Objective | Deliverable Description |
|--|---|
| Phase 2: To ensure systematic Risk Management in Safety (AS 31000) | <p>An Software-application-for-managing-Safety-enterprise-wide-safety creates-a-document-control-solution-that-is-cost-effective-and-target driven-integrated WHS/Risk Management IT solution that is worker friendly and provides a consistent and easily accessible application for incident reporting and corrective/preventative action management, internal audit and inspection, hazard data base and injury management</p> <p>Review and update of specific policies and procedures referenced to accurately reflect the desire to comply with AS/NZS 4801 and demonstrate commitment of the organisation to safety</p> <p>Use of Australian Standards, Building Codes & Codes of Practice to make WHS decisions and to provide WHS assurance</p> <p>Development of sophisticated risk assessment across the enterprise</p> <p>Integration of Safety risk with Enterprise Risk Management</p> <p>Performance measures evaluate risk assurance lead to review</p> <p>Contractor management framework reviewed and updated facilitated by software-solution - IT solution utilised for contractor management obligations</p> |
| Phase 3: To embed continual improvement in Safety (AS/NZS 4804 4801) | <p>"Safety is the way we work" – all staff and management understand and are committed to the BMCC safety value proposition</p> <p>Safety commitment is reflected through WHS performance improvement, governance and budget</p> <p>WHS Planning is integrated as a BMCC wide activity. Performance targets are set and managed.</p> <p>Implementation of WHS plan includes training, capital acquisitions, emergency planning, risk management, action planning, maintenance planning, re-evaluation of how activities are carried out, reference to best practice, measureable. Health and wellbeing program.</p> <p>Continual improvement in WHS is embedded across the organisation process in place for Safety.</p> |

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4. SCOPE

4.1 Inclusions

This project includes:

- WHS activities at BMCC
- Public Safety within the BMCC region

4.2 Exclusions

This project does not include:

- Insurance activities related to: JOHN – the IT solution will enhance the efficiency of these processes below so you may want to state that
 - Claims Management
 - Workers Compensation
 - Back-To-Work

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5. STAKEHOLDERS

The stakeholders for this project are:

| Internal Stakeholders | External Stakeholders |
|---|-----------------------|
| Executive Leadership team | Public |
| Managers | Contractors |
| Next levels of management: | Volunteers |
| <ul style="list-style-type: none"> • Program Leaders • Coordinators | |

| | |
|--|--|
| <ul style="list-style-type: none"> • Team Leaders and Supervisors • Staff • Safety Team | |
| Staff/workers | |

6. PROJECT SUMMARY

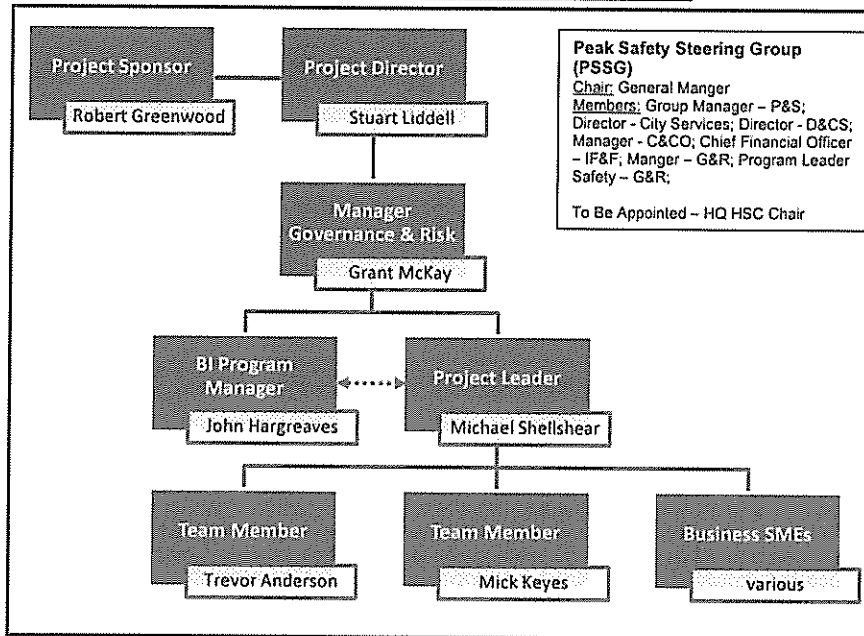
6.1 Human Resources Plan

The resources for this project are:

| Role | Name | Directorate | Branch | Responsibility |
|-----------------------------------|-------------------------------------|--------------------------------|-----------------------------------|--|
| PROJECT SPONSOR | Robert Greenwood | N/A | N/A | Senior Leadership support |
| PROJECT DIRECTOR | Stuart Liddell | People & Systems | N/A | Senior Leadership support |
| PROJECT CONTROL GROUP | Robert Greenwood | N/A | N/A | Chair of Peak Safety Steering Group (PSSG) |
| | Stuart Liddell | People & Systems | N/A | Project Director and Customer |
| | Kirrilly Twomey | City Services | N/A | Primary Customer |
| | Rick Harris | City & Community Outcomes | Infrastructure & Strategic Assets | Customer |
| | Chris Brogan | Development & Customer Service | Building & Compliance Services | Customer |
| | Neil Farquharson | Integrated Planning & Finance | Finance | Customer |
| | Grant McKay | People & Systems | Governance & Risk | Risk Management |
| | Trevor Anderson | People & Systems | Governance & Risk | Corporate Reporting |
| | Awaiting nomination | | | Safety Committee reporting |
| BUSINESS IMPROVE'T PROGRAM LEADER | John Hargreaves | People & Systems | Governance & Risk | Project Management |
| TEAM MEMBERS | Michael Shellshear
Mark Mulligan | People & Systems | Governance & Risk | Project Leader |
| | Trevor Anderson | People & Systems | Governance & Risk | Implementation Support |
| | Mick Keyes | People & Systems | Governance & Risk | Implementation Support |

6.2 Governance Need to change flow chart to show Trevor and Mick report to Grant not to the BI Program Manager. JOHN – I'd recommend you have Trevor and Mick reporting to you with a dotted line to me

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6.3 Project Plan Phases

The project has been planned in three phases.

The project officially commenced on ~~20 April~~ 1 July 2016 and is scheduled to transition to business as usual close (BAU) on 31 December 2018. The overall timeline for the project is set out in Gantt chart below: (details for Phase 1 only are provided in Attachment 1). Detailed planning for Phase 2 and Phase 3 will be undertaken respectively in December 2016 and July of 2017.

| PHASE | Jul-Sep 2016 | Oct-Dec 2016 | Jan-Mar 2017 | Apr-Jun 2017 | Jul-Sep 2017 | Oct-Dec 2017 | Jan-Mar 2018 | Apr-Jun 2018 | Jul-Sep 2018 | Oct-Dec 2018 |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Phase 1 – Compliance (WHS Act 2011) | | | | | | | | | | |
| Phase 2 – Systematic Risk Management & ERM Integration (AS 31000) | | | | | | | | | | |
| Phase 3 – Continual Improvement: embedded in Safety (AS 4801) | | | | | | | | | | |

6.4 Milestones

The following table sets out the major project milestones and the required delivery dates.

| ID | Milestone | Delivery Date |
|------|--|-------------------|
| 1 | Specialist resources on board | May 2016 |
| 2 | Peak Safety Steering Group in place | Jul 2016 |
| 3 | Directors and Managers introduced to the project individually | Jul 2016 |
| 4 | New Consultation arrangements with workers in place | Sep 2016 |
| 5 | To-Be workflows defined and tested – Incidents, Risks, other | Sep 2016 |
| 6 | WHS Master Document Register finalised | Oct 2016 |
| 76 | Consultation Training – HSRs/HSCs | Oct 2016 |
| 87 | IT Solution – business requirements defined | Oct 2016 |
| 9 | WHS Objectives and Targets set and communicated to all workers | |
| 10 | Corporate and Site Induction procedure revised and implemented (WHS) | Nov 2016 |
| 11 | WHS Communication protocols established across all worksites | Nov 2016 |
| 12 | WHS Training needs analysis completed for all managers/supervisors | Nov 2016 |
| 138 | Risk Management Training – Managers/others | Nov 2016 |
| 149 | IT Solution – potential suppliers assessed and a choice made | Dec 2016 |
| 1544 | Field facing WHS risk management tools reviewed and re-issued with training provided to workers (Pre-Start, HIRAC, JRA, SWMS, Toolbox Talk) Safety Management System compliant with WHS Act 2014 | Dec 2016 Dec 2016 |
| 16 | Management site inspection process and supporting documentation implemented (managers trained as required) | Dec 2016 |
| 17 | Health Surveillance program re-instated | Dec 2016 |
| 18 | Safety Management System compliant with WHS Act 2011 | Dec 2016 |
| 19 | Gap analysis undertaken to progress towards AS/NZS 4801 | Dec 2016 |

6.5 Cost Plan

The table below is a summary of the estimated project costs.

| Description of Cost | Amount | Funding Source |
|--|--------|----------------|
| Project Lead (includes on costs) | | Burning Cost |
| Training – consultation (HSR/HSC) | | Burning Cost |
| Training – Risk Management (Managers/others) | | Burning Cost |
| IT solution development | | Burning Cost |
| Consulting – expertise | | Burning Cost |
| Assurance | | Burning Cost |
| | | |
| TOTAL – to be finalised | | |

Note: The above estimated project costs are currently being revised.

6.6 Compliance Plan

The following Act and standards must be taken into consideration to ensure compliance with the relevant external compliance regimes.

| Compliance Description | Reason | Tasks Involved | Timeframe |
|------------------------|-----------------|-----------------------|------------------|
| WHS Act 2011 | Compliance | Adherence to Act | 31 December 2016 |
| AS 31000 | Risk Management | Adherence to standard | 30 June 2017 |
| AS 4804 | Assurance | Adherence to standard | 31 December 2017 |
| ISO 45000 | future proofing | Adherence to standard | When available |

6.7 Risk Plan

Refer separate document.

6.8 Communications Plan

Below is a summary of the anticipated timeframe for the communications that will be undertaken during this project.

| Communication Type | 2010 | | | | | | | | | | | |
|--|------|---|---|---|---|---|---|---|---|---|---|---|
| | J | F | M | A | M | J | J | A | S | O | N | D |
| Soft launch to ELT – face-to-face joint meeting | | | | | | | | | | | | |
| Individual meetings with directors and group managers | | | | | | | | | | | | |
| Weekly project team meetings | | | | | | | | | | | | |
| Peak Safety Steering Group (PSSG) meetings | | | | | | | | | | | | |
| Initial meetings with managers x 21 | | | | | | | | | | | | |
| PSSG initial communique to all staff – email from Chair/GMgr | | | | | | | | | | | | |
| PSSG communique to all staff – via Teamb Brief | | | | | | | | | | | | |
| Pilot workshops with Branches | | | | | | | | | | | | |
| Establishment of site WHS notice boards | | | | | | | | | | | | |
| Establishment of WHS tab on intranet | | | | | | | | | | | | |
| Re-establish WHS section of Team Brief | | | | | | | | | | | | |

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Robert/GM communique via All Staff email: 20/07/2016

Dear Colleagues

I am pleased to report that last Thursday the first meeting of the Peak Safety Steering Group (PSSG) was held. The purpose of the PSSG is to ensure that the organisation's focus on safety is maximised and maintained and that the Safety Improvement Project delivers on our organisational value - *'Work Safe Home Safe'*. You will recall from the last Teambrief that I have elected to Chair the PSS given the importance of safety to the staff and community.

One of the key decisions arising from this first meeting was that City Services will have an additional member on the PSSG. This is in recognition of the size of this directorate and the diverse nature of its activities. The new member will be Mark Bruhn, ~~Manager-Parks~~ Manager Parks & Support Services.

In brief, our first meeting proved very productive and I am very confident that we will be able to achieve our important mission. Future information on progress of the project and the outcomes of our Safety Management System will be provided to you monthly through Teambrief.

Thank you for your ongoing support to safety.

Regards, Robert

Robert Greenwood | General Manager | t: 02 4780 5518 | e: rgreenwood@bmcc.nsw.gov.au

7. ATTACHMENTS

7.1 Phase 1 Activity Details need a copy of Gantt chart changes to time frames need to be addressed JOHN – you will need to update/amend this to reflect the changes I have detailed

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| Task Name | Duration | Start | Finish |
|---|-----------------|--------------------|---------------------|
| IMPLEMENTATION - Phase 1 (Compliance) | 170 days | Mon 9/05/16 | Fri 30/12/16 |
| Planning - Phase 1 | 160 days | Mon 9/05/16 | Fri 16/12/16 |
| Review current draft project plan and associated documents | 10 days | Mon 9/05/16 | Fri 20/05/16 |
| Create draft Gantt chart of activities | 10 days | Mon 9/05/16 | Fri 20/05/16 |
| Transfer project plan to BMCC template | 22 days | Wed 1/06/16 | Thu 30/06/16 |
| Update project plan | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Maintain project plan and related plans | 146 days | Fri 27/05/16 | Fri 16/12/16 |
| Project Team meetings | 146 days | Thu 26/05/16 | Thu 15/12/16 |
| Safety Leadership (due diligence) | 60 days | Mon 9/05/16 | Fri 29/07/16 |
| Enlist highest level organisational sponsorship | 1 day | Fri 27/05/16 | Fri 27/05/16 |
| Present to General Manager | 1 day | Fri 27/05/16 | Fri 27/05/16 |
| Enlist ELT level support | 22 days | Wed 1/06/16 | Thu 30/06/16 |
| Present to ELT group | 1 day | Wed 1/06/16 | Wed 1/06/16 |
| Agree Peak Safety Steering Group | 1 day | Wed 1/06/16 | Wed 1/06/16 |
| Schedule regular PSSG meetings | 1 day | Mon 6/06/16 | Mon 6/06/16 |
| Meet directors/group managers individually | 19 days | Mon 6/06/16 | Thu 30/06/16 |
| Identify Change Champion managers for each directorate/group | 19 days | Mon 6/06/16 | Thu 30/06/16 |
| Engage with managers x 23 | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Meet with managers individually | 18 days | Fri 1/07/16 | Tue 26/07/16 |
| Set-up group manager meeting (if req'd) by end July | 3 days | Wed 27/07/16 | Fri 29/07/16 |
| Consultation (worker engagement) | 81 days | Fri 1/07/16 | Fri 21/10/16 |
| Understand As-Is consultation arrangements - manager meetings | 21 days | Fri 1/07/16 | Fri 29/07/16 |

| Task Name | Duration | Start | Finish |
|---|----------|--------------|--------------|
| Provide guidance to managers on To-Be consultation arrangements | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Implement To-Be consultation arrangements | 45 days | Mon 1/08/16 | Fri 30/09/16 |
| Consultation Training | 32 days | Thu 8/09/16 | Fri 21/10/16 |
| Conduct needs analysis for consultation training | 7 days | Thu 8/09/16 | Fri 16/09/16 |
| Deliver consultation training | 25 days | Mon 19/09/16 | Fri 21/10/16 |
| Risk Management (duty of care) | 81 days | Fri 1/07/16 | Fri 21/10/16 |
| Understand As-Is risk management arrangements - manager meetings | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Draft To-Be risk management process workflows | 7 days | Mon 22/08/16 | Tue 30/08/16 |
| Test To-Be risk management process | 12 days | Thu 8/09/16 | Fri 23/09/16 |
| Implement To-Be risk management arrangements | 45 days | Mon 22/08/16 | Fri 21/10/16 |
| Source training provider - Safety + ERM | 18 days | Mon 22/08/16 | Wed 14/09/16 |
| Train managers and other nominated staff | 20 days | Mon 26/09/16 | Fri 21/10/16 |
| Project Documentation Strategy | 20 days | Mon 18/07/16 | Fri 12/08/16 |
| Draft documentation strategy | 10 days | Mon 18/07/16 | Fri 29/07/16 |
| Finalise documentation strategy | 5 days | Mon 1/08/16 | Fri 5/08/16 |
| Implement documentation strategy | 5 days | Mon 8/08/16 | Fri 12/08/16 |
| Incident Investigation & Reporting | 87 days | Fri 1/07/16 | Mon 31/10/16 |
| Understand As-Is incident management arrangements - manager meetings | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Draft To-Be incident management process - identify hazard, assess hazard risk, control hazard | 1 day | Fri 29/07/16 | Fri 29/07/16 |
| Test To-Be incident management process | 1 day | Wed 31/08/16 | Wed 31/08/16 |
| Implement To-Be incident management process | 43 days | Thu 1/09/16 | Mon 31/10/16 |
| Reporting | 116 days | Mon 4/07/16 | Mon 12/12/16 |
| Prepare As-Is reports for July PSSG | 5 days | Mon 4/07/16 | Fri 8/07/16 |
| Prepare To-Be reports for August PSSG | 15 days | Mon 25/07/16 | Fri 12/08/16 |
| Finalise To-Be August reports for PSSG | 1 day | Mon 15/08/16 | Mon 15/08/16 |
| Finalise September reports for PSSG | 6 days | Mon 5/09/16 | Mon 12/09/16 |
| Finalise October reports for PSSG | 6 days | Mon 10/10/16 | Mon 17/10/16 |
| Finalise November reports for PSSG | 6 days | Mon 7/11/16 | Mon 14/11/16 |

| Task Name | Duration | Start | Finish |
|---|----------|--------------|--------------|
| Finalise December reports for PSSG | 6 days | Mon 5/12/16 | Mon 12/12/16 |
| Software Application Solution | 96 days? | Fri 5/08/16 | Fri 16/12/16 |
| Planning | 1 day | Fri 5/08/16 | Fri 5/08/16 |
| Scoping of requirements - business, functional, technical | 2 days | Wed 10/08/16 | Thu 11/08/16 |
| RFI suppliers | 31 days | Fri 12/08/16 | Fri 23/09/16 |
| Evaluation of options - in-house vs. supplier | 25 days | Mon 26/09/16 | Fri 28/10/16 |
| Develop plan for software solution implementation | 11 days | Tue 1/11/16 | Tue 15/11/16 |
| Design solution | 25 days | Mon 14/11/16 | Fri 16/12/16 |
| Implement software solution (in PHASE 2) | | | |
| Compliance Gap Analysis | 12 days | Thu 1/12/16 | Fri 16/12/16 |
| Conduct Compliance Audit | 12 days | Thu 1/12/16 | Fri 16/12/16 |
| Planning Phase 2 | | | |
| IMPLEMENTATION - Phase 2 (Systematic Risk Management & ERM integration - ISO 31000) | 129 days | Tue 3/01/17 | Fri 30/06/17 |
| IMPLEMENTATION - Phase 3 (Integrated Risk Management - AS 4801) | 391 days | Mon 3/07/17 | Mon 31/12/18 |

PROJECT MANAGEMENT PLAN

Safety Improvement Project

DOCUMENT CONTROL

Document Information

| Item | Information |
|------------------|-----------------------------|
| Document Id | ??? |
| Trim Folder Id | F10188: 16/161974 |
| Trim Folder Name | WHSPLA0009 SIP Project Plan |
| Document Owner | John Hargreaves |
| Issue Date | ??? |
| Last Saved Date | 25 August 2016 |

Document History

| Version | Issue Date | Changes |
|---------|------------|---|
| 1.1 | 12/08/2016 | Initial plan using this template |
| 2.0 | 12/09/2016 | Revised plan following new Project Leader appointment |

Document Approvals

This project is approved to proceed to the Implementation Phase.

| Sequence | Role | Name | Signature | Date |
|----------|-------------------|--|-----------|------|
| 1. | Project Oversight | John Hargreaves
Program Leader
Business Improvement | | |
| 2. | Project Oversight | Grant McKay
Manager,
Governance & Risk | | |
| 3. | Project Director | Stuart Liddell
Group Manager,
People & Systems | | |
| 4. | Project Sponsor | Robert Greenwood
General Manager | | |

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1. PURPOSE

The purpose of this project is to review and improve the Safety Management System¹ (SMS) at Blue Mountains City Council (BMCC) in response to the findings of the Willis Review completed in October 2015.

2. CONTEXT

2.1 Background

The centre for safety expertise at BMCC currently resides in the Governance & Risk Branch. This branch is part of People & Systems Group. The Governance & Risk Branch was created in 2014 with the objective of maturing council's risk management framework. Council's SMS was identified as being an area of high risk, due in part to legislative changes that have occurred in recent years; a particular change was the introduction of the WHS² Act 2011, with more stringent compliance obligations.

Council has managed safety in accordance with a 'management system' for a number of years. The ability of this system to facilitate the systematic management of safety risk was unknown (or at least unconfirmed) when Governance & Risk Branch was established in 2014; hence the commissioning of the Willis Review into safety management at BMCC. The ability of the SMS to be integrated with, or dynamically linked to, council's maturing ERM was also unknown.

2.2 Business Drivers

The drivers for this project are:

- The recommendations arising from the Willis Review
- The need for organisational compliance with the WHS Act 2011
- The risks posed by the current system of management of safety
- The need to better integrate the SMS into the maturing Enterprise Risk Management framework of BMCC
- Introduction and monitoring of WHS business improvement practices (cultural change) within the organisation in e.g. Duty of Officers and management accountability.

3. PROJECT OUTCOMES

3.1 Vision

The Safety Improvement Project will transition safety delivery from ad hoc to a proactive standardised Safety Management System (SMS) that complies with, and is supported by, Australian Standards, codes and legislation. Safety Leadership will ensure that these standards, codes and legislation are complied with.

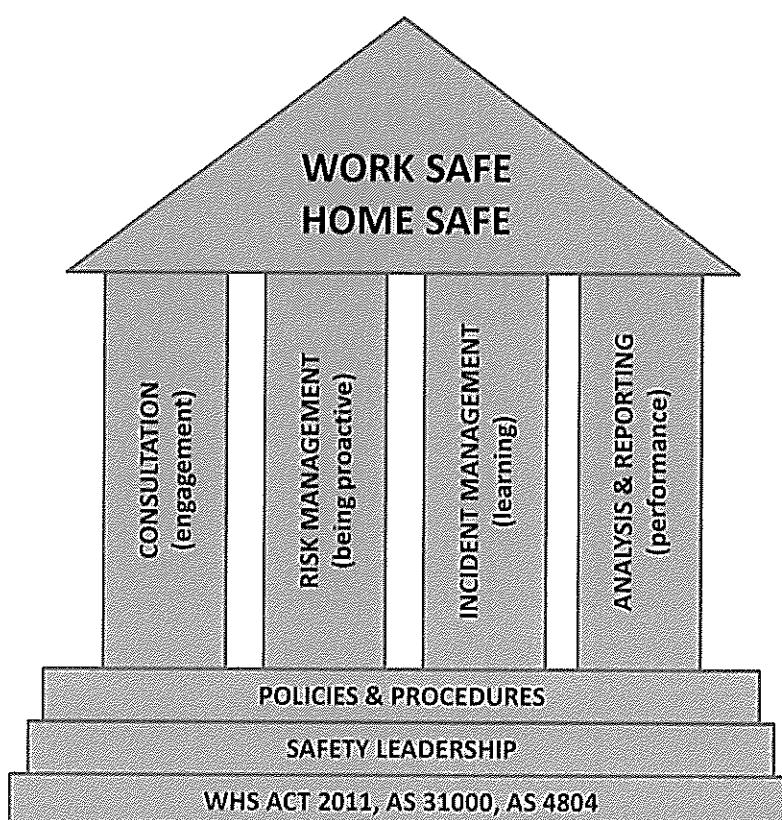
¹ The Safety Management System includes worker safety as well as public safety.

² WHS is an acronym for "Work, Health and Safety."

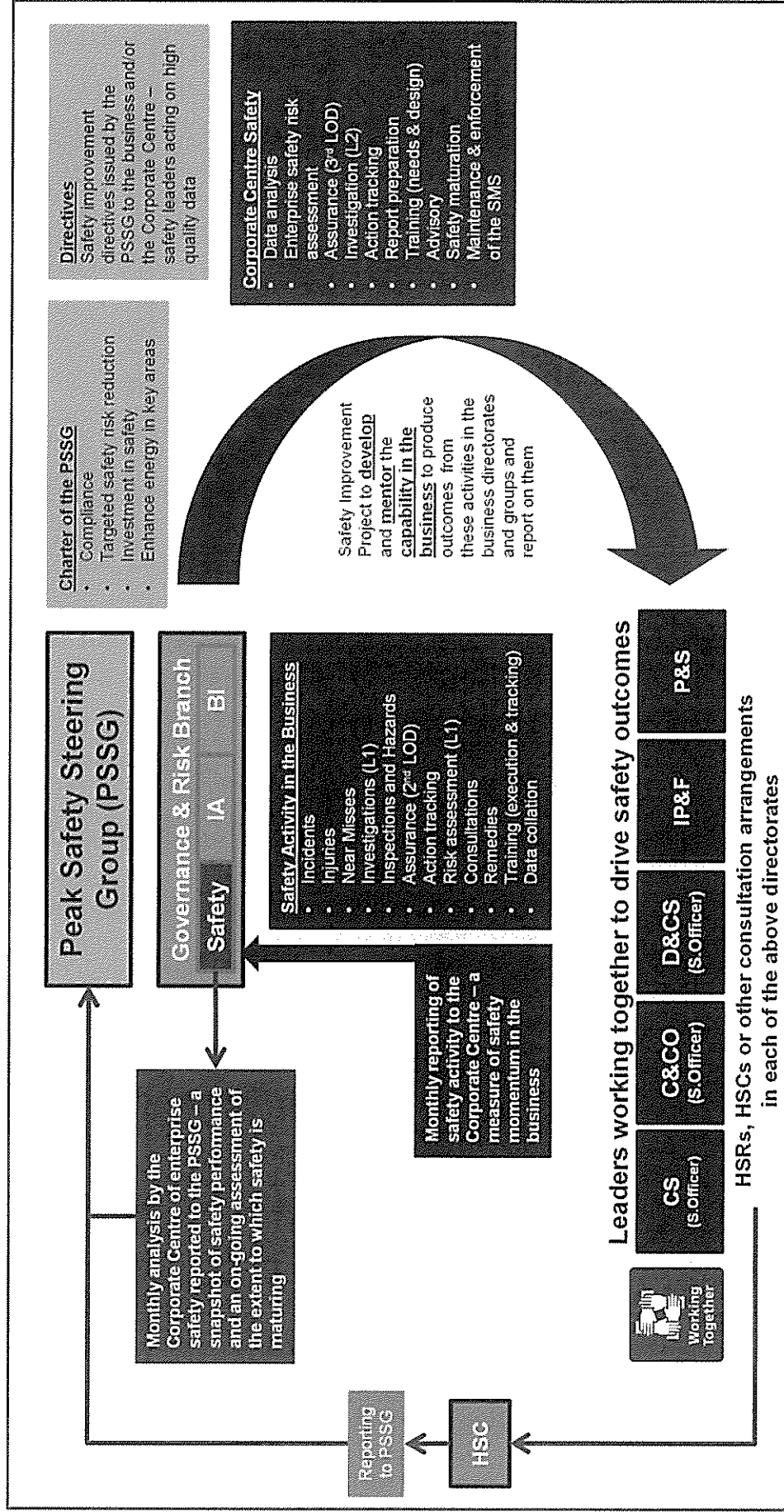
A “Work Safe Home Safe” outcome is the vision for all workers at BMCC. This supported by the fundamentals of:

1. A Safety Management System that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801;
2. Safety Leadership culture that is visible at the highest levels of management; cascading down to all levels of management and supervision;
3. Policies and Procedures that support safe work activity;
4. A WHS Consultative framework that demonstrates leadership commitment and is a mechanism of engagement with all BMCC workers for WHS policy setting, decision making, WHS training needs analysis and WHS communications;
5. A Risk Management approach to WHS where all levels of Managers and Coordinators are proactive in their approach to safety through the systematic compliance with the SMS, manifested by safety leadership via identification of hazards, assessing risk; applying controls and ensuring learnings are shared with all workers;
6. A commitment to pro-active Incident Management where BMCC strives to understand and learn from the hazards that cause harm to workers and the public through causal factor analysis and where corrective and preventative actions are developed by managers and workers, learnings are shared and continuous improvement becomes the norm; and
7. Analysis and Reporting supported by an integrated WHS/Risk Management IT solution that is worker friendly and provides a consistent and easily accessible application for incident reporting and corrective/preventative action management, internal audit and inspection, hazard data base and injury management.

See the 7 components of the above “Work Safe Home Safe” vision represented in the figure below.



The following schematic provides an overview of the responsibilities and flow of information foreseen to be in place at the end of Phase 1 – Compliance. Here, safety is managed in the business; evidence is supplied by the business; reporting is done via the Corporate Centre and by a central Health & Safety Committee to the Peak Safety Steering Group.



3.2 Objectives/Goals

The objectives for this project are:

- To ensure Officers of BMCC as described under the provisions of the WHS Act 2011 fulfill their due diligence obligations;
- To be fully compliant with WHS Act 2011 & WHS Regulations 2011, Codes and Australian Standards;
- To commit to continuous improvement in WHS and strive for compliance with AS/NZS 4801: Occupational Health and Safety Management Systems
- To demonstrate strong and consistent safety leadership at all levels of BMCC;
- To facilitate the systematic management of WHS at BMCC;
- To mature the capability of the SMS at BMCC – this to be done over all phases of the project; to progressively integrate into the organisation's ERM³;
- To embed WHS processes and functions into the business through accessible and user friendly documentation and IT system support;
- To set meaningful WHS performance targets and provide assurance on WHS performance through a systematic audit and inspection program;
- To increase WHS competency across BMCC through training and communication;
- To assess the potential for WHS and risk management software solutions and to implement if suitable.

3.3 Deliverables

The deliverables for this project are:

| Objective | Deliverable Description |
|---|--|
| Phase 1: To be compliant with the WHS Act 2011 and regulations | Due Diligence at Officer level of management evidenced through objective and target setting and reporting against performance |
| | Consultation arrangements in place that represent all workers in relation to health and safety matters |
| | Communication mechanisms in place across all workplaces that meet minimum WHS requirements – WHS notice boards, WHS "tab" on intranet and enhanced Teambrief WHS element |
| | Systematic Risk Management referenced to legislation; systematic Incident response and investigation |
| | Duty of Care – risk management – implemented and measured i.e. health surveillance |
| | Induction and training commensurate with risk |
| | Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Teambrief |
| | Leadership performance measures implemented that facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections objectives and targets) |
| | Safety Management System that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801 |
| | Software application evaluations complete |

³ ERM is an acronym for "Enterprise Risk Management."

| Objective | Deliverable Description |
|---|---|
| Phase 2: To ensure systematic Risk Management in Safety (AS 31000) | An integrated WHS/Risk Management IT solution that is worker friendly and provides a consistent and easily accessible application for incident reporting and corrective/preventative action management, internal audit and inspection, hazard data base and injury management |
| | Review and update of specific policies and procedures referenced to accurately reflect the desire to comply with AS/NZS 4801 and demonstrate commitment of the organisation to safety |
| | Use of Australian Standards, Building Codes & Codes of Practice to make WHS decisions and to provide WHS assurance |
| | Development of sophisticated risk assessment across the enterprise |
| | Integration of Safety Risk with Enterprise Risk Management |
| | Performance measures evaluate risk assurance lead to review |
| | Contractor management framework reviewed and updated – IT solution utilised for contractor management obligations |
| Phase 3: To embed continual improvement in Safety (AS/NZS 4801) | "Safety is the way we work" – all staff and management understand and are committed to the BMCC safety value proposition |
| | Safety commitment is reflected through WHS performance improvement, governance and budget |
| | WHS Planning is integrated as a BMCC wide activity. Performance targets are set and managed. |
| | Implementation of WHS plan includes training, capital acquisitions, emergency planning, risk management, action planning, maintenance planning, re-evaluation of how activities are carried out, reference to best practice, measureable. Health and wellbeing program. |
| | Continual improvement in WHS is embedded across the organisation |

4. SCOPE

4.1 Inclusions

This project includes:

- WHS activities at BMCC
- Public Safety within the BMCC region

4.2 Exclusions

This project does not include:

- Insurance activities related to:
 - Claims Management
 - Workers Compensation
 - Back-To-Work

The introduction of an IT solution in the project will likely assist in adding extra efficiency to the above insurance activities.

5. STAKEHOLDERS

The stakeholders for this project are:

| Internal Stakeholders | External Stakeholders |
|--|-----------------------|
| Executive Leadership team | Public |
| Managers | Contractors |
| Next levels of management: <ul style="list-style-type: none"> • Program Leaders • Coordinators • Team Leaders and Supervisors | Volunteers |
| Staff/workers | |

6. PROJECT SUMMARY

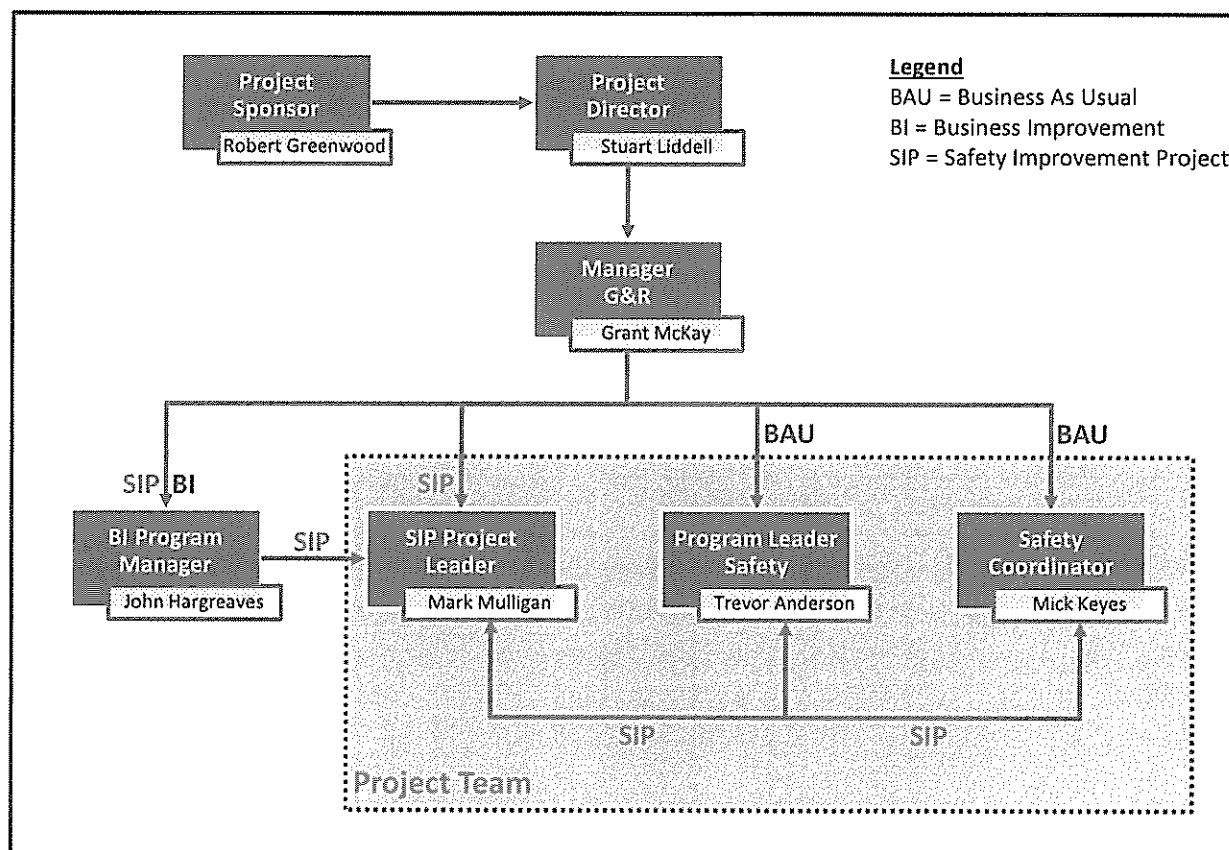
6.1 Human Resources Plan

The resources for this project are:

| Role | Name | Directorate | Branch | Responsibility |
|--|---------------------|--------------------------------|-----------------------------------|--|
| PROJECT SPONSOR | Robert Greenwood | N/A | N/A | Senior Leadership support |
| PROJECT DIRECTOR | Stuart Liddell | People & Systems | N/A | Senior Leadership support |
| PROJECT CONTROL GROUP | Robert Greenwood | N/A | N/A | Chair of Peak Safety Steering Group (PSSG) |
| | Stuart Liddell | People & Systems | N/A | Project Director and Customer |
| | Kirrilly Twomey | City Services | N/A | Primary Customer |
| | Rick Harris | City & Community Outcomes | Infrastructure & Strategic Assets | Customer |
| | Chris Brogan | Development & Customer Service | Building & Compliance Services | Customer |
| | Neil Farquharson | Integrated Planning & Finance | Finance | Customer |
| | Grant McKay | People & Systems | Governance & Risk | Risk Management |
| | Trevor Anderson | People & Systems | Governance & Risk | Corporate Reporting |
| | Awaiting nomination | | | Safety Committee reporting |
| BUSINESS IMPROVE'T PROGRAM LEADER | John Hargreaves | People & Systems | Governance & Risk | Project Management |
| TEAM MEMBERS | Mark Mulligan | People & Systems | Governance & Risk | Project Leader |

| Role | Name | Directorate | Branch | Responsibility |
|--------------------|-----------------|---|-------------------|--------------------------|
| | Trevor Anderson | People & Systems | Governance & Risk | Implementation Support |
| | Mick Keyes | People & Systems | Governance & Risk | Implementation Support |
| FIELD STAFF | Various | Service Delivery
C&CO
D&CS
P&S
IP&F | Various | Consultation and testing |

6.2 Governance



Note: Whilst the Safety Team members – Trevor Anderson and Mick Keyes – have a project reporting responsibility, their business-as-usual (BAU) reporting line is to Grant McKay, Manager Governance & Risk; all non-project issues are directed via this BAU channel.

A Peak Safety Steering Group (PSSG) has been set-up to oversee the project. This steering group is scheduled to meet on a monthly basis. Following project completion the PSSG will remain in place as the primary governance mechanism for the the organisation's Safety Management System.

The members of the PSSG are: General Manager (project sponsor); Group Manager – P&S (project director); Director – Service Delivery; Manager – Service Delivery; Director – D&CS; Manager – C&CO; Chief Financial Officer – IP&F; Manager – Governance & Risk; Program Leader, Safety; BMCC WHS Committee Chair.

6.3 Project Plan Phases

The project has been planned in three phases.

The project officially commenced on 1 July 2016 and is scheduled to transition to business as usual (BAU) on 31 December 2018. The overall timeline for the project is set out in Gantt chart below (details for Phase 1 only are provided in Attachment 1). Detailed planning for Phase 2 and Phase 3 will be undertaken respectively in December 2016 and July of 2017.

| PHASE | Jul-Sep 2016 | Oct-Dec 2016 | Jan-Mar 2017 | Apr-Jun 2017 | Jul-Sep 2017 | Oct-Dec 2017 | Jan-Mar 2018 | Apr-Jun 2018 | Jul-Sep 2018 | Oct-Dec 2018 |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Phase 1 – Compliance (WHS Act 2011 and regulations) | | | | | | | | | | |
| Phase 2 – Systematic Risk Management in Safety (AS 31000) | | | | | | | | | | |
| Phase 3 – Continual Improvement embedded in Safety (AS 4801) | | | | | | | | | | |

6.4 Milestones

The following table sets out the major project milestones and the required delivery dates.

| ID | Milestone | Delivery Date |
|----|---|---------------|
| 1 | Specialist resources on board | May 2016 |
| 2 | Peak Safety Steering Group in place | Jul 2016 |
| 3 | Directors and Managers introduced to the project individually | Jul 2016 |
| 4 | New Consultation arrangements with workers in place | Sep 2016 |
| 5 | To-Be workflows defined and tested – Incidents, Risks, other | Sep 2016 |
| 6 | WHS Master Document Register finalised | Oct 2016 |
| 7 | Consultation Training – HSRs/HSCs | Oct 2016 |
| 8 | IT Solution – business requirements defined | Oct 2016 |
| 9 | WHS Objectives and Targets set and communicated to all workers | |
| 10 | Corporate and Site Induction procedure revised and implemented (WHS) | Nov 2016 |
| 11 | WHS Communication protocols established across all worksites | Nov 2016 |
| 12 | WHS Training needs analysis completed for all managers/supervisors | Nov 2016 |
| 13 | Risk Management Training – Managers/others | Nov 2016 |
| 14 | IT Solution – potential suppliers assessed and a choice made | Dec 2016 |
| 15 | Field facing WHS risk management tools reviewed and re-issued with training provided to workers (Pre-Start, HIRAC, JRA, SWMS, Toolbox Talk) | Dec 2016 |
| 16 | Management site inspection process and supporting documentation implemented (managers trained as required) | Dec 2016 |
| 17 | Health Surveillance program re-instated | Dec 2016 |
| 18 | Safety Management System compliant with WHS Act 2011 | Dec 2016 |
| 19 | Gap analysis undertaken to progress towards AS/NZS 4801 | Dec 2016 |

6.5 Cost Plan

The table below is a summary of the estimated project costs.

| Description of Cost | Amount | Funding Source |
|--|------------------|----------------|
| Project Lead (includes on costs) | \$110,000 | Burning Cost |
| Training – consultation (HSR/HSC) | \$10,000 | Burning Cost |
| Training – Risk Management (Managers/others) | \$40,000 | Burning Cost |
| IT solution development | \$80,000 | Burning Cost |
| Consulting – expertise | \$45,000 | Burning Cost |
| Assurance | \$10,000 | Burning Cost |
| | | |
| TOTAL – to be finalised | \$295,000 | |

Note: The above estimated project costs are currently being revised.

6.6 Compliance Plan

The following Act and standards must be taken into consideration to ensure compliance with the relevant external compliance regimes.

| Compliance Description | Reason | Tasks Involved | Timeframe |
|------------------------|-----------------|-----------------------|------------------|
| WHS Act 2011 | Compliance | Adherence to Act | 31 December 2016 |
| AS 31000 | Risk Management | Adherence to standard | 30 June 2017 |
| AS 4804 | Assurance | Adherence to standard | 31 December 2017 |
| ISO 45000 | future proofing | Adherence to standard | When available |

6.7 Risk Plan

Refer separate document.

6.8 Communications Plan

Below is a summary of the anticipated timeframe for the communications that will be undertaken during this project.

| Communication Type | 2016 | | | | | | | | | | | |
|--|------|---|---|---|---|---|---|---|---|---|---|---|
| | J | F | M | A | M | J | J | A | S | O | N | D |
| Soft launch to ELT – face-to-face joint meeting | | | | | | | | | | | | |
| Individual meetings with directors and group managers | | | | | | | | | | | | |
| Weekly project team meetings | | | | | | | | | | | | |
| Peak Safety Steering Group (PSSG) meetings | | | | | | | | | | | | |
| Initial meetings with managers x 21 | | | | | | | | | | | | |
| PSSG initial communique to all staff – email from Chair/GMgr | | | | | | | | | | | | |
| PSSG communique to all staff – via Teambrief | | | | | | | | | | | | |
| Pilot workshops with Branches | | | | | | | | | | | | |
| Establishment of site WHS notice boards | | | | | | | | | | | | |
| Establishment of WHS tab on intranet | | | | | | | | | | | | |
| Re-invigorate WHS section of Teambrief | | | | | | | | | | | | |

Peak Safety Steering Group – establishment; first meeting

Robert/GM communique via All Staff email: 20/07/2016

Dear Colleagues

I am pleased to report that last Thursday the first meeting of the Peak Safety Steering Group (PSSG) was held. The purpose of the PSSG is to ensure that the organisation's focus on safety is maximised and maintained and that the Safety Improvement Project delivers on our organisational value - '*Work Safe Home Safe*'. You will recall from the last Teambrief that I have elected to Chair the PSS given the importance of safety to the staff and community.

One of the key decisions arising from this first meeting was that City Services will have an additional member on the PSSG. This is in recognition of the size of this directorate and the diverse nature of its activities. The new member will be Mark Bruhn, Manager Parks & Support Services.

In brief, our first meeting proved very productive and I am very confident that we will be able to achieve our important mission. Future information on progress of the project and the outcomes of our Safety Management System will be provided to you monthly through Teambrief.

Thank you for your ongoing support to safety.

Regards, Robert

Robert Greenwood | General Manager | t 02 4780 5518 | e rgreenwood@bmcc.nsw.gov.au

7. ATTACHMENTS

7.1 Phase 1 Activity Details

Red text activity yet (see next pages) to be updated by JH to reflect changes to plan

| Task Name | Duration | Start | Finish |
|---|-----------------|---------------------|---------------------|
| IMPLEMENTATION - Phase 1 (Compliance) | 170 days | Mon 9/05/16 | Fri 30/12/16 |
| Planning | 160 days | Mon 9/05/16 | Fri 16/12/16 |
| Review current draft project plan and associated documents | 10 days | Mon 9/05/16 | Fri 20/05/16 |
| Create draft Gantt chart of activities | 10 days | Mon 9/05/16 | Fri 20/05/16 |
| Transfer project plan to BMCC template | 22 days | Wed 1/06/16 | Thu 30/06/16 |
| Update project plan | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Maintain project plan and related plans | 146 days | Fri 27/05/16 | Fri 16/12/16 |
| Project Team meetings | 146 days | Thu 26/05/16 | Thu 15/12/16 |
| Safety Leadership (due diligence) | 60 days | Mon 9/05/16 | Fri 29/07/16 |
| Enlist highest level organisational sponsorship | 1 day | Fri 27/05/16 | Fri 27/05/16 |
| Present to General Manager | 1 day | Fri 27/05/16 | Fri 27/05/16 |
| Enlist ELT level support | 22 days | Wed 1/06/16 | Thu 30/06/16 |
| Present to ELT group | 1 day | Wed 1/06/16 | Wed 1/06/16 |
| Agree Peak Safety Steering Group | 1 day | Wed 1/06/16 | Wed 1/06/16 |
| Schedule regular PSSG meetings | 1 day | Mon 6/06/16 | Mon 6/06/16 |
| Meet directors/group managers individually | 19 days | Mon 6/06/16 | Thu 30/06/16 |
| Identify Change Champion managers for each directorate/group | 19 days | Mon 6/06/16 | Thu 30/06/16 |
| Engage with managers x 23 | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Meet with managers individually | 18 days | Fri 1/07/16 | Tue 26/07/16 |
| Set-up group manager meeting (if req'd) by end July | 3 days | Wed 27/07/16 | Fri 29/07/16 |
| Consultation (worker engagement) | 81 days | Fri 1/07/16 | Fri 21/10/16 |
| Understand As-Is consultation arrangements - manager meetings | 21 days | Fri 1/07/16 | Fri 29/07/16 |

| Task Name | Duration | Start | Finish |
|---|-----------------|---------------------|---------------------|
| Provide guidance to managers on To-Be consultation arrangements | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Implement To-Be consultation arrangements | 45 days | Mon 1/08/16 | Fri 30/09/16 |
| Consultation Training | 32 days | Thu 8/09/16 | Fri 21/10/16 |
| Conduct needs analysis for consultation training | 7 days | Thu 8/09/16 | Fri 16/09/16 |
| Deliver consultation training | 25 days | Mon 19/09/16 | Fri 21/10/16 |
| Risk Management (duty of care) | 81 days | Fri 1/07/16 | Fri 21/10/16 |
| Understand As-Is risk management arrangements - manager meetings | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Draft To-Be risk management process workflows | 7 days | Mon 22/08/16 | Tue 30/08/16 |
| Test To-Be risk management process | 12 days | Thu 8/09/16 | Fri 23/09/16 |
| Implement To-Be risk management arrangements | 45 days | Mon 22/08/16 | Fri 21/10/16 |
| Source training provider - Safety + ERM | 18 days | Mon 22/08/16 | Wed 14/09/16 |
| Train managers and other nominated staff | 20 days | Mon 26/09/16 | Fri 21/10/16 |
| Project Documentation Strategy | 20 days | Mon 18/07/16 | Fri 12/08/16 |
| Draft documentation strategy | 10 days | Mon 18/07/16 | Fri 29/07/16 |
| Finalise documentation strategy | 5 days | Mon 1/08/16 | Fri 5/08/16 |
| Implement documentation strategy | 5 days | Mon 8/08/16 | Fri 12/08/16 |
| Incident Investigation & Reporting | 87 days | Fri 1/07/16 | Mon 31/10/16 |
| Understand As-Is incident management arrangements - manager meetings | 21 days | Fri 1/07/16 | Fri 29/07/16 |
| Draft To-Be incident management process - identify hazard, assess hazard risk, control hazard | 1 day | Fri 29/07/16 | Fri 29/07/16 |
| Test To-Be incident management process | 1 day | Wed 31/08/16 | Wed 31/08/16 |
| Implement To-Be incident management process | 43 days | Thu 1/09/16 | Mon 31/10/16 |
| Reporting | 116 days | Mon 4/07/16 | Mon 12/12/16 |
| Prepare As-Is reports for July PSSG | 5 days | Mon 4/07/16 | Fri 8/07/16 |
| Prepare To-Be reports for August PSSG | 15 days | Mon 25/07/16 | Fri 12/08/16 |
| Finalise To-Be August reports for PSSG | 1 day | Mon 15/08/16 | Mon 15/08/16 |
| Finalise September reports for PSSG | 6 days | Mon 5/09/16 | Mon 12/09/16 |
| Finalise October reports for PSSG | 6 days | Mon 10/10/16 | Mon 17/10/16 |
| Finalise November reports for PSSG | 6 days | Mon 7/11/16 | Mon 14/11/16 |

| Task Name | Duration | Start | Finish |
|---|-----------------|--------------------|---------------------|
| Finalise December reports for PSSG | 6 days | Mon 5/12/16 | Mon 12/12/16 |
| Software Application Solution | 96 days? | Fri 5/08/16 | Fri 16/12/16 |
| Planning | 1 day | Fri 5/08/16 | Fri 5/08/16 |
| Scoping of requirements - business, functional, technical | 2 days | Wed 10/08/16 | Thu 11/08/16 |
| RFI suppliers | 31 days | Fri 12/08/16 | Fri 23/09/16 |
| Evaluation of options - in-house vs. supplier | 25 days | Mon 26/09/16 | Fri 28/10/16 |
| Develop plan for software solution implementation | 11 days | Tue 1/11/16 | Tue 15/11/16 |
| Design solution | 25 days | Mon 14/11/16 | Fri 16/12/16 |
| Implement software solution (in PHASE 2) | | | |
| Compliance Gap Analysis | 12 days | Thu 1/12/16 | Fri 16/12/16 |
| Conduct Compliance Audit | 12 days | Thu 1/12/16 | Fri 16/12/16 |
| Planning Phase 2 | | | |
| IMPLEMENTATION - Phase 2 (Systematic Risk Management & ERM integration - ISO 31000) | 129 days | Tue 3/01/17 | Fri 30/06/17 |
| IMPLEMENTATION - Phase 3 (Integrated Risk Management - AS 4801) | 391 days | Mon 3/07/17 | Mon 31/12/18 |

- ☐ Include safety training review of Barry Heath of GO1 submission in Gantt Chart + above Phase 1 – to be carried over by M&M.
- ☐ Include “Lone Worker” procedure (and create policy?) as a deliverable in Phase 1.

Safety Improvement Phase 1 Task Activity Details – 18 November PSSG update (as at 31 October)

LEGEND

Completed

On Target

At Risk

Behind Target

Ongoing

RESPONSIBILITY

JH – John Hargreaves

TA – Trevor Anderson

MK – Michael Keyes

SB – Scott Buchanan

MM – Mark Mulligan

GMc – Grant McKay

G&R – Governance & Risk Branch

| Deliverable Description | Task | Duration | Finish | Resp. |
|--|---|----------|----------|-------|
| 1. Due diligence at Officer level evidenced through objective and target setting and reporting against performance | Re-draft PSSG Committee Charter to reflect WHS Act Obligations and business reporting requirements | 1 day | 12/10/16 | MM |
| | Draft performance targets (lead and lag) to align with PSSG Charter | 3 days | 12/10/16 | TA |
| | PSSG approval of revised Charter and performance targets | 1 day | 21/10/16 | MM |
| | Communication of PSSG Charter and performance targets to staff | 1 day | 28/10/16 | MM |
| | Ongoing monitoring of Officer due diligence obligations | Ongoing | Ongoing | G&R |
| | | | | |
| 2. Consultation arrangements in place that represent all workers in relation to health and safety matters | Consult with ELT and establish Peak Safety Steering Group (PSSG) | 4 days | 31/07/16 | JH |
| | Meet with managers to establish current and future consultation arrangements | 23 days | 31/08/16 | JH/TA |
| | Support the establishment of new consultation arrangements in branches and across the organisation | 20 days | 30/09/16 | JH/TA |
| | Produce WHS Consultation procedure, obtain PSSG endorsement and communicate to managers and staff | 3 days | 15/10/16 | MM |
| | Obtain PSSG approval for revised Charter that includes Officer Due Diligence requirements and revised agenda template | 1 day | 21/10/16 | MM |
| | Communicate PSSG Charter to manager and staff | 3 days | 31/10/16 | MM/TA |

| Deliverable Description | Task | Duration | Finish | Resp. |
|--|--|----------|----------|-------------|
| 3. Communication mechanisms in place across all workplaces that meet minimum WHS requirements – WHS notice boards; WHS “tab” on Intranet and enhanced Team Brief WHS element | Safety “tab” provided on Intranet Key Sections Menu | 1 day | 26/09/16 | MK |
| | Team Brief WHS element enhanced to provide informative commentary on incidents and the Safety Improvement project plan | 2 days | 26/09/16 | TA/MM |
| | Agree information layout for safety notice boards at participating static sites | 2 days | 27/10/16 | MK |
| | Source appropriate type of notice board and deploy at all participating sites | 10 days | 9/12/16 | MK |
| | Appoint responsible person/s at each site for maintaining currency of material | 2 days | 19/12/16 | MK |
| | Communicate the deployment of safety notice boards via Team Brief | 1 day | 23/12/16 | MM |
| 4. Systematic risk management referenced to legislation; systematic incident response and investigation | Develop incident investigation decision matrix | 2 days | 24/10/16 | MM |
| | Review and re-draft Incident Reporting and Investigation procedure | 2 days | 28/10/16 | MM |
| | Review and re-draft Accident Investigation Report form/template | 2 days | 28/10/16 | MM |
| | Submit documents for review (PSSG required) | 2 days | 7/11/16 | MM |
| | Communicate procedural changes to relevant staff (teambrief) | 1 day | 19/12/16 | MM |
| | Publish endorsed documents on Intranet Safety Portal | 1 day | 23/12/16 | TA |
| 5. Duty of care – risk management – implemented and measured i.e. health surveillance | Confirm categories of Health surveillance required at BMCC | 3 days | 28/10/16 | TA |
| | Develop Health Surveillance spread sheet encompassing all categories and impacted staff | 3 days | 7/11/16 | TA |
| | Develop draft Health Surveillance procedure and associated forms | 3 days | 18/12/16 | TA/MM |
| | Submit draft procedure and forms for WHS committee review | 1 day | 18/12/16 | TA/MM |
| | Communicate procedural changes to relevant staff (safety bulletin or team brief) | 1 day | 19/12/16 | TA |
| | Publish endorsed documents on Intranet Safety Portal | 1 day | 23/12/16 | TA |
| 6. Induction and training commensurate with risk | Corporate induction material reviewed with regard to statutory WHS requirements and content (Induction checklist and probation review) | 2 days | 14/10/16 | TA/MM |
| | Consultation undertaken with HR (Scott Buchanan) to incorporate required changes to the Induction Checklist and Probation Review | 2 days | 24/10/16 | TA/MM
SB |
| | Changes to Induction Checklist and Probation Review implemented | 2 days | 18/11/16 | SB/TA |
| | WHS Induction Procedure reviewed (including elements of Orientation day) | 1 day | 18/11/16 | TA/SB |
| | Changes to induction procedure and form communicated to all supervisors and posted on Intranet | 1 day | 18/11/16 | SB/TA |
| | | | | |

| Deliverable Description | Task | Duration | Finish | Resp. |
|--|---|----------|----------|--------------|
| 7. Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Teambrief | Develop objectives and targets and propose to PSSG | 6 days | 18/08/16 | TA/JH |
| | Consult on initial reporting requirements with directors and group managers, consult with staff as required and implement | 10 days | 30/09/16 | TA/JH/
MK |
| | Prepare traffic light report structure for reporting to the PSSG | 2 days | 11/09/16 | TA/JH/
MM |
| | Obtain PSSG endorsement for report structure and lead and lag indicators | 1 day | 21/10/16 | MM |
| | Implement communication of safety performance via Teambrief | 2 days | 30/11/16 | MM/TA |
| 8. Leadership performance measures implemented that facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections/interactions objectives and targets) | Lead safety objectives/targets/indicators developed and endorsed by PSSG | 2 days | 21/10/16 | TA/MM |
| | Lead safety objectives/targets/indicators communicated to all managers/supervisors and staff via Team Brief | 1 day | 4/11/16 | TA/MM |
| | Site Safety/Workplace inspection checklist revised/developed and published | 2 days | 23/10/16 | MK/MM |
| | Training/coaching of managers and supervisors in utilisation of Site safety/Workplace inspection checklist | 60 days | 24/02/17 | TA/MK/
MM |
| | Lead safety indicators reported to PSSG monthly | Ongoing | Ongoing | TA |
| 9. Safety management system that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801 | Complete WHS document mapping register (existing mapped to AS/NZS 4801) what's current, published and what's out of date | 2 days | 21/10/16 | TA |
| | Review register and determine what documents require updating, reviewing, approval and publishing on Intranet | 4 days | 11/11/16 | TA/MM |
| | Review, consult and re-publish up to three Policy level documents | 6 days | 23/12/16 | TA |
| | Review, consult and re-publish up to six Program level documents | 12 days | 23/12/16 | TA/MK |
| | Review, consult and re-publish up to 20 SOP level documents | 40 days | 24/02/17 | TA/MK |
| | Review, consult and re-publish all SWMS | Ongoing | Ongoing | MK/TA/
MM |
| | Train staff in revised SOP's and SWMS as required | Ongoing | Ongoing | MK/TA/
MM |

| Deliverable Description | Task | Duration | Finish | Resp. |
|---|--|----------|----------|------------------------|
| 10. Software application evaluations complete | Undertake "Request for Information" step in evaluation process – 4 suppliers to be engaged: (1) Frontier/Chris 21 (2) K@ SmartSheet (3) Donesafe (4) SAI Global - Cintellate | 5 days | 30/09/16 | JH/TA/
MM/MK
GMC |
| | Develop Business Requirements document | 5 days | 30/10/16 | MM/TA/
MK/JH |
| | Create Request for Proposal document | 3 days | 4/11/16 | MM/TA/
MK/JH |
| | Review supplier responses | 4 days | 30/11/16 | MM/TA/
MK/JH |
| | Choose if/which software solution responses are suitable – if YES then which supplier to work with | 6 days | 16/12/16 | MM/TA/
MK/JH |
| | | | | |

Safety Improvement Phase 1 Task Activity Details – 17 February PSSG update (as at 14 February 2017)

LEGEND

Completed

On Target

At Risk

Behind Target

Ongoing

RESPONSIBILITY

JH – John Hargreaves

TA – Trevor Anderson

MK – Michael Keyes

SB – Scott Buchanan

MM – Mark Mulligan

GMc – Grant McKay

G&R – Governance & Risk Branch

| Deliverable Description | Task | Duration | Finish | Resp. |
|--|---|----------|----------|-------------|
| 1. Due diligence at Officer level evidenced through objective and target setting and reporting against performance | Re-draft PSSG Committee Charter to reflect WHS Act Obligations and business reporting requirements | 1 day | 12/10/16 | MM |
| | Draft performance targets (lead and lag) to align with PSSG Charter | 3 days | 12/10/16 | TA |
| | PSSG approval of revised Charter and performance targets | 1 day | 21/10/16 | MM |
| | Communication of PSSG Charter and performance targets to staff | 1 day | 28/10/16 | MM |
| | Ongoing monitoring of Officer due diligence obligations | Ongoing | Ongoing | G&R |
| 2. Consultation arrangements in place that represent all workers in relation to health and safety matters | Consult with ELT and establish Peak Safety Steering Group (PSSG) | 4 days | 31/07/16 | JH |
| | Meet with managers to establish current and future consultation arrangements | 23 days | 31/08/16 | JH/TA
MK |
| | Support the establishment of new consultation arrangements in branches and across the organisation | 20 days | 30/09/16 | JH/TA
MK |
| | Produce WHS Consultation procedure, obtain PSSG endorsement and communicate to managers and staff | 3 days | 15/10/16 | MM |
| | Obtain PSSG approval for revised Charter that includes Officer Due Diligence requirements and revised agenda template | 1 day | 21/10/16 | MM |
| | Communicate PSSG Charter to manager and staff | 3 days | 31/10/16 | MM/TA
MK |

| Deliverable Description | Task | Duration | Finish | Resp. |
|--|--|----------|----------|-------------|
| 3. Communication mechanisms in place across all workplaces that meet minimum WHS requirements – WHS notice boards; WHS “tab” on Intranet and enhanced Team Brief WHS element | Safety “tab” provided on Intranet Key Sections Menu | 1 day | 26/09/16 | MK |
| | Team Brief WHS element enhanced to provide informative commentary on incidents and the Safety Improvement project plan | 2 days | 26/09/16 | TA/MM |
| | Agree information layout for safety notice boards at participating static sites | 2 days | 21/10/16 | MK |
| | Source appropriate type of notice board and deploy at all participating sites | 10 days | 9/12/16 | MK |
| | Appoint responsible person/s at each site for maintaining currency of material | 2 days | 19/12/16 | MK |
| | Communicate the deployment of safety notice boards via Team Brief | 1 day | 23/12/16 | MM |
| | | | | |
| 4. Systematic risk management referenced to legislation; systematic incident response and investigation | Develop incident investigation decision matrix | 2 days | 21/10/16 | MM |
| | Review and re-draft Incident Reporting and Investigation procedure | 2 days | 28/10/16 | MM |
| | Review and re-draft Accident Investigation Report form/template | 2 days | 28/10/16 | MM |
| | Submit documents for review (PSSG required) | 2 days | 7/11/16 | MM |
| | Communicate procedural changes to relevant staff (teambrief) | 1 day | 19/12/16 | MM |
| | Publish endorsed documents on Intranet Safety Portal | 1 day | 23/12/16 | TA |
| | | | | |
| 5. Duty of care – risk management – implemented and measured i.e. health surveillance | Confirm categories of Health surveillance required at BMCC | 3 days | 28/10/16 | TA |
| | Develop Health Surveillance spread sheet encompassing all categories and impacted staff | 3 days | 7/11/16 | TA |
| | Develop draft Health Surveillance procedure and associated forms | 3 days | 18/12/16 | TA/MM |
| | Submit draft procedure and forms for WHS committee review | 1 day | 18/12/16 | TA/MM |
| | Communicate procedural changes to relevant staff (safety bulletin or team brief) | 1 day | 19/12/16 | TA |
| | Publish endorsed documents on Intranet Safety Portal | Ongoing | 23/12/16 | TA/
MK |
| | | | | |
| 6. Induction and training commensurate with risk | Corporate induction material reviewed with regard to statutory WHS requirements and content (Induction checklist and probation review) | 2 days | 14/10/16 | TA/MM |
| | Consultation undertaken with HR (Scott Buchanan) to incorporate required changes to the Induction Checklist and Probation Review | 2 days | 21/10/16 | TA/MM
SB |
| | Changes to Induction Checklist and Probation Review implemented | 2 days | 18/11/16 | SB/TA |
| | WHS Induction Procedure reviewed (including elements of Orientation day) | 1 day | 18/11/16 | TA/SB |
| | Changes to induction procedure and form communicated to all supervisors | 1 day | 18/11/16 | SB/TA |

| Deliverable Description | and posted on Intranet | | Task | Duration | Finish | Resp. |
|--|------------------------|--|---|----------|----------|--------------|
| | | | | | | |
| 7. Organisational WHS Objectives and Targets set and communicated to all workers – performance against targets communicated monthly via Teambrief | | | Develop objectives and targets and propose to PSSG | 6 days | 18/08/16 | TA/JH |
| | | | Consult on initial reporting requirements with directors and group managers, consult with staff as required and implement | 10 days | 30/09/16 | TA/JH/
MK |
| | | | Prepare traffic light report structure for reporting to the PSSG | 2 days | 11/09/16 | TA/JH/
MM |
| | | | Obtain PSSG endorsement for report structure and lead and lag indicators | 1 day | 21/10/16 | MM |
| | | | Implement communication of safety performance via Teambrief | 2 days | 30/11/16 | MM/TA |
| 8. Leadership performance measures implemented that facilitate coaching, mentoring and oversight of compliance (initiated through management site inspections/interactions objectives and targets) | | | Lead safety objectives/targets/indicators developed and endorsed by PSSG | 2 days | 21/10/16 | TA/MM |
| | | | Lead safety objectives/targets/indicators communicated to all managers/supervisors and staff via Team Brief | 1 day | 4/11/16 | TA/MM |
| | | | Site Safety/Workplace inspection checklist revised/developed and published | 2 days | 28/10/16 | MK/MM |
| | | | Training/coaching of managers and supervisors in utilisation of Site safety/Workplace inspection checklist | Ongoing | Ongoing | TA/MK/ |
| | | | Lead safety indicators reported to PSSG monthly | Ongoing | Ongoing | TA |
| 9. Safety management system that complies with the WHS Act 2011 and aspires to compliance with AS/NZS 4801 | | | Complete WHS document mapping register (existing mapped to AS/NZS 4801) what's current, published and what's out of date | 2 days | 21/10/16 | TA |
| | | | Review register and determine what documents require updating, reviewing, approval and publishing on Intranet | 4 days | 11/11/16 | TA/MM |
| | | | Review, consult and re-publish two Policy level documents | 6 days | 23/12/16 | TA |
| | | | Review, consult and re-publish up to six Program level documents | 12 days | 23/12/16 | TA/MK |
| | | | Review, consult and re-publish up to 20 SOP level documents | 40 days | 24/02/17 | TA/MK |
| | | | Review, consult and re-publish all SWMS | Ongoing | Ongoing | MK/TA/ |
| | | | Train staff in revised SOP's and SWMS as required | Ongoing | Ongoing | MK/TA/ |

| Deliverable Description | Task | Duration | Finish | Resp. |
|---|--|----------|----------|-------------------------|
| 10. Software application evaluations complete | Undertake "Request for Information" step in evaluation process – 4 suppliers to be engaged: (1) Frontier/Chris 21 (2) K@ SmartSheet (3) Donesafe (4) SAI Global - Cintellate | 5 days | 30/09/16 | JH/TA/
MM/MK
/GMC |
| | Develop Business Requirements document | 5 days | 31/10/16 | MM/TA/
MK/JH |
| | Create Request for Proposal document | 3 days | 4/11/16 | MM/TA/
MK/JH |
| | Review supplier responses | 4 days | 30/11/16 | MM/TA/
MK/JH |
| | Choose if/which software solution responses are suitable – if YES then which supplier to work with | 6 days | 16/12/16 | MM/TA/
MK/JH |
| | | | | |



***WORK HEALTH & SAFETY
MANANAGEMENT SYSTEM
MANUAL***

WORK HEALTH & SAFETY MANAGEMENT SYSTEM MANUAL

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COPY STATUS

REFERENCED DOCUMENT TITLE: BLUE MOUNTAINS CITY COUNCIL
WORK HEALTH & SAFETY MANAGEMENT SYSTEM
MANUAL

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AUTHORISATION

DOCUMENT TITLE: BLUE MOUNTAINS CITY COUNCIL
WORK HEALTH & SAFETY MANAGEMENT SYSTEM MANUAL
Version 5
Endorsed By ELT or PSSG on .../.../16

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Approved by: _____ Date: _____

General Manager,
Blue Mountains City Council.

WORK HEALTH & SAFETY MANAGEMENT SYSTEM MANUAL

GENERAL STATEMENT AND ORGANISATION BACKGROUND

The Blue Mountains City Council is responsible for one of the largest municipal areas in the world. The area comprises approximately 143,000 hectares (of which 102,000 hectares are within a national park and a further 12,000 hectares are public reserve or crown land), 26 townships or villages and has a population of approximately 78,000.

The environmental and scenic importance of the Blue Mountains was highlighted by its listing as an area of World Heritage significance on 29th of November 2000. More than 3 million people from around the globe visit the Blue Mountains area annually.

The inauguration of local government on the Blue Mountains commenced on 4 January 1889 when the Municipality of Katoomba was incorporated and in 1890 the first Katoomba Council was formed.

On 13 June 1906 the Kanimbla Shire Council was incorporated. The Council covered the major part of the Mountains except for Katoomba. On 14 December 1919 the separate Municipality of Blackheath was incorporated, being taken from the Blue Mountains Shire area. At this stage, there were three Councils operating in the Blue Mountains area and it later became necessary to form a county council to supervise the distribution of electricity and water supplies in the area, and so on 1 July 1944 the Blue Mountains County Council was established. Other duties of this County Council were the supervision and operation of the sewerage schemes.

In May 1946 Katoomba was proclaimed a City. On 1 October 1947 the Municipality of Blackheath, the City Katoomba and the Blue Mountains Shire Council, together with Blue Mountains County Council, incorporated to become the Blue Mountains City Council.

Further changes took place on 1 January 1980 when the electricity function was transferred to Prospect County Council and on 1 July 1980 when the Metropolitan Water, Sewerage and Drainage Board assumed responsibility for water supply and sewerage services in the City.

Further changes to the structure of local government and Blue Mountains City Council were made on 1 July 1993, when the N.S.W. Local Government Act took effect. This Act changed the responsibilities of the Mayor and Councillors and separated the functions more clearly from those of the General Manager. The new Act has forced local government to become more responsible and accountable. One of the significant changes has been to place all senior staff on performance based contracts.

Blue Mountains City Council has 12 councillors (including the Mayor who is elected by the Councillors), representing 4 Wards within the City. The General Manager is appointed by the Council to manage the administration of the Council and in turn, the General Manager appoints staff within Council.

Blue Mountains City Council always strives to meet the needs of the diverse communities in the Blue Mountains; and to provide quality services to customers.

In the Blue Mountains, there are a number of factors that create difficulties in providing basic services for residents. Some of the difficulties including terrain and climate arise from the very attributes which make the area such an attractive place to live and visit.

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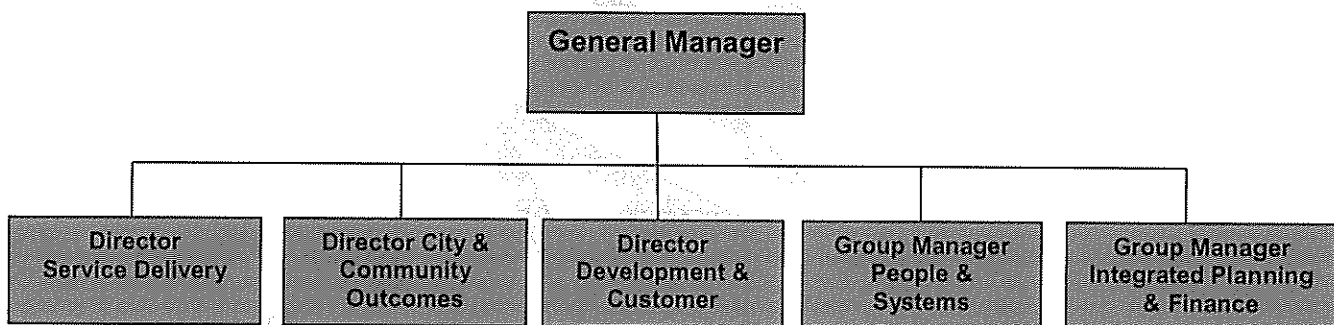
Despite these challenges, BMCC is committed to providing the best services that it can to customers. Council services are now being progressively tested against external organisations under a wide ranging change program. The objective is to ensure all services are provided in an efficient and cost effective manner.

BMCC has also released a series of Service Aims. The twelve aims were introduced to ensure that Council staff work at a very high professional standard and to make public Council's benchmarks of customer service delivery.

Consistent with these principles the Work Health & Safety Management System Procedure has been designed and implemented, to improve the health, welfare and safety of council workers in their work environments and their interaction with the wider community. With increasing demands on Council, combined with the diverse and complex range of services offered, the implementation of appropriate management systems is seen as essential in meeting legal, ethical, industrial relations and financial obligations.

1.0 FUNCTIONS WITHIN COUNCIL

The Organisation consists of three Directorates & two Groups



Service Delivery

The Service Delivery directorate is the principal service provider for the Blue Mountains City Council. It has the primary goal of providing local government services listed within Service Level Specifications to the community in a cost effective, efficient and sustainable manner.

Service Delivery directorate is the principal service provider for the Blue Mountains City Council. It has the primary goal of providing local government services to the community in a cost effective, efficient and sustainable manner. Services provided are as follows:

- Civil operations including construction and maintenance of roads, parks and sports grounds, and other civil infrastructure.;
- Management of Wentworth Falls Lake Dam;
- Management and support of Local Traffic Committee and implementation of road safety programs;
- Built asset maintenance, graffiti removal, capital works as required;
- Aquatics, Fitness and Leisure Centres;

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- Waste Services including domestic refuse collection, effluent pump-out and disposal, landfill gatehouse and Waste Transfer Station operation, bulky waste pick-up and kerbside chipping;
- Contract management of recycling and green waste collection services;
- Fleet management and maintenance, purchasing, stores warehousing and supply of goods;
- Cleansing of town centres, public places and other public infrastructure; and
- Visitor Information Services including the operation of two (2) Visitor Information Centres that service the Blue Mountains Regional area. The Centres are actively involved in the promotion and marketing of the Blue Mountains Region locally, nationally and internationally through various media such as the internet, retail sales, provision of community information and an accommodation booking facility. The Visitor Information Centres are Accredited Visitor Information Centres (AVIC) through Tourism NSW.

Development, Health & Customer Service

The Development, Health & Customer Services Directorate has strong economic, social and environmental responsibilities (reflected in our regulatory activities) and a strong commitment to providing excellent customer service in Family Day Care, Libraries and Council's Business & Information Centres. We also offer competitive building / engineering certification services. Our functional areas are highly sensitive to the external environment including changing legislation, market conditions and emerging technology.

Our aim is to provide quality customer and professional services that respond to key outcomes and priorities in the Council's Community Strategic Plan Sustainable Blue Mountains 2025. The Principal Activities to which we contribute include, Built Environment-Using land, Built Environment-Moving Around, Social- Looking after People and Civic Leadership- Providing Good Governance.

City & Community Outcomes

The key role of the City & Community Outcomes Directorate is to contribute to the development and implementation of the strategic direction, policy and standards for the planning, development, presentation and care of the City's built and natural environment. The Directorate also provides a wide range of programs and services for the benefit and well-being of the Blue Mountains community, as well as deliver capital improvements of Council assets across the City.

Integrated Planning and Finance

The role of the Integrated Planning and Finance Group is to lead and drive implementation of the Integrated Planning and Reporting legislative framework and provide corporate and financial services that support the Council to achieve its Vision of being A Sustainable Council Leading a Sustainable City.

People and Systems

The role of the People & Systems group is to develop, implement and manage People, Organisational Development, Systems and Information Management strategies and programs to deliver our vision of being a **Sustainable Organisation Leading a Sustainable City**. This includes raising our focus on risk management and safety and integrated systems and procedures.

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There are four separate branches within the People & Systems group, namely Information Solutions, Executive Services, Governance & Risk and Human Resources.

NORMATIVE REFERENCES & RELATED DOCUMENTS

Australian Standards

AS 1885.1-1990 Measurement of WHS Performance
AS 1885.1 Supp 1-1991

Australian / New Zealand Standards

AS/NZS 4360: 2004 Australian/New Zealand Standard, Risk Management
AS/NZS 4801: 2001 Australian/New Zealand Standard, Occupational Health and
Safety Management Systems

International Standards

AS/NZS ISO 9001:2000 Quality Management Systems - Requirements
AS/NZS ISO 14001:2004 Environmental Management Systems

Guidelines

AS/NZS 4804:2001 Work health and safety management systems -
General guidelines on principles, systems and supporting
techniques.

Quality WHS System Model for Self-Insurers

Web Sites

<http://www.nwhsc.gov.au>
<http://www.workcover.nsw.gov.au>

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2.0 DEFINITIONS

The following expanded definitions apply to this Management System Procedure.

Audit

A systematic examination against defined criteria to determine whether activities and related results conform to planned arrangements and are suitable to BMCC's Management System Procedure and objectives.

BMCC

Blue Mountains City Council

Client

Any party receiving services from BMCC.

Continuous Improvement

Regular reviews of existing processes to enhance the Work Health & Safety Management System Procedure, to achieve improvement in overall WHS performance in line with BMCC's WHS Policy and guidelines.

Contract

Agreed requirements between a supplier and a client transmitted by any means (ISO 9000.2:1998 Section 3.1 and ISO 9001:2015). It also includes commercial orders, whether written or not.

Contractor

An organisation, or individual, which formally contracts to provide a product or service to BMCC.

Construction Projects

Includes all organised activities concerned with the demolition, building, landscaping and maintenance of community infrastructure.

Leadership Team

Executive Leadership Team consisting of the General Manager, Director Service Delivery, Director City & Community Outcomes, Director Development, Health & Customer Service, Group Manager People & Systems, Group Manager Integrated Planning & Finance.

Environment

Surroundings in which an organisation operates including air, water, land, natural resources, flora and fauna, humans, and their interrelation.

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Environmental Aspects

Elements of an organisation's activities, products or services that can interact with the environment.

Environmental Impact

Any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organisation's activities, products or services.

Hazard

Something having the potential to cause harm in terms of human injury or ill health, damage to property, damage to the environment or some combination of these.

Hazard Identification

The process used to identify all possible situations where people may be exposed to injury, illness or disease.

Hierarchy of Control

Methods by which risks can be controlled based on a hierarchy of effectiveness in the following order
1 Elimination; 2 Substitution; 3 Isolation; 4 Engineering; 5 Administrative Control; 6 Personal Protective Equipment (PPE).

Incident

An unplanned event resulting in, or having a potential for harm, ill health, damage or loss.

Line Managers

Operational managers, operational engineers, coordinators and team leaders.

Person Conducting Business or Undertaking (PCBU)

Person Conducting Business or Undertaking (PCBU). The Officers of the PCBU hold responsibility for the implementation of the Safety Management System Procedure.

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Policy (WHS)

Statement by the organisation of its commitment in relation to its overall health, safety and injury management performance and which provides a framework for action and for the setting of health, safety and injury management objectives and targets.

Procedure (WHS)

Written plans giving detailed instructions for managing a regularly occurring situation or activity.

Product

Means products or services provided by and/or for the Organisation. It is the "results of activities or processes" and includes "services, hardware, processed materials, software or a combination thereof" (ISO 9000.2:1998 Section 3.2 and ISO 9001:2000 3.1).

Rehabilitation

The process of restoring an injured worker to the fullest physical, psychological, social, vocational and economic function of which they are capable.

Risk

The probability of harm becoming actual.

Risk Assessment

Risk assessment is the process of gathering data and making assumptions based on that data to estimate short- and long-term harmful effects on human health or the environment from exposure to hazards associated with the use of a particular product or technology. The overall process of estimating the magnitude of risk and deciding whether the risk is acceptable.

Senior Managers

General Manager, Directors, Group Managers and their direct management reports.

SWP

Safe Workplace Procedure

Tender

An offer made to a supplier in response to an invitation to provide specified products or services. This also includes requests for quotation in any form from potential suppliers of products or services to BMCC.

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WHS Objective

Overall goals in terms of WHS performance, arising from the work health and safety policy that an organisation sets itself to achieve, and which is quantified where practicable.

Work Health & Safety Management System Manual (WHSMSM)

That part of the overall management system which includes organisational structure, planning activities, responsibilities, practises, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining WHS policy, procedures and guidelines, and so managing WHS risk associated with the Organisation.

Workers

Means all wages and salaried staff, casual or contract staff, Including Contractors, Sub contractors and Volunteers.

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3.0 WHSMSM PROGRAM REQUIREMENTS

4.1 GENERAL REQUIREMENTS

An essential capability of the WHS Management System Procedure is that of flexibility. BMCC recognises that the diverse range of activities and complex interactions with the community that it is involved in requires a system that can adapt to a number of different operational levels. This WHS Management System Procedure will have to be integrated into all day-to-day activities of Council to be effective. For this reason it is essential that the platform produced has the capability to be integrated into other management systems. The Work Health & Safety Management System Procedure has been designed to integrate with existing Quality and Environmental Management Systems, to help facilitate this process.

BMCC recognises that the implementation of the WHS Management System Procedure will develop and improve over a period of time. Realistic objectives and performance indicators will be established and monitored over designated periods.

4.2 POLICY AND COMMITMENT **Work Health & Safety Policy**

(Insert Policy as Endorsed by PCT and ELT)

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4.3 PLANNING

4.3.1 Identification of hazards, hazard/risk assessment and control of hazards/risks

Refer BMCC-SPP-9.1 Hazard Identification and Assessment (line 53 identified as JSA but no detail)

BMCC WHS Risk Management Policy (Published March 2014 - line 10 – it is a Hazard Identification, Risk Assessment and Control (HIRAC) procedure without a risk matrix and needs to be re-written)

Health and safety in the workplace is best achieved through management of work process and must be integrated into management of all work activities. Risks should be managed with appropriate control measures. Hazardous operations or locations should be strictly controlled and plant and equipment should be regularly inspected and serviced. System based control methods which use standardised routines or physical barriers to prevent incident are superior to methods which rely on judgement and cooperation of individuals. BMCC will establish and maintain procedures for the:

- Identification of WHS risk;
- Assessment of identified WHS risk;
- Implementation of measures to eliminate or minimise risk;
- Identification and conformity with relevant WHS legislation, regulation, standards and codes of practice;
- Effective work method control for maintenance, cleaning, repair and inspection of plant and equipment; and
- Management of emergencies.

4.3.2 Legal and other requirements

Refer BMCC SPP 1.3.1 Housekeeping for Legal Compliance (line 34 – this is a very generic and possibly redundant procedure whose purpose is better served by the site inspection checklists)

Legislation Obligations Register (this needs to be developed and added to the WHS Document Register)

Under the WHS Act 2011, courts may impose severe penalties on Persons Conducting Business or Undertaking (PCBU) and individuals.

The following is a reminder both of obligations and assistance that is available for managers to comply with the law.

- BMCC must take care for workers safety and ensure their health and safety at work, BMCC must also ensure that persons not in its employment are not exposed to risks to their health and safety, e.g. visitors, contractors and the general public;
- Additionally a PCBU must ensure that workers are consulted on all WHS matters within the workplace and given opportunities to participate in decisions involving WHS matters;
- Penalties associated with contraventions of the WHS Act 2011 or the WHS Regulation 2011 for PCBU can be very high. These penalties are documented in the legislation, copies of which are available at all permanently established worksites, through the WHS Co-ordinator or via the SafeWork NSW website. <http://www.workcover.nsw.gov.au/>

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- Those workers directly involved in any work place incident and those responsible for supervision or management of a workplace may also be liable under the law;
- Offences that are repeated can bring much higher penalties than the first offence;
- There are imprisonment penalties for some offences;
- Management is responsible to ensure they know what legislation applies to their operations, to have up to date copies on-site and to ensure that these legislative requirements are complied with. Ignorance of standards is no defence against breaches of the legislation or failure in "duty of care" requirements;
- Under WHS legislation there does not have to be an accident or injury for prosecution to succeed against an employer, where the statutory duty has been breached;
- There is liability if the event is foreseeable. If an accident occurs and steps are then taken which would have prevented it then it would be difficult to deny that the accident was foreseeable; and
- It is extremely difficult to successfully defend a prosecution as the WHS Act imposes a very high standard of care.

Note - For details of all obligations under the WHS Act 2011 please refer to the Act itself, hard copies are available from the WHS Program Leader or alternatively can be downloaded from the WorkCover web site <http://www.workcover.nsw.gov.au/>

The State Government sets requirements under WHS Legislation, the aim of which is to provide a safe and healthy workplace.

A reference list of all major legislation and standards that apply to BMCC operations will be developed in the element 'Document and Data Control', Section ?. A compliance register will be established and maintained at all operating sites. The register will detail:

- all statutory requirements
- all license requirements
- requirements for compliance with codes of practice
- requirements for compliance with standards

A procedure will be in place for updating and controlling the compliance register. The requirements listed in the register will be monitored to ensure and demonstrate compliance.

It is BMCC's responsibility to keep up to date with any changes. SafeWork NSW and WorkSafe are excellent sources of reference material. Other sources include:

- All levels of government;
- Industry and employer associations;
- Staff associations and unions;
- Commercial databases; and
- Professional services such as WorkSafe Australia.

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State and Federal "Codes of Practice" explain legal requirements and set guidelines that help organisations to comply, guidelines for WHS, and publications are produced by the State Government, WorkCover, WorkSafe Australia and the National Work Health & Safety Committee.

Model codes of practices set out the specific requirements for health and safety in the workplace. These codes are always a good guide to follow, however, where they are referred to in Acts or Regulation they become law and you must comply with their requirements.

The legal requirements which deal with management duties in health and safety are wide ranging as expressed in the Work Health and Safety Act 2011. The Act also imposes duties on workers and occupiers relating to public safety.

In addition, manufacturers, designers, importers, and suppliers of articles or substances for use at work are required to provide relevant information at the time of purchase.

Duties outlined in the Act can provide a checklist for compliance.

4.3.3 WHS objectives and targets

Objectives and targets shall be measurable and used monthly at Peak Safety Steering Group meetings and Team Brief meetings. They shall also be reviewed annually to evaluate the suitability and effectiveness of WHSMSM performance.

| Objective | Target | Type |
|---|---------|------|
| SafeWork NSW Notifiable Incidents | <4 | Lag |
| Lost Time Injury Frequency Rate (LTIFR) | <15 | Lag |
| Medically Treated Injury Frequency Rate (MTIFR) | <40 | Lag |
| Inductions Completed (new workers) | 100% | Lead |
| Workplace WHS Inspections Completed to Target | >80% | Lead |
| Manager WHS Leadership Activities Completed to Target | >80% | Lead |
| Workers Compensation Average Cost of Claims | <\$6000 | Lag |

4.3.4 WHS management plans

~~Refer BMCC-SPP-2.2 – WHS Committee Program Procedure Remove and Replace with:~~
BMCC Workplace Health and Safety Consultation Procedure

~~BMCC-SPP-2.3 Project Risk Management (line 38 – no link to the document in the register?)~~

BMCC Safety Improvement Plan

Planning is essential to achieve these goals. Initial attention will be given to the implementation of systems that prevent and reduce the likelihood of exposure to hazards and that, where such efforts do not meet with success, best practice, compensation and rehabilitation services are available.

To facilitate the planning process, the following organisational groups along with staff involved in the work procedures will be requested to provide input:

- WHS Committees;

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- WHS Sub committees ;and
- WHS representatives

The WHS Consultation Procedure and Constitution of the WHS Committees and PSSG Charter is found on BMCC's Intranet under Safety/Consultation.

To meet the requirements of the BMCC's WHS Management System Manual, Hazard Identification, Risk Assessment and Hazard Control procedures are established and maintained to identify hazards and assess risk related to the activities, products and services over which BMCC has control or influence.

These procedures must be taken into account when planning all work activities. The specific application of hazard identification, risk assessment and control procedures will be part of all ongoing planning process relating to operations undertaken across BMCC.

Relevant operational teams will develop Operational Specific Safety Plans in accordance with WHS Guidelines and Procedures. This will involve the preparation and identification of safety documents in consultation with relevant staff involved in the process.

BMCC shall ensure that those managers and supervisors responsible for the different operational teams will structure their work activities based on the necessary experience and qualifications of key staff. These qualifications and experience levels will be established and reviewed by the responsible managers and supervisors, as well as the acquisition of appropriate resources, as part of an ongoing process to manage operational requirements.

Procedures will be in place to ensure personnel performing critical procedures or work instructions have proper training, instruction and are competent to perform these processes.

It is the responsibility of line managers to ensure that the WHSMSM is observed and that no nonconforming products, services and or work practices are supplied to staff, contractors or visitors to BMCC worksites.

For all work activities, responsible staff shall be named in the relevant Operational Safety Manuals.

Senior managers shall have the freedom and responsibility for instigating safety actions and solutions, for controlling production procedures and the related inspection procedures.

Risk management methodology will be applied to all such plans.

Project Specific Safety Plans will be developed at the commencement of each project to identify the safety requirements, procedures and technical documents including but not limited to:

- Project organisational structure and responsibilities;
- JSA, safety operating procedures, instructions and identified hazards and risks;
- Incident Management Plans;
- Inspection and Test Plans;
- Training requirements and Programs; and
- Audit Programs.

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4.4 IMPLEMENTATION

4.4.1 Structure and responsibility

4.4.1.1 Resources

Refer BMCC-SPP-1.2.2 Branches Responsibilities (line 31 - No link to this document in the WHS Document Register)

BMCC's Executive management structure is made up of the General Manager, 3 Directors, and 2 Group Managers.

The General Manager reports directly to the Mayor. The General Manager is assisted by the Executive Leadership Team (ELT) who is responsible for policy, strategy and general management of the various Council groups.

Consideration of available resources is taken into account to ensure:

- That there is adequately trained staff to carry out the operation in a safe manner;
- That there is adequate equipment, which is properly maintained;
- That all risks are controlled to ensure a healthy and safe work environment;
- That appropriate procedures are available or can be provided;
- That promised delivery times can be met; and
- The availability of contractors and subcontractors that conform to BMCC standards.

BMCC shall ensure there is sufficient nominated staff for these functions, that these staff are trained to conduct verification activities, and that they are provided with appropriate procedures and/or work instructions.

4.4.1.2 Responsibility and accountability

Refer BMCC-SPP-1.3.1 Management Responsibilities (line 30 the link in the WHS Document Register is to the old WHS program Guideline)

BMCC Position Descriptions?

The Officers of the PCBU hold responsibility for the implementation of the Safety Management System Procedure.

Authority is delegated down from this top position through the organisational structure to meet agreed organisational objectives. As in the case of the traditional responsibilities in areas such as Purchasing, Personnel Recruitment, and Development Applications specific responsibilities relating to Work Health and Safety need to be delegated and persons held accountable.

The authority delegated to achieve health and safety responsibilities must operate in the same way as that of other management functions. In order to carry out the health and safety function effectively the degree of authority delegated must equal the responsibility given.

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An essential element of any WHSMSM is the understanding by all staff of their involvement and accountability in that procedure. For example, persons responsible for health and safety in a particular area must have the authority to implement actions necessary to achieve their objectives. If the actions required achieving these objectives exceed their authority there must be a clear path of responsibility for staff to the appropriate level of management.

Detailed Responsibility Statements for the General Manager, Directors, Group Managers, Managers, Supervisors, Team Leaders, Workers and the WHS Program Leader are found in their respective position descriptions.

Work Health & Safety is both an individual and shared responsibility of all workers. The promotion and maintenance of work health & safety is mainly the responsibility of management. Management at all levels are required to monitor the health and safety of all persons in the workplace, and ensure compliance with relevant Acts and Regulations, WorkCover approved Codes of Practice and where applicable internal WHS policies and procedures.

a) Managers

All levels of Management are responsible for the following:

- Ensuring that this Procedure is effectively implemented in their areas of control;
- Supporting workers in meeting their WHS responsibilities and ensuring their accountability;
- Implementation and monitoring of WHS Procedures to support the WHS policy commitments and objectives in relation to the minimisation and eventual elimination of workplace injuries and work illness.

Managers will ensure adequate provisions in their draft budget estimates each year to provide for further changes necessary to meet the health and safety requirements of their areas of responsibility.

Managers will also ensure that WHS accountabilities are included in all position descriptions for workers under their control.

b) Line Managers and supervisors

Line Managers and Supervisors are responsible, and will be held accountable, for taking all practical measures to ensure:

- That the workplace under their control is safe and without risks to health;
- That the behaviour of all persons in BMCC workplaces, including contractors and visitors, is safe and without risks to health;
- That all workers under their control are appropriately trained and competent to carry out any tasks that they are required to perform.

More specifically the relevant supervisor:

- Will always be held accountable for acting on detected unsafe or unhealthy conditions or behaviour;

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- Ensuring that hazard identification systems are in place and understood by all staff; and
- If the relevant line supervisor does not have the necessary authority to fix and / or address an issue, they will be held accountable for reporting the matter promptly, together with any recommendations for remedial action, to a supervisor or manager who does have the necessary authority.

The manager or line supervisor who has the necessary authority will be held accountable for taking prompt remedial action to eliminate or control any unsafe or unhealthy conditions or behaviour.

c) Workers

All workers are responsible for the following:

- Working in a safe manner;
- Encouraging others to work in a safe manner;
- Cooperating with, supporting and promoting WHS initiatives in the workplace;
- Reporting of all workplace injuries or incidents at their workplace in accordance with procedures in place at the time of the incident;
- Reporting or rectifying any unsafe acts or conditions that come to their attention;
- The use and maintenance of appropriate safety clothing and personal protective equipment as may be required; and
- Attending all work health & safety training as required.

4.4.2 Training and competency

Refer BMCC-SPP-18 Training (line 84 – no information or link in the WHS Document Register)

BMCC-SPP-18.1 Staff Competency, Licence and Training Records (line 48 & 85 – no information or link in the WHS Document Register)

BMCC-SPP-18.2 Induction Programs (no reference in the WHS Document Register)

BMCC Competency Assessment Forms?

The actions of individuals are central to the effective operation of the WHSMSM, and as such, relevant training programs and staff development must be undertaken. The main forms of development relevant to safety are:

- General and worksite specific inductions;
- Specific instructions on defined operations and legislative requirements;
- General instructions on safe work practices; and
- Instruction on the management of emergencies.

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Training will be a balance of formal off-line training and informal workplace based instruction, but the objective is the same - behaviour modification based on understanding of hazards and risk and the implementation of effective controls.

BMCC recognises that general training to heighten safety awareness and to develop attitudes of all staff and contractors is essential to the achievement of our safety objectives. To ensure that these principles are adhered to BMCC shall implement and maintain suitable training programs to ensure all staff and contractors receive instructions in the safety practices appropriate to their positions.

In consultation with the respective business units the following steps are taken, as appropriate:

- Identification of the way in which work activities are conducted safely;
- Identification of the training needs of individual staff for satisfactory performance of such work activities;
- Planning and organising general safety awareness programs;
- Planning and organising legislative based training;
- Recording training and achievements;
- Development and documentation of training plans for each staff member;
- Personnel involved in critical activities will be identified;
- Selection criteria for personnel involved in critical activities will be prepared;
- Competency profiles will be developed for personnel involved in critical activities;
- Training matrices will be developed and will define requirements for personnel involved with critical activities;
- Training matrices will be developed for personnel with safety responsibilities (other than critical activities).

4.4.3 Consultation, communication and reporting

4.4.3.1 Consultation

Refer BMCC Workplace Health & Safety Consultation Procedure (include in WHS Document Register)

BMCC Meeting Minutes?

BMCC Toolbox Talk – Daily Pre-Start Meeting?

BMCC Employee Induction Record?

BMCC is committed to providing a healthy and safe workplace for all workers, sub-contractors and visitors. BMCC recognises consultation as an essential part of effective management of Workplace Health and Safety. It is a BMCC commitment to encourage all workers to participate in the effective use of the established WHS consultation mechanisms.

The consultation process increases BMCC's awareness of hazards and WHS issues experienced by workers, other Persons Conducting a Business or Undertaking (PCBU), sub-contractors, self-employed workers, volunteers and visitors. The consultation process also allows workers, officers, and the PCBU to contribute to the making of decisions affecting their health, safety and welfare at BMCC workplaces. The combination of these factors allows BMCC to provide safe and healthy workplaces for workers, customers and visitors.

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Meaningful and effective consultation involves drawing on the knowledge, experience and ideas of all BMCC workers, officers, PCBU's, sub-contractors and visitors and encouragement of their active participation in, and input to improvements of, the WHSMSM that BMCC has in place for managing WHS.

BMCC will utilise a combination of WHS Committees and the election of WHS Workgroup Representatives (Health and Safety Representatives HSRs) for specific workgroups to undertake the consultative process in an effective manner.

Branch and Team meetings will also be utilised to facilitate WHS consultation. Each meeting will have allocated standing WHS agenda items to be discussed. New WHS matters can be raised, discussed and either resolved in the Team meeting or escalated to the most relevant WHS committee for further consultation and resolution.

All WHS consultation arrangements within BMCC will be compliant with the requirements of any NSW workplace safety legislation, currently the WHS Act 2011 (NSW) and the WHS Regulation 2011.

a) Objectives

- To enable workers to contribute to the decision making process involving issues affecting their workplace health, safety and welfare;
- To enable meaningful consultation with workers and PCBU about WHS risks in the workplace and identify effective control methods for those risks;
- To document the strong commitment across all levels of BMCC to WHS consultation as an effective means of improving safety in the workplace;
- The development and continuous improvement of a systematic approach to health and safety.
- Share relevant information about WHS and welfare with workers, officers and PCBU; and
- To enable Officers of BMCC to fulfil their Due Diligence obligations as described in the WHS Act 2011.

b) Scope

- All Workers, Team Leaders, Team Coordinators, Managers and WHS Representatives shall be encouraged to resolve everyday WHS issues at the initial organisational level that they are first raised. Where issues are unable to be resolved at this level, or if the proposed resolution is not satisfactory, only then shall the WHS Committee become involved.

4.4.3.2 Communication

Refer BMCC-SPP-1.2 Safety Promotion and Publicity (line 28 – needs revision to reflect the requirements on this section of the standard)

Communication is an essential part of the WHSMSM. The effective transfer of information within BMCC, and into BMCC from external sources, is the key to understanding the safety issues confronting workers, managers and the community.

Commonly used methods of communicating WHS information within BMCC are:

- Safety alerts/bulletins
- Incident reports
- Safety Signs
- Safety notice boards
- Safe Working Procedures

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- Staff Meetings
- Videos
- Team Brief
- WHS Committee Minutes

4.4.3.3 Reporting

Refer BMCC-SPP- 20 Measuring and Evaluating Performance (cannot find this in WHS Document Register)

BMCC PSSG Charter (include in WHS Document Register)

BMCC PSSG WHS Performance Indicators and Statistics Report (include in WHS Document Register)

BMCC shall identify where there is a need for WHS performance reporting and the use of statistical techniques.

This could involve trend analysis on:

- BMCC organisational objectives and targets (as presented monthly to the PSSG);
- Safety Statistics e.g. Injury Type, Injury Agency, Injured Body Part;
- Worker Compensation Statistics e.g. Lost Time Injury Frequency Rate (LTIFR);
- WHS Breaches and Prosecutions;
- Work Hygiene Monitoring – Health Surveillance;
- Internal Audits and Inspections;
- Operational Reviews;
- External Audits;
- Hazard Identification;
- Incident Investigations; and
- Corrective and Preventive Action.

Areas where statistics are required will be tabled at the Peak Safety Steering Group meetings on a monthly basis and reported to the WHS Committees as a standing agenda item.

4.4.4 Documentation

Refer BMCC-SPP-5 Document and Data Control (line 42 – no details or link to document in WHS Document Register)

BMCC WHS Master Document Register?

BMCC WHS System Improvement Notice?

BMCC Register of System Improvements?

System documents are the procedures, work instructions and associated forms used to implement the plans and achieve the objectives and targets of the WHSMSM.

System records are the completed forms and other data that confirm compliance with the system procedures and work instructions.

All documents and data that affect safety, and are essential to the completion of work in a safe manner, shall be systematically controlled and maintained. The system of control shall be based on

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the review, approval, issue, and maintenance of documentation as WHSMSM documentation or client order documentation.

Specific safety procedures for each operation should be defined, documented and updated as necessary by management and staff involved in the performance of the operation.

BMCC's operations vary in size and complexity, therefore, each business unit needs to identify the documents which they require to fulfil the requirements of the WHSMSM and any controls which may have been established to maintain the system. Existence of documentation specific to their business requirements provides evidence that a system and procedures have been established and serves to communicate the organisation's standards.

Documenting the WHSMSM enables the task of evaluating compliance and performance measurement. Where the WHSMSM has been integrated into overall management systems, the health and safety documentation should be incorporated into existing documentation.

Documents can be in any medium providing they are accessible, useful and easily understood. Some specific safety records may need to be maintained in hard copy format to comply with regulatory and internal program requirements e.g. injury reports, risk assessments and traffic control plans.

The actual number and complexity of the documents required will vary between branches, however, a summary of the relevant documentation should be maintained on file with an indication of where the documents are located.

The following are typical of what is required:

- Policies;
- Operational Safety Procedures/Manuals;
- Integrated management systems;
- Procedures and evidence that they are being implemented;
- Objectives and performance indicators for the current year;
- Organisation reference documents;
- WHS responsibilities;
- Permits and licences; and
- Project plans.

References to document control in this section shall be taken to include data control as well, including authorities to change or amend electronically stored data.

4.4.5 Document and data control

All documents and data sets should be identified by title, issue/version number and date where practical. Product, operational or project documents also have an originator or owner designated. All completed safety forms are "owned" by the WHS Program Leader and do not require an originator. Before issue, all controlled documents shall bear an indication of having been checked for adequacy and be authorised for issue.

Controlled documentation is reviewed for completeness, compliance with relevant specification, industry standards and other relevant material.

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Only current controlled documentation shall be in use throughout BMCC, assurance that this is the case is enhanced by prompt issue of the latest revision with concurrent withdrawal of superseded documents.

Current issues of appropriate documents or data sets are made available at all major locations and each workstation where operations essential to the maintenance of safety are performed.

Safety related documents are stored and maintained as controlled documents. Methods of document control are defined in procedures.

The same position or person(s) approving the original documents has authority to make changes and modifications to them. At the time of reissue of safety documents, obsolete data is to be removed from the workplace.

All controlled documents are dated and provisions made for revisions and for the dates of revisions to be noted on them.

All changes to documents require the addition of the next sequential revision status indicator and date, and receive the same review and approval by the originator of the original document. The revision status is indicated along with the issue date of the revised document. The nature of the change may also be indicated where appropriate.

Requests for changes to BMCC's controlled documents are to be prepared and submitted in accordance with requirements.

A Safety Document Register (master list of corporate documents and their revisions) is maintained by the WHS Program Leader.

a) Uncontrolled documents

Uncontrolled copies of the WHSMSM may be made available to interested parties. Such copies shall be clearly identified as being uncontrolled and shall not be required to be updated with future revisions.

b) Retention of documents

All superseded original documents will be withdrawn from production areas or sites to avoid unintended use. This will be the responsibility of the relevant Line Manager once notified by any changes by the document originator.

The original or master copy of each superseded document is retained for reference purposes where required by contract, requested by a client, or when stipulated by BMCC for traceability purposes. Other surplus copies may be destroyed provided an original or master copy is retained as required.

The retention period for all documents shall be nominated in the procedure covering safety recall (nominally 5 years).

c) National standards, specifications and regulations

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A register of all relevant NSW WHS Legislation, Regulations NSW WorkCover Codes of Practice, Australian Standards, and other relevant specifications will be maintained by the WHS Program Leader for information and reference points.

4.4.6 Hazard identification, hazard/risk assessment and control of hazards/risks

Refer BMCC-SPP-2 Developing JSA's and Safe Workplace Procedures (line 53 – in draft dated 2014 – required for section 4.3.1 also)

BMCC-SPP-2.1 JSA's and Safe Workplace Procedures (same as above?)

BMCC Hazard Identification Procedure?(there is one on the Intranet under Safety/Injuries and Incidents but it has no date on it and is not on the WHS Document Register)

4.4.6.1 General

The WHSMSM has been developed to give support to BMCCs commitment to safety in all its activities. The system is designed to increase client satisfaction and to ensure compliance with legal requirements, while creating a healthy and safe workplace for all workers and the public.

BMCC shall establish and maintain documented WHSMSM, WHS related Procedures and Safe Workplace Procedures as a means of ensuring that its product and services conform to specified requirements. This includes the preparation and documentation of:

- WHS Program Guidelines Manual outlining BMCC's WHS Protocols and Procedures in general;
- WHS Program Procedures;
- Operational Safety Plans (for specific operations or projects);
- Safe Work Method Statements and Safe Workplace Procedures as required (Work Instructions may be used to amplify operating procedures); and
- Safety Records.

Integral to the planning process is the requirement to identify, assess and control hazards and risks.

- Hazard is the potential for harm.
- Risk measures the probability that a hazard with a given outcome (or consequence) will occur.

Hazards do not cease to exist unless the hazardous activity itself ceases to exist, even though the risk may be reduced to a level where the hazard is considered of little consequence. If the integrity of risk control measures is not maintained then the risk profile will change, possibly increasing dramatically and without knowledge.

Site safety meeting will be used as a mechanism to promote the hazard identification, risk assessment and control process. The Site Safety Meetings shall:

- Identify hazardous activities;
- Identify the need for written safe work procedures;
- Identify and ensure delivery of suitable WHS site inductions for all staff involved in the project;

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- Discuss safety problems or breaches;
- Review site inspection reports;
- Determine corrective action to be verified by the line manager; and
- Record minutes to be reviewed at the Site Safety Meeting.

4.4.6.2 Hazard Identification

Hazards will be identified and classified according to their potential consequence with the risk ranking for hazards based on the SafeWork NSW Hazpak matrix.

Where they cannot be eliminated risks will be reduced to As Low As Reasonably Practicable (ALARP) using the hierarchy of control.

4.4.6.3 Hazard/risk assessment

Risks will be analysed, assessed against accepted criteria and measures will be implemented to ensure they are controlled. This will include the implementation of a system to:

- Document hazards;
- Track the elimination and control of hazards; and
- Review the hazards and their controls.

Recovery plans will be integrated into risk control measures and a critical activities list will be compiled. Risk controls will be monitored and corrective actions will be reviewed on a regular basis.

4.4.6.4 Control of hazards/risks

Where additional procedures are required in Operational Safety Plans to reflect the scope of activity and the hazards and risks involved, Safe Workplace Procedures (SWP) will be produced. SWPs and Safe Work Method Statements (SWMSs) are developed in relation to identified hazards and associated risks. Hazards and risks can be identified from many sources, of which Job Safety Analysis is one method of systematically trying to identify hazards.

The need for documented procedures will be identified by assessing the risks associated with activities and tasks and may range from SWPs to Safe Work Method Statements (SWMSs).

Procedures to control the hazards identified by the activity/task review will be developed and will be based on the hierarchy of hazard control principles.

Prescribed SWP's will be in place at sites where major hazards exist (e.g. permit to work, simultaneous operations, isolations, permitted operations, job safety analysis, hazard and incident reporting, emergency response).

Safety critical procedures will be separately documented or indexed e.g. confined spaces entry procedures.

The competency of personnel will be assessed and documented prior to them carrying out safety critical procedures.

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4.4.6.5 Evaluation

Refer *BMCC Construction Work Site Safety Inspection Checklist*
BMCC Contracted Works Site Safety Inspection Checklist
BMCC Workplace Inspection and WHS Leadership Activity Record
(all the above need to be added to the WHS Document Register)

Evaluation as to the effectiveness of the hazard identification, risk assessment and control process will be undertaken across all layer of supervision on a monthly basis as a minimum and recorded using one of the three inspection forms detailed above

Data will be analysed by the Governance & Risk Branch on a monthly basis with Safety Statistic reporting being presented to the Peak safety Steering Group and the WHS Committees for review and action as required.

4.4.7 Emergency preparedness and response

Refer *BMCC-SPP-9.5 Fire Control and Emergency Plan (Line 57 – on T Drive its 16 years old and very out of date)*
BMCC-SPP-9.8 Communication of Emergency Information (line 60 – there is no linked document in the WHS Document Register)
BMCC-SPP-9.6 First Aid Procedure (line 58 – Procedure is not detailed in the WHS Document Register but a 2008 version is available on the Intranet and still points to the OHS Act (2000) and Regulation (2001)
BMCC Incident Reporting and Investigation Procedure (line 66)

Emergency response plans, procedures and trained personnel will be in place in all permanent BMCC businesses, operations and operating sites to detect emergencies and plan an appropriate response for control and recovery. Short term worksites will have appropriate site specific emergency response plans prepared and agreed to by onsite staff.

Branches will have an emergency management plan to provide support to the operating site emergency response group. This will normally be provided through an emergency management team at each specified site.

BMCC will have a disaster management plan to provide support to emergency management teams and to manage the broader consequences of the emergency.

Emergency response plans will document how to initiate an emergency response.

Each emergency plan will detail:

- Reporting and functional relationships between the operating site, business unit and corporate management teams;
- The procedure for activating the team;
- The roles and responsibilities of all persons involved in the teams;
- The response by visitors, contractors and employees;
- The equipment available for emergency response; and
- The procedures to be followed for the effective operation of the emergency response team, including:
 - Briefings and updates;

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- Notification;
- Media release;
- Shift handover;
- Deactivation;
- Strategy; and
- Control and communication arrangements.

This will include interfaces between Council operations/branches and contractors, specialist response organisations and statutory authorities.

Where appropriate, bridging plans will be prepared that details the emergency arrangements between contractors and Council operations/branches.

A schedule of emergency training, drills and exercises will be developed in order to confirm the effectiveness of the response teams, the emergency plans and the control and communications systems. All drills and exercises will be recorded and lessons learned will be documented and followed up.

Emergency plans will be controlled documents.

Group Managers will be responsible for ensuring that all areas under their control have relevant Emergency Plans and that they receive a copy of all such emergency plans.

4.4.8 High risk activities identification and traceability

Refer *BMCC-SPP-8 High Risk Activity's ID and Traceability (not on WHS Document Register)*
BMCC-SPP-8 1 Permit To Work (not on WHS Document Register)
BMCC-SPP-8.2 Task Competencies Licensing and Training (line 48 on WHS Document Register but no detail or link provided)
BMCC-SPP-8.3 Access Restrictions (line 49 on WHS Document Register but no detail or link provided)
BMCC-SPP-8.4 Isolation Procedures (line 50 on WHS Document Register but 16 years out of date)
BMCC-SPP-8.5 Confined Spaces (line 51 on WHS Document Register but 13 years out of date)

High risk activities, such as the transportation of hazardous substances, removal of asbestos, etc. shall be clearly identified.

A register of high risk activities will be maintained.

High risk activities must be recorded to ensure traceability of the high risk component.

Should further traceability be required by a particular contract, those requirements would be met so as to satisfy the conditions of the contract.

Where and to the extent that traceability is a specified requirement, individual installations shall have a unique identification. Traceability is intended for critical items where deficiencies are likely to cause safety hazards, expensive rework/replacement, and legislative non-compliance or expose BMCC to significant damage claims.

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Where high-risk activities require identification and traceability, they shall be clearly identified in the Inspection & Test Plan.

Where required, high risk activities will be clearly stated on the Purchase Order.

In carrying out high risk work activities, BMCC recognises the need to properly identify the work process, including materials and purchased or supplied items back to supplier references, drawings or other documents, from the time each item is received up till the time of usage.

These requirements will be documented as part of a high risk activity control plan. Serial numbers or batch numbers of items specified above shall be noted, records of the reference numbers shall form part of the control plan.

4.5 MEASUREMENT AND EVALUATION

4.5.1 Monitoring and measurement

4.5.1.1 General

Refer BMCC-SPP-10 Workplace Inspection (line 62 – no link to the procedure which needs to be updated to reflect the new inspection forms approved in October)

BMCC-SPP-10.1 Routine Plant Inspection (line 63 and the link goes to a document that was last published in 2004)

BMCC-SPP-12.1 Safety Signs (line 64 in WHS Document Register but no detail and no document link)

BMCC Incident Reporting and Investigation Procedure

BMCC Construction Site Safety Inspection Checklist

BMCC Contracted Works Site Safety Inspection Checklist

Workplace Inspection and WHS Leadership Activity Record

BMCC Corrective Action Report?

BMCC Incident Register?

Internal Audit Schedule?

A procedure has been written for planning and coordinating WHSMSM inspections, testing and monitoring of work-sites, equipment and processes as well as incoming products and materials.

All work activities will be subject to planned inspections and test programs to verify safety requirements. Formal inspection and testing will occur at key points of the activity.

Line Managers shall establish and maintain records for planning and conducting ongoing inspections, testing and monitoring related to WHSMSM objectives and targets. The frequency of such inspection and testing should be appropriate to each item inspected, tested or monitored and should be documented as part of the inspection process.

Staff involved in inspection, testing and monitoring should have suitable skills and experience. Records of ongoing inspection, testing and monitoring should be maintained and made available to relevant management, staff and contractors.

Inspection can take the form of:

- Specific workplace inspections;

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- Audit;
- Site inspection;
- Workplace survey.

Testing and monitoring for specific hazards can take the form of:

- Environmental, e.g. flammable gases;
- Personal, e.g. noise and dust assessment;
- Biological, e.g. pesticides in blood/urine.

a) Incoming inspection

Inspection will confirm the following:

- Identify incoming materials and subcontract services and for each item or service, verify that part numbers, descriptions, supplier's name and quantities, are the same as recorded in the initial BMCC order, the supplier's documentation, and in any Goods Received documentation raised by BMCC;
- Inspect and test incoming products or subcontracted work as to relevant test criteria, as required by the procedure;
- Isolation of incoming products or services until the required inspection and test reports are received and verified;
- Identify nonconforming product; and
- Initiate corrective action with subcontractors when nonconforming products or services are received.

b) Urgent release of unverified product

Unverified product shall not be released without the authorisation of the relevant line manager. When unverified product is released for production or installation, it shall be done in a way that is clearly traceable to permit its review or recall after verification if necessary, in the event of a non-conformance.

c) In-process inspection and testing

BMCC recognises that it has a fundamental obligation to control its own work at each stage of the work activity.

In-process inspection is carried out in accordance with the relevant Inspection and Test Plan written for each project. BMCC ensures that all inspections are carried out by trained staff and the reports form part of the Safety Records.

As well as inspection of the works and work methods, inspections and tests must be conducted of:

- Work sites;
- Access and egress;
- Protective measures e.g. site fencing, traffic control;
- Adherence to safe working rules; and
- Plant and equipment.

Before handing over completed work, the relevant line manager shall check to ensure that all requirements have been correctly completed.

d) Inspection and test records

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Inspection and Test Plans (ITPs) and checklists used for inspection and test during the work, and for final inspection prior to completion, state clearly the acceptance criteria for each inspection or test, staff to whom responsibilities have been assigned and their qualifications. When complete, these ITPs and checklists are records to show that the project has passed inspection and test. ITPs and checklists are retained for specified periods.

e) Control of inspection measuring and test equipment

BMCC recognises that all staff needs to know whether the works, materials and equipment on which they are required to work, have been inspected, tested and accepted. This is a safeguard against product, equipment or work of inadequate quality being provided to clients.

All inspection, measuring and test equipment, whether owned by Council, clients, contractors, subcontractors, or private individuals, shall be controlled, safety checked and calibrated in accordance with an established schedule and to the manufacturer's recommendations.

Test equipment will be stored in a manner to prevent deterioration, damage or alteration to the functional or dimensional characteristics and protected from the influence of other equipment or operations to maintain its accuracy between calibration levels.

All equipment is identified with a unique number which is traceable to the equipment log and equipment calibration record.

Whenever a new piece of equipment is needed, guidance on the accuracy and repeatability is obtained from the manufacturer before purchase to ensure it is capable of meeting contract requirements.

f) Calibration of field equipment

New and existing essential inspection, measuring and test equipment shall be listed on an Equipment Inventory/Calibration Schedule. This list shall include all items used to demonstrate product conformance to specified requirements.

The relevant line manager / supervisor shall be responsible for establishing and maintaining the schedule of inspection where applicable e.g. calibration of gas detector monitors used in confined space entry operations.

All equipment will only be tested by persons with recognised qualifications as per, legislative requirements, industry best practice or the manufacturers' recommendations

All equipment identified as requiring calibration shall have a suitable indicator showing the calibration status or be traceable to calibration records and/or certificates.

g) Storage and handling

Inspection, Measuring and Testing Equipment shall be maintained in a clean and tidy condition at all times. Equipment should be used and stored in a suitable area to protect it from damage or deterioration. Where practicable, it should be returned to its container or packaging when not in use.

Where possible, equipment should be safeguarded from adjustment which may invalidate the calibration setting.

h) Damaged or out of calibration equipment

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Equipment which is found to be damaged or out of calibration should be immediately removed from service, until it is replaced, repaired or re-calibrated. It shall be suitably identified by means of tag or label to prevent inadvertent use.

i) **Manufacturer supplied data**

All operating manuals, calibration certificates and calibration record forms for Inspection, Measuring and Testing Equipment shall be kept at the location in which the item of equipment is housed or used.

j) **Inspection and test status**

BMCC will implement a method of identifying test status to ensure that it is clear that incoming materials, construction work, construction equipment, temporary works, protection systems and work environments have satisfactorily completed the required inspection and tests.

A system of tags, colours, stickers, stamps, barriers, special storage areas or records can be used to indicate special precautions to be taken, or to designate unsafe areas.

Where test status records are the subject of legislative requirements these requirements will take precedence over internal BMCC procedures e.g. testing and tagging of electrical equipment, testing of pressure vessels, LPG cylinders, lifting equipment etc.

4.5.1.2 Health surveillance

Refer BMCC-SPP-13.1 Routine Health Monitoring (not in WHS Document Register)

BMCC-SPP-13.1a Monitoring the Working Environment (line 67 but no detail or document link provided)

BMCC-SPP-13.2 Manual Handling (line 68 the linked procedure is dated 2008 so is not compliant with current WHS legislation)

BMCC-SPP-13.3 PPE (line 20 WHS Document Register)

BMCC-SPP-13.4 Shift work (line 70 WHS Document Register with no detail or document link))

BMCC-SPP-13.5 Communicable Diseases (line 71 WHS Document Register with no detail or document link)

BMCC-SPP-13.6 Managing Repetitious, Physically demanding tasks(line 72 WHS Document Register with no detail or document link)

BMCC-SPP-13.7 Medical Examinations for Heavy Goods Drivers(line 73 WHS Document Register with no detail or document link)

BMCC-SPP-13.8 Medical Records Protocol(line 74 WHS Document Register with no detail or document link)

BMCC-SPP-13.9 First Aid (line 58 on the WHS Document Register but is 8 years out of date and does not point to current legislation)

BMCC Injury Management Procedure

BMCC Health Surveillance Procedure

BMCC Health Surveillance Register?

A specific health program will be defined for each operation including:

- Pre-placement medical assessments;
- Disease prevention;

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- Surveys of the working environment to identify health and hygiene hazards and to assess and treat the associated risks. Health and hygiene hazard surveys as required will include airborne particulates; toxic materials or atmospheres; asphyxiate gases and vapours; ventilation; skin irritants; carcinogens; corrosive and caustic chemicals; ionising and non-ionising radiation; noise and vibration; repetitive tasks; manual handling; lighting; stress; infectious diseases; and
- Personnel monitoring as required.

Procedures will be developed and resources will be maintained at each major operating centre or site to treat personnel who suffer injury or illness including:

- Availability of documented first aid treatment advice;
- Facilities for stabilisation of injury/illness pending medical care;
- First aid resources sufficient for foreseeable incidents;
- Emergency evacuation to a place where adequate treatment is available; and
- Prompt information by competent personnel to relatives of the person concerned

Health hazards will be incorporated into the hazards register.

Manual handling risks will be identified and controlled.

Hazardous substances will be identified, labelled and controlled.

Personal protective equipment (PPE) will be supplied as required.

Employees will be trained in the selection, use and care of PPE.

Procedures will be maintained for the rehabilitation of employees who suffer disability through work-related injury or illness. The program for return to work will be defined in consultation with the relevant medical practitioner and progress will be monitored.

a) Drug and alcohol

Refer to BMCC's Drug and Alcohol Policy for greater detail. This policy is available on the staff intranet under the HR Self Help Tab, Human Resource Policies, or a hard copy is available from any HR staff member or the WHS Co-ordinator.

b) Non-smoking workplace

Refer to BMCC's Non Smoking Policy for greater detail. This policy is available on the staff intranet under the HR Self Help Tab, Human Resource Policies, or a hard copy is available from any HR staff member or the WHS Co-ordinator. Smoking in BMCC buildings and vehicles is not allowed.

c) Communicable diseases

Refer *BMCC-SPP-13.11 Needle Stick Injury (line 77 of the WHS Document Register but no detail or document link)*

BMCC-SPP-13.12 Vaccination Procedure (not in WHS Document Register)

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The work health and safety of all workers is considered to be of the utmost importance and it is BMCC's intention that every effort is made to protect them from the possibility of infection from communicable diseases such as Hepatitis A, B and C, Tetanus and Aids. General Procedures for Safe Working where there may be a risk of infection due to contact with sharps or contaminated materials have been developed along with Needle Stick Injury Procedures. Individual business groups are responsible to ensure that all tasks which may expose staff to communicable disease hazards are identified through the risk assessment process and suitable control methods incorporated into standard work procedures and Safe Work Method Statements.

4.5.2 Incident investigation, corrective and preventative action

Refer BMCC Incident Reporting and Investigation Procedure (line 66 WHS Document Register)

BMCC-SPP-14 Corrective and Preventive Action (line 78 WHS Document Register with no detail or document link)

a) Incident investigation

All incidents will be investigated to a depth of detail commensurate with the actual or potential seriousness of the incident. The investigation will establish:

- The basic event;
- The controls that would normally protect the event from occurring;
- Factors that contributed to the control failure;
- Detailed control failures; and
- Corrective/Preventative actions to prevent recurrence.

Where a Level 2 or Level 3 incident has occurred, an investigation team will be assembled to carry out the investigation. Representation on the investigation team will be commensurate with the actual or potential seriousness of the incident and may include some or all of the following:

- Employee(s) or contractor(s) involved;
- Employee safety representative;
- The supervisor(s) of the operations leading to the incident;
- Senior management from the operation, branch or corporate; and
- Any relevant specialists from corporate or other Council group sites.

The investigation findings will be documented in a formal report.

The investigation report will identify the actions to be taken to prevent recurrence.

The results of incident analyses will be reviewed by the Governance & Risk Team and discussed at safety meetings.

A monthly report and trend analysis of all incidents and progress on follow-up will be prepared by the Governance & Risk Branch and reviewed as appropriate, for example at ELT or PSSG, safety committee meetings and business group/team meetings.

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Products, materials, equipment, project management or construction work, protective systems, work practices and work sites which have failed, are below standard or do not conform with specification requirements and have contributed to an injury/near miss, need to be controlled. Control of such issues includes:

- Incident/accident procedures are applied;
- Any non-compliance is promptly detected, identified and documented;
- There are no unsafe work practices or unsafe areas;
- Non-conforming materials are not used or installed;
- Appropriate areas of BMCC and relevant authorities are advised;
- Irregularities are effectively resolved; and
- Injury management and rehabilitation procedures are applied, should they be required.

b) Review and disposition of non-conforming work practices

The responsibility for review and the authority for redesigning of nonconforming work practices relating to safety is with the relevant line Manager and staff involved in the work processes in consultation with the WHS Program Leader or Safety Team.

c) Injury management

Refer BMCC Injury Management Program/Procedure (line 19 WHS Document Register)

Injury management encompasses all measures associated with ensuring an early and safe return to work of staff that have been injured or become ill as a result of their employment. An injury management program will identify as a minimum, all aspects of:

- Treatment;
- Rehabilitation;
- Retraining;
- Claims management; and
- Employment management practices.

d) Corrective action

BMCC recognises the need to eliminate the causes for product or services and processes not conforming to specification, by initiating appropriate corrective actions aimed at determining how the non-conformance occurred and what can be done to stop it happening again.

Non-conformances may result when:

- Procedures governing production or installation are not complied with;
- The procedures or documentation are inadequate;
- Failures, breakdown or nonconformities in product, tools, equipment or facilities exist;
- There is an unfulfilled need for training;
- Working conditions are unsuitable;
- Process control is deficient; and
- Communication is poor.

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Non-conformance issues can also be exposed through audits and reviews. Corrective action should not necessarily wait until an audit, review or incident has occurred.

Work activities need to be continually assessed so as to reduce risk before an incident has occurred.

e) Preventative action

Preventative action involves:

- Analysing all processes, work activities, safety records, service reports and client complaints to detect incident trends so that action can be taken to prevent the non-conformance occurring on any other project undertaken by BMCC; and
- Initiating preventative actions to deal with problems to a level corresponding to the risks encountered to ensure as far as reasonably practicable that the incident will not occur again.

f) PPE General Guidelines

The Hierarchy of Control will be applied to eliminate or minimise hazard exposure in the workplace. When such controls as elimination, substitution, isolation, engineering and procedural are not practical or applicable, personal protective equipment shall be employed to reduce or eliminate personnel exposure to hazards. Personal Protective Equipment (PPE) will be provided, used, and maintained when it has been determined that its use is required and that such use will lessen the likelihood of work injuries and/or illnesses.

g) PPE UV Protection

Refer to BMCC's UV Protection Policy for greater detail. (line 17 WHS Document Register – should become part of a combined PPE procedure)

h) Uniform and Protective Clothing Policy

Refer to BMCC's Uniform and Protective Clothing Policy for greater detail. (line 12 WHS Document Register – should become part of a combined PPE procedure)

4.5.3 Records and records management

Refer BMCC-SPP-16 Control of WHS Records (nothing in WHS Document Register)

Refer WHS Document Register?

Information is crucial to the operation of an effective WHSMSM, without high quality information management activities lack direction.

Information quality is assured by systematic collection of data and analysis, health and safety records must also meet legal and legislative requirements, therefore information management systems must correspond with formal requirements in their structure, maintenance and preservation.

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The objective of this element is to establish and maintain a system of records in order to demonstrate compliance with statutory and Australian Standard requirements, WHSMSM requirements and to record the extent to which planned safety objectives and targets have been met.

Records will be documented and maintained that demonstrate the implementation and operation of the safety management system and the extent to which planned objectives have been met. Records may include:

- Site WHS Program objectives, plans and performance indicators;
- Job Safety Analysis;
- Safe Workplace Procedures;
- Permits to work;
- Pre-placement Health evaluation;
- Induction Training;
- Ongoing WHS training;
- Management of contractors;
- Visitor Control;
- WHS Committee minutes;
- Site Safety Inspections;
- Risk Assessments;
- Hazardous Substances inventory;
- Hazard control programs;
- Work Health and Environmental monitoring;
- Inspection, calibration and maintenance records for plant and equipment;
- Operational overviews and external audits;
- Emergency procedures and practice drills; and
- Accident and incident investigations.

The relevant line manager is responsible for the control of WHSMSM records of activities under their control.

The WHS Program Leader/Safety Team are responsible for the maintenance of all corporate WHS and rehabilitation records. To give objective evidence that all specified requirements has been completed.

Documentation and records may in addition be forwarded to the WHS Program Leader/Safety Team for review, analysis and advice.

All records shall be legible and kept for the period shown in the relevant Operational Safety Manual.

Records kept electronically shall be backed-up as required and a copy kept away from site.

Records that have reached their retention period shall be destroyed in a manner determined by BMCC.

4.5.4 WHSMSM audit

Refer BMCC-SPP-17 Internal Safety Audits (line 81 on WHS Document Register but no details or document link)

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BMCC-SPP-17.1 Operational Reviews (line 82 on WHS Document Register but no details or document link)

BMCC-SPP-17.2 Vehicle Safety Audit (line 83 on WHS Document Register but no detail and link does not work)

Internal audits are implemented to verify the WHS Programs of branches are complying with the requirements of the WHSMSM.

Audits will be scheduled on the basis of status and importance taking into consideration the key elements of the WHSMSM.

The results of the audits and in particular where non-conformances are found are to be brought to the attention of the line manager responsible for the area where the non-conformance was found.

Follow up audits where required shall be scheduled to determine if corrective action taken has been effective.

External audits will be conducted when required.

a) Internal audits schedule

Refer BMCC Internal Audit Schedule

The WHS Co-ordinator in consultation with the HR Manager and Internal Auditor is responsible for scheduling internal audits of the WHSMSM. The General Manager shall approve the audit schedule and copies shall be issued to all fixed operations.

The schedule shall be based on the status and importance of the operations or activities to be audited, but shall ensure that all fixed operations are audited at least once every two years. Audits are often performed on a geographic or cluster basis.

The Audit Schedule shall cover all documented components of the WHSMSM.

Changes to the audit schedule should be recorded and re-issued as necessary by the WHS Co-ordinator.

Major Projects are also subject to internal audits and reviews. The WHS Program Leader, HR Manager and Internal Auditor are responsible for scheduling and resourcing such audits and reviews.

b) Auditor qualifications

Ideally, auditors should, as a minimum, have completed an Internal Safety Auditor's course, registered with the Quality Society of Australasia (QSA) or equivalent. In addition, audit team members may be internally trained 'on-the-job' but should not act as Lead Auditors until 'certified' as competent by a Lead Auditor.

Auditors must be independent of direct responsibility for the area being audited.

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Audit teams should have adequate technical expertise to assess the effectiveness of the WHSMSM in meeting the desired outcomes of the activity.

c) Audit reporting

Corrective Action Requests shall be raised for each area of non-compliance with WHS Procedures (see Corrective and Preventive Action within this section).

Corrective Action Requests must be based on objective evidence and should be a statement of fact. The auditor should not recommend a course of action.

The Lead Auditor shall prepare a concise audit report summarising:

- Purpose and scope of the audit;
- Overall statement of compliance and effectiveness of the activities audited; and
- Corrective Action Requests (CAR) and issues of concern raised as a result of the audit.

Copies of Corrective Action Requests (CAR) and substantiating documentation should be attached to the report.

The Lead Auditor and the audited (where practicable) shall sign the report.

The original of the audit report shall be forwarded to the central file, held by the WHS Program Leader/Safety Team, and copies shall be issued to the relevant Manager and to BMCC's Internal Auditor as applicable, the audited shall also receive a copy.

Corrective Action Requests raised shall be closed out by the Manager responsible for the operation audited.

d) Audit follow-up

Where an audit finds a serious non-compliance with the WHSMSM, the Lead Auditor should schedule a follow-up audit to verify that corrective action has been taken and has been effective.

The follow-up time frame agreed with the audited should be in keeping with the risk and impact of the non-compliance concerned. The time-frame should be recorded on the audit report and/or CAR's.

The auditor shall record whether or not corrective actions were taken and have been effective on the original Corrective Action Request (CAR) form. If the corrective action was not complete and effective, the CAR should not be closed out, and a further follow-up time agreed with the audited.

4.6 MANAGEMENT REVIEW

Refer BMCC-SPP-21 Continuous Improvement Review (line 87 on WHS Document Register but no details or document link)

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BMCC will review the WHSMSM at least every two years as a whole and specific elements may be reviewed more often as the result of technological or procedural changes or in response to issues that may occur within BMCC.

A formal Management Review will be carried out and involve members of the PSSG, WHS Committee, the WHS Program Leader/Safety Team, and Senior Managers.

The records kept by the WHS Program Leader/Safety Team of both review meetings include:

- Date and location of review;
- Scope of review (e.g. full system, part of system);
- Review participants (names and functions);
- Minutes of proceedings;
- Action (if any) and responsibilities, including target dates.

These records are safety records, and will be managed accordingly.

Results of these reviews shall be documented. An agenda will be raised prior to the meeting and details of all subjects to be covered will be distributed to members of the review team.

Reporting requirements will be established at the corporate level to ensure data is collected for annual and other corporate reporting.

Reporting procedures will be established in branches and operations consistent with the BMCC reporting requirements. A plan will be established in all branches and operations that:

- Documents a programme to achieve compliance with BMCC Program Guidelines;
- Identifies roles and responsibilities of individuals in achieving the WHS Manual action plan;
- Provides an up to date summary of achievements against the plan; and
- Is measurable and achievable.

Objectives and targets will be established for all branches, operating centres, facilities and projects.

Proactive as well as reactive measures will be included in safety objectives and targets.

The roles and responsibilities for implementing, monitoring and achieving the safety plan and its objectives and targets will be established in each branch and operation.

4.7 TENDER AND CONTRACT REVIEW

Refer BMCC-SPP-3 Tender and Contract Review (line 40 on WHS Document Register but has no details and the linked document has no date stamp or indication when it was issued and by whom)

Refer BMCC-SPP-6.1 Managing Contractor Safety (line 43 on WHS Document Register but no details or document link)

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BMCC Contractor Management Procedure

This procedure should be read in conjunction with existing documented BMCC Tendering Guidelines and its requirements are supplemental to those of the existing procedures.

Best Practice health and safety performance requires health and safety as being integral to all management activities. This approach also encompasses the area of tender and contract review. If contracts are developed with due consideration of health and safety organisations can maintain standards more easily. Prior to commencement of work on any project, all documentation is reviewed to ensure there is a full understanding of the safety implications for that project.

Please refer to the BMCC WHS Contractor Guidelines for greater detail on this item.

a) Tender review

When tender documents or technical specifications are received, the nominated senior manager and/or line manager will consider:

- The nature of the work involved;
- Any applicable construction requirements;
- The hazards and associated risks of construction;
- Whether future servicing or installation work is required; and
- Whether the nature of the service to be provided is within the capability of the Organisation submitting the tender.

Variations to tender requirements requested by the Organisation tendering shall be attached to the tender submission documents for consideration by BMCC.

b) Contract (order) review

Successful tenders, orders or other contracts shall be reviewed to ensure that:

- The requirements are adequately defined;
- The contract does not differ from tender documentation where applicable;
- Any points of conflict between contract and tender documents are resolved and recorded;
- The successful tendering organisation has the resources, capability and capacity to meet the contract requirements; and
- The risks identified can be controlled with the resources, capability and capacity available.

Records of these reviews shall be kept and will become part of the safety records.

The relevant line manager shall be responsible for assigning staff, facilities and resources to comply with specific client and safety requirements for each order/contract and shall be responsible for dealing with the client following contract acceptance.

c) Amendment to a contract

The relevant line manager shall be responsible for advising clients of amendments to contracts and the associated terms and conditions of such amendments, unless there is a specific project plan assigning this responsibility to a senior manager.

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When there is a contractual change it is the responsibility of the senior manager and/or the line manager to notify all relevant staff, either internally or externally affected by the change. Wherever possible the amendments will be discussed with the persons who carried out the initial contract review to determine if the amendment requires re-quoting.

d) Records

Records of contracts, contract amendments and contract reviews will be kept by the relevant line manager.

4.8 DESIGN CONTROL

Refer BMCC-SPP-4 Design Control (line 41 on WHS Document Register but no details or document link)

This procedure should be read in conjunction with existing quality and environmental management procedures, and its requirements are supplemental to those of the existing procedures.

Best Practice health and safety performance requires health and safety as being integral to all management activities. This approach also encompasses the area of design. When a process, product or workplace is designed and built with health and safety in mind, the number of reactive or add on procedures will be minimised.

BMCC will develop procedures to control and verify the design of the product on order. This is to ensure that major hazards and risks to personnel have been identified, evaluated and controls have been implemented that verify the design, construction, commissioning and operation of the installation and its associated services are safe.

Risk assessment will be incorporated as part of the project management process.

Safety controls will be detailed at all phases of design, construction and commissioning in the project execution plan.

Suitably trained personnel will be formally involved in the design and risk assessment process.

Reliability, maintainability and operational criteria including the process isolation philosophy will be formally agreed with the operations personnel.

Standards and design specifications will meet regulatory and best practice standards.

Suitably qualified personnel will be included in project reviews at the end of each project phase.

A formal hand over procedure from the project team to operations staff will be agreed.

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A quality assurance system where required, will be in place that verifies design, procurement and construction is in accordance with specifications. This will include contractor and sub- contractor activities.

A project safety plan will be prepared, implemented and performance objectives monitored, responsibility for this task remains with the line manager in charge of the project.

a) Design and development planning

Design plan(s) shall be developed identifying and describing the design and development activities.

Suitably qualified staff and adequate resources, shall be allocated to each of the design and development activities identified, the design plan will be updated where required as the design evolves.

b) Organisation and technical interfaces

Organisation and technical interfaces between different groups which input into design process, including client or regulatory authority, are to be identified and defined in the Project Design Plan.

Design procedures will ensure that the necessary information is regularly reviewed, documented and transmitted between the groups.

c) Design input

Design input requirements relating to the project are obtained from the contract review records, drawings, specifications, statutory authority codes, the client and BMCC's own standards.

The input requirements are to be reviewed by the designer in conjunction with the line manager for adequacy. Incomplete, ambiguous or conflicting requirements are resolved with those responsible for specifying these requirements as soon as they are identified.

d) Design output

The design plan identifies the required design output requirements, for each design activity. The output shall be documented and expressed in terms of requirements that can be verified, e.g. preliminary report, calculations, analysis and drawings. Designer and verifier shall ensure that the design output:

- Meets the design input requirements;
- Contains or references the acceptance criteria; and
- Identifies those characteristics of the design that are crucial to the safe and proper functioning of the project, e.g. construction methods, geo-technical issues, demolition, etc.

Design output documents are in the form of drawings clearly showing dangerous and hazardous areas, specifications, and specific acceptance criteria.

All design output documents are reviewed before release. If the final acceptance of the design is with the client, all information is forwarded for their perusal.

e) Design review

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Design results are reviewed during formal project design meetings. These meetings are conducted at required stages as nominated in the project design plan. Representatives of functions concerned with design stage and specialist staff shall attend these meetings.

Records of reviews in the form of minutes of meetings shall be maintained.

f) Design verification

Design verification activities are planned, documented and assigned to competent staff. Design verification at nominated stages is undertaken to establish that design output meets design input requirements.

In addition to conducting design reviews, design verification measures include:

- Performing alternative calculations;
- Comparing the new design with similar proven designs if available;
- Undertaking tests and demonstrations including safety; and
- Reviewing the design stage documents before release.

Design verification measures are recorded.

g) Design validation

After successful design verification, design validation, where applicable, shall be performed to ensure that the product conforms to defined user needs and/or requirements.

Design validation is normally performed on the final project stages under defined operating conditions; records of design validation will be maintained.

h) Design changes

All changes and modifications to the design are identified, documented, reviewed and approved by authorised staff and, where contractually required, the client before their implementation.

4.9 PURCHASING

Refer BMCC-SPP-6 Ordering and Purchasing (line 89 on WHS Document Register but no details or document link)

Through proper management of purchasing many potential health and safety problems can be avoided. Purchasing decisions must be coordinated and those responsible for selecting goods and services must be aware that senior management requires their consideration of health and safety issues. Preferred suppliers may be considered as a control mechanism.

The principles of Risk Management will assist in setting short and long-term goals for the correction and removal of identified hazards. Control measures for many potential hazards might be addressed prior to their introduction from new processes, equipment and substances.

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A critical element of the WHSMSM is the consideration of health and safety implications at the planning and purchasing stage. The primary control measures of elimination and substitution can be applied effectively at the planning, design, purchasing and maintenance stages. Implementing health and safety considerations at these stages is also likely to decrease the time for health and safety training and supervision. It should also be noted that the WHS Act 2011 requires an employer to consult with health and safety representatives on all proposed changes to the workplace, plant or substances being used that may affect health, safety and welfare at the workplace.

BMCC will develop procedures to ensure that health and safety is considered at the planning and purchase stage of all work activities. These procedures will require centralised control and/or coordination of all ordering and purchasing activities. Closely organised formal contact between purchasing staff and line managers will ensure responsible health and safety management at all stages of purchasing, planning and acquisition.

a) WHS purchasing policy

The following purchasing procedures should be read in conjunction with existing documented BMCC Purchasing Procedures and are supplemental to those of the existing procedures. Please refer to BMCC's WHS Purchasing Policy for greater detail.

b) Evaluation of contractors, subcontractors and suppliers

Refer BMCC-SPP-6.1 Managing Contractor Safety (line 43 on WHS Document Register but no details or document link)

BMCC Contractor Management Procedure

An assessment of the potential risk exposure from contract operations will be conducted prior to a contract being awarded.

The level of safety management and involvement with the contractor(s) required by the operation/branches will be determined.

The personnel responsible for managing each contract will be determined and documented prior to the issuing of tenders.

Procedures will be in place for managing the safety aspects of contract and support service operations including:

- Pre-qualification of contractors to verify safety systems and controls;
- Contract tender, evaluation and award;
- Implementation of the contract requirements (determined during the pre-qualification and award stages); and
- Ongoing monitoring, inspection and audit of the contractors.

The system of monitoring, inspection and audit will ensure contractor's personnel comply with safety management systems and plans.

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Clear reporting relationships and lines of communication will be established between the contractor and their representatives within the BMCC operation/branches.

Contractor services will comply with technical integrity requirements relating to design, construction and commissioning where appropriate.

Systems will be provided for assessing the competence of contractor personnel based on industry best practice or statutory licensing requirements.

Site specific induction training will be given to contractors prior to commencing work. This will cover the relevant safety requirements for the facility or site, including:

- Pre-start work meetings;
- Emergency response, escape and evacuation;
- Permit to work system;
- Maintenance and operating procedures;
- Travel requirements;
- Incident reporting; and
- All contractors engaged in construction work must have undergone training as specified in the WorkCover Code of Practice: WHS induction training for construction.

c) Plant and Equipment

Refer BMCC-SPP-6.3 Purchase of New Plant (not on WHS Document Register)

BMCC Pre-Start Checklist (line 55 on WHS Document Register but no issue date on document)

For new plant and equipment a consultative hazard identification process should be carried out prior to purchase, ensuring all health and safety requirements are realised, as established by Council's Guidelines.

Please refer to BMCC's WHS Plant Policy for greater detail.

d) Purchase of Hazardous Substances

BMCC-SPP-6.2 Hazardous Substances (line 44 WHS Document Register 16 years out of date)

Where substances are to be purchased, e.g. for vehicles, maintenance or construction process, the substances shall be designated as hazardous or non-hazardous. Hazardous substances will include dangerous substances.

Please refer to the WHS Regulation 2011, Chapter 7 Hazardous Chemicals.

Where hazardous substances are identified, the senior managers shall ensure:

- A risk assessment is undertaken which includes determination if a less hazardous substance can be used;

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- An exposure control procedure is devised;
- An employee information and instruction program is developed;
- A training needs analysis is developed;
- A Material Safety Data Sheet (MSDS) is obtained before the first delivery; and
- Copies of the MSDS are to be held where the substance is to be used and/or is made available to staff who will be exposed to the substance. Further copies are to be held in a central register accessible to all staff using hazardous substances.

e) Purchasing Data

All purchase orders raised by the BMCC shall clearly describe the product ordered and shall be sourced from approved suppliers.

Purchasing data is reviewed to establish the ability to continue to meet BMCC's purchasing requirements and to remain approved.

Product specified for incorporation into products or systems are ordered via Purchase Orders on which the following information is specified, as appropriate:

- the type, class, style, grade or other precise identification of the goods or services required; and
- title or other positive identification and applicable issue of specifications, drawings, process requirements, inspection instructions and other relevant technical data including requirements for approval or qualification of product, procedures, process equipment and staff.

Amendments and modification to Purchase Orders shall be referenced to the original purchase order, receive the same authorisation and approval, and be reviewed prior to release.

BMCC Purchasing guidelines allow for alternative purchase methods for goods and services under \$1000 e.g. Corporate Credit Cards, the preceding purchasing data guidelines will apply to purchase documentation in these cases.

f) Verification of Purchased Product

According to the type of product, the relevant line manager is responsible for verification of purchased product.

Should incoming products be released prior to verification, it shall be able to be traced by serial number to facilitate replacement in the event of nonconformity.

g) Verification at Supplier's Premises

BMCC requires of its contractors and subcontractors, the right to verify at various stages that such purchased products and services conform to specified requirements.

Verification by BMCC does not absolve the contractor or subcontractor from the responsibility to provide acceptable goods or services, nor does it preclude subsequent rejection.

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h) Client Verification of BMCC Supplied Products and/or Services

When requested, a client has the right to verify products and/or services purchased from BMCC conform to specified requirements. This right of access shall extend where practicable to council's facilities to permit verification at source.

i) Plant Safety Policy

Refer BMCC-SPP-9.9 Protection of Personnel Working Around Plant (line 15 WHS Document Register)

**Note: Please refer to BMCC's Plant Safety Policy*

j) High Visibility Work-Wear Policy

Refer BMCC-SPP-12.2-Procedure for High Visibility Work-Wear (line 12 WHS Document Register – should form part of a combined PPE procedure)

**Note: Please refer to BMCC's High Visibility Workwear Policy*

4.10 PROCESS CONTROL

Refer BMCC-SPP-9 Risk Management Profile (not in WHS Document Register)

Each branch will identify and plan for processes and practices which directly affect WHS and ensure that processes are carried out under controlled conditions. Unless agreed by ELT corporate WHS processes and procedures will take precedence over individual branch arrangements. This will include but not be limited to:

- Accident and Incident Reporting;
- Compensation and Claims Management, in liaison with authorised council staff e.g. WHS Team, Risk Management Co-ordinator and the Workers' Compensation Officer;
- Hazard Management.

Controlled conditions should include the following:

- Documented work instructions where the absence of such instructions would adversely affect WHS performance;
- The approval of processes and equipment as appropriate;
- The certification of personnel to work on certain equipment and processes; and
- The maintenance of records.

Documented work instructions developed for work processes impacting on safety are called Safe Workplace Procedures (SWP). SWPs are being developed on a corporate level to assist branches, this list is not exhaustive and progress of development can be verified with the WHS Program Leader/Safety Team, copies of SWPs will be made accessible to staff as developed and/or revised:

- Airborne Contaminants

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- Asbestos
- Blood Borne Pathogens
- Compressed Air
- Confined Spaces
- Control of Visitors Procedure
- Cranes and Slings
- Dealing With Public Complaints
- Driver Fuel Spills
- Electrical Safety
- Electromagnetic Radiation And Mobile Phones
- Fire and Emergency Evacuation
- Fire Safety Procedure
- Forklifts
- Hazardous Chemical Release
- Hearing Conservation
- Heat Stress Prevention
- Hot Work Procedures
- Housekeeping
- Indoor Air Quality
- Laser Equipment
- Lighting
- Lone Workers
- LPG Gas Safety
- Machine Guarding
- Managing Crystalline Silica Exposure
- Medical Emergencies
- Mobile Plant, Crane And Hoist Operation
- Needle Stick Injury
- New Employee Safety Orientation
- Safe Access
- Safe Guarding Machinery
- Safe Use Of Screen Based Equipment
- Site Security
- Strain Injuries
- Synthetic Mineral Fibres
- Tool Safety
- Use Of Pesticides
- Ventilation
- Welding Gas Cutting

4.11 PROCESS PLANT MAINTENANCE

Refer BMCC-SPP-9.2 Plant Maintenance (line 54 WHS Document Register 16 years out of date)

BMCC-SPP-9.7 Registration of Plant and Design (line 59 WHS Document Register but no details and no document link)

BMCC-SPP-9.3 Defective Plant Report (line 55 WHS Document Register this is actually the Daily Plant/Vehicle Inspection Checklist)

WORK HEALTH & SAFETY MANAGEMENT SYSTEM MANUAL

Maintenance, inspection, testing and modification systems will be implemented to ensure process, plant and equipment condition meets the design description and specifications.

Any deviation from design description and intended purpose will be identified and changes will be implemented where necessary to ensure safe and efficient operation.

Process, plant and equipment description information will be current, available and will include:

- basis of design
- codes and relevant legislation
- hazard assessment reports
- operating limits
- engineering drawings
- specifications and engineering standards
- maintenance, inspection and testing strategies
- operating procedures

A register for processes, plant and equipment requiring maintenance, inspection and testing will be maintained by the group responsible for the equipment.

A system for the management and control of engineering modifications will be implemented.

A system will be in place to verify equipment or services supplied by third parties is clearly specified and controlled to ensure safe operation. No modifications to equipment supplied by third parties will be allowed by BMCC. Equipment not meeting requirements will be returned to the supplier.

a) Fleet and Mobile Plant Operation Policy

Refer BMCC-SPP 9.4 Fleet Management (line 56 WHS Document Register it is 16 years out of date)

**Note: Please refer to BMCC's Fleet and Mobile Plant Operation Policy (line 11 WHS Document Register – more like a procedure and should be re-written as such)*

4.12 HANDLING, STORAGE, PACKAGING, PRESERVATION AND DELIVERY

| | |
|--------------------------|--|
| <i>Refer BMCC-SPP-15</i> | <i>Materials Storage and Handling (not in WHS Document Register)</i> |
| <i>BMCC-SPP-15.1</i> | <i>Hazardous Substance Procedure (line 44 WHS Document Register and is 16 years out of date)</i> |
| <i>BMCC-SPP-15.2</i> | <i>Waste Management (not in WHS Document Register)</i> |
| <i>BMCC-SPP-15.3</i> | <i>Dangerous Goods (line 79 no details and no document link)</i> |
| <i>BMCC-SPP-15.4</i> | <i>Asbestos (line 80 no details and no document link)</i> |

Materials handling is a major component of BMCC's outdoor work activities. The storage, handling and movement of materials can give rise to a variety of hazards. These hazards need to be identified, the risks assessed and a program for the implementation and control solutions developed.

WORK HEALTH & SAFETY MANAGEMENT SYSTEM MANUAL

Steps will be taken to determine:

- The safe manual and mechanical handling of materials;
- Safe transport and storage of materials; and
- Identification of materials (including hazardous substances).

a) Handling

Procedures are required to ensure that plant and material are handled, stored, packaged and delivered correctly. Material could include hazardous substances, toxic waste and dangerous goods. This also involves compliance with legislative and Australian Standards and industry best practice requirements.

BMCC will ensure that adequate equipment is available to prevent damage to materials and injury to staff.

Approved staff and equipment should be used where hazardous activities occur. If licenses are not required, then competent staff that has undergone adequate training will be supplied.

b) Storage

Storage is controlled to ensure that plant, and materials are stored appropriately and safely, so that the workers are protected from damage, and risk to the community is controlled.

Statutory requirements, recognised standards, and manufacturer's recommendations shall be taken into consideration in deciding the best method of storage and or installation of materials which will prevent damage and deterioration of the material and any resulting threat to health and safety of BMCC staff, contractors, visitors or the general public.

The condition of materials onsite or in storage areas shall be assessed at regular intervals by relevant line managers. Potential emergency situations will also be included in this assessment.

All legislative requirements will apply to hazardous and toxic substances (refer WHS Regulation 2011, Chapter 7).

c) Packaging

Packaging, preservation and labelling processes shall be used to ensure that products are clearly identified and controlled to prevent risk to staff and the community.

From a safety and environmental perspective it is important that any product that comes onto the site, or leaves the site, is assessed for its potential environmental and health impact, and that appropriate packaging requirements are implemented.

Where possible product shall be stored in its original packing material, unless opened for inspection or other necessary reasons.

WORK HEALTH & SAFETY MANAGEMENT SYSTEM MANUAL

Packaging and storage of toxic and hazardous substances will follow statutory requirements and will comply with suppliers' recommendations as per the relevant Material Safety data Sheets (refer WHS Regulations 2011, Chapter 7).

d) Preservation

Work, either completed or in progress, which may be subject to damage, or form a potential risk to the health and safety of staff and the wider community shall be properly protected through appropriate storage and handling environments to maintain product integrity e.g. application of herbicides or protective coatings.

Where hazardous or dangerous substances are utilised, or substances that can change into a more toxic form if not properly preserved are held, an appropriate storage and handling environment will be maintained.

e) Delivery

Items and equipment delivered to BMCC or provided to clients shall be clearly marked with destination details to avoid loss, and shall be protected from damage. These products and equipment shall be despatched in sufficient time to ensure timely arrival at their destination.

Where hazardous, dangerous, toxic or contaminated substances are being delivered, statutory requirements will be maintained (refer WHS Regulations 2011 Chapter 7).

COMPARISON TABLE
INDEPENDENT INVESTIGATION INTO ASBESTOS ISSUES

| TERMS OF REFERENCE (TOR) | INVOLVEMENT OF MARK MULLIGAN |
|--|--|
| <p>1. The conduct of the works at the Lawson car park and at the Lawson Mechanics Institute, including the removal of any soil, rock and other materials from the work site and the relocation of any such materials to other sites.</p> | <p>The works of the Lawson car park construction were undertaken by the Service Delivery (SD) Directorate. The works at the Lawson Mechanics Institute were contracted to an external building company. Mr Mulligan was not engaged by the Council in any operational capacity at the time that these works were undertaken. Mr Mulligan had no involvement in the works and no responsibility for them.</p> |
| <p>2. The use of the Lawson depot to receive any materials referred to in paragraph 1 and the storage and subsequent removal of those materials from the Lawson depot to any other work sites within the City.</p> | <p>The Lawson depot was controlled by the SD Directorate at the time that works were undertaken on the Lawson carpark and Mechanics Institute. The Council's City & Community Outcomes (C&CO) Directorate was permitted to store material taken from the car park site within the depot. Mr Mulligan was not involved in any decisions relating to these matters. He had no operational or other responsibilities whatsoever in relation to the Lawson works. At the time Mr Mulligan commenced working at Council the Lawson site was closed.</p> |
| <p>3. The work undertaken by the Council in the period 2012 to date to compile the Council's Asbestos Register (AR) and to prepare the Council's Asbestos Management Plan (AMP), including any factors which delayed or contributed to the delay in the completion of that work.</p> | <p>Mr Mulligan was never engaged by the Council to compile the Council's Asbestos Register (AR) or to prepare the Council's Asbestos Management Plan (AMP). Mr Mulligan was engaged as the consultant, working part time in the period October 2016 to December 2016 to advance the Council's Safety Management Systems (SMS) project. Mr Mulligan had no involvement in asbestos working groups during his engagement as a consultant. Mr Mulligan had no involvement in the asbestos working group following his appointment as Acting Director, Service Delivery with effect from 1 November 2017 until his departure from the Council on 12 February 2018.</p> |
| <p>4. Whether the presence of asbestos based building materials, or asbestos contaminated soil, within any building or on any properties owned by the Council, in the period 2016 to date, was not appropriately documented, recognised or managed at that</p> | <p>Mr Mulligan had no responsibility for the documentation, identification and management of asbestos based building materials or asbestos contaminated soil within any Council buildings or on any Council owned properties. Mr Mulligan's directorate were responsive for building maintenance but staff from SD were seconded to the Asbestos Response Team, reporting to a different directorate. Mr Mulligan was director of the area including</p> |

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| time. | waste Management, including the Katoomba tip. |
| 5. The identification of asbestos contaminated materials (including fill) within the former Blackheath tip site, including the access allowed to that site (by staff and members of the public) once the presence of asbestos based materials was known. | Mr Mulligan had initial responsibilities as asset manager in waste area for the Blackheath Tip, and initial response to securing the site, this responsibility for the management of the former Blackheath tip site, was then transferred to the Asbestos Project Team. Mr Mulligan had no responsibility for determining who would have or may have access to that site. |
| 6. The actions taken by the Council in the period May 2017 to date, in response to any enquiries undertaken by SafeWork NSW (SW) or any notices given by SW to the Council, in relation to the management of asbestos based materials in Council owned properties, the repair of properties containing such materials and the advice given to Council staff in relation to the presence of those materials. | Mr Mulligan was not working for the Council in the period May 2017 to 31 October 2017. In the period from 1 November 2017 and onwards he had no responsibility in relation to any enquires undertaken by Safework NSW (SW) or in relation to the Council's responses to any notices given by SafeWork NSW (SW) to the Council in 2016 or 2017/2018. However, he did have management of the Katoomba Waste facility and response at this site to Safework, with assistance from the Asbestos Response Team – who did not report to him. |
| 7. Investigations undertaken by the Council in the period 2012 to date to identify asbestos based materials in any building or on any site identified by SW in the period May 2017 to date, and the steps taken by the Council, both before and after May 2017, to record, remediate or render safe asbestos in any such buildings. | Mr Mulligan had no involvement in or responsibility for any of the investigations described in TOR 7 over the period from 2012 to date, to identify asbestos based materials in any building or in any site identified by SW in the period from May 2017 to date. Note Mr Mulligan had responsibility for building maintenance, but Asbestos response team, who did not report to Mr Mulligan, undertook the initial response to any asbestos matters. |
| 8. Whether any disciplinary action was taken or threatened against members of the Council staff arising from information brought forward by those staff members in | Mr Mulligan was not working for the Council as an employee until 1 November 2017. No such allegations have been made for period 1 November 2017 to date. As a consultant in the period October to December 2016 he had no involvement in or responsibility for disciplinary action |

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| relation to the Council's management of asbestos issues. | against members of Council staff. |
| 9. The procedures and plans that have been adopted by the Council in the period 2012 to date, and the work practices that have been implemented by the Council over that period, to manage risks associated with asbestos based materials, present within Council owned buildings or on Council owned land. | Mr Mulligan's involvement in relation to the Council Safety Management System (SMS) policies was limited to the period October 2016 to December 2016 and his involvement in the Council's SMS project. Mr Mulligan had no role in the implementation of Council's procedures and plans until his appointment as Acting Director, Service Delivery on 1 November 2017. For the 11 week period Mr Mulligan worked as Director he had no role in the adoption by the Council of procedures and plans in relation to work practices to manage risks associated with asbestos based materials present within Council owned buildings or on Council owned land. Work on developing asbestos management plan was being undertaken by a different Directorate. |
| 10. The Council's policies and practices adopted and implemented in the period 2012 to date to ensure that Council staff were informed from time to time of the presence of asbestos based materials in Council owned buildings and on Council owned sites, including information made available to Council staff before work was undertaken at any such building or site. | Mr Mulligan had no role as consultant in October 2016 to December 2016 in informing staff, or ensuring that Council staff were informed from time to time, of the presence of asbestos based materials in Council owned buildings or on Council owned sites. At this time Mr Mulligan was involved in the Council's SMS project. For his appointment for the 11 weeks as Acting Director, Service Delivery, he had no role in informing staff about the presence or possible presence of asbestos based materials in Council owned buildings. By 1 November 2017, when Mr Mulligan commenced working as Director, the issue of asbestos, including the unknown presence of asbestos in Council owned buildings, was a matter of major public controversy. By that date, the USU was involved in ongoing and detailed correspondence with the Council and its members about asbestos issues, including allegations that staff had been permitted to work on sites without being aware of the presence of asbestos. |
| 11. The establishment, role and operation of the Council's Work, Health and Safety Committee. | Mr Mulligan had no role in establishing the Council's Work, Health and Safety Committee nor was he ever a member of that Committee. Mr Mulligan played a role as Consultant October 2016 to December 2016 in reviewing of WHS consultation procedures, including the reestablishment of Work Health and Safety Committees.

During the 11 week period from October 2016 to November 2016, working as a consultant, Mr Mulligan supported the General Manager to establish the Peak Safety Steering Group in response the outcomes of the Willis report. |
| 12. Such other matters as the | No additional matters have been recommended by the |

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| investigator brings to the Council's attention and recommends as a matter that should be investigated (subject to that recommendation being endorsed by the Council's solicitor). | investigator for further investigation. |
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Angus Broad

From: Rosemary Dillon
Sent: Thursday, 22 February 2018 4:56 PM
To: 'office@upton.minister.nsw.gov.au'
Cc: Grant Gleeson; Mark Greenhill; Chris Vanderkley
Subject: Submission by Blue Mountains City Council to Minister for Local Govt - Response to Notice of Intention to Suspend
Attachments: BMCC Submission to the Minister Local Govt - NoI to Suspend - 20180222 FINAL.pdf
Importance: High

Dear Minister and Mr Gleeson,

On behalf of the Mayor, Cr Mark Greenhill, and the Deputy Mayor, Cr Chris Van der Kley, I provide a submission by Blue Mountains City Council in response to the Minister's Notice of Intention to Issue a Suspension Order to the Council under S438M of the Local Government Act.

The submission has been made within the required 7 days of the date of the Notice, which was served on the Council on Thursday 15 February.

Should you require any further information to assist with your full consideration of the Council's submission, this will be provided promptly on request.

We look forward to hearing from you.

Regards
Rosemary

Rosemary Dillon | General Manager | t 02 4780 5518 | e rdillon@bmcc.nsw.gov.au

Blue Mountains City Council • council@bmcc.nsw.gov.au • www.bmcc.nsw.gov.au • Locked Bag 1005 Katoomba NSW 2780



22 February 2018

Office of the Mayor
Reference File: 18/040808

The Hon. Gabrielle Upton
Minister for Local Government
GPO Box 5341
SYDNEY NSW 2001

SUBJECT: Notice of Intention to Issue a Suspension Order to Blue Mountains City Council Section 438M of the *Local Government Act, 1993* (the Act)

Dear Minister,

Introduction to the Council's Submissions

1. We refer to your letter dated 14 February 2018 addressed to the Mayor of the City of Blue Mountains, Councillor Mark Greenhill. Your letter constituted a notice pursuant to s438K of the Act that you intend to issue a suspension order to suspend Blue Mountains City Council (Council) for a period of 3 months and to appoint an interim administrator under s438M of the Act (Notice).
2. Your Notice was served by email on 15 February 2018. Mr Grant Gleeson, Director Legal at the Office of Local Government, has confirmed that the Council has until close of business today, Thursday 22 February 2018, to make its submissions to you.
3. At the Extraordinary Meeting of the Council held on the night of Tuesday 20 February 2018 the elected Councillors considered a Mayoral Minute relating to the Notice. That Mayoral Minute recorded the Council's recommended submission in response to your Notice.
4. Your Notice to the Council is Attachment 2 to the Mayoral Minute. You will note that the Mayoral Minute is structured to review each of the substantive paragraphs in your letter being paragraphs three to ten inclusive. The Mayoral Minute records the Council's submission in response to each of those paragraphs.
5. The Council's submissions in response to your Notice comprise the following:
 - (1) This letter to you dated 22 February 2018.

(2) Subject to paragraph 6. below, the Mayoral Minute dated 20 February 2018, including Attachments 1 to 7, as follows:

- Attachment 1: Email from Mr Grant Gleeson to the General Manager of the Council, Dr Rosemary Dillon, dated 15 February 2018 (9:28AM);
- Attachment 2: Your Notice dated 14 February 2018;
- Attachment 3: The Office of Local Government (OLG) *Quick Guide to Suspension Orders PROCESS FOR COUNCILS*;
- Attachment 4: Minute Nos. 416 and 417, recording the resolutions passed at the Ordinary Council meeting held on 14 November 2017 (relating to the establishment of the two independent investigations to which your letter refers);
- Attachment 5: Maddocks' legal advice addressing the two identified questions;
- Attachment 6: Table and report titled *BMCC Progress in Addressing Asbestos Management*; and
- Attachment 7: Letter dated 25 January 2018 forwarded by the Council to Mr Tim Hurst, Acting Chief Executive, OLG;

(3) Addendum to Mayoral Minute – Submission in response to the Minister for Local Government's Notice of Intended Suspension of the elected Councillors of Blue Mountains City Council.

(4) Minutes of Extraordinary Council Meeting 20 February 2018.

(5) Letter from the New South Wales Ombudsman (Chris Wheeler) to the Council dated 15 February 2018, received by the Council today (21 February 2018).

(6) McPhee Kelshaw letter dated 13 February 2018 forwarded to Mr Grant Gleeson, Director Legal of the OLG, with the following attachments:

- Amended Terms of Reference;
- Preface to Mr Tooma's book titled "*Duties of Officers*" (2012).

(7) Letter from Clyde & Co (Mr Michael Tooma) to McPhee Kelshaw dated 19 February 2018, relating to Mr Tooma's interview of Mr Mark Mulligan.

6. On the night of the meeting on 20 February 2018 the following amendments were made to the Mayoral Minute (without change in the text):

Amendments to the Mayoral Minute:

| | | |
|--------------|-------------|--|
| P10 | Para 2 | Insert: We are determined to protect the health and welfare of our past, current and future workers. |
| P12 | (4) | Disregard "as follows" |
| p22 | Para 1 | "attachments" refers to Attachment 7 |
| p23 | Para 2 | "attached" refers to Attachment 7 |
| Attachment 6 | Sub heading | To read Attachment 6 not Attachment 4 |

Your Notice

7. Your Notice is Attachment 2 to the Mayoral Minute. The grounds for possible suspension of the Council nominated in your Notice are appropriately summarised as follows:
- (1) The Council established two (external) independent investigations, being the Recruitment Investigation and the Asbestos Investigation.
 - (2) When making your decision on 22 December to issue a Performance Improvement Order to the Council, rather than to proceed to suspension, integral to your decision was:
 - The integrity of the processes the Council had initiated (in relation to the two independent investigations).
 - The capacity of the Council to address the matters confronting it (which the Council understands to be a reference to the issues arising from the history of asbestos management by the Council, including the matters that are the subject of Mr Tooma's independent investigation).
 - (3) You understand that as at 16 November 2017 (when Mr Tooma was first engaged) there was a pre-existing but continuing relationship, both professional and social in nature, between Mr Michael Tooma and Mr Mark Mulligan and that this ongoing relationship was not disclosed to the Council.
 - (4) You understood that Mr Mark Mulligan was in November 2017 the Council's Chief Safety Officer.
 - (5) When Mr Tooma was engaged as independent investigator the Council did not adopt processes that ensured the prior association between Mr Tooma and Mr Mulligan, or any other of Mr Tooma's prior material associations, were disclosed to the Council.
 - (6) The Mayor had made a statement to the Chief Executive of the Office of Local Government, Mr Tim Hurst, that he had lost confidence in Mr Tooma's investigation.
 - (7) The sudden departure of Mr Mulligan (whom you then incorrectly understood to be the Council's Chief Safety Officer) on 12 February 2018 was, at the date of the Notice, *yet to be explained*.

- (8) The Council had previously submitted that the governing body of the Council was not directly involved in the events leading up to the identification of asbestos management problems in 2017.
- (9) The Council has not adopted a process that has been robust enough to implement a mechanism that satisfactorily addresses the significant risk posed by the asbestos management problem, with governance and probity (conflict of interest) issues having the potential to erode community confidence.
- (10) The Council has proposed the appointment of a temporary adviser.
- (11) The Council was seeking to *sheet responsibility for the failings of the Council's onto others*, on the basis of the statement made in the Council's letter dated 25 January 2018 to the OLG (being Attachment 6 to the Mayoral Minute).

The Council's Submissions – Overview and amplification

- 8. Each of the matters identified in your Notice, summarised in paragraphs 6(1) to 6(11) above, is addressed in the attached Mayoral Minute and in the other documents that make up the Council's submission. Further to those documents, the Council amplifies the submission in the following material respects.
- 9. Whilst the Council has been and remains open and candid about the challenges it faces and is determined to co-operate with you and the OLG in order to address and resolve the substantive issues, it is necessary to note that your Notice contains material errors such that any decision reached through the current process would be invalid. Two of the key issues, in short, are as follows:
 - (1) The indispensable legal foundation for a decision to suspend a council is that you have reasonably formed the belief that it is *necessary* to appoint an administrator in order to restore the proper or effective functioning of the council. However, your Notice, quite correctly, observes that external management is only 'a possible solution': that falls short of satisfying a legal requirement of 'necessity'.
 - (2) The advice that you have received to the effect that Mr Mulligan was the Council's Chief Safety Officer, and that Mr Tooma had a conflict of interest, was incorrect. Whilst a personal connection between an investigator (or a decision maker) and a person under investigation (or subject to a possible decision) may give rise to an issue of bias or conflict of interest on the part of the investigator (or decision maker), that is only so if the relevant person is in fact under investigation or potentially subject to the decision. It was not so in this case. It is simply not correct to say that Mr Mulligan was the Chief Safety Officer of the Council (ever) and in respect of none of his work for the Council was there any issue that Mr Tooma was investigating. Mr Mulligan was not responsible for the development of the Council's Asbestos Management Plan and his work did not specifically focus on the Council's overall asbestos response. Mr Tooma was not required to assess, evaluate or judge Mr Mulligan or his performance. Therefore, Mr Tooma did not have a conflict of interest as you appear

to have been advised. Once that is understood—and the objective and important error about Mr Mulligan's role is recognized—a substantial part of the reasons in your Notice falls away. (In any event, there is no impropriety in commencing a project only to find later that a conflict of interest has unexpectedly arisen and needs to be managed: in those circumstances there is a range of possible responses, but they did not arise in this case.)

10. As noted in the Mayoral Minute, Mr Tooma's Interim Report 1 *Asbestos Management at Lawson Carpark, Lawson Mechanics Institute and Lawson Depot February 2018* has been received. A copy of Mr Tooma's report and Annexures 1 to 51 to that report will be delivered to your office, in accordance with the Period for Compliance specified in the PIO.
11. Mr Tooma's report is detailed and comprehensive. The report identifies matters that were not previously known to the governing body, including systemic issues. The governing body will, following its detailed review of Mr Tooma's report, be in a position to begin to address those issues.
12. Mr Tooma's further reports will be delivered to the Council progressively over the period up to and including 31 March 2018.
13. Mr Tooma's engagement has been criticised in the media, and has been questioned in your Notice. The process followed by the Council's solicitors when Mr Tooma was engaged is now explained in detail in the Mayoral Minute. That process has been reviewed and supported by Maddocks solicitors, in the advice that is Attachment 5 to the Mayoral Minute.
14. Your apprehension about that process, and your concern that an appropriate process was not followed, have now both been addressed.
15. The substantive criticisms levelled against Mr Tooma, and the basis upon which his independence has been questioned, arises from his relationship with Mr Mark Mulligan, which in turn arose from Mr Tooma's role as a solicitor acting for Essential Energy (the former Country Energy) in relation to work, health and safety legal issues. The Council understands that Mr Tooma has spoken directly to the OLG concerning these matters.
16. In the Council's submission Mr Tooma's prior relationship with Mr Mulligan, which effectively ended in 2012 (as a close professional and associated personal relationship), is not and could not be material to Mr Tooma's investigations. In particular, the Mayoral Minute confirms, and you are now aware, that Mr Mulligan was never employed as the Council's Chief Safety Officer and his position with the Council was not significant to Mr Tooma's investigation.
17. Mr Mulligan's sole work for the Council, before he was employed as Acting Director, Service Delivery on 1 November 2017, was a period of 11 weeks during October, November and December 2016. The nature of Mr Mulligan's engagement at that time is identified in the Mayoral Minute.

18. Mr Mulligan's engagement as a consultant ended on 23 December 2016. During the 11 week period in which Mr Mulligan consulted to the Council in late 2016, he worked 3 to 4 days per week.
19. Mr Tooma has been engaged to investigate the management of asbestos by the Council, as an organisation. While the report will make reference to Council employees, the report is directed to organisational and systemic issues, not to individuals. The report does not require Mr Tooma or the Council to apportion individual blame for the circumstances in which the Council finds itself and, in particular, does not require Mr Tooma to assess or judge Mr Mulligan's performance. Rather, the report will allow the Council to address the organisational and systemic issues that brought about the events of 2017.
20. Questions have been raised in relation to the reason why Mr Tooma did not notify the Council of his prior relationship with Mr Mulligan, when he identified Mr Mulligan's employment with the Council, commencing on 1 November 2017 as Acting Director, Service Delivery. The answer to that question is simple. Mr Tooma did not consider that either Mr Tooma's prior relationship with Mr Mulligan or Mr Mulligan's appointment as Acting Director from 1 November 2017, was material to the investigation. The Council is informed that Mr Tooma did not know that Mr Mulligan had worked as a consultant (for 11 weeks in late 2016) until he interviewed Mr Mulligan in January 2018.
21. The reason why Mr Tooma interviewed Mr Mulligan is explained in Mr Tooma's letter dated 19 February 2018. That interview was undertaken to assist Mr Tooma to understand the organisational structure and interactions of the Council. As the Acting Director, Service Delivery, Mr Mulligan was an appropriate interviewee, in common with the other Directors and Group Managers of the Council.
22. The Council submits that a review of Mr Tooma's first report will confirm to your satisfaction the rigorous and independent nature of the investigation that he is undertaking.
23. A rigorous external review is, in the Council's submission, a difficult but healthy process. After you consider the Council's response to the concerns that you have expressed, the Council submits that you will be satisfied both with the process under which Mr Tooma was originally engaged and with the process that he has pursued as independent investigator.
24. The accusations made in relation to Mr Tooma's prior professional and personal association with Mr Mulligan were first aired in the media in the week commencing 12 February 2018. On page 20 and 21 of the Mayoral Minute, the Mayor explains the reasons for his contact with the OLG and the reasons for the comment that he made. The Mayor, in common with the other elected Councillors, considers that Mr Tooma's investigation should continue, and he has confidence in Mr Tooma. If, however, you consider (despite the further information now available to you) that Mr Tooma should stand aside as investigator, then the Council proposes that Ms Alena Titterton of Clyde & Co assume the role of independent investigator, and complete the investigation.

25. Ms Titterton has been closely involved in all aspects of the investigation to date. Ms Titterton has participated in all interviews (and thus been able to make some assessment of the interviewees) and is in a position to ensure that all of the work undertaken in the investigation to date is brought to a conclusion.
26. The Council's commitment and determination to responsibly manage asbestos risks has been detailed previously in the submission of 20 December 2017 and in this submission as identified in Attachment 6 to the Mayoral Minute, and through the other correspondence and reports (including Interim PIO reports) that you have received.
27. Attachment 6 supplements the information provided on pages 19 and 20 of the Mayoral Minute, in sub-paragraphs (1) to (8) inclusive.
28. The Council's response to the asbestos management issues has been robust and comprehensive. The Mayoral Minute confirms the Council's commitment of very substantial financial resources to its response. The Council has taken its own action and has also engaged appropriate consultants and liaised with SafeWork NSW.
29. You have noted with concern the statement in the Council's letter dated 25 January 2018, which is quoted in your Notice as *"the Council does not and will not accept without challenge unfounded allegations made against it in the media or any other assertions that the Council is responsible for the actions of third parties over whom the Council has no lawful authority or who are engaged to carry out specialised work."*
30. The Council has previously corresponded with the Office of Local Government concerning the events of January 2018, the attendance of SafeWork inspectors at the Springwood depot to confirm the previous clearance of the depot in response to improvement notices issued by SafeWork and the subsequent introduction of a new SafeWork team of inspectors, who reach different conclusions to the first team.
31. The Council is neither a licensed asbestos removalist nor a licensed asbestos hygienist. The Council is not an expert consultant, engaged by third parties to advise on asbestos. You are aware that this is a specialist field requiring precise qualifications and significant and appropriate experience.
32. The Council, recognising that asbestos management and asbestos removal is an expert field, engaged consultants such as SLR Consulting Pty Limited (SLR), Greencap Pty Limited (Greencap), Regional EnviroScience Hazardous Materials Laboratory and Consultancy (EnviroScience) and Airsafe Pty Limited (Airsafe). The Council engaged these consultants and contractors because of their reputations in relation to asbestos management and because they are licensed by SafeWork to provide advice and carry out work in relation to asbestos management and asbestos removal.
33. In the Council's submission, the Council is entitled to rely upon the expertise of the highly qualified and licensed consultants and contractors that it engages. If the Council receives advice from those contractors and consultants then the Council is entitled to rely upon that advice.

34. The same principle applies in relation to SafeWork. If SafeWork inspectors inform the Council that those inspectors are satisfied that the Council (through the work of its expert contractors and consultants) has fully satisfied the requirements of SafeWork Improvement Notices or Prohibition Notices, then the Council is entitled to rely upon that advice. It is not the task of the Council, and it is not appropriate for the Council, to suggest that SafeWork's advice may be incorrect or may be misdirected.
35. The comment made by the Council in its letter dated 25 January 2018 (Attachment 7 to the Mayoral Minute) was directed to that issue. The comment was not an attempt to shift the Council's responsibility onto other parties. On the contrary. The Council was noting that it had acted responsibly, in seeking appropriate advice, and in relying upon the expert regulators assessment of issues. In the Council's submission it is unfair and unreasonable for the Council to be criticised for doing so.
36. Because of the Council's concerns about public statements made in relation to SafeWork, including comments on the media which appeared to indicate that SafeWork was being directed to follow a path that it may not otherwise have followed (based on its assessment of issues as an independent regulator), the Council lodged a formal complaint with the Office of the New South Wales Ombudsman, to record its concerns. That complaint has now been addressed. In the letter dated 15 February 2018, forwarded to the Council by the Ombudsman, the Ombudsman has confirmed that a formal investigation into the complaint will now be undertaken.
37. The Ombudsman's investigation will follow its own course. The Council will cooperate with that investigation. That matter is put no higher or no lower than the fact that Council had a concern and that the Ombudsman sees sufficient substance in the complaint (without any assessment at this time of the complaint) to merit the initiation of a formal investigation.
38. Forwarded with this letter is a copy of a letter dated 15 February 2018, received by the Council from the New South Wales Ombudsman.

Resolution

39. The Council accepts that a decision merely not to proceed with the intended suspension order is the beginning not the end of resolving the matters of concern to the Minister and the Council.
40. As your letter dated 14 February 2018 acknowledges, when it points out that the appointment of an administrator is a "possible solution", there are other possible solutions. The Council is fully committed to working with you and the Office of Local Government to finding the best solution, as is indicated by its openness in acknowledging allegations and problems, its sharing of information with the OLG, and its suggestion that a temporary (or special) adviser be appointed pursuant to s. 438G of the Act.
41. The appointment of a temporary adviser is no light step. To the contrary, it involves the exercise of a significant statutory power that has similarities to the appointment of a interim administrator. It is accompanied by a statutory regime that includes, for example, the legal duty, imposed on the Council, the Councillors and the staff by s. 438H, "to co-operate with the temporary adviser

and to provide any information or assistance the temporary adviser reasonably requires to exercise his or her functions.”

42. The appointment of a temporary adviser also has the following advantages:
 - (1) The role of the adviser can be carefully focused on the particular issues of concern to the Minister.
 - (2) The adviser can (pursuant to subs. 438G (5)) be given “such other functions” as the Minister might determine, so it can be an expansive and significant role.
 - (3) The appointment can be longer than the six-month maximum prescribed for a suspension of a council (provided that the corresponding improvement order specifies a longer period).
43. Perhaps most importantly, the appointment of a temporary adviser is a mechanism pursuant to which the State (through the adviser appointed by the Minister) and the local community (through its elected councillors and the Council staff) can work jointly to remedy the problems at hand. Such an approach is more likely to secure entrenched improvements and is more consistent with the democratic nature of local government, which should not lightly be abrogated.
44. The remit of a temporary adviser is linked to the scope of the related Performance Improvement Order. If necessary, the Council invites the Minister to issue a further or amended improvement order so that all issues that a temporary adviser might usefully address can be addressed. The Council would respectfully suggest that the best approach to establishing the scope of an adviser’s work would be through co-operative discussions between the OLG and the Council in order to ensure that all issues are identified. That said, the main issues have been identified, and both the asbestos management issues and some broader issues of the corporate arrangements and practices of the Council could be included. These latter, broader issues are ones that are likely best to be improved and resolved over a longer period than six months, so that the appointment of a temporary adviser is a better option than the appointment of an interim administrator.
45. The drafting of the instrument of appointment of a temporary adviser, and of any corresponding amended or new Performance Improvement Order, is of course a matter to be undertaken with care. The Council offers its full co-operation in such an exercise. If you are inclined to consider or follow such an approach, the existing notice of a proposal to suspend the Council could remain in place (if you so decide) pending the efforts to finalize arrangements for the appointment of a temporary adviser. The Council respectfully urges that you are entitled to see the final version of a detailed proposal for the appointment of an adviser (settled by the OLG, taking account of the Council’s suggestions) before choosing between that option and the option of appointing an administrator. The Council also notes that should you decide not to proceed with the current decision-making process to suspend the Council, you would not be precluded from undertaking a new process.
46. The Council submits that the best course is to withdraw the Notice and appoint a temporary adviser.

47. Your Notice has allowed the Council a period of 7 days within which to make its submissions. The Notice confirms that you limited this time for submissions because of your opinion that the matter was urgent.
48. You are now aware of matters addressed in your Notice that were incorrect and of misunderstandings concerning the Council's position. In that circumstance, the Council also submits that it would be appropriate for you to formally extend the period within which the Council may make submissions from 7 days to 14 days.
49. The Council accepts your power to make such an extension, given that you now have before you, both through the Council's submission and through the copy of Mr Tooma's report, much more information than was previously available. In particular, the rigorous and continuing nature of the Council's action to address the serious problem of asbestos management will now be more fully understood by you than was previously the case.
50. No doubt, you are entitled to accept that your continued application of pressure on the Council has contributed to resolving this issue satisfactorily but it is also fair to note the Council's full and open approach to achieving the same ends. That is a fruitful basis for a cooperative approach in relation to asbestos management in the future.
51. To allow the parties to continue in dialogue, with the intention of acting in the best interests of the community of the City of Blue Mountains, including the interests of the Council's employees, an extension of the 7 day period to 14 days would be appropriate as an alternative to immediately withdrawing the Notice, despite Council's view that the withdrawal of the Notice would be an appropriate step for you to take.
52. The Council again emphasises that in making that submission, the Council endorses and accepts the appointment of a temporary adviser, with the intention that the terms of reference for that special adviser would be the subject of further discussions between the Council and the Office of Local Government.
53. Should you require any further information to assist with your full consideration of the Council's submission, this will be provided promptly on request.
54. We look forward to hearing from you.

Yours faithfully,



Mark Greenhill OAM
Mayor



Chris Van der Kley
Deputy Mayor



Office of Local Government

SUBMISSION TO THE BLUE MOUNTAINS PUBLIC INQUIRY

Introduction

The Office of Local Government (OLG) recognises the important role of public inquiries in facilitating independent and expert review of significant matters of concern to the Minister and the general public.

OLG notes that the Terms of Reference (ToR) relate to:

- the performance of the Blue Mountains City Council (Council) and councillors in dealing with asbestos management issues since 2012;
- Council's processes surrounding the employment of certain staff and contractors including those engaged to conduct independent investigations into asbestos management and employment issues;
- the performance of the Council and councillors in determining an appropriate organisational structure, resource allocation and facilitating a consultative and supportive working environment; and
- Council's compliance with its statutory responsibilities under the *Local Government Act 1993* (the Act).

In the first instance, this submission outlines OLG's role and its strategic approach to intervention. This information provides context for the information that follows regarding OLG's dealings with the Council and related actions taken by the Minister for Local Government (the Minister).

The submission canvasses the role and responsibilities of the Council and other Government agencies in responding to the issues of concern that are identified in the ToR.

OLG submits that a review of evidence available to the Inquiry will indicate that the circumstances confronting the Council involve complex considerations.

Regardless of past events, the tasks confronting the Council to address the matters of concern are ongoing and are multifaceted. It is submitted that going forward Council will need to have the capacity to successfully implement recommendations made following independent investigations initiated by Council and, as well, any recommendations arising from the separate investigation and/or any regulatory action initiated by SafeWork NSW and the NSW Environment Protection Authority. These recommendations will need to be translated into the Improvement Plans developed by Council in accordance with the requirements of the Performance Improvement Order issued by the Minister. The various actions identified will then need to be resourced and implemented.

Ultimately, the successful implementation of the Improvement Plans, and any further recommendations that may be made by the Commissioner, will be the responsibility of the governing body.

OLG's role and its strategic approach to intervention

Strategic Plan 2018-2022

OLG's Strategic Plan 2018-2022¹ sets out our strategic goals and strategies. Of particular relevance to the Inquiry are the following goals and the related strategies:

- High performing councils that deliver for their communities.
- Councils and officials held accountable for performance and integrity.

In seeking to have more high performing councils, OLG pursues a range of strategies, as set out in the strategic plan and reproduced hereunder:

- 2.1 *Proactively engage with councils to identify their needs and opportunities*
- 2.2 *Deliver tools, guidelines, workshops and other capacity building initiatives for councils and councillors*
- 2.3 *Support council election processes*
- 2.4 *Work with joint organisations of councils to deliver regional and rural priorities*
- 2.5 *Build the capacity of councils to implement policy & regulatory changes of Government*

Similarly, in seeking to ensure Councils and officials are held accountable for performance and integrity, OLG pursues a range of strategies, as set out in the strategic plan and reproduced hereunder:

- 4.1 *Refine, promote and measure the criteria for a high performing council*
- 4.2 *Monitor and report on performance and compliance to regulation*
- 4.3 *Undertake council risk profiling to better target our interventions*
- 4.4 *Provide governance advice on good practice*
- 4.5 *Take early action on poor performance*
- 4.6 *Intervene in councils when warranted and appropriate.*

Ultimately, OLG's role is about improving the performance of councils.

Improvement and Intervention Framework

OLG has developed and published an *Improvement and Intervention Framework*² (the Framework) to guide it in identifying appropriate intervention strategies when councils are identified as facing difficulties. The Framework provides that OLG should aim to intervene early when councils are experiencing problems. It also references a range of options and powers available to the Minister to intervene where appropriate, proportionate and necessary.

¹ Publicly available on OLG website at: www.olg.nsw.gov.au/about-us/our-strategy.

² Publicly available on OLG website at:

www.olg.nsw.gov.au/strengthening-local-government/conduct-and-governance/improvement-and-early-intervention.

OLG's role in the interventions that preceded the public inquiry

Council first contacted OLG on 13 November 2017 following criticism in the media in respect of asbestos management and recruitment issues.

An OLG Principal Investigator attended Council on 20 November 2017 and met with Council's Acting General Manager, Dr Rosemary Dillon. Council's legal adviser and another Council officer were also present. At the time, Dr Dillon had been recently appointed as the Acting General Manager following the retirement of the previous incumbent.

At the time of the visit to Council, Council had already instigated independent investigations into the asbestos management and recruitment issues being ventilated in the media. SafeWork NSW also had an active regulatory interest in the asbestos management issues at Council, having issued improvement and prohibition notices to Council.

A chronology detailing significant dates and events is attached (**Annexure 1**). OLG's focus, since 22 January 2018, has primarily been on monitoring the action taken by Council in response to the Performance Improvement Order (PIO) issued by the Minister on that date and further, on the provision of advice to the Minister relating to the proposed exercise of further intervention powers.

The Notice of Intention to Suspend served on Council on 13 December 2017

On 12 December 2017, the Minister had formed the preliminary belief that the appointment of an interim administrator was necessary to restore the proper or effective functioning of Council and she issued a Notice of Intention to Suspend for the following stated reasons:

- there had been a failure to comply with work, health and safety obligations as evidenced by the improvement and prohibition notices issued by SafeWork NSW
- there were reputational, legal and public health and safety risks in respect of Council's management of asbestos
- there was a systemic problem at Council in managing asbestos which had not been adequately proactively addressed
- the media coverage reflected community concern about ineffective management of asbestos
- a period of independent governance was required to ensure that Council could meet its legislative responsibilities in relation to asbestos management

A copy of the Notice of Intention to Suspend is attached. (**Annexure 2**)

Council provided a detailed submission to the Minister which, amongst other things, suggested that the Minister, as an alternative to suspension, might consider the issuance of a PIO as a more targeted and effective response to her concerns about the asbestos management issues facing Council. A copy of the Council's submission is attached. (**Annexure 3**)

The Notice of Intention to issue a PIO served on Council on 22 December 2017

Following consideration of Council's submission in respect of the proposed suspension, the Minister determined on 22 December 2017 to not suspend Council and instead to issue a Notice of Intention to issue a PIO. At that time she informed the Council that she "*...remained concerned that the safety of [the] community and work force has been compromised by inadequate processes to deal with asbestos and Council must take urgent action*". The Minister stated that she had formed the view that a PIO was required for the following reasons:

- on the available information, Council may have failed to comply with relevant statutory obligations under work, health & safety and environmental legislation
- there were significant reputational, legal and public health and safety risks facing Council in respect of its management of asbestos, including potential prosecution/liability issues
- ongoing action and monitoring needed to be taken by Council to ensure that its governance and asbestos management practices complied with regulatory obligations
- Council itself had invited the Minister to consider issuing a PIO as an alternative to the suspension of the elected body.

A copy of the Notice of Intention to issue a PIO is attached. **(Annexure 4)**

The PIO served on Council on 22 January 2018

Following consideration of Council's submission in respect of the proposal to issue a PIO, the Minister determined on 22 January 2018 to issue a PIO to Council. In addition to the reasons set out in the body of the PIO, the Minister advised Council that, in coming to her decision, she had had particular regard to the need to ensure the safety of the community and of Council's workforce, and the need for robust processes to be in place, and adequately resourced, to ensure Council was in a position to deal with the issues of concern into the future.

The PIO required Council to report certain matters to the Minister and regulators, and to take certain actions to improve performance. The PIO also imposed a compliance reporting timetable on the Council.

A copy of the PIO is attached. **(Annexure 5)**

The second Notice of Intention to Suspend served on Council on 15 February 2018

On 13 February 2018, allegations were made in the media that the independent investigator engaged by Council to undertake the asbestos management issues had an undisclosed conflict of interest arising from a professional relationship and friendship with the Acting Director, Service Delivery at Council.

On 15 February 2018, the Minister issued a Notice of Intention to Suspend on the basis that, amongst other things, the integrity of the processes initiated by Council and the capacity of Council to address the matters confronting it had been called into question as a result of a pre-

existing relationship between the investigator and the Acting Director, Service Delivery. A copy of the second Notice of Intention to Suspend is attached. **(Annexure 6)**

On 22 February 2018, Council provided a submission to the Minister on the proposed suspension, and on the same day sought and was granted injunctive relief in the Supreme Court restraining the Minister from acting on the Notice of Intention to Suspend.

On 23 February 2018, the Supreme Court declined to dissolve the injunction and the proceedings were transferred to the Land and Environment Court.

On 8 March 2018, the Minister instructed the Crown Solicitor to lodge an appeal to the Court of Appeal against the order made by the Supreme Court on 22 February 2018. The appeal was heard on 28 May 2018, and on 20 June 2018 the Court of Appeal handed down its judgment upholding the appeal and setting aside the injunction.

On 12 July 2018, Council discontinued the proceedings in the Land and Environment Court.

Provision of advice to the Minister

OLG has had an ongoing role in providing advice to the Minister on the circumstances of the Council and the availability, and merits, of intervention options. OLG has provided ongoing briefings to the Minister on the PIO process, and the proposed suspension, and facilitated legal advice to inform the Minister's decisions.

Public interest disclosures

OLG has received three complaints from public officials raising concerns pertaining to the Council's asbestos management practices and employment matters. OLG has dealt with these complaints as public interest disclosures (PID). On OLG's assessment, the matters raised by these complaints largely fell within the ambit of matters examined by the independent investigations commissioned by the Council, those being undertaken by Safework NSW, and being addressed under the Improvement Plans developed in accordance with the PIO.

On that basis, OLG has determined not to investigate the matters raised in these complaints.

Roles of and responsibilities of the Council

The PIO required compliance reports to be submitted to the Minister at various points in time in respect to the actions taken by Council to implement the PIO. Council met all reporting requirements under the PIO.

Council in responding to the Minister's PIO has been required to develop and implement Improvement Plans.³ The compliance reporting indicates that Council has made significant progress in implementing the Improvement Plans.

Section 438E(2) of the Act provides that:

“A council complies with a performance improvement order only if the actions required by the performance improvement order (including any actions required to be taken by individual councillors) are taken to the satisfaction of the Minister.”

Roles of and responsibilities of others in addressing matters of concern

OLG has reviewed the ToR. It is appropriate that they direct the Inquiry to an examination of the statutory roles and responsibilities of the Council in relation to the matters of concern referred to in the ToR. What matters ought to be investigated are a matter for the Commissioner to decide.

It is noted that the instrument appointing the Commissioner which sets out the TOR limits the scope of the Inquiry to “...to matters relating to the carrying out of provisions of the LG Act, in recognition that the carrying out of certain other legislative provisions is the subject of separate investigation and/or regulatory action by SafeWork NSW and the NSW Environment Protection Authority.”

SafeWork NSW and the NSW Environment Protection Authority (EPA) have important regulatory roles in reviewing the conduct of local councils in regard matters pertaining to asbestos and pollution respectively. Both agencies have active and ongoing regulatory interest in the asbestos management at Council.

While the limitation to the scope of the Inquiry is noted, it is submitted that the views of both SafeWork NSW and the EPA could usefully assist the Inquiry.

³ Section 438(1) of the Act provides that “The governing body of a council is responsible for ensuring the council’s compliance with a performance improvement order.”

Opportunities - looking to the future

It is noted that the Commissioner may make recommendations as the Commissioner sees fit having regard to the outcomes of the Inquiry.

The presence of asbestos in public buildings and places and the need for proactive management of risk that arises from the presence of asbestos is not unique to Council. While Council has found itself in circumstances requiring the ongoing devotion of significant resources towards addressing long-standing issues arising from the past use of asbestos, the actions taken by Council in responding to this situation may inform best-practice into the future.

The Inquiry, therefore, provides an opportunity for the consideration of recommendations that may have broader application and benefit across the local government sector.



Tim Hurst
Chief Executive
Office of Local Government

Table of Annexures

| Annexure number | Annexure title |
|------------------------|--|
| 1 | Chronology of relevant events |
| 2 | Notice of Intention to Suspend – December 2017 |
| 3 | Council's submission to the Minister – December 2017 |
| 4 | Notice of Intention to issue a PIO – December 2017 |
| 5 | Performance Improvement Order – January 2018 |
| 6 | Notice of Intention to Suspend – February 2018 |

Annexure 1 – Chronology of relevant events

| Date | Event |
|------------------------------------|--|
| 13 November 2017 | Council's General Manager contacts OLG to advise of the proposal for Council to undertake independent investigations into asbestos management and employment practices as a result of allegations made in the media. |
| 20 November 2017 | OLG attended Blue Mountains City Council and discussed the emerging situation with the Acting General Manager and the Council's lawyer. OLG received advice that SafeWork NSW and the Environment Protection Authority were to undertake separate investigations into the Council's practices relating to asbestos management. |
| 12 December 2017 | Minister issued a Notice of Intention to Suspend the Council. |
| 22 December 2017 | Minister determined not to Suspend the Council but instead to serve a Notice Of Intention to issue a Performance Improvement Order (PIO), following careful consideration of the Council's submission on the Notice of Intention to Suspend. |
| 18 January 2018 | Council's submission on the proposed PIO received. |
| 22 January 2018 | Following consideration of the Council's submission, the Minister issued a PIO. |
| 13 February 2018 | A potential conflict of interest on the part of an investigator engaged by the Council raised in the media. The concern related the investigator, Michael Tooma having an undisclosed association with a Council officer, which cast doubt on the independence of the investigation.
Council requested that the Minister appoint a special adviser to assist the Council to meet the challenges confronting it. |
| 15 February 2018 | Minister served a further Notice of Intention to Suspend the Council. |
| 22 February 2018 | Council responded to that Notice of Intention but at the same time commenced proceedings to restrain the Minister from taking action to suspend the Council and obtained an ex parte injunction restraining the Minister. |
| 22 February 2018 -
20 June 2018 | Matters before the Court. Ultimately, these proceedings culminated in a decision of the Court of Appeal and an injunction was set aside. |
| 27 June 2018 | Minister commissioned Richard Beasley, SC, to hold a public inquiry into the Council and to report to the Minister. |
| 12 July 2018 | Council discontinued the proceedings in the Land and Environment Court and agreed to pay the Minister's costs of those proceedings. |



21 September 2018

Office of the Mayor

Reference File: F11725 - 18/238002

Your Reference: A603806

Mr Richard Beasley SC
Commissioner
Blue Mountains Public Inquiry
Office of the Commissioner
Locked Bag 3012
NOWRA NSW 2541

Dear Mr Beasley

**SUBJECT Blue Mountains City Council Public Inquiry
Joint Submission Providing Information - Mayor and
Governing Body of the Council**

1. On behalf of the governing body of Blue Mountains City Council ("Council") I respond to the invitation extended in your letter dated 21 August 2018. You invited me, and my fellow Councillors, to assist your Inquiry by providing information relevant to the terms of reference for the Inquiry. By resolution passed at the Ordinary meeting of the Council held on 21 August 2018 the Council resolved that I prepare a submission on behalf of the governing body.

The City of Blue Mountains

2. The Council's local government area includes over 10,000ha of natural bushland, including large parts of the Blue Mountains National Park and World Heritage Area. The Council is responsible for managing development on the urban fringe between and within the developed townships and the adjoining bushland.
3. Development in the Blue Mountains substantially commenced following the construction of the railway line across the Mountains to Lithgow. In the Upper Mountains tourist and residential development followed. In the Lower Mountains villages were established to provide accommodation for workers travelling to Sydney and the western areas of the City. The major growth in the City occurred after World War II.
4. Within the Council's area there are 27 towns and villages. The Council is required to provide a wide range of services, including waste management services, and facilities such as libraries, community halls, swimming centres and sporting complexes. Those services are dependent upon the buildings and other infrastructure that is owned and maintained by the Council.

5. The Council must address many legacy issues. For example, from the late 19th Century and onwards the Council's predecessors operated local tips. The Council has reduced the number of waste management facilities to two, which are located at Katoomba (Waste Transfer Station) and Blaxland (Waste Management Facility, including an operational landfill). However, the Council must manage the now-abandoned tips, including the former Blackheath Tip.
6. The Council owns many buildings and structures. The majority of these built improvements were constructed before 2003. Many of the buildings and structures incorporate asbestos containing materials ("ACM"). As the buildings and infrastructure age, so their condition deteriorates. Issues of maintenance and replacement must be addressed. In total, the value of all of the buildings and other infrastructure owned by the Council exceeds one billion dollars.
7. While ageing buildings and infrastructure are a common challenge for councils in New South Wales, the Council faces unusual challenges as a result of the configuration of the City and the demand for services that this configuration creates.
8. The suburbs and villages of the City, particularly beyond the Lower Mountains area, have been compared to "pearls on a string", a comparison which reflects the ribbon development of those towns and villages, following the Great Western Highway and the western railway line. The Highway and the railway provide the effective spine of the built up areas of the City, with some scattered settlements detached from this main area at Bell, Mt Wilson, Mt Irvine and Mt Tomah.
9. The majority of the suburbs, towns and villages of the Blue Mountains are located on the Blue Mountains ridge, over a distance of approximately 70kms from Lapstone to Mt Victoria. However, the configuration of the City makes the provision of services very difficult.
10. For example, there are five Council owned swimming centres between Lapstone and Mt Victoria (Glenbrook, Springwood, Lawson, Katoomba and Blackheath)—an unusually large number for the population (and a product of the history of local government in the Blue Mountains). Facilities such as the swimming centres and other sports infrastructure (clubhouses, toilet blocks, fencing etc) have been developed over an extended period. Residents of the City look to the Council to ensure that these facilities continue to be maintained and available for use, despite the financial challenges of doing so. The distance between facilities, and the physical separation of the towns and villages (particularly in the Mid Mountains and Upper Mountains) makes the demand for services understandable.
11. The Council has a limited rating and revenue base. In contrast to other councils on the periphery of Sydney, the Council has no substantial commercial or industrial core. The Council has almost no established agricultural areas. The Council's rating base substantially relies on residential rates, with some revenue flowing from the limited light industrial and commercial centres in towns such as Blaxland, Springwood, Leura, Katoomba and Blackheath.
12. Despite this restricted revenue base, the Council has over recent years established itself as a sound financial manager. The Council's achievements in that regard were recognised by the New South Wales Government when the Council was designated as "Fit for the Future". The Council was not required by the Government to amalgamate with councils in adjoining areas.

The Challenge of Geography

13. The Blue Mountains ridge is, in effect, an elevated plateau, below which the gullies, valleys and gorges of the Greater Blue Mountains are located. As a result of this topography, and the existence of very extensive areas of natural bushland around the urban areas, our community faces the constant risk of bushfire.
14. The City has experienced many serious bushfires, causing damage to property and (in some cases) loss of life. In October 2013, the City experienced the very significant bushfires at Springwood/Winmalee and Yellow Rock and at Mt Victoria/Bell and Mt Wilson. I was Mayor during this very challenging period.
15. The 2013 Winmalee fire resulted in the largest loss of housing stock in any one bushfire incident in New South Wales history. As a result of both fires the following losses were experienced, with a total of 895 properties destroyed or suffering some degree of damage:

| | |
|--------------------------------|------------|
| • dwellings loss (total): | 197 |
| • dwelling loss (substantial): | 5 |
| • dwelling loss (partial): | 129 |
| • outbuilding loss: | 102 |
| • other properties damaged: | <u>462</u> |
| | 895 |
16. The 2013 bushfires, and the community and individual recovery from those bushfires, required the application of significant Council resources. Those resources included Council staff, Council plant and equipment and the utilisation of the Blaxland Waste Management Facility. The challenge faced by the Council was greater than might otherwise have been the case because of the substantive withdrawal of the NSW State Government from the recovery effort after only four months. The effects of the 2013 bushfires, and the consequent dislocation of day-to-day Council operations, presented significant challenges for the Council throughout 2014 and into 2015.
17. The clearing of the firegrounds necessitated work involving the identification and removal of ACM. The elected Council received regular reports on the bushfire recovery work. Those reports often identified ACM removal as a significant issue. As far as Councillors were aware, that issue was competently and comprehensively addressed.
18. The danger presented by bushfire, and the risk of other natural disasters (including windstorms and snow), are permanent features of life in the Blue Mountains. The Council must in all of its relevant activities take these risks into consideration as it seeks to manage the City and the buildings and infrastructure within the City.

The Elected Council

19. In the period 1 January 2012 to September 2013 Councillor Daniel Myles was the Mayor of the City of Blue Mountains. I was elected Mayor in September 2013 and I have served as Mayor since that time. Within one month of my election, the Council faced the disaster presented by the 2013 bushfires and on behalf of the community I was heavily engaged in the recovery work, as were all the Councillors then in office.

20. The elected Councillors are not experts in local government administration or professionals in town planning, engineering, risk management, work health and safety or any other specific field. While some Councillors hold professional qualifications, others do not. Councillors bring to their task their life experience and act as members of the governing body and representatives of the communities by which they are elected.
21. With effect from September 2016 the New South Wales Government introduced major changes to the *Local Government Act 1993* ("LGA"). Those changes substantially redefined the roles of the Mayor, Councillors and the governing body. However, as Councillors are not (in the majority of cases) lawyers, they rely, of necessity, upon the expertise and advice of the professional officers of the council.
22. One of the key resources for Councillors, when understanding their role and responsibilities, is the publication titled *Councillor Handbook* ("Handbook") published by the NSW Office of Local Government ("OLG").
23. This publication first appeared as the *Councillor Guide* in 2008 ("Guide"). The Guide became the Handbook in 2012, with subsequent editions published in 2016 and 2017.
24. Appropriately, an important focus of the Handbook is the requirement that Councillors act ethically and responsibly. Councillors are called upon to carefully weigh up a wide range of matters and to make balanced decisions.
25. That call, which is found in the Foreword to the Handbook 2012, recognises the realities faced by the governing body of every council. Councils face demands for the maintenance and renewal of ageing infrastructure. Councils are called upon to provide multiple services to the residents of their respective local government areas. Councils are required to undertake comprehensive strategic planning, and to do so within the framework of the OLG *Integrated Planning Guidelines*.
26. In contrast to politicians elected at State and Federal level, Councillors are closer to volunteers. The ordinary Councillors of the City of Blue Mountains receive a very modest allowance. In common with all Mayors of local government areas in the State, I receive a more significant allowance, reflecting the extensive work that I am called upon to perform, including all my civic representative work.
27. The Councillors of the City of Blue Mountains attend ordinary meetings of the Council on a four weekly meeting cycle. However, when occasion requires, Councillors also attend extraordinary meetings.
28. In the case of ordinary meetings, Councillors are required to review very detailed Business Papers and then to participate in the Council's decision making on the issues that are presented in those Papers. In my own experience, as a person who has served as a Councillor of the City from 1999 to 2004 and then again from 2008 until the present, a Councillor requires at least a full working day to adequately review the Business Papers that come before the ordinary meetings.
29. Attendance at Council meetings is only one part of the obligations that Councillors assume. In the City of Blue Mountains, Councillors also attend weekly briefing sessions (excluding the weeks in which Council meetings are held), with the Council's professional staff. Those briefing sessions involve the review of

significant matters that are either scheduled to come before a Council meeting or that are being addressed by the Council's professional staff. Councillors also attend planning workshops, which are usually held on weekends.

30. The Councillors who serve in the City of Blue Mountains (and who have served since 2012) work hard and seek to fulfil their obligations as Councillors both ethically and responsibly. They bring to this task their life experience and the confidence of the community.
31. The State Government does not mandate professional or employment qualifications that must be satisfied before a person is eligible to stand for election as a councillor. The LGA (as explained through the Handbook) contemplates a separation of roles and powers, with the governing body approving the strategies and policies according to which each council will work and the general manager being responsible for the day-to-day management and operations of the council concerned.
32. Each council (and our City reflects this pattern) is staffed by professional officers with expertise in particular areas. Each council in the State relies upon its professional town planners, engineers, financial officers, building and infrastructure staff and skilled administrators to ensure that the organisation functions effectively and that matters requiring strategic planning and policy development are brought before the elected Council for consideration and approval.

Councillors and Work Health and Safety

33. Councillors will, as they seek to act ethically and responsibly, be aware of publications such as the Handbook and of other matters that are brought forward during planning workshops, briefing sessions and OLG documents on which Councillors are briefed. However, Councillors are required to deal with such a wide range of matters, and to determine funding and service priorities in response to multiple demands, that they will always rely on the expertise of council staff.
34. The Terms of Reference ("TOR") for the Inquiry primarily focus on the Council's asbestos management and the role of the governing body in that context. The TOR identify provisions of the LGA which are considered by the Minister to be relevant to the governing body in relation to asbestos management.
35. As already noted, the Councillors of this City are not experts in work health and safety law, or in the legislation administered by regulators including SafeWork NSW ("SafeWork"). The identification by Councillors of the legislative responsibilities of the Council, whether as service provider, employer, local government authority, planning authority, approval authority or compliance authority rests, to a significant degree, on the information and expert advice that is brought to the Councillors for consideration.
36. The role of Councillors is indicated in the following paragraphs, taken from page 20 of the 2012 Handbook:

"One of the most important roles of a Councillor is to participate in policy decision-making on behalf of the community.

This involves working as part of a team of councillors to make decisions and policies that guide the activities of the council. Policies can be defined as the principles and intent behind the programs that a council implements.

This includes setting the broad, strategic direction for the local community. To do this councillors have to understand their community, its characteristics and needs, the types of services required to meet these needs."

37. The WHS Act is not, in relation to issues such as asbestos management, a primary focus of the Handbook.
38. That is understandable, given that elected councillors are not "officers" as defined in s4 of the WHS Act, nor are they a "person conducting a business or undertaking", as defined in s5 of that Act.
39. In the period 2012 to date, the governing body of the Council has acted in good faith to fulfil the obligations imposed upon the body as a whole and on individual Councillors. The Council responded well to the 2013 bushfires and as part of its response appropriately and competently managed issues in relation to asbestos and the fireground. The Council and the governing body have demonstrated their community leadership by implementing the Integrated Planning and Reporting legislative requirements including addressing the financial and asset management challenges of the City and engaging with the community on affordable and acceptable levels of service.

Planning to Fund Services and Infrastructure

40. In 2014 the Council implemented its Integrated Planning and Reporting Framework, including the update of the Community Strategic Plan and the update of the Council's 10 year Resourcing Strategy. This work required the Council and the then governing body to address the funding that was required to maintain and improve the City's ageing built infrastructure and to engage with the community on affordable and acceptable levels of Council services.
41. As part of this work, and following the conduct of many planning and strategy workshops, in mid-2014 the governing body determined to put before the ratepayers of the City three options for the future funding of the Council (service levels reduced, service levels maintained and service levels improved). The Council's detailed proposals were set out in the document titled "Service Dashboards: Summary Service & Asset Plans, July 2014" ("Service Dashboard document").
42. The Service Dashboard document presents a summary of the Council's 10 year service and asset planning covering 20 different service areas and the management of over \$1.2 billion worth of built assets and over 10,000 ha of natural bushland and waterways. The document was publicly exhibited from 4 August to 15 September 2014.
43. Among many issues, the Service Dashboard document identified managing asbestos in community buildings as a "Key Strategic Risk" (see page 75). On that issue, the document states:

"Medium and low risk community buildings owned by the Council have not yet been assessed for possible asbestos contamination (high risk buildings have been assessed)".

44. In response to this particular risk the following Risk Management Strategy was presented (see page 75):

"Continue to maintain the asbestos register, label buildings in accordance with the asbestos register, document procedures to deal with any additional discovery, maintain safe work method statements and train relevant staff, comply with NSW Government asbestos policy."

45. As far as the then governing body was concerned, we were being informed (through the Service Dashboard document), that while asbestos had been identified as a risk (along with many other risks to the organisation), risk management strategies had been developed and were being implemented to address that risk, amongst others.
46. In August 2014, following the Council's consideration of the Resourcing Strategy, I forwarded, on behalf of the Council (and the governing body), a letter to every ratepayer in the City known (by address) to the Council. The letter put before the ratepayers the three options for the funding of Council's facilities and services to which I refer in paragraph 41 above. The letter addressed the possibility of the Council making an application to the Independent Pricing and Regulatory Tribunal ("IPART") for a special rate increase, to assist the Council to meet the challenge that it faced in relation service provision and infrastructure maintenance. Ratepayers were requested to indicate their preference among the three funding alternatives, linked to the three different service levels.
47. In response to the Council's letter the ratepayers of the City overwhelmingly chose the first option, which was identified as delivering improved service levels, but with a consequent increase in rates. Having regard to the response of residents to my letter, the Council made an application to IPART and secured approval for rate increases that, together with the 2013 special rate variation, will deliver increased funding totalling \$121 million over a 10-year period. This additional funding is being directed to meeting the renewal and maintenance requirements of the City's ageing built infrastructure, including building facilities.

Strategic Planning

48. In the period since 2012, the General Managers and the Council's Executive Leadership Team ("ELT") have led annual Councillor strategic workshops and have reported to the governing body on the outcomes of those workshops and on the actions taken to implement the decisions taken. That reporting has been provided through Council induction seminars and through regular Council briefings.
49. For example, at the 2014 Councillor Induction Seminar (following the resignation of two Councillors elected in 2012 and the consequent requirement for by-elections to elect two new Councillors) the General Manager briefed Councillors on the Council's Strategic Direction and 4 year Priority Outcomes including:

| 9. Strengthening our governance and risk management | | |
|---|---------|--|
| Improving our decision making and strengthening our governance | Ongoing | The development and maturity of our LTFF, Asset Management Strategy and Workforce Management Strategy based on risk assessment to guide improved decision making.

New internal governance structure introduced creating 3 cross organisational Steering Groups for Governance & Risk, Asset Management and Best Value Services to inform Integrated Plans, Delivery Program and Budget process and decision making. |
| Making best practice enterprise risk management a normal part of our business – using it to prioritise decision making and reduce costs | Ongoing | Continue to mature ERM through increased capacity and capability and a risk based approach generally to the Council business. |
| Continuing our focus on improving workforce safety | Ongoing | Similar to ERM this key operational priority is maturing through group analysis and increasing capacity and capability. Strong integration of safety with the organisational values and behaviours. Ongoing education regarding risk assessment and WHS requirements. Trend in reduction of injuries and workers compensation costs and lost time injuries.

Gap Analysis conducted to inform priority risk areas for improvement. |

50. The governing body endorsed the outcomes of those workshops. The governing body adopted recommendations from a report on the outcomes of the Councillor Strategic Workshop conducted on 12 March 2016 (Minute No. 100, Ordinary Meeting 26 April 2016) that included “noting the significant achievement against the priority outcomes for the past three and a half years as outlined in Attachment 1” (TRIM 16/65132) including the matters noted in the previous paragraph.

The Mayors and the General Managers

51. The elected Councillors, as the governing body, will not (in most cases) know the fine detail of the statutory obligations that apply to all of the Council's operations and service obligations. However, as the governing body, the Councillors do have the benefit of the advice and expertise of the professional staff, who report and make recommendations to the elected Council concerning the policies and strategies that should be put in place by the Council.
52. The Council has enjoyed the benefits created by the constructive working relationship between the two Mayors (Councillor Myles and myself) who have held office since 2012 with the two General Managers who have served during that same period. The General Managers have, in my assessment, communicated openly and professionally with the governing body.
53. In my assessment, on the basis of the information available to me, the General Manager in the period 2012 to 2017, held the genuine belief that safety and risk managements issues were being appropriately addressed and managed by the Council. During that period, the General Manager worked extensively with the governing body on addressing the financial and asset management challenges of the City through the Integrated Planning processes and through engagement with community on affordable and acceptable levels of service in 2012-2013 and 2014-2015.

54. These processes included the preparation of comprehensive Service Dashboards adopted by the Council for public exhibition to the community and supporting engagement processes, as noted above.
55. Following my election as Mayor in September 2013, until Mr Greenwood's retirement in November 2017, I met with him each week. We also held a monthly meeting with the Deputy Mayor (to supplement the one-on-one meeting that would otherwise have been held during the week concerned). From time to time the agenda for these meetings included an update on the Council's strategic approach to safety. No asbestos management concerns were raised with me at those meetings, until May 2017.
56. In May 2017, during a meeting attended by both the Deputy Mayor and myself, the General Manager informed me of the attendance of SafeWork representatives at the Council's Springwood Depot and of identified issues relating to the Council's management of asbestos. I directed the General Manager, with the agreement of the Deputy Mayor, to brief the Councillors on the matters that had been discussed with us. That briefing was arranged soon after this discussion.
57. In the period from June 2017 onwards the governing body was briefed on the action being taken by the Council in relation to asbestos management. The governing body understood that the Council was appropriately responding to the issues identified by SafeWork and that all necessary action was being taken.
58. The position changed with effect from 8 November 2017, when Mr Ray Hadley of Radio 2GB began the first of many broadcasts attacking the Council, the Council's management of asbestos and myself. Mr Hadley also made accusations of inappropriate staff appointments, based on personal relationships.

The Governing Body's Actions from November 2017

59. As a result of the allegations in relation to staff appointments, the Council's then Group Manager, People & Systems, stood down from his position, at his own request. Following discussions among Councillors, I brought to the Council meeting on 14 November 2017 two Mayoral Minutes.
60. The first Mayoral Minute recommended that an independent investigation be initiated by the governing body, through its solicitors, in relation to issues concerning the Council's management of asbestos. The second Mayoral Minute recommended that the Council initiate (again through its solicitors) an independent investigation in relation to the relevant staff recruitment and consultant engagement issues.
61. Those investigations were undertaken by Clyde & Co (asbestos management) and McCullough Robertson (staff recruitment and consultant engagement). In due course, the governing body received the reports of those investigations and advice concerning the outcomes of the investigations.
62. Also in November 2017 and onwards the governing body was informed that SafeWork inspectors had attended Council properties and had issued Improvement Notices and Prohibition Notices. The EPA also attended at the Council's premises at 2-6 Park Street, Lawson and begun enquiries in relation to the use of that property.

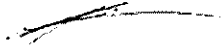
63. Since that time the governing body has been regularly briefed on the Council's response to the identified asbestos management issues, on the SafeWork and EPA investigations and on the results of the two independent investigations initiated by the governing body. The Council has resolved to adopt all of the recommendations made by Clyde & Co and by McCullough Robertson in their respective reports. Those recommendations have been publicly disclosed through Mayoral Minutes.
64. In December 2017 the Minister for Local Government foreshadowed the possible suspension of the Council, and invited the Council to make submissions in response to the notice issued by the Minister. The Council responded to that notice through submissions that were adopted at the Council meeting on 19 December 2017 and forwarded to the Minister the following day. In response, the Minister elected not to suspend the Council. Instead, on 22 January 2018 the Minister made a Performance Improvement Order ("PIO") against the Council.
65. Although the Minister subsequently gave a second notice of possible suspension against the Council, with legal proceedings following the service of that notice, the Minister ultimately elected (for a second time) not to suspend the Council. Instead, the Minister has initiated the Public Inquiry.
66. In the period from 22 January 2018 to date the Council (both governing body and organisation) has worked diligently to fully implement the requirements of the PIO. The Council has developed detailed Improvement Plans in relation to both asbestos management and staff recruitment and has provided full details of those plans, and of the Council's implementation work, to the Minister.
67. As far as the governing body is aware, in the absence of any indication to the contrary from the Minister, the Council has fully complied with the PIO. The development of the Council's Improvement Plans and the implementation of those Plans has proved to be a very exacting task, involving the application of significant Council staff and financial resources. Nonetheless, the Council has achieved the outcomes required by the Minister.

Conclusion

68. These submissions are drawn to provide background information to you, in response to your invitation for submissions. You are about to receive from the Council a large number of documents and records, in response to the Notice to Produce that you have served.
69. The governing body of the Council, and myself as Mayor, stand ready and willing to assist you in the conduct of your Inquiry and to provide any information that you require to fulfil your task within the TOR that have been set by the Minister.
70. In summary, the governing body considers that the Council, in a very challenging environment, has acted competently and diligently to address the many statutory responsibilities that fall upon it. The governing body has been diligent in its strategic planning and financial management.
71. As I have stated on behalf of the governing body at Council meetings, it is clear that there were deficiencies in the Council's management of asbestos. However, having become aware of those deficiencies, the governing body has acted with urgency and focus to address the matters that have been identified and to

ensure, as far as we are able, that the Council implements the changes that are required to ensure that its obligations are observed.

Yours faithfully



MARK GREENHILL OAM
Mayor



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Our Ref: TC:JB:144549

Your Ref:

21 September 2018

Richard Beasley SC
Commissioner
Blue Mountains Public Inquiry
Office of the Commissioner
Locked Bag 3012
NOWRA NSW 2451

Dear Mr Beasley,

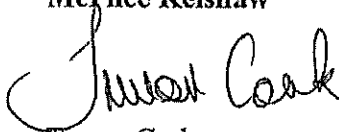
Blue Mountains Public Inquiry – Blue Mountains City Council
Pursuant to s. 438U of the Local Government Act 1993
Initial submissions – Terms of Reference

We act for Blue Mountains City Council, in relation to the Public Inquiry initiated by the Minister for Local Government.

We **attach** for your consideration our submissions made on behalf of the Council in relation the Terms of Reference of the Inquiry.

We would welcome, on behalf of the Council, your response to the attached submissions, as you consider appropriate.

Yours faithfully
McPhee Kelshaw


Trevor Cork

SOLICITORS
McPHEE
KELSHAW
CONVEYANCERS

PRINCIPALS

PAUL MCPHEE LL.B., PUBLIC NOTARY Acc. Spec. (Property Law, Family Law)
TREVOR CORK B.A., LL.M., Acc. Spec. (Business, Local Govt. & Planning Law)
STEVEN NICHOLSON B.A., LL.B.

ASSOCIATES

ANNE WOODWARD-BROWN Dip.Law SAG
ANN SCHRALE B.A., LL.B. Acc. Spec. (Family Law)
AMANDA MALINOWSKY B.A., LL.B. Acc. Spec. (Family Law)

SOLICITORS

ANASTASIA DALITZ B.A., LL.B. (Hons)

MCPHEE KELSHAW PTY LTD TRADING AS MCPHEE KELSHAW

THE OLD BAKERY ARCADE, 170 MACQUARIE ROAD, SPRINGWOOD • TELEPHONE (02) 4751 1055 • FAX (02) 4751 5868
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PO BOX 4, SPRINGWOOD NSW 2777 • DX 26729 SPRINGWOOD • EMAIL: info@mcphreekelshaw.com.au • ABN: 75 117 682 194



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Blue Mountains Public Inquiry - s.438U of the Local Government Act 1993 Analysis of the terms of reference

Introduction

- 1 The following analysis of the terms of reference that the Minister for Local Government has set for the Inquiry ('the terms of reference') states the understanding of the Blue Mountains City Council ('the Council'). As each of the nine clauses of the terms of reference refers to provisions of the *Local Government Act 1993* ('the LG'), this document also contains an introduction to key provisions of that Act. Also, to a limited extent, the analysis offers some examples of what the terms of reference could, in the Inquiry's discretion, examine.

- 2 These submissions are arranged as follows:

| | <i>Page</i> | <i>Par.</i> |
|---|-------------|-------------|
| Introduction . | 1 | 1 |
| Overview of the Local Government Act | 4 | 9 |
| The overlapping nature of the terms of reference | 10 | 27 |
| Clauses 1, 7, and 9: Dealing with asbestos management issues arising in the course of delivering goods, services, facilities & activities | 14 | 29 |
| Clause 5: Funding for asbestos management issues | 17 | 39 |
| Clause 2: Care and diligence in dealing with asbestos management issues | 18 | 43 |
| Clause 3: Recruitment of certain employees and contractors | 19 | 47 |
| Clause 6: A consultative and supportive working environment | 22 | 55 |
| Clause 8: An appropriate organizational structure | 23 | 59 |
| Clause 4: Appointment of independent investigators | 23 | 61 |

- 3 The terms of reference have been cast very specifically by reference to selected provisions of the LG Act. That this was deliberate is evinced by the general qualification and explanation stated in the final paragraph of the terms of reference:
- 4 The Inquiry will be limited to matters relating to the carrying out of provisions of the LG Act, in recognition that the carrying out of certain other legislative provisions is the subject of separate investigation and/or regulatory action by SafeWork NSW and the NSW Environment Protection Authority.
- 5 Each of the nine clauses of the terms of reference combines three features the intersection of which defines the matter for inquiry:

- (1) First, there is a *factual* issue. For example, cl. 1 is concerned with the Council's handling of 'asbestos management issues' since 2012, and cl. 3 is concerned with the 'employ[ment] and/or engag[ement] . . . [of] staff or contractors' since 2012.
 - (2) Second, there is a focus on the discharge of specific statutory *functions* conferred on the Council and/or its governing body (or, in one case [cl. 8], its councillors and senior staff) by various provisions of the LG Act.
 - (3) Third, there is the question of conformity with a *principle* found in, or a *role* of the governing body prescribed by, a provision of LG Act. Most clauses identify one or more of the principles articulated in ss. 8A and 8B; most clauses specify one or more of the roles conferred on the governing body by s. 233; and s. 349 is mentioned in cl. 3 and s. 439 is mentioned in cl. 2.
- 6 Sometimes, two of the three aspects of a clause in the terms of reference are substantially the same. For example, the factual issue raised by cl. 7, whether or not the Council has been 'co-operating' 'effectively with State government agencies in addressing asbestos issues', directly reflects the terms of the one guiding principle that cl. 7 invokes, the principle in par. 8A (1) (e) that 'Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.'
- 7 An issue with the scope of the terms of reference should be addressed squarely at the outset. Whereas some clauses of the terms of reference speak of the Council's handling of an issue 'since 2012', in most cases an essential ingredient of the matter for inquiry is the Council's conformity with legislative provisions that only commenced on 23 September 2016 (having been inserted by the *Local Government Amendment (Governance and Planning) Act 2016*). In particular, ss. 8A and 8B, and the current form of s. 223, did not commence until 23 September 2016; there can be no valid assessment of compliance with those provisions before that date.
- 8 The proposition that this Inquiry is ultimately concerned with the matters stated in the terms of reference does not, however, deny that the Inquiry can inquire more broadly in its efforts to ascertain the truth about the issues raised by terms of reference. Evidence about events from 2012 to 2016 may have contextual relevance. The Council acknowledges the flexibility with which the Inquiry may proceed.
- 9 Indeed, the Council respectfully contends that understanding the broader factual and legal context is relevant to assessing the Council's performance in respect of the issues identified in the terms of reference. Limitations on and demands upon the Council's resources, and statutory provisions beyond those cited in the terms of reference (both within the LG Act and in other statutes, e.g. the Workplace Health and Safety Act 2010), are relevant.

Overview of the Local Government Act

- 10 The LG Act is arranged into chapters (and several schedules and a dictionary). It is not necessary to mention all the chapters, let alone all of the provisions therein, but a summary of the LG Act's pertinent provisions may be helpful.
- 11 Chapter 9 (ss. 204–265) contains several foundational provisions. First: 'The Governor may, by proclamation, constitute any part of New South Wales as an area.'¹ Then, Pt 2 (ss. 219–259) of Ch. 9 establishes councils and the offices of mayor and councillor. The LG Act itself constitutes a council for each area.² Each council is a body politic of the State, with the legal capacity and powers of an individual.³ Although a council is not a body corporate,⁴ the laws of the State apply to each council 'in the same way' as they apply 'to and in respect of a body corporate (including a corporation).'⁵
- 12 The elected councillors 'comprise the governing body of the council.'⁶ The role of the governing body is prescribed by s. 223. Until 22 September 2016, that section simply provided: 'The role of the governing body is to direct and control the affairs of the council in accordance with this Act.' On 23 September 2016, s. 223 took its current form—the form that is cited throughout the terms of reference, with specifically selected paragraphs of s. 223 nominated. The current form of s. 223 is:
 - (1) The role of the governing body is as follows:
 - (a) to direct and control the affairs of the council in accordance with this Act,
 - (b) to provide effective civic leadership to the local community,
 - (c) to ensure as far as possible the financial sustainability of the council,
 - (d) to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,
 - (e) to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,
 - (f) to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,
 - (g) to keep under review the performance of the council, including service delivery,

¹ *Local Government Act 1993* ('LG Act'), s. 204.

² LG Act, s. 219.

³ LG Act, subs. 220 (1).

⁴ LG Act, subs. 220 (2).

⁵ LG Act, subs. 220 (4).

⁶ LG Act, s. 222.

- (h) to make decisions necessary for the proper exercise of the council's regulatory functions,
 - (i) to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,
 - (j) to determine the senior staff positions within the organisation structure of the council,
 - (k) to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,
 - (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.
 - (2) The governing body is to consult with the general manager in directing and controlling the affairs of the council.
- 13 Each 'area must have a mayor'.⁷ The functions of the mayor are prescribed by s. 226, the current form of which was inserted in 2016. As currently in force, it provides that the mayor has several functions, including 'to be the principal member and spokesperson of the governing body',⁸ and 'to preside at meetings of the council'.⁹ Section 232, the current form of which was also inserted in 2016, prescribes the 'the role of a councillor'. It does so in rather broad terms (currently, *e.g.*, each councillor is 'to be an active and contributing member of the governing body'¹⁰). Even though neither s. 226 nor s. 232 has been individually cited in the terms of reference, each is within the meaning of cl. 2's reference to Pt 2 of Ch. 9, a reference that is apt to cover the two sections in both their forms (*i.e.*, pre- and post-substitution).
- 14 With effect from 23 September 2016, Ch. 3 of the LG Act established 'Principles for local government'. 'The object of the principles . . . is to provide guidance'.¹¹ The principles include those stated in ss. 8a and 8b, which because of their significance to this Inquiry are set out here:

8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

⁷ LG Act, s. 225.

⁸ LG Act, par. 226 (c).

⁹ LG Act, par. 226 (e); see also s. 369.

¹⁰ LG Act, par. 232 (1) (a).

¹¹ LG Act, s. 8 (as inserted with effect from 23 September 1996: before then, s. 8 provided a 'charter' for councils, some of which is now echoed in s. 8A).

- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) **Decision-making**

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) ...

8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,

- (iii) funding decisions,
- (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services.

Section 8C then sets out several 'principles for strategic planning' that are to 'apply to the development of the integrated planning and reporting framework by councils'. The term 'integrated planning and reporting framework', even though it is generally preceded by the definite article, is not defined in the LG Act, but it is implied by several provisions¹² that each council (with the participation of councillors¹³) must develop one (whatever it precisely is), and do so in accordance with guidelines established by the Departmental Chief Executive Officer ('the Departmental CEO') pursuant to s. 406.¹⁴

- 15 The fact that ss. 8A and 8B did not commence until 23 September 2016 has been mentioned. In addition, the general nature and perennial applicability of many of the principles should be born in mind. Although not every principle necessarily has direct or significant application to every decision or action of the Council, most of the principles are generally applicable. The principles should not be considered a checklist, a proposition that has at least two aspects: first, adherence to the principles should not merely be a question of ticking items on a list as a matter of form; second, it is not necessary that every deliberation—written or otherwise—should expressly advert to each principle.

- 16 Chapter 12 (ss. 355–400zh) prescribes rules by which councils are to operate. In particular, s. 355 provides:

A function of a council may, subject to this Chapter, be exercised:

- (a) by the council by means of the councillors or employees, by its agents or contractors, by financial provision, by the provision of goods, equipment, services, amenities or facilities or by any other means, or
- (b) by a committee of the council, or
- (c) partly or jointly by the council and another person or persons, or

¹² E.g., LG Act, par. 438HC(2) (c).

¹³ LG Act, par. 232 (1) (c).

¹⁴ The guidelines established pursuant to s. 406 are distinct from the guidelines that the Departmental Chief Executive can issue pursuant to s. 23A. The s. 406 guidelines *are to be* established by the CEO (of her or his own unilateral authority and duty) for the purposes of Ch. 12 (subs. (1)); they can 'impose requirements' (of a certain kind) (subs. (2)) and '[a] council must ensure that the requirements of the guidelines are complied with' (subs. (4)). On the other hand, under s. 23A the CEO *may* 'prepare, adopt or vary' certain guidelines (subs. (1)); if they are relate to a matter under another Act then the relevant minister must concur (subs. (2)); and the rule is merely that councils 'must take any relevant guidelines issued under this section into consideration before exercising any of its functions' (subs. (3)).

- (d) jointly by the council and another council or councils (including by means of a joint organisation or a Voluntary Regional Organisation of Councils of which the councils concerned are members), or
- (e) by a delegate of the council (which may, for example, be a joint organisation or a Voluntary Regional Organisation of Councils of which the council is a member).

It should be noted that the effect of this provision—which in part might be considered descriptive—is that a function of a council (as conferred by statute) may be exercised in one of the listed ways. The effect is *not* that any function conferred directly on a particular officer is deemed to be a function of the council; nor is it that an act of an officer pursuant to a function conferred on his or her office is deemed to be an act of the council.¹⁵

- 17 Further, the reference to councillors and employees in par. 355 (a) does not confer on councillors and employees the unilateral power to act on behalf of the Council: par. (a) speaks only of 'the council' exercising its functions 'by means' of councillors and employees (and the other measures listed). In accordance with the general law, some activities of a body (*e.g.*, building a road) can be undertaken pursuant to an employment arrangement and without a statutory delegation of power. Sometimes, a person will, in accordance with the law of agency, act (or be deemed to act) on behalf of the Council. However, specific statutory functions conferred on a council, especially the decision-making powers entailed therein, must be discharged by the council itself—and a decision of a council is made by way of 'a majority of the votes at a [quorate] meeting of the council',¹⁶ or pursuant to a delegation so made by the council. Part 3 of Ch. 12 provides a regime for delegations: subject to the fact that some functions cannot be delegated, the council may delegate its functions to the council's general manager or any other person or body but *not* to another employee of the council;¹⁷ the general manager, however, can sub-delegate to another employee and may so delegate his or her own statutory functions.¹⁸ It is clear from Pt 3 (and other provisions¹⁹) that the LG Act distinguishes between the functions of councils and the functions of their general managers. This is significant because the terms of reference are tightly framed, referring to the functions of staff only in cl. 8 and otherwise referring only to the functions of the council and/or its governing body.
- 18 Chapter 11 (ss. 332–354I) deals with the staffing of councils. Part 1 (ss. 332 and 333) thereof requires a council to determine and periodically review the council's organisational structure.²⁰ In particular, that entails deciding what

¹⁵ The contrast with s. 381 (described in *n.* 17) is instructive.

¹⁶ LG Act, s. 371.

¹⁷ LG Act, subs. 377 (1). See also s. 381, which provides that if another statute confers a function on an employee or councilor then that conferral is deemed to be a conferral on the council itself (and can then be delegated in accordance with the LG Act).

¹⁸ LG Act, s. 378.

¹⁹ *E.g.*, LG Act, s. 341. See also the discussion below about the appointment of senior staff.

²⁰ LG Act, s. 333. The section was amended, in a minor way, with effect from 30 August 2016.

'senior staff positions' will exist and their place in the organisational structure, and what resources will be allocated towards the employment of staff.²¹ It is (and at least since 30 August 2016, if not before, has been) for the General Manager, not the Council, to decide what non-senior staff positions will exist.²²

- 19 Part 2 (ss. 334–341) deals with '[t]he general manager and senior staff'. Each council has the function (and duty) of appointing a general manager; it is a senior staff position.²³ It is the function of the general manager to appoint all the other staff members²⁴ (even though the council decides what senior positions will exist). Other functions of the general manager are prescribed by s. 335.
 - 20 Part 3 (ss. 343 and 343) deals with '[t]he public officer' and Pt 4 (ss. 344–347) deals with '[e]qual employment opportunity'.
 - 21 Part 5 (ss. 348–354A) contains '[o]ther provisions concerning staff'. Section 349, which is cited in cl. 3 of the terms of reference, provides:
 - (1) When the decision is being made to appoint a person to a position:
 - (a) only a person who has applied for appointment to the position may be selected, and
 - (b) from among the applicants eligible for appointment, the applicant who has the greatest merit is to be selected.
 - (2) The merit of the persons eligible for appointment to a position is to be determined according to:
 - (a) the nature of the duties of the position, and
 - (b) the abilities, qualifications, experience and standard of work performance of those persons relevant to those duties.
 - (3) In determining the merit of a person eligible for appointment to a position, regard is to be had to the objects of Part 4 of this Chapter (see section 344).
- Part 4 (ss. 344–347) of Ch. 11 deals with 'Equal employment opportunity'.
- 22 Perhaps strangely,²⁵ the LG Act contains no express provision for the Council to employ staff or making it clear that the actual employer is the Council.²⁶

²¹ LG Act, subs. 332 (1). Subsection 332 (1) was replaced by new subss. (1)–(1A) with effect from 30 August 2016. Prior to that amendment, it was, arguably, unclear who had authority to determine what non-senior positions would exist.

²² LG Act, subs. 332 (1A)— which was inserted with effect from 30 August 2016, although it should nonetheless be noted that, by s. 335, the function of appointing staff was the general manager's before that date.

²³ LG Act, s. 334.

²⁴ LG Act, s. 335 (h). The general manager must consult the council before appointing or dismissing a senior staff member: s. 337. (The current form of s. 335 commenced on 23 September 2016, but the previous version also provided for the general manager to appoint staff.)

²⁵ Cf. *Constitution Act 1902*, s. 47A.

There are, however, many provisions that refer to the Council being the employer (e.g., subs. 338 (1) refers to 'senior staff of the council', par. 8A (1) (i) says that 'Councils should be responsible employers', s. 36DA refers to 'council employees', s. 47G refers to 'employee[s] of the council', and par 55 (3) (h) refers to 'a contract for the employment of a person as an employee of the council'; an explanatory table headed 'WHAT ARE A COUNCIL'S FUNCTIONS' [appearing after s. 23A] gives as an 'example' of a council's 'ADMINISTRATIVE FUNCTIONS' the 'Employment of staff').

- 23 Some of the other functions of councils may be mentioned. For the purposes of the LG Act, '*function*' includes a power, authority and duty.²⁷ The functions of councils include 'service functions' (the subject of Ch. 6), 'regulatory functions' (Ch. 7), and 'ancillary functions' (Ch. 8).

- 24 The terms of reference expressly mention ss. 23 and 24. Section 24 is within Ch. 6 of the LG Act, which is headed 'What are the service functions of Councils?' and comprises ss. 24 to 67. Section 24 provides:

A council may provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to this Act, the regulations and any other law.

Section 23 is within Ch. 5 of the LG Act, which is headed 'What are a Council's functions?' and comprises ss. 21 to 23A. Somewhat blandly, and perhaps unnecessarily, s. 21 provides that a Council has the functions conferred on it by the LG Act and s. 22 provides that a Council has the functions conferred on it by any other Act or law. Section 23 then provides:

A council may do all such things as are supplemental or incidental to, or consequential on, the exercise of its functions.

By its nature and terms, s. 23 does not confer any independent function on the Council. Rather, it ensures that the Council has the 'supplemental or incidental

... or consequential' power needed to discharge those of its functions that are conferred elsewhere in legislation.

- 25 Chapter 13 (ss. 401–438ZD) provides for how councils are 'accountable for their actions'. Part 3 thereof is cited in the terms of reference,²⁸ but no particular section therewithin is identified. Part 3 deals with 'Financial management'. It requires councils to have 'a consolidated fund' and 'a trust fund',²⁹ and provides for accounting records, financial reports and financial

²⁶ The model is thus different from the model in the *Government Sector Employment Act 2013*— see ss. 21–22 of and Pts 1 and 2 of Sch. 1 to that Act.

²⁷ *Local Government Act 1993* ('LG Act'), s. 3; Dictionary.

²⁸ Inquiry Terms of Reference ('ToR'), cl. 5.

²⁹ LG Act, Ch. 13, Pt 3, Div. 1.

auditing,³⁰ performance and other auditing,³¹ the appointment of auditors,³² and annual reports.³³

26 Finally, Ch. 14 (ss. 439–490C) deals with ‘Honesty and disclosure of interests’. Section 439 is cited in cl. 2 of the terms of reference and relevantly provides:

- (1) Every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.
- (2) Although this section places certain duties on councillors, members of staff of a council and delegates of a council, nothing in this section gives rise to, or can be taken into account in, any civil cause of action.
- (3) ...

The overlapping nature of the terms of reference

27 The clauses of the terms of reference call for inquiry into overlapping matters. There are three broad topics— the Council’s handling of asbestos issues (ccl. 1, 2, 5, 7, and 9), its handling of certain staffing issues (ccl. 3, 6, and 8), and its process of commissioning two investigations into those two sets of issues (cl. 4). Because of the way they overlap, it is convenient to discuss the clauses in the following order: 1, 9, 7, 5, 2, 3, 6, 8, and 4.

28 It may also be convenient to summarize the terms of reference in tables that mark the intersections between the statutory functions (on the one hand) and the principles and roles (on the other), and that indicate the overlaps and relationships between the different clauses of the terms of reference. The following three tables deal with the clauses of the terms of reference relating to (respectively) asbestos management, staffing issues, and the commissioning of investigations into them. In each table the numbers refer to the clauses of the terms of reference and are placed to indicate the intersections between functions and principles and roles that define the required inquiry.

[Page 12 follows]

³⁰ LG Act, Ch. 13, Pt 3, Div. 2.

³¹ LG Act, Ch. 13, Pt 3, Div. 2A (inserted with effect from 1 October 2016).

³² LG Act, Ch. 13, Pt 3, Div. 3.

³³ LG Act, Ch. 13, Pt 3, Div. 4.

Table 1: Asbestos issues

| PRINCIPLES & ROLES: | FUNCTIONS | | |
|---|-------------------------|--------------------------|---|
| | Sec 23: Ancillary power | Sec 24: provide services | |
| Strong leadership: s.8A(1)(a) | 1 & 9 | 1 & 9 | |
| Value for residents & ratepayers: s.8A(1)(b) | | 5 | 5 |
| Plan strategically: s.8A(1)(c) | 1 | 1 | |
| Apply IP&R Framework: s.8A(1)(d) | | | |
| Cooperate with State & other councils: s.8A(1)(e) | 7 | 7 | |
| Manage assets--affordable future: s.8A(1)(f) | | | |
| Work with others to secure community needs: s.8A(1)(g) | | | |
| Fair, ethical, unbiased, in community interest: s.8A(1)(h) | | | |
| Responsible employer; good workplace: s.8A(1)(i) | | | |
| Recognise diverse needs & Interests: s.8A(2)(a) | | | |
| Consider social justice: s.8A(2)(b) | | | |
| Consider long term: s.8A(2)(c) | 1 | 1 | |
| Consider ecological sustainability: s.8A(2)(d) | | | |
| Transparent, accountable decision making: s.8A(2)(e) | 1 | 1 | |
| Responsible, sustainable finances: s.8B(a) | | 5 | 5 |
| Invest in responsible, sustainable infrastructure: s.8B(b) | | 5 | 5 |
| Effective financial & asset mgmnt & policies: s.8B(c) | | 5 | 5 |
| Regard intergenerational equity: s.8B(d) | | 5 | 5 |
| Direct Council affairs: s.223(1)(a) | 1 | 1 | |
| Civic leadership: s.223(1)(b) | 1 & 9 | 1 & 9 | |
| Ensure financial sustainability: s.223(1)(c) | | | 5 |
| Adhere to Ch 3 principles: s.223(1)(d) | 1 | 1 | |
| Strategic plans, programs & policies: s.223(1)(e) | | | |
| Rating & rev. policy; plan resource allocation: s.223(1)(f) | | | |
| Review council performance, service delivery: s.223(1)(g) | 1 & 9 | 1 & 9 | |
| Exercise regulatory functions: s.223(1)(h) | 1 & 9 | 1 & 9 | |
| Recurit & monitor Gen Mgr: s.223(1)(i) | | | |
| Set snr staff positions in org structure: s.223(1)(j) | | | |
| Consult & inform stakeholders: s.223(1)(k) | 9 | 9 | |
| Ensure honesty, efficiency & appropriateness: s.223(1)(l) | 1, 7 & 9 | 1, 5, 7, 9 | 5 |
| Merit appointments: s.349 | | | |
| Act honestly, carefully & diligently: s.439(1) | | 2 | |

Table 2: Staffing or organizational issues

| PRINCIPLES & ROLES: | FUNCTIONS | |
|---|-------------------------|--------------------------|
| | Sec 23: Ancillary power | Sec 24: provide services |
| Strong leadership: s.8A(1)(a) | 3 | |
| Value for residents & ratepayers: s.8A(1)(b) | | |
| Plan strategically: s.8A(1)(c) | 8 | 8 |
| Apply IP&R Framework: s.8A(1)(d) | | |
| Cooperate with State & other councils: s.8A(1)(e) | | |
| Manage assets--affordable future: s.8A(1)(f) | | |
| Work with others to secure comty needs: s.8A(1)(g) | | |
| Fair, ethical, unbiased, in comty interest: s.8A(1)(h) | | |
| Responsible employer; good workplace: s.8A(1)(i) | 6 | |
| Recognise diverse needs & Interests: s.8A(2)(a) | | |
| Consider social justice: s.8A(2)(b) | | |
| Consider long term: s.8A(2)(c) | 8 | 8 |
| Consider ecological sustainability: s.8A(2)(d) | | |
| Transparent, accountable decision making: s.8A(2)(e) | 3 | |
| Responsible, sustainable finances: s.8B(a) | | |
| Invest in resp. sust'ble infrastructure: s.8B(b) | | |
| Effective financial & asset mgmnt & policies: s.8B(c) | | |
| Regard intergenerational equity: s.8B(d) | | |
| Direct Council affairs: s.223(1)(a) | | |
| Civic leadership: s.223(1)(b) | | |
| Ensure financial sustainability: s.223(1)(c) | | |
| Adhere to Ch 3 principles: s.223(1)(d) | | |
| Strategic plans, programs & policies: s.223(1)(e) | | |
| Rating & rev. policy; plan resource allocation: s.223(1)(f) | | |
| Review council performance, service delivery: s.223(1)(g) | 8 | 8 |
| Exercise regulatory functions: s.223(1)(h) | 8 | 8 |
| Recurit & monitor Gen Mgr: s.223(1)(i) | | |
| Set snr staff positions in org structure: s.223(1)(j) | 3 & 6 | |
| Consult & inform stakeholders: s.223(1)(k) | | |
| Ensure honesty, efficiency & appropriateness: s.223(1)(l) | 3, 6, & 8 | 8 |
| Merit appointments: s.349 | 3 | |
| Act honestly, carefully & diligently: s.439(t) | | |

Table 3: Engagement of investigators

| PRINCIPLES & ROLES: | FUNCTIONS | |
|---|-------------------------|--------------------------|
| | Sec 23: Ancillary power | Sec 24: provide services |
| Strong leadership: s.8A(1)(a) | | |
| Value for residents & ratepayers: s.8A(1)(b) | 4 | 4 |
| Plan strategically: s.8A(1)(c) | | |
| Apply IP&R Framework: s.8A(1)(d) | | |
| Cooperate with State & other councils: s.8A(1)(e) | | |
| Manage assets--affordable future: s.8A(1)(f) | | |
| Work with others to secure comty needs: s.8A(1)(g) | | |
| Fair, ethical, unbiased, in comty interest: s.8A(1)(h) | 4 | 4 |
| Responsible employer; good workplace: s.8A(1)(i) | | |
| Recognise diverse needs & Interests: s.8A(2)(a) | | |
| Consider social justice: s.8A(2)(b) | | |
| Consider long term: s.8A(2)(c) | | |
| Consider ecological sustainability: s.8A(2)(d) | | |
| Transparent, accountable decision making: s.8A(2)(e) | 4 | 4 |
| Responsible, sustainable finances: s.8B(a) | 4 | 4 |
| Invest in resp. sust'ble infrastructure: s.8B(b) | 4 | 4 |
| Effective financial & asset mgmnt & policies: s.8B(c) | 4 | 4 |
| Regard intergenerational equity: s.8B(d) | 4 | 4 |
| Direct Council affairs: s.223(1)(a) | | |
| Civic leadership: s.223(1)(b) | | |
| Ensure financial sustainability: s.223(1)(c) | 4 | 4 |
| Adhere to Ch 3 principles: s.223(1)(d) | | |
| Strategic plans, programs & policies: s.223(1)(e) | | |
| Rating & rev. policy; plan resource allocation: s.223(1)(f) | | |
| Review council performance, service delivery: s.223(1)(g) | | |
| Exercise regulatory functions: s.223(1)(h) | | |
| Recurit & monitor Gen Mgr: s.223(1)(i) | | |
| Set snr staff positions in org structure: s.223(1)(j) | | |
| Consult & inform stakeholders: s.223(1)(k) | | |
| Ensure honesty, efficiency & appropriateness: s.223(1)(l) | 4 | 4 |
| Merit appointments: s.349 | | |
| Act honestly, carefully & diligently: s.439(1) | | |

Clauses 1, 7 and 9: Dealing with asbestos management issues arising in the course of delivering goods, services, facilities & activities

- 29 The first clause of the terms of reference requires inquiry and report 'with respect to whether:'

In exercising its functions pursuant to sections 23 and 24 of the *LG Act*, the Council and its governing body has since 2012 dealt with, and is dealing with, asbestos management issues at the Council in accordance with the guiding principles in section 8A (1) (a), (c) and (2) (c), (e) and the role of the governing body in section 223 (1) (a), (b), (d), (g), (h) and (l) of that Act.

- 30 The ninth clause of the terms of reference requires inquiry and report 'with respect to whether:'

In exercising its functions pursuant to sections 23 and 24 of the *LG Act*, the response of Council and the governing body to the asbestos management issues raised in 2017 has been and is in accordance with the guiding principle in section 8A (1) (a) and the role of the governing body in section 223 (1) (b), (g), (h), (k) and (l) of that Act.

- 31 In each case, there are three aspects to the scope of the required inquiry. These, with attention given to the common and contrasting features of cl. 1 and 9, are as follows:

- (1) The general topic is the Council and its governing body's handling of asbestos management issues. In particular:
 - (a) cl. 1 is concerned with how they have 'dealt with' them since 2012; and
 - (b) cl. 9 is concerned with their 'response' to the particular issues raised in 2017.
- (2) The topic, however, extends only so far as the dealings and response have been in the course of the Council and its governing body's exercising their functions pursuant to ss. 23 and 24 of the *LG Act*. Sections 23 and 24 have been discussed above. In short, s. 24 empowers councils to 'provide goods, services and facilities, and carry out activities' to meet their communities' needs, and s. 23 confers 'supplemental', 'incidental', and 'consequential' power. Presumably, the reference to s. 23 is linked to the reference to s. 24; no other primary function is mentioned.
- (3) The matter for inquiry is limited to whether or not the Council and its governing body have dealt with and responded to the issues in accordance with selected guiding principles and selected aspects of the role of the governing body, as follows:
 - (a) both cl. 1 and cl. 9 invoke the principle that 'Councils should provide strong and effective representation, leadership, planning and decision-making' (par. 8A (1) (a));
 - (b) the following additional principles are invoked only by cl. 1:

- (i) 'Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community' (par. 8A (1) (c));
- (ii) 'Councils should consider the long term and cumulative effects of actions on future generations' (par. 8A (2) (c)); and
- (iii) 'Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions' (par. 8A (2) (e));
- (c) the following roles of the governing body are mentioned in both cl. 1 and cl. 9:
 - (i) 'to provide effective civic leadership to the local community' (par. 223 (b));
 - (ii) 'to keep under review the performance of the council, including service delivery' (par. 223 (g));
 - (iii) 'to make decisions necessary for the proper exercise of the council's regulatory functions' (par. 223 (h)); and
 - (iv) 'to be responsible for ensuring that the council acts honestly, efficiently and appropriately' (par. 223 (l));
- (d) cl. 1 refers to two additional roles of the governing body:
 - (i) 'to direct and control the affairs of the council in accordance with this Act' (par. 223 (a)); and
 - (ii) 'to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council' (par. 223 (d)) (which thus picks up all the other principles not otherwise selected, although presumably only to the extent that the Inquiry considers relevant); and
- (e) cl. 9 refers to one additional role of the governing body (not selected for the purpose of cl. 1)—namely, 'to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities' (par. 223 (k)).

All three criteria must be satisfied before something will be within cl. 1 or cl. 9 of the terms of reference.

- 32 The key difference between cll. 1 and 9 is that—subject to the fact that ss. 8A, 8B and 223 only commenced in 2016—the former covers matters 'since 2012' whereas the latter is specifically confined to the Council's response to the issues raised in 2017. In effect, cl. 9 recognizes that in 2017 a new chapter began, when the Council and its governing body had their attention drawn to

specific asbestos management issues and began responding. The adequacy of the responses will be a focus of the Inquiry.

- 33 Clause 7 is closely related to cll. 1 and 9. It requires inquiry and report 'with respect to whether:'

In exercising its functions pursuant to section 23 and 24 of the *LG Act*, the Council has co-operated, and is co-operating, effectively with State government agencies in addressing asbestos management issues in accordance with the guiding principle in section 8A (1) (e) and the role of the governing body in section 223 (1) (l) of that Act.

- 34 Again, there are three aspects to the scope of the required inquiry:

- (1) The general topic (which is a subset of the topic raised by cll. 1 and 9) is the effectiveness of the Council's co-operation with State government agencies 'in addressing asbestos management issues'.
- (2) As with cll. 1 and 9, that topic extends only so far as such co-operation has been a matter arising in connexion with the Council's exercising functions under ss. 23 and 24 of the *LG Act*. However, it may be that the reference to s. 23 has wider significance in cl. 7 than in cll. 1 and 9.
- (3) The matter for inquiry is limited to whether or not the Council has discharged its functions in accordance with a guiding principle and an aspect of the role of the governing body:
 - (a) the former (which is not invoked by cl. 1 or cl. 9) is the principle in par. 8A (1) (e)—that 'Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community'—so it adds little or nothing the factual topic identified; and
 - (b) the latter (which is mentioned in both cl. 1 and cl. 9 [and also cl. 5, discussed below]) is the role prescribed in par. 223 (l) ('to be responsible for ensuring that the council acts honestly, efficiently and appropriately').

All three criteria must be satisfied before something will be within cl. 7 of the terms of reference.

- 35 The scope of each of cll. 1, 7 and 9 is critically limited by the goods, services, facilities and activities provided or undertaken by the Council pursuant to s. 24 (and its incidental [*etc.*] exercise of power pursuant to s. 23), so it is necessary to identify the relevant goods, services, facilities and activities that the Council has provided or undertaken. Examples might include the Lawson Carpark, the Council's depot at Lawson, the former Blackheath tip site and its surrounds, the Wentworth Falls Pre-School, the Lapstone Oval and nearby clubhouse, the Katoomba Waste Transfer Station, and locations where audits in 2013–2015 found higher levels of asbestos-related risk.
- 36 It is respectfully noted that whilst the terms of reference permit the Inquiry to examine conformity with the *LG Act* in respect of matters that are also the subject of investigations by SafeWork NSW and the EPA (and, indeed,

anyone else), it was the evident and proper intent of the Minister— and would in any event be proper— that the Inquiry not overlap or interfere with those other investigations.

- 37 The need to focus on the services *etc.* provided by the Council does not deny the appropriateness of examining the Council's management of asbestos issues generally, for the Council's policies, procedures, and plans with respect to managing asbestos issues, and their implementation, have been important context and are relevant to the matters for inquiry.
- 38 In respect of cl. 7, the Council's dealings with the following State government agencies might be of interest to the Inquiry:
- (a) Safework NSW;
 - (b) the Environmental Protection Authority;
 - (c) Roads and Maritime Services;
 - (d) the Office of Local Government; and
 - (e) the Minister for Local Government.

Clause 5: Funding for asbestos management issues

- 39 The fifth clause of the terms of reference requires inquiry and report 'with respect to whether:'

In exercising its functions pursuant to section 24 and Part 3 of Chapter 13 of the *LG Act*, the Council and its governing body has [*sic*] since 2012 made funding decisions so as to address asbestos management in accordance with the guiding principles in section 8A (1) (b) and 8B and the role of the governing body in section 223 (1) (c) and (f) of that Act.

- 40 The three aspects to the scope of the required inquiry are as follows:
- (1) The general topic is the Council's funding decisions regarding asbestos management issues since 2012.
 - (2) That topic, however, extends only so far as those decisions were made in the course of exercising functions under s. 24 or Pt 3 of Ch. 13 of the *LG Act*.
 - (3) The matter for inquiry is limited to whether or not the Council and its governing body have undertaken those dealings in accordance with the guiding principles in ss. 8A (1) (b) and 8B and the role of the governing body as prescribed in pars. 223 (c) and (f).

All three criteria must be satisfied before something will be within cl. 5 of the terms of reference.

- 41 Section 24— which empowers councils to meet their communities' needs by providing goods, services and facilities and by carrying out activities— has been discussed above. Chapter 13 of the *LG Act* is headed 'How are councils made accountable for their actions?' and Pt 3 thereof is headed 'Financial management' and comprises ss. 408 to 426. The functions include, for

example, the duty to have a 'consolidated fund' and a 'trust fund'³⁴ and requirements about proper record keeping and audits.³⁵ Which ones are to be the focus of the Inquiry is not presently discernible, and it is not clear that the reference to Pt 3 of Ch. 13 will add much to the reference to s. 24.

42 Again, the third aspect of the clause will be important. The inquiry into funding decisions regarding asbestos management issues is to be focussed on whether or not those decisions:

- (a) conformed to the principle that '[c]ouncils should carry out functions in a way that provides the best possible value for residents and ratepayers' (par. 8A (1) (b));
- (b) conformed to the principles in s. 8B (quoted above);
- (c) were consistent with the councillors' obligation 'to ensure as far as possible the financial sustainability of the council' (par. 223 (1) (c)); and
- (d) were consistent with the councillors' obligation 'to be responsible for ensuring that the council acts honestly, efficiently and appropriately' (par. 223 (1) (l)).

(It will be seen that the principles and roles of the governing body that have been selected for inclusion in cl. 5 are quite different from those selected for inclusion in cll. 1, 7 and 9, with just one exception— par. 223 (1) (l).)

Clause 2: Care and diligence in dealing with asbestos management issues

43 The second clause of the terms of reference requires inquiry and report 'with respect to whether:'

In exercising their functions pursuant to Part 2 of Chapter 9 of the *LG Act*, the mayor and councillors of the Council have since 2012 exercised, and are exercising, a reasonable degree of care and diligence in dealing with asbestos management issues at the Council in accordance with section 439 (2) of the *Local Government Act 1993*.

44 The three aspects of the scope of the required inquiry are as follows:

- (1) The general topic is the mayor's and councillors' dealing with asbestos management issues since 2012 (*not* the Council's).
- (2) That topic, however, extends only so far as those dealings have been in the course of the councillors' exercising their functions pursuant to Pt 2 of Ch. 9 of the LG Act.
- (3) The matter for inquiry is limited to whether or not the councillors were reasonably careful and diligent, within the meaning of subs. 439 (1) of the LG Act.³⁶

³⁴ LG Act, s. 408.

³⁵ LG Act, Ch. 13, Pt 3, Div. 2.

³⁶ Section 439 was last amended with effect from 1 March 2013.

All three criteria must be satisfied before something will be within cl. 2 of the terms of reference. It can be seen that cl. 2 is expressed or structured differently from the other clauses that refer to the management of asbestos issues, no doubt because the clause requires examination not of the Council itself, but of its mayor³⁷ and other councillors. Part 2 of Ch. 9 includes s. 223 (in both its current and earlier forms), which prescribes the role of the governing body and which is mentioned in the other clauses, but here it is cast as the part of the LG Act that provides the *function* the discharge of which is the factual topic for examination, not (as elsewhere) as a *principle* or *role* to be applied as the measure of performance.

45 Chapter 9 is headed 'How are councils established?' and comprises ss. 204 to 265. Part 2 thereof is headed 'Councils' and comprises ss. 219 to 259. Two sections are notable for present purposes:

- (1) Section 226 states the role of the mayor. It need not be reproduced here, but currently includes, for example, the rather general role of 'be[ing] the leader of the council and a leader in the local community' and the more specific role of 'presid[ing] at meetings of the council'.
- (2) Section 232 states the role of councillors. Again, mention of a couple of examples may suffice for present purposes: currently, a councillor is 'to be an active and contributing member of the governing body' and 'to make considered and well informed decisions as a member of the governing body'.

In both cases, and both before and after each was amended in 2016, the functions are general in application (and not specific to asbestos management), but they are functions capable of being exercised 'in dealing with asbestos management issues'. The focus of cl. 2 of the terms of reference is on whether or not the exercise of these functions, when undertaken with respect to asbestos management issues, was undertaken with care and diligence.

46 It may be accepted that the merits of the councillors' decisions may, potentially, have indirect relevance to the matter for inquiry pursuant to cl. 2. A manifestly bad decision might put the Inquiry on notice that an examination into whether or not a lack of care or diligence was the cause of the bad outcome is warranted. However, cl. 2 does not call for an examination of the merits of decisions *per se*, and considerable caution will be due if the merits of decisions are to be examined on the basis that they might be relevant to whether or not sufficient care and diligence were applied. The Inquiry may consider that such an indirect line of investigation is not warranted at all.

Clause 3: Recruitment of certain employees and contractors

47 The first of the terms of reference's clauses that deals with staffing issues is the third. It requires inquiry and report 'with respect to whether:'

³⁷ The current mayor was elected in September 2012.

In exercising their functions pursuant to Parts 1 and 2 of Chapter 11 of the *LG Act*, the Council and its governing body has [*sic*] since 2012 determined to employ and/or engage Mr Mark Mulligan, Mr John Hargreaves and other staff or contractors in accordance with the guiding principles in section 8A (a) (a) and (2) (e) and the role of the governing body in section 223 (1) (j) and (l), as well as section 349 of that Act.

48 The three aspects of the scope of the required inquiry are as follows:

- (1) The general topic is the 'determin[ations]' to employ Mr Mulligan, Mr Hargreaves and others. That is, the focus of attention is on the *decisions* to employ *those* two people (whether as employees or contractors), and anyone else that the Inquiry selects.
- (2) The topic is tied to the Council and councillors' exercise of their functions pursuant to Pts 1 and 2 of Ch. 11 of the LG Act.
- (3) The matter for inquiry is limited to whether or not the Council and councillors discharged those functions 'in accordance with the guiding principles in' pars. 8A (1) (a) and (2) (e), the 'the role of the governing body' prescribed in pars. 223 (1) (j) and (l), and the requirements of s. 349.³⁸

All three criteria must be satisfied before something will be within cl. 3 of the terms of reference. In fairness to Messrs Mulligan and Hargreaves (and any other individual whose retention comes to be examined in this Inquiry), it is worth emphasizing that *their* conduct is not in issue and the terms of reference neither make nor imply any allegation against them.

49 Apart from the retentions of Messrs Mulligan and Hargreaves, the Council is not aware of whose retention, if anyone's, will be the subject of investigation by the Inquiry.

50 A threshold issue that arises is whether or not Mr Mulligan or Mr Hargreaves was ever a senior staff member within the meaning of the LG Act. The answer to that question will determine what provisions of Pts 1 and 2 are applicable to their retention. The Council respectfully anticipates that in due course the Inquiry will be satisfied that:

- (a) Mr Hargreaves was employed by the Council from 9 May 2016 to 5 May 2017 as the Program Leader, Business Improvement (a temporary position), and as such he was not a senior staff member;
- (b) Mr Mulligan was retained as a safety consultant from 29 August to 23 December 2016, and as such he was not a staff member of the Council (senior or otherwise); and
- (c) Mr Mulligan was employed by the Council from 1 November 2017 to _ February 2018 as Acting Director, Service Delivery, and as such he was a senior staff member of the Council during this period.

³⁸ Section 349 was last amended in 1998.

51 The application of Pts 1 and 2 of Ch. 11 to Mr Hargreaves's appointment as a non-senior staff member entails only the application of the following functions of the Council (including its councillors and the General Manager insofar as he [at the time] could fairly be said to have been acting as or for the Council):

- (a) the Council's function (in consultation with the General Manager) of 'determin[ing] . . . the resources to be allocated towards the employment of staff' (par. 332 (1) (c));
- (b) the General Manager's function of determining what non-senior staff positions will exist (subs. 332 (1A)); and
- (c) the General Manager's function of 'appoint[ing] staff in accordance with the organisation structure . . . and the resources approved by the council' (par. 335 (h)).

The appointment of Mr Hargreaves was subject to s. 349 (quoted above and requiring merit-based selection).

52 If the Inquiry is ultimately satisfied that in 2016 Mr Mulligan was retained pursuant to a contract for services, and not as an employee, then it may be satisfied that no provision of Pt 1 or Pt 2 of Ch. 11 (nor s. 349) has application and that the engagement is outside the terms of reference. If, however, the Inquiry concludes that in 2016 Mulligan was an employee (but not a senior staff member) then the application of Ch. 11 entail the same provisions as mentioned above at par. 50.

53 As with the employment of Mr Hargreaves, the employment of Mr Mulligan in 2017-18 relevantly attracts consideration of pars 332 (1) (c) and 335 (h). Also relevant (if only because cl. 3 invokes par. 223 (1) (j)), is par. 332 (1) (a), which confers on the Council the function of determining the organisational structure and the senior staff positions within it. Again, s. 349 was applicable too.

54 Turning to the third aspect of cl. 3 of the terms of reference, the required inquiry is not into the discharge of the Ch. 11 functions generally, but into the Council's conformity with its responsibility:

- (a) to 'provide strong and effective representation, leadership, planning and decision-making' (par. 8A (1) (a));
- (b) to ensure that its 'decision-making [is] transparent and [its] decision-makers are . . . accountable for decisions and omissions' (par. 8A (2) (e)); and
- (c) for 'ensuring that the council acts honestly, efficiently and appropriately' (par. 223 (1) (l)).

(Clause 3 also speaks of conformity with the Council's role 'to determine the senior staff positions within the organisation structure of the council' [par. 223 (1) (j)], but that seems to add nothing to the second aspect of cl. 3.)

Clause 6: A consultative and supportive working environment

55 The sixth clause of the terms of reference requires inquiry and report 'with respect to whether:'

In exercising its functions pursuant to Parts 1 and 2 of Chapter 11 of the *LG Act*, the Council and its governing body since 2012 has [*sic*] facilitated, and is facilitating, a consultative and supportive working environment in accordance with the guiding principle in section 8A (1) (i) and the role of the governing body in section 223 (1) (i), (j) and (l) of that Act.

56 In form, this clause again involves three elements the intersection of which defines the scope of inquiry. However, the cited statutory provisions so significantly overlap—

- par. 8A (1) (i) ('Councils should be responsible employers and provide a consultative and supportive working environment for staff') covers the topic ('facilitating' 'a consultative and supportive working environment');
- par. 223 (1) (i) (the governing body is 'to determine the process for appointment of the general manager by the council and to monitor the general manager's performance') is covered by Council's Ch. 11 function of 'appoint[ing] a person to be its general manager' (s. 334); and
- par. 223 (1) (j) (the governing body is 'to determine the senior staff positions within the organisation structure of the council') covers Council's Ch. 11 function of 'determin[ing] . . . the senior staff positions within the organisation structure of the council' (par. 332 (1) (a))

— that a simpler statement of the effect of cl. 6 (including reference to par. 223 (1) (l)) may be convenient.

57 The matter for inquiry is whether or not the Council and its governing body, when since 2012 exercising their functions under Pts 1 and 2 of Ch. 11, have facilitated a 'consultative and supportive working environment' and met their 'responsib[ility] for ensuring that the council acts honestly, efficiently and appropriately'. (Chapter 11 does not confer any functions on the governing body except insofar as it confers them on the Council.) The functions of the Council under Ch. 11 functions are:

- (a) to 'determine . . . the senior staff positions within the organisation structure of the council' (par. 332 (1) (a));
- (b) to 'determine . . . the roles and reporting lines (for other senior staff) of holders of senior staff positions' (par. 332 (1) (b));
- (c) to 'determine . . . the resources to be allocated towards the employment of staff' (par. 332 (1) (c));
- (d) to appoint a general manager (s. 334); and

- (e) to be consulted by the General Manager in respect of the appointment of senior staff (s. 337) (the latter function being reserved to the General Manager).

58 A question may arise about the extent to which the discharge of the General Manager's functions under Ch. 11 falls for inquiry. It is submitted that the basic position is that the statute has clearly delineated certain functions to be the General Manager's, not the Council's, and the General Manager's functions are not within the terms of reference. However, as has been acknowledge above in the discussion of cl. 3, there is some room for uncertainty. This is particularly so with respect to the employment of staff, for although the function of appointing staff is the General Manager's (par. 335 (h)) it appears that the Council is the employer.

Clause 8: an appropriate organisational structure

59 The eighth clause of the terms of reference is different from the others, for it is concerned not only with the performance of the Council and councillors but also, and uniquely in this Inquiry, with the performance of the Council's senior staff. It requires inquiry and report 'with respect to whether:'

In exercising its functions pursuant to Parts 1 and 2 or Chapter 11 of the *LG Act*, the governing body and the senior staff of the Council has [*sic*] determined, reviewed and re-determine an appropriate organisational structure and resource allocation in accordance with the guiding principle[s] in section 8A (1) (c), (2) (c) and the role of the governing body in section 223 (1) (g), (h) and (l) of that Act.

60 The three aspects to the scope of the required inquiry are as follows:

- (1) The general topic is the effectiveness of the setting of the organisational structure and the allocation of resources (by the governing body and senior staff).
- (2) That topic, however, extends only so far as such work has been done pursuant to Pts 1 and 2 of Ch. 11 of the *LG Act*.
- (3) The matter for inquiry is limited to whether or not the Council's governing body and senior staff have discharged their functions in accordance with the guiding principles in pars 8A (1) (c) and (2) (c) and the role of the governing body as prescribed in pars 223 (g), (h) and (l).

All three criteria must be satisfied before something will be within cl. 8 of the terms of reference.

Clause 4: appointment of independent investigators

61 Finally, relating to both asbestos management and staffing issues, but quite distinct from them too, the fourth clause of the terms of reference requires inquiry and report 'with respect to whether:'

In exercising its functions pursuant to sections 23 and 24 of the *LG Act*, the Council's process of engaging Clyde & Co and McCullough Robertson lawyers (through McPhee Kelshaw solicitors and conveyancers), including with respect to management of any conflicts of interest, to conduct

independent investigations into asbestos related incidents and employment issues, respectively, was in accordance with the guiding principles in sections 8A (1) (b), (h), (2) (e) and 8B and the role of the governing body in section 223 (1) (c) and (l) of that Act.

62 The three aspects of the scope of the required inquiry are as follows:

- (1) The general topic is the 'process of engaging' Clyde & Co and McCullough Robertson, with particular (but not exclusive) reference to whether or not any conflicts of interest (or potential ones) were managed.
- (2) That topic is framed by the reference to ss. 23 and 24 of the LG Act.
- (3) The matter for inquiry is limited to whether or not the Council discharged its functions 'in accordance with the guiding principles in' ss. 8A (1) (b) and (h) and (2) (e), and 8B, and the 'the role of the governing body' prescribed in pars. 223 (1) (c) and (l).

All three criteria must be satisfied before something will be within cl. 4 of the terms of reference.

63 sections 23 and 24, and their context, have been set out previously. It is sufficient here to note that the retention of the two firms in question to conduct the investigations in question was within the scope of ss. 23 and 24 and those sections do not provide any material constraint on the scope of the inquiry.

64 However, the inquiry is required to focus on the following principles and aspects of the role of the governing body:

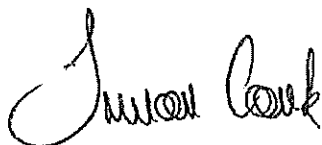
- (a) 'Councils should carry out functions in a way that provides the best possible value for residents and ratepayers' (par. 8A (1) (b));
- (b) 'Councils should act fairly, ethically and without bias in the interests of the local community' (par. 8A (1) (h));
- (c) 'Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions' (par. 8A (2) (e));
- (d) all of the principles stated in s 8B (which have been reproduced above);
- (e) it is the role of the governing body 'to determine the senior staff positions within the organisation structure of the council' (par. 223 (1) (j)); and
- (f) the Council is 'responsible for ensuring that the council acts honestly, efficiently and appropriately' (par. 223 (1) (l)).

65 As the focus of cl. 4 is on the 'Council's process' of engaging Clyde & Co and McCullough Robertson, it does not appear that the wisdom of retaining someone to conduct the investigations in question is a matter for inquiry. The Minister's decision to commission a public inquiry covering some of the same territory itself vindicates the Council's decision to have the two investigations undertaken. Rather (and without claiming to be more than indicative, let

alone claiming to be exhaustive), the following issues appear to be at the centre of the inquiry required by cl. 4:

- (1) Was it appropriate for the Council to have its external solicitors (McPhee Kelshaw) select the investigators?
- (2) Was the Council's process consistent with its obligation to 'act fairly, ethically and without bias in the interests of the local community'?
- (3) Was the Council's decision-making 'transparent' and consistent with the proposition that 'decision-makers are to be accountable for decisions and omissions'?
- (4) Was the Council's process adequate to detect and manage any conflict of interest that might exist or arise for the chosen investigators?
- (5) Were the matters for investigation of sufficient importance to warrant the retention of investigators of such high qualification as those chosen?
- (6) Were the matters for investigation of sufficient importance to warrant the conduct of such thorough investigations as those that were commissioned?
- (7) Were the matters for investigation of sufficient importance to warrant the expense that was, or was likely to be, incurred by the decisions made?
- (8) Did the process that led to these decisions adhere to the principle that councils' should secure 'the best possible value for residents and ratepayers'?

The Council submits that important factors to consider under cl. 4 may include the value of having a council frankly face its potential problems and seek to address them openly and honestly, the significance of asbestos management issues, and the importance of recruitment to an organization.



Dated: 21 September 2018