



Burwood Council

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BURWOOD COUNCIL MEETINGS

MINUTES OF THE MEETING OF THE COUNCIL OF BURWOOD held at the Council Chamber, Suite 1, Level 2, 1-17 Elsie Street, Burwood on Tuesday 24 October 2017 commencing at 6.12pm.

ATTENDANCE

Councillor John Faker (Mayor)
Councillor Ernest Chan
Councillor Heather Crichton
Councillor Joseph Del Duca
Councillor Raj Dixit
Councillor Lesley Furneaux-Cook (Deputy Mayor)
Councillor George Mannah

Mr M McMahon, General Manager
Mr T Briscese, Deputy General Manager Corporate, Governance & Community
Mr B Macdonnell, Deputy General Manager Land, Infrastructure & Environment
Mr J Inglese, Senior Manager Assets & Design
Ms D Luo, Manager Strategic Planner
Ms P Viney, Governance Co-ordinator
Ms V Karpowicz, EA to the General Manager

OPENING OF MEETING BY THE MAYOR

The Mayor opened the meeting with a prayer and Acknowledgement of Country.

OPEN FORUM

There was no business for this item.

APOLOGIES

There were no apologies for the meeting.

DECLARATIONS OF INTEREST

Councillor Ernest Chan declared a non-pecuniary interest on (ITEM 68/17) Implications of the Strathfield Sports Club Site Rezoning as has he is the chairperson for the Special Children's Services Centre Inc charity and the club has made donations to the charity. Cr Chan took no further part in debate or discussion.

DECLARATIONS OF POLITICAL DONATIONS

There were no declarations of political interests by Councillors.

CONFIRMATION OF MINUTES

93/17 RESOLVED *(carried unanimously)*

That the minutes of the meeting of the:

1. Council Meeting held on 26 September 2017

2. Council Meeting (Closed Session) held on 26 September 2017
3. Building & Development Committee Meeting held on 10 October 2017

as circulated, be confirmed and signed as a true record of the proceeding of the meeting.

(Moved Deputy Mayor Lesley Furneaux-Cook /Seconded Councillor George Mannah)

ADDRESS BY THE PUBLIC ON AGENDA ITEMS

Name	Item
Ms Helen Deegan	(ITEM 63/17) Results of Public Exhibition of Planning Proposal for Southern Side of Cooper Street Strathfield
Mr Nicholas Nasser	(ITEM 63/17) Results of Public Exhibition of Planning Proposal for Southern Side of Cooper Street Strathfield
Ms Annette McDonald	(ITEM 63/17) Results of Public Exhibition of Planning Proposal for Southern Side of Cooper Street Strathfield
Ms Kathleen Lamoureux	(ITEM 63/17) Results of Public Exhibition of Planning Proposal for Southern Side of Cooper Street Strathfield
Mr Albert Pulie	(ITEM 63/17) Results of Public Exhibition of Planning Proposal for Southern Side of Cooper Street Strathfield
Mr Ron Benson	(ITEM 63/17) Results of Public Exhibition of Planning Proposal for Southern Side of Cooper Street Strathfield

GENERAL BUSINESS

(ITEM 63/17) RESULTS OF PUBLIC EXHIBITION OF PLANNING PROPOSAL FOR SOUTHERN SIDE OF COOPER STREET STRATHFIELD

File No: 17/35739

Summary

The Planning Proposal (PP) applies to land on the southern side of Cooper Street, between Cooper Lane and Wentworth Road Strathfield. The PP seeks to:

- Rezone the land from R2 Low Density Residential to R1 General Residential
- Increase the maximum building height from 8.2 metres to 20.5 metres at the western end of the land, with a gradual reduction in height to 14 metres and 11 metres at the eastern end
- Increase the maximum floor space ratio (FSR) from 0.55:1 to 2.3:1 at the western end of the land, and to 1.5:1 at the eastern end
- Delist 18A Cooper Street Strathfield as a heritage item

Following the Gateway Determination issued by the Department of Planning and Environment (DP&E), the PP was publicly exhibited. A total of 30 submissions have been received, including 22 in objection, four in support and four from public authorities. It is recommended that Council request the DP&E not to progress the PP.

94/17 RESOLVED *(carried unanimously)*

1. That Council not support the Planning Proposal.
2. That Council forward the resolution to the Department of Planning & Environment and request the Greater Sydney Commission to determine that the Planning Proposal not proceed.

3. That the proponent be notified of the Council resolution in writing.
4. That those who have made a submission be advised of the Council resolution in writing.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor George Mannah)

Deputy Mayor Lesley Furneaux-Cook and Councillor George Mannah called for a **DIVISION**.

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Mayor Faker	
Councillor Mannah	
Councillor Dixit	
Councillor Del Duca	
Councillor Crichton	
Councillor Chan	
Deputy Mayor Furneaux-Cook	
Total (7)	Total (0)

(ITEM 64/17) VOLUNTARY PLANNING AGREEMENT - 6 RAILWAY PARADE BURWOOD

File No: 17/38541

Summary

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Modification Application for 6 Railway Parade Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA provides for the developer to pay a monetary contribution to Council in lieu of a shortfall of on-site visitor parking. Council's endorsement is sought to enter into the VPA after the granting of the Modification Application.

95/17 RESOLVED *(carried unanimously)*

1. That Council enter into the VPA for 6 Railway Parade Burwood for the provision of a monetary contribution of \$293,040 towards public car parking as per the Public Parking Policy, after the granting of the Modification Application, which would include a condition on the amended consent requiring that the VPA be entered into prior to the issuing of a modified Construction Certificate.
2. That Council authorise the General Manager or Acting General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse the minor revisions of the VPA documents prior to execution.
4. That the Developer pay the monetary contribution to Council, on or before, the execution of the VPA by Council.

(Moved Councillor George Mannah/Seconded Councillor Heather Crichton)

Councillors George Mannah and Heather Crichton called for a **DIVISION**.

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Mayor Faker	
Councillor Mannah	
Councillor Dixit	
Councillor Del Duca	
Councillor Crichton	
Councillor Chan	
Deputy Mayor Furneaux-Cook	
Total (7)	Total (0)

(ITEM 65/17) VOLUNTARY PLANNING AGREEMENT - 1 LYONS STREET STRATHFIELD

File No: 17/41849

Summary

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Modification Application for 1 Lyons Street Strathfield have been publicly notified in accordance with the relevant legislation. The draft VPA will provide the developer to pay a monetary contribution to Council in lieu of a shortfall in parking. Council's endorsement is now sought to enter into the VPA after the granting of the Modification Application.

96/17 RESOLVED *(carried unanimously)*

1. That Council enter into the VPA for 1 Lyons Street Strathfield for the provision of a monetary contribution of \$49,500 towards public car parking after the granting of the Modification Application, which would include a condition on the amended consent requiring that the VPA be entered into.
2. That Council authorise the General Manager or Acting General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse the minor revisions of the VPA documents prior to execution.
4. That the Developer pay the monetary contribution to Council, on or before, the execution of the VPA by Council.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor Joseph Del Duca)

Deputy Mayor Lesley Furneaux-Cook and Councillor Joseph Del Duca called for a **DIVISION**.

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Mayor Faker	
Councillor Mannah	
Councillor Dixit	
Councillor Del Duca	
Councillor Crichton	
Councillor Chan	

FOR	AGAINST
Deputy Mayor Furneaux-Cook	
Total (7)	Total (0)

(ITEM 66/17) VOLUNTARY PLANNING AGREEMENT - 11-13 BURWOOD ROAD BURWOOD

File No: 17/41343

Summary

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with a Modification Application for 11-13 Burwood Road Burwood has been publicly notified in accordance with the relevant legislation. The draft VPA provides for the developer to pay a monetary contribution to Council in exchange of additional development on the site. Council's endorsement is now sought to enter into the VPA after the granting of the Modification Application.

97/17 RESOLVED *(carried unanimously)*

1. That Council enter into the VPA for 11-13 Burwood Road Burwood for the provision of a monetary contribution of \$349,800 towards public facilities in line with the Open Space and Community Facilities Study for Burwood after the granting of the Modification Application, which would include a condition on the amended consent requiring that the VPA be entered into.
2. That Council authorise the General Manager or Acting General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse the minor revisions of the VPA documents prior to execution.
4. That the Developer pay the monetary contribution (dollar value dependant on the final determination of the Modification Application in relation to floor space) to Council, on or before, the execution of the VPA by Council.

(Moved Councillor George Mannah/Seconded Councillor Heather Crichton)

Councillors George Mannah and Heather Crichton called for a **DIVISION**.

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Mayor Faker	
Councillor Mannah	
Councillor Dixit	
Councillor Del Duca	
Councillor Crichton	
Councillor Chan	
Deputy Mayor Furneaux-Cook	
Total (7)	Total (0)

(ITEM 67/17) VOLUNTARY PLANNING AGREEMENT - 2-14 ELSIE STREET BURWOOD

File No: 17/45031

Summary

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) in connection with Development Application (DA) for 2-14 Elsie Street Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA will provide for the developer to pay a monetary contribution to Council for additional floor space. Council's endorsement is sought to enter into the VPA after the granting of the consent for the DA, subject to the contribution amount being based on the rate most recently adopted by Council.

98/17 RESOLVED *(carried unanimously)*

1. That Council enter into the VPA for 2-14 Elsie Street Burwood for the provision of a monetary contribution of \$1,809,975 towards public facilities after the granting of the consent for DA 14/2017, which would include a condition of consent requiring that the VPA be entered into.
2. That Council authorise the General Manager or Acting General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse the minor revisions of the VPA documents prior to execution.
4. That the Developer pay the monetary contribution (dollar value dependant on the final determination of the DA) to Council, on or before, the execution of the VPA by Council.
5. That the General Manager amend the VPA for 2-14 Elsie Burwood to 10% increase in floor space ration for the land contemplated by the Development.

(Moved Councillor George Mannah/Seconded Councillor Ernest Chan)

Councillors George Mannah and Ernest Chan called for a **DIVISION**.

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Mayor Faker	
Councillor Mannah	
Councillor Dixit	
Councillor Del Duca	
Councillor Crichton	
Councillor Chan	
Deputy Mayor Furneaux-Cook	
Total (7)	Total (0)

CR ERNEST CHAN LEFT THE MEETING AT 7:32 PM

(ITEM 68/17) IMPLICATIONS OF THE STRATHFIELD SPORTS CLUB SITE REZONING

File No: 17/39780

Summary

A Voluntary Planning Agreement (VPA) was entered into by Burwood Council and the Strathfield Recreation Club Ltd (the Club) in January 2014. The VPA was accompanied by an amendment to the Burwood Local Environmental Plan (BLEP) to rezone part of the Club site. It was envisioned that a redevelopment of the Club site would provide for a link road to be dedicated to Council. However, the Club later notified Council that it no longer intended to develop to the extent envisioned. This report discusses the implications of the VPA and rezoning.

99/17 RESOLVED *(carried unanimously)*

1. That Council endorse the preparation of a Planning Proposal to facilitate the insertion of a site-specific clause in the Burwood Local Environmental Plan (BLEP) in respect to the Strathfield Sports Club site.
2. That Council submit the Planning Proposal to NSW Department of Planning and Environment for a Gateway Determination.
3. That subject to the Gateway Determination, affected property owners be notified, the Planning Proposal be publicly exhibited and consultation with any relevant public authorities be undertaken.
4. That the results of the public exhibition and consultation be reported back to Council.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor George Mannah)

Deputy Mayor Lesley Furneaux-Cook and Councillor George Mannah called for a **DIVISION**.

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Mayor Faker	
Councillor Mannah	
Councillor Dixit	
Councillor Del Duca	
Councillor Crichton	
Deputy Mayor Furneaux-Cook	
Total (6)	Total (0)

CR ERNEST CHAN RETURNED TO THE MEETING AT 7:45 PM

(ITEM 69/17) ESTABLISHMENT - INDEPENDENT HEARING AND ASSESSMENT PANEL (IHAP)

File No: 16/23497

Summary

In August 2017 the *Environmental Planning and Assessment Act 1979* (EP&AA) was amended in relation to the establishment and operation of local planning panels called

Independent Hearing and Assessment Panels (IHAP).

An IHAP is a panel of three independent expert members and a community member who assesses development applications (DAs) made to Council. Under these provision of the EP&AA, Councillors will no longer be able to determine development applications. This function will be performed by either the IHAP, Council Officers, or the Joint Regional Planning Panel.

This report is to advise Council of the changes to the legislation and that Council is required to have a IHAP in place prior to 1 March 2018.

100/17 RESOLVED *(carried unanimously)*

1. That the item be deferred to the November Council Meeting to be in line with the Hills Shire report seeking an exemption from the Minister from having an IHAP.
2. That the Mayor make representation the Minister to seek an exemption from having an IHAP.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor George Mannah)

(ITEM 70/17) SOUTHERN SYDNEY REGIONAL ORGANISATION OF COUNCILS (SSROC) - MEMBERSHIP FEES

File No: 17/43710

Summary

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of nine member councils located south of Sydney Harbour and covering a third of Sydney's population, 1.7 million people. The Organisation is intended as a forum for the exchange of ideas between member councils, as well as a platform for undertaking regional projects and joint procurement.

SSROC has submitted its membership fees for 2017/18 and these fees are now submitted to Council for consideration and review.

101/17 RESOLVED *(carried unanimously)*

That Council endorse membership to Southern Sydney Regional Organisation of Councils (SSROC) for 2017/18 and approves the increase in expenditure.

(Moved Councillor Ernest Chan/Seconded Councillor George Mannah)

(ITEM 71/17) ADOPTION - DRAFT COMMUNITY STRATEGIC PLAN COMMUNITY CONSULTATION STRATEGY

File No: 17/45380

Summary

Burwood Council adopted its Community Strategic Plan, Burwood2030, in December 2010 following extensive community and stakeholder consultation.

Following the election of the new Council in September 2017, Council is now required to review the Community Strategic Plan within the first nine months of the new term in accordance with s 402(5) of the *Local Government Act 1993* (the Act).

The Office of Local Government recommends a community engagement program is undertaken within the first three to six months of the new term in order to ensure that the strategic objectives set in the Plan are still current and relevant.

A Draft - Community Strategic Plan – Community Consultation Strategy has been prepared for Council's adoption.

102/17 RESOLVED (*carried unanimously*)

That Council adopt the Draft - Community Strategic Plan Community Consultation Strategy.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor Joseph Del Duca)

(ITEM 72/17) COUNCIL COMMITTEES

File No: 17/36030

Summary

To determine the formation of Committees to assist Council in their decision making on various community, technical and planning issues as well as determine Council representation on such Committees.

103/17 RESOLVED (*carried unanimously*)

That Council approves the following Committees and appoints Councillors as Chairpersons, delegates and alternates for the term September 2017 to September 2018:

Committee/Board		Chairperson	Delegate(s)	Alternate(s)
1.	Building and Development Committee	Mayor Cr John Faker Deputy Chairperson - Deputy Mayor	All Councillors	N/A
2.	Burwood Anzac Commemorative Service Committee	Mayor Cr John Faker	N/A	Cr George Mannah
3.	Burwood Local Traffic Committee	Mayor Cr John Faker	N/A	Cr George Mannah
4.	General Manager's Contract Review Panel	Mayor Cr John Faker	Cr Lesley Furneaux-Cook Cr George Mannah	Cr Heather Crichton
5.	Audit, Risk and Improvement Committee		Cr Lesley Furneaux-Cook Cr Raj Dixit	
6.	National Servicemen's Association	Cr Heather Crichton	N/A	Cr Joseph Del Duca
7.	Sandakan Community Educational Committee	Cr Heather Crichton	N/A	Cr Ernest Chan

8.	Sydney East Joint Regional Planning Panel	N/A	Cr George Mannah Cr Joseph Del Duca	General Manager DGM LIE
9.	Southern Sydney Regional Organisation of Councils – Full Committee	N/A	Mayor Cr John Faker Cr George Mannah	Cr Ernest Chan Cr Heather Crichton
10.	Southern Sydney Regional Organisation of Councils – Sustainability Committee	N/A	Cr Raj Dixit Cr Lesley Furneaux-Cook	
11.	Southern Sydney Regional Organisation of Councils – Program Delivery	N/A	Cr Joseph Del Duca Cr Ernest Chan	
12.	Multicultural Committee	Cr Ernest Chan		Cr Joseph Del Duca

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Joseph Del Duca)

(ITEM 73/17) LOCAL GOVERNMENT NSW ANNUAL CONFERENCE SYDNEY - DECEMBER 2017

File No: 17/41479

Summary

This year the Local Government NSW Annual Conference is being held from Monday 4 to Wednesday 6 December 2017 at the Hyatt Regency Sydney. Council can nominate four Voting Delegates and, as customary, Observers to attend the Conference.

The conference is the highlight of the Local Government year. It is an opportunity for everyone to come together to debate and determine advocacy priorities, set directions, gain and share knowledge, network with peers and this year, elect a new Board.

With increasing professional and governance demands on councils, it is very important to keep up to date with the latest developments in order to continue to provide the best possible service and representation to communities.

There will be presentations from the Premier of NSW, the Minister & Shadow Minister for Local Government and the Minister for Roads, Maritime & Freight.

104/17 RESOLVED *(carried unanimously)*

1. That Council nominates Councillors, Mayor John Faker, Deputy Mayor Lesley Furneaux-Cook, Heather Crichton and George Mannah to attend as the Voting Delegates who will be appointed as a proxy to vote on behalf of Council at the Local Government NSW Annual Conference 2017 held from 4 December to 6 December 2017.
2. That Councillor Raj Dixit be authorised to attend as nominated observer and an alternate voting delegate.

3. That Councillors Ernest Chan and Joseph Del Duca as nominated observers.
4. That the Acting General Manager be authorised to attend.
5. That the nominated observers confirm their attendance by 27 October 2017 to the General Manager.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Ernest Chan)

(ITEM 74/17) INVESTMENT REPORT AS AT 31 JULY 2017

File No: 17/35872

Summary

In accordance with Clause 212 of the *Local Government (General) Regulation 2005*, this report details all money that Council has invested under Section 625 of the *Local Government Act 1993*.

105/17 RESOLVED *(carried unanimously)*

1. That the Investment Report for 31 July 2017 be received and endorsed.
2. That the Certificate of the Responsible Accounting Officer be received and noted.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor Raj Dixit)

(ITEM 75/17) INVESTMENT REPORT AS AT 31 AUGUST 2017

File No: 17/41536

Summary

In accordance with Clause 212 of the *Local Government (General) Regulation 2005*, this report details all money that Council has invested under Section 625 of the *Local Government Act 1993*.

106/17 RESOLVED *(carried unanimously)*

1. That the Investment Report for 31 August 2017 be received and endorsed.
2. That the Certificate of the Responsible Accounting Officer be received and noted.

(Moved Councillor Ernest Chan/Seconded Councillor Joseph Del Duca)

(ITEM 76/17) INVESTMENT REPORT AS AT 30 SEPTEMBER 2017

File No: 17/44609

Summary

In accordance with Clause 212 of the *Local Government (General) Regulation 2005*, this report details all money that Council has invested under Section 625 of the *Local Government Act 1993*.

107/17 RESOLVED *(carried unanimously)*

1. That the Investment Report for 30 September 2017 be received and endorsed.
2. That the Certificate of the Responsible Accounting Officer be received and noted.

(Moved Councillor Heather Crichton/Seconded Councillor George Mannah)

(ITEM 77/17) DISCLOSURE BY COUNCILLORS AND DESIGNATED PERSONS RETURN REGISTER (PECUNIARY INTEREST RETURNS AND REGISTER) 2016/2017 AND PRIMARY RETURNS

File No: 17/41423

Summary

In accordance with Section 450A of the *Local Government Act 1993*:

- The General Manager must keep a Register of Pecuniary Interest Returns and the Returns must be available for inspection by members of the public.
- The General Manager must arrange for the tabling of the Returns at the first meeting held after the last day of the period for lodgement (i.e. the first Council meeting after the end of September).

108/17 RESOLVED *(carried unanimously)*

That the Ordinary Disclosures by Councillors and Designated Persons (Pecuniary Interest) Returns for the period 1 July 2016 to 30 June 2017 and primary returns be noted and accepted as tabled.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor Heather Crichton)

(ITEM 78/17) PROPOSED POWER OF ATTORNEY FOR THE ACTING GENERAL MANAGER

File No: 17/35422

Summary

Since 2011 Council has been granting power of attorney to the General Manager, allowing signing of documents following formal resolutions by Council. It is recommended that the current legal arrangement be continued to facilitate the timely implementation of decisions of Council.

The power of attorney is prescribed, and not irrevocable or an enduring power of attorney. That is, the power of attorney can be terminated, revoked or suspended by Council at any time. The power of attorney must be registered for any dealings affecting land with the Land & Property Information Authority of NSW.

As the current General Manager, Michael Gerard McMahon, ceases his contract with Burwood Council on 24 November 2017, it is recommended that the Acting General Manager, Bruce Gordon Macdonnell, is granted the power of attorney if Council wishes to do so.

Background

Council received legal advice in 2011 in respect of the circumstances in which the Council can grant power of attorney to the General Manager, the operation of such power of attorney, and information that must be included in a report to Council so that

the Council can determine whether or not to give power of attorney to the General Manager.

The following information was provided by Council's lawyers to assist Councillors in making the determination:

- a. a prescribed power of attorney can be granted to the General Manager to enable him to sign documents to give effect to resolutions of the Council made pursuant to its non-delegable functions under Section 377(1) of the Act.
- b. a prescribed power of attorney can be granted to the General Manager to enable him to sign documents to give effect to functions of the Council which the Council has validly delegated to the General Manager under Section 377(1) of the Act.
- c. if the Council resolves to grant a prescribed power of attorney to the General Manager, the prescribed power of attorney should be registered in the General Register of Deeds at the NSW Land and Property Management Authority (LPMA) to enable the General Manager to sign documents of title for registration at the NSW LPMA;
- d. the signing of documents by the General Manager under a prescribed power of attorney is a more expeditious way of implementing decisions of the Council rather than by affixing the Seal of Council to documents in the presence of two people (including at least one Councillor) in accordance with the requirements of clause 400 of the Regulation.
- e. if the Council grants a prescribed power of attorney to the General Manager, the prescribed power of attorney will not authorise the General Manager to execute a document or do any act which will confer a benefit on the General Manager unless the prescribed power of attorney expressly authorises the conferral of the benefit: Section 12(1) of the POA Act;
- f. the General Manager will maintain a register of documents signed under the prescribed power of attorney and report to Council at its meetings on each document which the General Manager has signed pursuant to the prescribed power of attorney
- g. the Council is free to terminate or suspend the prescribed power of attorney at any time after giving the prescribed power of attorney to the General Manager
- h. an instrument revoking or terminating a registered power of attorney may also be registered by the Registrar-General in the General Register of Deeds
- i. many councils in New South Wales grant powers of attorney to their general managers and to other senior staff including (without limitation) the City of Sydney and North Sydney Council

A further summary of the legal advice is provided below:

1. Grant of a Power of Attorney

- a. A fundamental consideration is whether a council can give a power of attorney to an individual. The *Powers of Attorney Act 2003 (POA Act)* defines a "principal" in Section 3(1) as "the person giving the power". "Person" is not defined in the POA Act, but is defined in Section 21(1) of the *Interpretation Act 1987* as including "an individual, a corporation and a body

corporate or politic”.

- b. Under Section 220(1) of the *Local Government Act 1993* (**the Act**), a council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State. Consequently, councils fall within the definition of a “principal” for the purposes of the POA Act and can give powers of attorney to individuals.
- c. Section 377(1) of the Act provides that a council may, by resolution, delegate to its general manager or any other person or body, any functions of the council other than the functions listed in that Section.
- d. The functions listed in Section 377(1) of the Act must only be exercised by a council. In the exercise of these functions, such as the sale and purchase of land or the borrowing of money, ordinarily a council enters into a contract, agreement or loan facility by affixing its seal to the relevant document in the manner required by clause 400 of the *Local Government (General) Regulation 2005* (**the Regulation**).
- e. There is no reason why, in the exercise of its non-delegable functions under Section 377(1) of the Act, a council cannot resolve that the signing of documents which give effect to the resolution be effected by its general manager. Making such a resolution does not result in a delegation of non-delegable functions, but simply provides for a more efficient process for the signing of relevant documents than by affixing the seal of the Council to those documents.
- f. Additionally, in circumstances where a council, by resolution, delegates functions (other than those functions listed in Section 377(1) of the Act – such as the delegable functions of creating easements or leases), to its general manager or any other officer of the council, a council can resolve that the signing of documents which give effect to the delegated functions be done under power of attorney.

2. Operation of a Power of Attorney

- a. The POA Act permits the grant of:
 - (i) prescribed powers of attorney
 - (ii) irrevocable powers of attorney
 - (iii) enduring powers of attorney
- b. If the Council resolves to give a power of attorney to the General Manager, the power of attorney should be a prescribed power of attorney and not an irrevocable or enduring power of attorney.
- c. Irrevocable powers of attorney remain effective despite, among other things the bankruptcy, mental incapacity or death of the principal. Enduring powers of attorney remain effective, even if the principal lacks capacity through loss of mental capacity, after execution of the power of attorney. Such powers of attorney are not relevant where the principal is a body politic such as a council.
- d. Although, the POA Act does not expressly empower a principal to terminate,

revoke or suspend a prescribed power of attorney, it is clear from Division 2 of Part 6 of the POA Act and from Schedule 1 of the POA Act that a principal can terminate or revoke a prescribed power of attorney. A prescribed power of attorney terminates on the death or mental incapacity of the attorney and may be revoked by the principal at any time by written notice. The Council will be free to terminate, revoke or suspend a prescribed power of attorney at any time after giving a prescribed power of attorney to the General Manager.

- e. If a power of attorney is terminated, revoked or suspended, an attorney who does an act that would have been within the scope of the power without knowing of the termination or suspension is entitled to rely on the power of attorney in relation to that act in the same manner and to the same extent as if the power had not been terminated or suspended: Section 47 of the POA Act.
- f. However, an attorney under a prescribed power of attorney that is terminated must not do any act or thing under the prescribed power of attorney if the attorney knows of the termination at the time when the attorney does the act or thing: Section 49(1) of the POA Act. An attorney under a prescribed power of attorney must not do any act or thing under the prescribed power of attorney where the authority to do that act or thing has been suspended if the attorney knows of the suspension at the time when the attorney does the act or thing: Section 49(2) of the POA Act. The maximum penalty for breach of these Sections is five years' imprisonment.
- g. Powers of attorney may be registered, but must be registered for any dealings affecting land: see Section 52 of the POA Act.

If any registered power of attorney is terminated, such termination can be registered.

109/17 RESOLVED (*carried unanimously*)

1. That Council delegate to Bruce Gordon Macdonnell, Acting General Manager, a prescribed power of attorney in accordance with the General Power of Attorney attached to the report.
2. That Council authorise the Mayor and Deputy Mayor to execute the General Power of Attorney under Common Seal of Council.
3. That the Power of Attorney for the Acting General Manager be referred to Council's lawyers for lodgement.
4. That the current General Manager's Power of Attorney be referred to Council's lawyers for termination.
5. That the Acting General Manager report to Council every three months on all documents signed under the prescribed Power of Attorney.

(Moved Councillor Heather Crichton/Seconded Deputy Mayor Lesley Furneaux-Cook)

(ITEM 79/17) ADOPTION - DRAFT PERMIT PARKING SCHEME POLICY

File No: 17/45287

Summary

A review of Council's Permit Parking Scheme Policy has been undertaken in relation to providing residents with a second Visitor Permit without the need to submit an additional application form.

110/17 RESOLVED *(carried unanimously)*

That Council adopt the Draft Permit Parking Scheme Policy.

(Moved Councillor George Mannah/Seconded Councillor Ernest Chan)

(ITEM 80/17) ADOPTION - DRAFT CAR SHARE POLICY - FOLLOWING PUBLIC EXHIBITION

File No: 17/44478

Summary

Council resolved at its Meeting of 23 May 2017 to approve the Draft Car Share Policy in principle and to place it on public exhibition for comment. Car Sharing is a convenient and cost-effective alternative to private car ownership. It complements sustainable transport modes such as walking, cycling and public transport, thereby reducing private vehicle use and parking demand, by enabling residents and local businesses convenient access to vehicles for short periods.

111/17 RESOLVED *(carried unanimously)*

That Council adopt the Draft Car Share Policy and fees and that the new information be incorporated into Council's Schedule of Fees and Charges for the 2017-2018 Financial Year.

(Moved Deputy Mayor Lesley Furneaux-Cook/Seconded Councillor Heather Crichton)

REPORTS OF COMMITTEES

(ITEM RC4/17) MINUTES OF THE OCTOBER 2017 BURWOOD LOCAL TRAFFIC COMMITTEE

File No: 17/47890

Summary

Attached are the Minutes of the Burwood Local Traffic Committee from its meeting of October 2017. The Minutes are hereby submitted to the Ordinary Council Meeting for consideration and adoption by Council.

112/17 RESOLVED *(carried unanimously)*

That the minutes of the Burwood Local Traffic Committee of October 2017 be noted and the recommendations of the Committee as detailed below be adopted as a resolution of the Council.

(ITEM LTC17/17) WENTWORTH ROAD BURWOOD - PROPOSED PEDESTRIAN CROSSING

Recommendations

1. That Council install a pedestrian crossing fronting 88 Wentworth Road Burwood, including a kerb extension on the eastern side and all relevant signs and line

marking per the plan attached in the report.

2. That Council convert the intersection of Russell Street and Wentworth Road from a GIVE WAY control to a STOP control with all associated signs and linemarkings.

(ITEM LTC18/17) THE BOULEVARDE, STRATHFIELD - EXTENTION OF KISS & RIDE ZONE

Recommendation

That Council approve the installation of an 18 metre 'Kiss & Ride' zone on the eastern side of The Boulevarde, between Parnell Street and the roundabout adjacent to Strathfield Train Station, from 8.00am to 9.00am and 5.00pm to 6.00pm, Monday to Friday.

(ITEM LTC19/17) PAISLEY ROAD CROYDON - CHANGES TO PARKING SPACES

Recommendation

That Council approves the following parking bay changes on Paisley Road Croydon as part of the Croydon Train Station Easy Access Upgrade project, as per the plan attached to the report.

(ITEM LTC20/17) KING EDWARD STREET, CROYDON - PARKING RESTRICTIONS

Recommendations

1. That Council approve the removal of the unrestricted parking area on the eastern side of King Edward Street immediately south of Wychbury Avenue and the extension of adjacent '2P Parking' restrictions.
2. That Council monitor the impact of the changes to parking restrictions in King Edward Street to ensure no adverse effect on parking in adjacent streets.

(ITEM LTC21/17) KING STREET, ENFIELD - ADDITIONAL DISABLED PARKING SPACE

Recommendation

1. That Council approve the installation of a six metre long 'Disabled Parking' space next to the existing space with associated signage on the northern side of King Street, adjacent to Saint Thomas' Anglican Church, as per the above sketch plan.
2. That Council approve the new space to be restricted from 9am to 6pm on Sunday only.

(ITEM LTC22/17) CHURCH STREET, BURWOOD - NO PARKING RESTRICTIONS

Recommendation

That Council approve the installation of 'No Parking' restrictions along the entire northern side of Church Street Burwood, between Burwood Road and Shaftesbury Road, for a length of 270 metres.

(ITEM LTC23/17) 29 FITZROY STREET, CROYDON - REQUEST FOR DISABILITY PARKING BAY

Recommendation

That Council support the request to install a disabled parking bay in front of 29 Fitzroy Street Croydon based on the availability of on-street and off-street parking.

(Moved Councillor George Mannah/Seconded Councillor Ernest Chan)

INFORMATION ITEMS

(ITEM IN27/17) ANSWERS TO QUESTIONS WITHOUT NOTICE - COUNCIL MEETING OF 25 JULY 2017

File No: 17/42072

Summary

At the Council Meeting of 25 July 2017 the following Questions without Notice (QWN) were submitted by Councillors. Council Officers responded to the QWN and Councillors were notified on 7 September 2017 of the outcome of the QWN.

These are now submitted as part of the Council Agenda for Public Notification.

QUESTIONS WITHOUT NOTICE – COUNCIL MEETING OF 25 JULY 2017	
Question	Response
<p><u>Councillor Justin Taunton</u></p> <p>Question 1</p> <p>Can I have an update the on CCTV financial funding from the Hon. Craig Laundy MP, Federal Member for Reid?</p>	<p><u>Senior Manager Compliance</u></p> <p>Burwood Council did not receive any funding for CCTV from the recent grant review despite a detailed application.</p>
<p><u>Councillor Justin Taunton</u></p> <p>Question 2</p> <p>In relation to financial grants for street scapes and town centre beautification programs, from State and Federal Governments, can Council enquire as to what grants are available?</p>	<p><u>Senior Manager Assets and Design</u></p> <p>Council's Landscape and Urban Design Team monitor grant opportunities and will apply for streetscape and town centre beautification grant as they become available. The next round of the Greater Sydney Commission's Metropolitan Greenspace Program grants is expected to be announced in March 2018.</p>
<p><u>Councillor Justin Taunton</u></p> <p>Question 3</p> <p>Does Council work together with groups like rotary with its Graffiti removal program?</p>	<p><u>Acting Senior Manager Works and Operations</u></p> <p>Council does not work with any other organisation to remove Graffiti. Council is invited annually to participate in State Government 'Graffiti Removal Day'. Although the annual invitation is</p>

	<p>always considered Council usually declines due to the year-round approach taken to manage graffiti.</p> <p>Council invests significant resources in the removal of graffiti through a multi-faceted program of reactive and proactive responses to graffiti vandalism under the Graffiti Management Plan. As a result of this significant investment Council does not have additional resources to contribute to the upcoming 'Graffiti Removal Day' this year, however, we do support the program by promoting the event on Council's Website.</p>
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No Decision – Information Item Only

(ITEM IN28/17) MAYORAL DISCRETIONARY GRANTS - SMALL DONATIONS MADE FOR THE PERIOD ENDING 30 JUNE 2017

File No: 17/31316

Summary

The Discretionary Grants – Small Donations Policy was reviewed by Council and adopted on 25 June 2013. As part of the Policy requirements a list of donations made is to be reported to Council on a quarterly basis. The attached table details the Discretionary Grants for the June quarter ending 2017.

No Decision – Information Item Only

(ITEM IN29/17) POWER OF ATTORNEY FOR THE GENERAL MANAGER - MAY TO JULY 2017

File No: 17/41035

Summary

At the Council Meeting of 28 June 2011, Council resolved to delegate to Michael Gerard McMahon, General Manager, a prescribed power of attorney and that the General Manager report to Council every three months on all documents signed under the prescribed power of attorney.

Council notes that the following documents were signed under power of attorney between May to July 2017.

No Decision – Information Item Only

(ITEM IN30/17) PETITIONS

File No: 17/45044

Summary

Petitions received are reported to Council on a monthly basis. Council has received four petitions since the last Council Meeting.

Date Received	Petition Subject	No. of Households and Businesses within the LGA	No. of Households outside the LGA	Responsible Council Division
25 September 2017	Traffic Improvement in Enfield	79	8	Land, Infrastructure and Environment
10 August 2017	BD.2017.085 - 2 George Street Burwood	7		Land, Infrastructure and Environment
10 July 2017	Clarence and Church Streets Burwood inclusion in transition zone	35		Land, Infrastructure and Environment
10 October 2017	BD.2017.053 – 197-199a Burwood Road Burwood	13		Land, Infrastructure and Environment

Comments

That Council notes that the Petition has been referred to the appropriate Council Officers for attention.

No Decision – Information Item Only

MAYORAL MINUTES

(ITEM MM9/17) PLANNING PROPOSAL FOR THE FORMER VISION AUSTRALIA SITE 4 MITCHELL STREET ENFIELD

Trim No. 17/48254

Summary

A Planning Proposal was submitted to Council in July 2017 from a company who has purchased the premises at 4 Mitchell Street Enfield, formerly owned by Vision Australia.

The proposal seeks to increase the maximum building height from 8.5 metres to 21 metres and the maximum Floor Space Ratio (FSR) from 0.85:1 to 1.4:1, to facilitate the construction of a mix of town houses and apartments ranging from two to six storeys.

I have concerns over the amenity impacts of the proposal on residences facing Burwood Road Enfield, the traffic impacts on Baker Street Enfield and Llangollan Avenue Enfield and the visual impacts on Henley Park.

Due to these concerns and also given the history of the proposal for the nearby Flower

Power site, it would be appropriate to engage a consultant to carry out an independent assessment of the subject proposal.

113/17 RESOLVED *(carried unanimously)*

1. The General Manager engage a specialist consultant to assist in the assessment of the Planning Proposal for the former Vision Australia site.
2. The assessment should focus on traffic, bulk, scale, amenity impacts and impacts on residents fronting Burwood Road Enfield.

(ITEM MM10/17) CLAUSE 10 TERMINATION OF THE CONTRACT OF EMPLOYMENT THE GENERAL MANAGER'S EMPLOYMENT WITH COUNCIL

Trim No. 17/49324

Summary

At the Council Meeting of 26 September 2017, Council resolved unanimously that in accordance with Clause 10 Termination of the Contract of Employment the General Manager's employment with Council will terminate and cease at the close of business on Friday 24 November 2017.

It was also resolved unanimously that Bruce Macdonnell – Deputy General Manager - Land Infrastructure and Environment be appointed as Acting General Manager effective from 25 November 2017 for a period of up to 12 months.

114/17 RESOLVED *(carried unanimously)*

1. In order to allow the General Manager to preside over the Council Meeting on 28 November 2017 and to enable the Councillors and Council Officers to have a farewell function with him after the Council Meeting, I propose that Council resolve to extend the General Manager's contract of employment until the close of business Wednesday 29 November 2017.
2. Bruce Macdonnell – Deputy General Manager – Land Infrastructure and Environment be appointed as Acting General Manager effective from 30 November 2017 for a period of up to 12 months.

(ITEM MM11/17) PROPOSED SILVER SPONSORING OF ST MERKORIOUS CHARITY DAY

Trim No. 17/49324

Summary

I have received a request for Council to support a local charity in raising funds for those in need. St Merkorious Charity prepares and delivers over 70,000 meals a year to the homeless and disadvantaged in Sydney.

They have one big annual charity event and are holding a "Day at the Bay", a fun day for the family on 5 November 2017 at Leichhardt Oval.

Council has been requested to be a Silver Sponsor of the Event which is \$3000.

I support this event and Charity as some of Burwood Council's residents are offered support in this way.

115/17 RESOLVED (*carried unanimously*)

Burwood Council support the "Day at the Bay" event by becoming a Silver Sponsor to the amount of \$3000.

QUESTIONS WITHOUT NOTICE

The following Questions Without Notice were submitted at the Meeting:

Cr Furneaux-Cook

Question 1:

The developer of the Wynne/Belmore Streets site continues to breach operating hours (cranes and trucks) both am and pm despite fines:

1. Can/when do the Law Enforcement Officers patrol this area?
2. Are the fines enough to cause the developer to cease work?
3. Can Council stop the developer after a continued none compliance?

Question: 2

When residents are given a parking fines and wish to challenge it, what is the process?

Cr Joseph Del Duca

Question: 1

In the past term of Council (2012-2017):

1. How many Voluntary Planning Agreement (VPA) requests did Burwood Council receive?
2. How many of these VAPs, did the Council support and how many did they reject?

Question: 2

In the past term of Council (2012-2017) how much revenue did Burwood Council receive from the VPAs?

Question: 3

Can Councillors be provided with a detailed breakdown of exactly what revenue was received by Burwood Council from VPAs in the last term (2012-2017) and what the funds were spent on i.e. what specific projects?

This concluded the business of the meeting and Council rose at 8.10 pm.

Confirmed this 28 November 2017.

MAYOR

GENERAL MANAGER