

SUPPLEMENTARY AGENDA

Notice is hereby given that an Ordinary Meeting of Council will be held at Mona Vale Memorial Hall on

Wednesday 26 April 2017

Beginning at 6.30pm for the purpose of considering and determining matters included in this agenda.



Mark Ferguson
General Manager

Issued: 26/04/2017

OUR VALUES

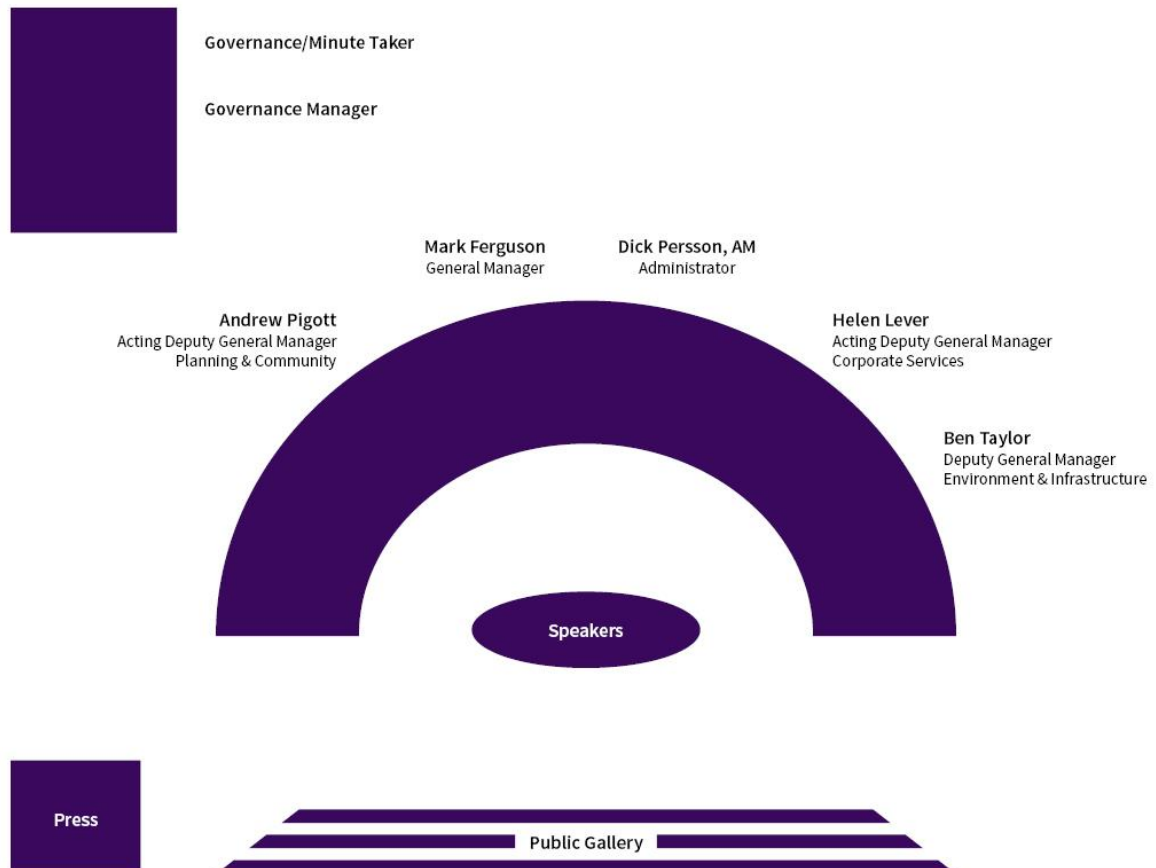
Respect

Empowerment

Service

Wellbeing

Equity



**Agenda for an Ordinary Meeting of Council
to be held on Wednesday 26 April 2017
at Mona Vale Memorial Hall
Commencing at 6.30pm**

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6.0 GENERAL MANAGER'S REPORTS

ITEM 6.1	MANLY OVAL PROJECT AND WHISTLER STREET PROJECT REVIEWS
REPORTING MANAGER	GENERAL MANAGER
TRIM FILE REF	2017/113988
ATTACHMENTS	1 ↓ Review Report- Ernst & Young 2 ↓ Review Report - Value Network

EXECUTIVE SUMMARY

PURPOSE

To update Council on the public release of the reviews of the Manly Oval project and the Whistler Street project.

SUMMARY

Following resolutions at an Extraordinary Meeting of the former Manly Council on 12 April 2016, Manly Council executed:

- a) A Development Deed dated 26 April 2016 with Abergeldie Contractors Pty Ltd (Abergeldie) for the development of a carpark under Manly Oval (Manly Oval project); and
- b) A Development Deed dated 27 April 2016 with Built Development (Manly) Pty Ltd (Built) and Athas Holdings Pty Ltd (Athas) for the redevelopment of the existing Whistler Street carpark (Whistler Street project).

At the first meeting of Northern Beaches Council on 19 May 2016, the Administrator undertook to review the Manly Oval project and the Whistler Street project in light of community concerns.

The reviews were completed and reports on the reviews were prepared by Value Network and Ernst & Young (Review Reports).

A report on the Review Reports was considered at the Council meeting of 23 August 2016. At this meeting, Council resolved to, among other things:

1. Terminate the Development Deeds with Abergeldie and with Built and Athas;
2. Treat the Review Reports as confidential because they are commercial in confidence and relate to matters specified in section 10A(2) of the *Local Government Act 1993*; and
3. Upload the Review Reports to Council's website as soon as possible following completion of the matters in 1 above.

Council and Abergeldie have reached agreement to terminate the Development Deed for the Manly Oval project.

On 15 November 2016, Council provided notice of termination of the Development Deed for the Whistler Street project to Built and Athas. On 25 November 2016, Built and Athas provided to Council a notice under the Development Deed disputing the validity of the termination. Council is holding without prejudice negotiations with Built and Athas regarding the Whistler Street project to see if there is any prospect of that Project proceeding on some basis acceptable to Council.

Members of the community have expressed significant interest in the Review Reports and whether they will be publicly released. The *Government Information (Public Access) Act 2009* authorises the proactive release of government information.

RECOMMENDATION OF GENERAL MANAGER

That Council note that the reports prepared by Ernst & Young dated 19 August 2016 and Value Network dated 18 August 2016 on the Manly Oval project and the Whistler Street project were published with appropriate redactions on Council's website at about noon on 26 April 2017.

REPORT

BACKGROUND

General

At an Extraordinary Meeting of the former Manly Council on 12 April 2016, Manly Council resolved in confidential session to accept tenders for the development of a carpark under Manly Oval (Manly Oval project) and the redevelopment of the existing Whistler Street carpark (Whistler Street project).

Following the Extraordinary Meeting, Manly Council executed:

- a) A Development Deed dated 26 April 2016 with Abergeldie Contractors Pty Ltd (Abergeldie) for the Manly Oval project; and
- b) A Development Deed dated 27 April 2016 with Built Development (Manly) Pty Ltd (Built) and Athas Holdings Pty Ltd (Athas) for the Whistler Street project.

At the first meeting of Northern Beaches Council on 19 May 2016, the Administrator undertook to review the Manly Oval project and the Whistler Street project in light of community concerns.

Council's Deputy General Manager Corporate Services was requested to facilitate an independent review of the projects. Value Network and Ernst & Young were subsequently engaged to conduct reviews.

The reviews were completed and reports on the reviews were prepared by Value Network and Ernst & Young (Review Reports).

Council meeting of 23 August 2016

The Review Reports were presented to Council's meeting of 23 August 2016. At the meeting, Council resolved as follows:

"074/16 RESOLVED

D Persson

That Council:

- A. *Accept the findings made by Value Network and Ernst & Young in their independent reviews into the viability of the Manly Oval and Whistler Street Carparks;*
- B. *Terminates the Development Deeds:*
 - i) *with Abergeldie Contractors Pty Ltd for the Manly Oval Carpark (dated 26 April 2016 for the Manly Oval Carpark); and*
 - ii) *with Built Development (Manly) Pty Ltd and Athas Holdings Pty Ltd (dated 27 April 2016 for the Whistler Street Redevelopment);*
- C. *Treats Confidential Report 15.3 for the Manly Oval and Whistler Street Carparks Review, and the attachments therein, as confidential because they are commercial in confidence and relate to matters specified in section 10A(2) of the Local Government Act 1993;*
- D. *Uploads to the website the reports by Value Network and Ernst & Young as soon as possible following completion of Item B above;*
- E. *Remains committed to pursuing the overall vision of the Manly 2015 Masterplan that seeks to re-energize the Manly CBD; and*

- F. Delegate authority to the General Manager to do all things necessary to give effect to the above."*

Council meeting of 31 January 2017

Matters concerning the Manly Oval project and the Whistler Street project were considered further at the Council meeting of 31 January 2017.

With respect to Abergeldie, the report to Council stated:

- Council and Abergeldie have reached agreement to terminate the Development Deed for the Manly Oval project.
- The termination of the Development Deed in no way reflects adversely on the good conduct and performance of Abergeldie or its partners during the development of the Manly Oval project.

With respect to Built and Athas, the report to Council stated, among other things:

- Following the Council resolution on 23 August 2016, Council representatives met with representatives of Built and Athas on a without prejudice basis. On 15 November 2016, Council provided notice of termination of the Development Deed to Built and Athas. On 25 November 2016, Built and Athas provided to Council a notice under the Development Deed disputing the validity of the termination (Dispute).
- Council, Built and Athas propose to hold negotiations regarding the Whistler Street project and the disputed termination, without prejudice to their legal rights. It is proposed that the negotiations would be undertaken pursuant to a proposed Negotiations Deed.
- The proposed Negotiations Deed would facilitate the without prejudice negotiations between the parties, with an aim, without obligation:
 - a) To agree on the form of a project for the redevelopment of the Whistler Street site on terms that are acceptable to the parties; and
 - b) To resolve the Dispute.

At the meeting of 31 January 2017, Council resolved as follows:

"004/17 RESOLVED

D Persson

That:

- A. Council note the status of the Development Deeds; and*
- B. the General Manager report to Council on progress in respect of the proposed Negotiations Deed with Built Development (Manly) Pty Ltd and Athas Holdings Pty Ltd in or before August 2017".*

The Negotiations Deed has been executed and negotiations are being undertaken, with oversight by a probity advisor.

Community interest in the Review Reports

Members of the community have expressed significant interest in the Review Reports. Council has received queries from members of the community regarding whether and when the Review Reports will be publicly released.

Given the various issues involved, the consideration regarding the potential release of the Review Reports has taken time. Consultation with various third parties has been undertaken and approval to release the reports has been sought from the authors of the reports.

Council's Administrator has requested that a report on the Review Reports be provided to this meeting.

The *Government Information (Public Access) Act 2009* (Act) seeks to facilitate public access to government information. Section 7 authorises the proactive release of government information.

The public interest considerations in favour of disclosure of the Review Reports include:

- There is a general public interest in favour of the disclosure of government information;
- There has been significant community interest in the Manly Oval project and the Whistler Street project;
- Disclosure of the information could reasonably be expected to promote open discussion of Council's affairs, enhance government accountability and contribute to positive and informed debate on issues of public importance;
- Disclosure of the information could reasonably be expected to inform the public about the operations of Council.

In this case, consideration has been given to whether Council can facilitate public access to the information in the Review Reports by suitable redactions if inclusion of such matters would otherwise result in there being an overriding public interest against disclosure of the Review Reports.

It has been decided that the Review Reports, with suitable redactions, should be made publicly available through publication on Council's website pursuant to section 7 of the Act. The Review Reports have now been published on Council's website and are also attachments to this report.

CONSULTATION

Consultation with various potentially affected parties has been conducted.

TIMING

The Review Reports have been published on Council's website.

FINANCIAL IMPACT

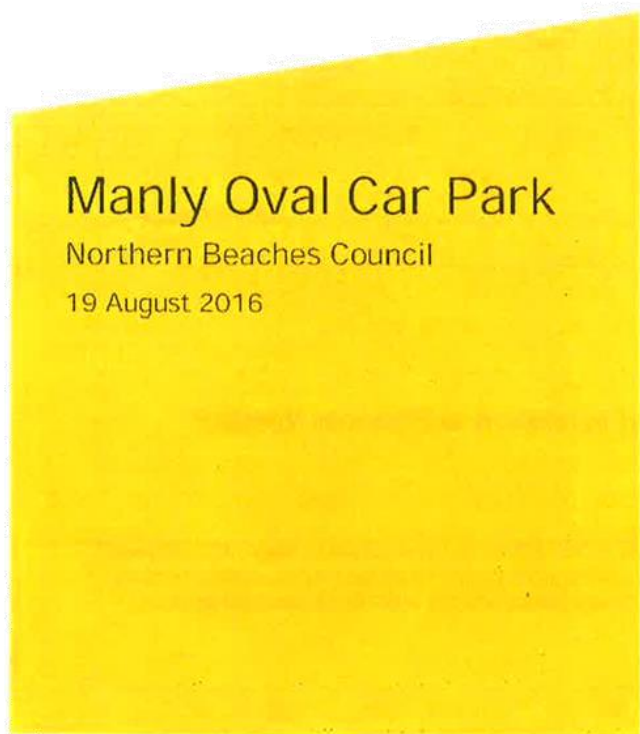
The release of the Review Reports by publishing them on Council's website would not incur any material cost.

SOCIAL IMPACT

Members of the community have sought the release of the Review Reports.

ENVIRONMENTAL IMPACT

Nil





Mark Ferguson
General Manager
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

19 August 2016

Manly Oval Car Park - Assessment in relation to Financial Viability

Dear Mr Ferguson,

In accordance with our contract dated 22 June 2016, please find enclosed our report (the "Report") in relation to our assessment of the financial viability work prepared by the former Manly Council in relation to the proposed Manly Oval Car Park development and the Whistler Street Car Park site.

Scope of our work

The scope of work addressed in our Report is:

- ▶ In relation to the financial and commercial analysis produced, consideration of the financial modelling completed to date, limited to considering results and the links to assumptions and source data for inputs;
- ▶ Assessment of construction risk and contingencies, and the approach to identifying and evaluating project risks generally; and
- ▶ Consideration of any broader economic arguments put forward to support the feasibility of the Car Park development, including any expected economic benefits, and the relationship to the Whistler Street Car Park lease.

Our scope for work excludes:

- ▶ Audit of any financial model or model assumptions, or restating of inputs or re-performing of expenditure and revenue calculations;
- ▶ Considering funding for the Car Park development, including consideration of funding which may be raised through other initiatives in the *Manly2015 Masterplan*; and
- ▶ Assessment of the tender process, tender evaluation or planning approvals.

Restrictions on using this Report

The Report should be read in its entirety including this cover letter, the applicable scope of the work and any limitations. A reference to the Report includes any part of the Report. No further work has been undertaken by Ernst & Young since the date of the Report to update it.

Ernst & Young has prepared the Report for the benefit of Northern Beaches Council in their assessment of the proposed Manly Oval Car Park development pursuant to our contract. Ernst & Young has considered only the interests of Northern Beaches Council. Ernst & Young has not been engaged to act, and has not acted, as advisor to any other party. Accordingly, Ernst & Young makes no representations as to the appropriateness, accuracy or completeness of the Report for any other party's purposes.



No reliance may be placed upon the Report or any of its contents by any recipient of the Report for any purpose and any party receiving a copy of the Report must make and rely on their own enquiries in relation to the issues to which the Report relates, the contents of the Report and all matters arising from or relating to or in any way connected with the Report or its contents.

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Any commercial decisions taken by the Northern Beaches Council are not within the scope of our duty of care and in making such decisions you should take into account the limitations of the scope of our work and other factors, commercial and otherwise, of which you should be aware of from the sources other than our work.

No claim or demand or any actions or proceedings may be brought against Ernst & Young arising from or connected with the contents of the Report or the provision of the Report to any party. Ernst & Young will be released and forever discharged from any such claims, demands, actions or proceedings.

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Ernst & Young's liability is limited by a scheme approved under Professional Standards Legislation.

Basis of Our Work

Our Report is based on information provided to us by Northern Beaches Council and other publicly available information available to us within the timeframe for preparation of the Report.

We have not independently verified, or accept any responsibility or liability for independently verifying, any such information nor do we make any representation as to the accuracy or completeness of the information. Our work does not constitute an audit of the proposed Manly Oval Car Park development. We accept no liability for any loss or damage, which may result from your reliance on any research, analyses or information so supplied.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Darrin Grimsey', is written over a light blue horizontal line.

Darrin Grimsey
Partner

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1. Executive Summary

EY have considered the work prepared to date by the former Manly Council in relation to the proposed Manly Oval Car Park development ("MOCP"). This included considering work prepared on the financial viability of MOCP and the valuation of the Whistler Street Car Park site.

MOCP and the potential sale of Whistler Street Car Park are referred to collectively as the Project.

We prepared our findings and recommendations after reading existing documents relating to the Project as provided by Northern Beaches Council ("NBC"), including technical studies, financial models, demand studies, risk assessments, and economic benefit assessments. The documents presented and the process followed was compared and contrasted with best practice project development guidelines¹ for local government ("the Guidelines") and with our previous experience advising on similar projects. We also discussed the Project with management of NBC.

EY have also read the signed development deed for the Whistler Street Car Park ("Development Deed") from a development perspective to comment on whether it is within market parameters.

1.1 Findings

Financial viability of MOCP:

- ▶ The work completed by NBC to date is extensive in its parts but as a whole does not constitute a cohesive and current feasibility study or business case as described in the Guidelines. In particular, the work to date does not adequately demonstrate analysis supporting a proposition that investment in car parking is a superior means of supporting the economic goals in Manly Council's strategic plans. Further, it does not demonstrate support for a proposition that MOCP is the most economically efficient investment in car parking. Analysis for the most part has been completed in 2013 and critical components have not been updated since, and therefore may not reflect current consumer behaviour and inherent risks.
- ▶ Our work has considered Manly Council's Capital Expenditure Review submission for MOCP, which was prepared in December 2013. This submission is the most comprehensive summary of the work completed by Manly Council: it addresses the strategic context for MOCP, discusses the potential benefits of MOCP, addresses community and stakeholder consultation, and discusses the results of modelling of both financial viability and affordability of MOCP. However, from the perspective of best practice for an infrastructure project business case, the submission is limited particularly in relation to defining a rationale for investment, integrating risk analysis into the financial appraisal, and establishing the best value for money procurement method.
- ▶ Work provided to us by NBC does indicate that, for the assumptions used, revenues from MOCP could exceed initial and ongoing costs. Further, modelling does include extensive scenario analysis to test results. However, there are limits to this work: growth rates per annum in revenue from usage are not altered in any of the 18 scenarios modelled, and the modelling inputs are not integrated with a detailed quantitative risk analysis. That is, work provided does not demonstrate that the breadth of the scenario analysis - especially on the 'downside' - matches potential variation in financial outcomes given the risks inherent in MOCP. Risks have been given limited qualitative consideration, and without quantitative analysis. Ground condition and revenue risks are discussed further in section 3.2.4.
- ▶ Assumptions used in modelling (particularly the assumptions relating to investment horizon and turnover growth) are not aligned with our expectations for demonstrating robust and sustainable financial viability. The rationale for selecting a preferred discount rate is also not provided.

¹ Major Projects Guidance for Local Government, 2014, prepared for Australian Local Government Association
<http://www.lgprofessionalsaustralia.org.au/major-projects-guidance.html>

- ▶ A cohesive procurement strategy has not been completed. The Capital Expenditure Review submission asserts that a council-financed approach is viable and private sector financed approaches are not, which summarises prior commercial work prepared for Manly Council. However, from the perspective of best practice for an infrastructure project business case, this work is limited. In particular, it is a narrow consideration of options and fused with consideration of financial viability, and the assessment methodology is not consistent with the Guidelines.

Valuation of the Whistler Street Car Park:

- ▶ A financial appraisal of the value of the Whistler Street Car Park site prepared for Manly Council in November 2013 is considered to be below our anticipated current market range for the site.
- ▶ Payments to NBC proposed through the Development Deed are above our anticipated current market range. However the timing of the works in kind and associated payments are somewhat unknown and appear at risk. The Development Deed suggests works on the site will be completed by September 2019. However, there appears to be little incentive in the Development Deed for compliance with this schedule.

1.2 Recommendations

We recommend that NBC consider the steps below before proceeding with the Project:

- ▶ Completing a full business case as described in the Guidelines including an options assessment in the form described in section 3.3.1 of this Report. A comprehensive benefit/cost analysis should be completed, incorporating all appropriate costs (including risk).
- ▶ Collating and consolidating the financial analysis in digital form (a financial model), and running the analysis with up to date assumptions, which have been tested against benchmarks and the market to ensure that they are reasonable, defensible, and provide a robust basis to evaluate the Project.
- ▶ Undertaking a full risk analysis for the Project, using the risk matrix prepared to date as a starting point. Risks that support both the assessment of scope options and the forecasts of financial impacts should be quantified and incorporated into the financial modelling. Key risks identified should be quantified using technical analysis, and included in cost estimates.
- ▶ The preferred procurement method should be developed in accordance with best practice that includes an analysis of the optimal risk allocation between NBC and contracted parties. The preferred method will in turn drive the approach to financing the Project. The procurement method work should be extended – as relevant – to include commercial principles for contracting.
- ▶ Subject to advice from others (including legal advice), consider suspending the current procurement and allocating resources to complete the work identified above.

Figure 1, illustrates the work done to date and the gaps with best practice described in the Guidelines.

Figure 1: Gap analysis with best practice

Master Plan	Feasibility Study	Business Case	Procurement
<p>The Many Masterplan from 2015 articulates a vision for the Many CBD area. Project objectives for MOCIP at various identified locations are aligned with the at strategic plan.</p> <p>Strategic alignment to vision and mission statement</p> <p>A vision for potential development of the area</p> <p>Strategies to manage development and change over time</p> <p>Character and quality management planning</p> <p>Community consultation</p> <p>Governance arrangements</p> <p>Financial, labour, and budget</p>	<p>A comprehensive feasibility study does not appear to have been completed. Significant work has been completed but is not consolidated.</p> <p>Strategic alignment analysis</p> <p>Cost estimates</p> <p>Financial and quality management</p> <p>Demand modelling for assets</p> <p>Revenue assumptions and preliminary impact of one</p> <p>Recommendation related to feasibility of the project</p> <p>Community consultation</p>	<p>Complete and cohesive business case has not been completed. A full cost / benefit calculation has not been completed.</p> <p>A clear to change "what if" scenario?</p> <p>Specific project objectives</p> <p>Benefit calculation at all levels</p> <p>Cost and benefit analysis (B/C Ratio)</p> <p>Detailed risk assessment (project based)</p> <p>Sustainability assessment</p> <p>Technical standards and regulatory requirements</p> <p>Stakeholder engagement</p> <p>Consultation/Communications Plan</p>	<p>Procurement strategy has not been documented and therefore the optimal procurement solution has not been demonstrated.</p> <p>Scope of procurement</p> <p>Procurement objectives</p> <p>Market capability and constraints analysis</p> <p>Publicly available documents</p> <p>Early start</p>
<p>Landmark impact plan outlined at a high level</p> <p>Infrastructure arrangements outlined at a high level</p> <p>Potential development of transport options including the development of a new road, bridge, and street</p> <p>Development of project objectives against the strategic objectives not observed</p> <p>Change and quality management plan not defined</p>	<p>Community of interest groups and consultation conducted from April 2015 for 6 months</p> <p>Demand modelling for assets provided to Many Council 2015</p> <p>Cost estimates completed 2015</p> <p>A range of strategic options have not been explored</p> <p>Revenue assumptions and cost estimates not fully integrated</p>	<p>Community of interest groups and consultation conducted from April 2015 for 6 months</p> <p>Some relevant consultation undertaken as part of the project</p> <p>Strategic alignment analysis of the MOCIP completed as part of the strategic review</p> <p>Low assessment conducted - potential to complete more quantitative assessment</p> <p>Investment case, business and cost-benefit analysis not completed</p> <p>Procurement options assessed from first principles not completed</p>	<p>Publicly available documents</p> <p>Procurement objectives not defined</p> <p>Market capability analysis not completed</p> <p>Publicly available documents</p> <p>Cost-benefit analysis not completed</p> <p>Community of interest groups and consultation conducted from April 2015 for 6 months</p>
<p>Project not aligned with strategic objectives</p> <p>Strategic objectives resulting in significant impact on the quality of the Council's many master plan</p>	<p>Other options considered to address strategic objectives, but are not evaluated as part of the feasibility study</p> <p>Revenue assumptions may not be reasonable, overstated low quality of life impact</p>	<p>A complete and cohesive business case has not been completed. Significant work has been completed but is not consolidated.</p> <p>Financial and quality management planning</p>	<p>Detailed procurement strategy not defined, completed</p> <p>The project procurement strategy is not optimal and may not deliver a value for money outcome</p>
<p>A business case should demonstrate how a set of project objectives align with Council's long-term vision and objectives. Objectives are essential for testing options.</p>	<p>A full options appraisal should be conducted. Risk assessments completed as part of the project for the Many Masterplan. Assumptions and cost estimates should be reviewed and their impact on the project should be determined and tested against the market.</p>	<p>A full business case should be completed which includes the financial and economic benefits and costs of the project.</p>	<p>A full procurement assessment from first principles should be completed, with clearly defined procurement objectives and with input from relevant stakeholders.</p>

Northern Beaches Council
Many Oval Car Park

2. Background and Context

2.1 Background

NBC, an amalgamation since 2016 of the former Warringah, Pittwater and Manly councils, has oversight over the *Manly Masterplan 2015* which recommends two main projects in the Manly area: the redevelopment of the Whistler Street Village Centre and Library site, and the design and construction of a 500 space underground carpark at Manly Oval, known as the MOCP.

A significant body of work has been completed between 2010 and 2014 to plan and test the viability of MOCP. Similarly, work has been completed on the sale and decommissioning of the current Whistler Street Car Park ("WSCP"). Funds from the sale of the WSCP are proposed to be used to fund the MOCP.

Since 2014, a market process has been carried out, and successful tenderers have been chosen.

NBC, now under the management of an administrator and Implementation Advisory Group, is the new proponent for the Project, and incoming management wishes to understand the business case for it including analysis completed on financial viability.

2.2 Purpose of this Report

The purpose of this Report is to assist management of NBC by providing findings on the work completed to date, and specifically, a recommendation on whether the work completed to date is aligned with best practice infrastructure project appraisal and constitutes a sufficiently robust and defensible case.

2.3 Our Approach

In accordance with our scope of work, we have undertaken the following:

- ▶ An assessment of documents provided by NBC including excerpts from financial models and demand studies, risk assessments, and economic benefit assessments;
- ▶ Meetings with management of NBC;
- ▶ Gap analysis referencing the Guidelines; and
- ▶ A discussion of our findings and recommendations with NBC and other advisors also engaged by NBC to review the Project.

In parallel with our work, we have considered the report developed by Value Networks titled *Manly Oval Car Park Review*. Our recommendations and findings are broadly aligned with this report, including following consideration of the information identified in it.

2.4 Limitations

In completing this Report, we have relied on documentation and information provided to us by NBC. We have completed our assessment on the assumption that this is a complete set of documentation, and have not held discussions with the providers of those documents.

We were not provided with all financial modelling prepared to date in electronic form. However we were provided with a net present value (NPV) analysis for the Project prepared by contractors to Manly Council, though this work is not dated. Consequently our findings on financial modelling relate to the results, assumptions and inputs in the NPV workbook. Findings are discussed in section 3.2.1. The financial modelling presented in the Capital Expenditure Review submission was not provided to us.

3. Findings and recommendations

3.1 Gap analysis on best practice

In order to determine the extent to which the Project has been assessed in accordance with the Guidelines, we conducted a gap analysis using the documentation for the Project. The Guidelines set a standard for the development and procurement lifecycle and is designed to be a tool to improve outcomes for selection and delivery of projects by local government.²

For the Project, key reference points in the Guidelines are:

- ▶ Consolidating development work into a business case;
- ▶ Determining the rationale for investment by defining the need for intervention given status quo; and
- ▶ Defining needs or problems, identifying benefits, and compiling different scope options prior to a rigorous testing of the merits of those options.

The practical outcome of following the Guidelines is the construction of a coherent body of work which pulls together all aspects of a project development process and effectively supports decision making. Best practice project development is crucial because it provides the strongest foundation to pursue a project that is most aligned to the needs and objectives articulated by local government, and enables identifying, understanding and managing project risk.

Our expectation with regard to financial modelling is that a cash flow model is developed for a discounted cash flow analysis of shortlisted scope options, and which uses up to date revenue, expenditure, and funding assumptions. Scenario modelling should be included to ensure a number of options are analysed, and sensitivity analysis used to stress-test results. Risks should be quantified through discounting or through simulation-based modelling techniques and added to costings.

Figure 1 on page Error! Bookmark not defined. outlines our gap analysis on areas where existing documentation does not adequately meet best practice. The following section expands on our key findings.

3.2 Financial viability

A number of documents have been provided by NBC in relation to the financial viability of the Project and our findings reflect our consideration of these documents.

3.2.1 Financial Model

The primary documents provided in relation to forecast financial impacts for the Project are Manly Council's Capital Expenditure Review submission dated 2013 and *NPV Summary of Business Cases for Discount Rates & Leasing of Whistler*.

The analysis calculates the net present values of forecast cash flows and includes a cost of financing in the calculations. In total 18 scenarios are explored: the following parameters are adjusted for each scenario:

- ▶ Car parking demand between pre-determined Low, Medium, and High levels. The levels provide a different starting demand, but in all cases annual growth is assumed to 5% per annum;
- ▶ Interest rates for a financing loan between [REDACTED] and [REDACTED];
- ▶ Discount rates (for the NPV calculation) between [REDACTED] and [REDACTED].

² More information about the Guidelines is available at <http://www.lgprofessionalsaustralia.org.au/major-projects-guidance.html>

A NPV is generally used as a proxy for the financial viability of a project, as it considers whether the cash flows of a project in aggregate are positive if discounted to account for the time value of money. The NPV figures calculated in some of the documents provided appear as negative values however our interpretation from statements in those documents is that negative values are inflows to Manly Council (and positive values are outflows). Consequently, the NPV results indicate that the Project is expected – given the assumptions used – to generate a positive value taking account of the timing of future cashflow.

The NPV of the Project is largely driven by revenues (both baseline starting amounts and the growth rate assumed), and capital expenditure. Operational expenditure has less of an impact, as operating costs for car parking assets tend to be low relative to capital costs, and there are low rates of operating expenditure growth in real terms.

The documents provided do not indicate which discount rate scenario should be preferred for this Project (but instead used a range of different rates). Given that the discount rate used has a significant effect on the NPV outcome, and that it is used to compare different options, it is crucial that an assessment of the appropriate discount rate is completed.

To inform its Capital Expenditure Review submission, Manly Council commissioned work in 2013 on the financial and commercial aspects of the Project. This work found that Manly Council could achieve a project (and equity) internal rate of return of [REDACTED] if it were to fund the Project internally. This finding assumed:

- ▶ a combined cost of funds (both equity and debt) of [REDACTED]
- ▶ a reduction in car spaces from 800 to 760;
- ▶ utilisation (the proportion of time that the car park is occupied by customers) of 30%; and
- ▶ an investment horizon of 50 years.

Given that most public sector debt tenors are between 10 and 20 years, and that the useful life of the car park is unlikely to be 50 years, this investment horizon is longer than we would consider appropriate. A shorter term would have a significant effect on any discounted cash flow results, and would potentially shift the NPV values from positive to negative. As a point of comparison, the WSCP was built in the late 1980s but is considered by Manly Council in the Capital Expenditure Review submission to be expensive to maintain, non-compliant with building code, and with limited fitness for purpose.

3.2.2 Other Issues

While documents provided indicate that other financial modelling was completed, it is not clear which assumptions – for car spaces, capital expenditure, and demand – have been applied to the analyses, and accordingly, we cannot compare results. Results appear to vary significantly between studies, which could indicate they are conducted on car park proposals of different scopes: we sighted scopes mentioning 460 to 800 spaces, and capital expenditure per car space varying between [REDACTED]. We were not able to determine the reasons for these variances because the electronic financial models or assumption books were unavailable.

Some assumptions used in the financial analysis completed appear to be inconsistent with what we have seen elsewhere and lack explanation or justification. For example, the work commissioned by Manly Council to inform the Capital Expenditure Review submission assumes a 3.5% growth rate in turnover per annum which is not commensurate with our previous experience with car park turnover rates. The assumed utilisation of the car park in the same review is 30%, which would suggest low demand. An outcome where ticket prices increase but simultaneously there is excess demand for spaces is counter-intuitive and the basis for this relationship is not demonstrated in the documents provided.

We also reviewed a spreadsheet which determined the balance sheet impact of the Project under certain own-source and grant funding scenarios; this spreadsheet looked at the Project from a pure

funding perspective, which is an important component of the framework for local government projects, but was not an assessment of its financial viability.

Assessing Project viability requires consideration of a number of different aspects, one of which is financial viability. There is a risk that because the Project has the potential to generate net revenues, Project viability will become conflated with that of financial viability. It is important to distinguish Project viability as a broader measure of whether the Project responds to an identified need for intervention to status quo, and whether the benefits are worth the risks.

3.2.3 Assessment

The financial analysis completed has not been documented to a level that allows us to determine the rationale for the use of certain assumptions, a number of which are not aligned with our expectations particularly those relating to investment horizon and turnover growth. The use of aggressive assumptions presents a risk that the Project will not achieve the revenues and returns modelled.

Analysis for the most part has been completed in 2013 and not updated since, and therefore may not reflect current expectations for consumer behaviour; it should be done again and updated. Other factors which might have changed include planning for public transport links or availability of public transport in the area, alternate road routing or traffic behaviour, the commissioning of alternative car park areas, and the physical development or otherwise of the area which the car park services. Analysis should use a consistent set of tested assumptions for the number of spaces, utilisation, capital expenditure, and turnover.

3.2.4 Risk

Work reviewed includes a risk assessment matrix completed in 2013 by Manly Council. This document outlines risk events, consequences, likelihoods, overall risk ratings, and considers control measures which could be used to mitigate the risk events. Investment planning, design, market, reputation, compliance, construction, environmental, and OH&S risks (among others) are considered.

This assessment is limited in its description and interrogation of Project risks. For example, we understand that there is a significant geotechnical risk due to the height of the water table in the Manly area, however, this is considered only briefly in the risk assessment even though Manly Council commissioned geotechnical work. This risk is worthy of further analysis or quantification: in our discussions with NBC and on our site visit, we note that the a supermarket car park near Manly Oval is required to pump out a large amount of ground water at significant cost. Documents provided suggest that the soil at the site may be high in sulphates, which would be expected to affect the cost of construction and may not have been considered in the cost planning to date. It is not clear that the financial analysis referred to in section 3.2 includes adequate costs and allowances to cover risks.

Risk also needs to be embedded more widely in the project development and options appraisal process. Potential risks that should be assessed from a longer term perspective include the risk of obsolescence and market competition (in the form of alternative parking).

Risk impacts have been qualitatively described through the risk assessment matrix, but have not been quantitatively valued. The discount rate forms a proxy of sorts for the quantification of market risk, but there has been limited work completed on determining the correct discount rate to be used. Other ways in which risk can be quantified included through precedent comparisons and computer aided stochastic simulation (e.g. Monte Carlo, @Risk). This will in turn change the cashflow profile of the Project and will affect the NPV, and potentially decrease NPV values.

There may also be unintentional consequences from relocating the WSCP from a commercial viability and community amenity standpoint. The WSCP is currently well-utilised and provides a convenient service. Moving the car park to the other side of the Manly city area may result in

access issues for patrons and reduce demand. The options appraisal process, including demand modelling, should demonstrate consideration of these impacts, and whether any of the other Project options better mitigate this risk.

We note that at present, most of the trips recorded at WSCP are short term stays, with a small proportion of regular or period based customers. There is a risk that short term, or irregular users change their habits because the location of parking changes. While Manly Council commissioned parking demand and utilisation work to forecast parking demand, the documents provided do not demonstrate that the low-medium-high scenarios identified above match the breadth of patronage and revenue risks, particularly on the 'down-side'.

Finally, a significant risk is that the sale of the WSCP site does not achieve the amount expected, and that funds to support the development of MOCP are not realised. Manly Council modelled these funding scenarios as part of the Capital Expenditure Review submission and asserted that it could still sustainably fund the Project. Documents provided indicate that NSW Treasury Corporation determined that Manly Council could borrow up to [REDACTED] for the Project: these estimates would need to be updated if further work is completed on future cash inflows.

3.2.5 Assessment

The existing risk analysis is insufficient to support work on the financial viability of the Project. Key risks which have the ability to compromise the construction, operation, and funding of the car park have not been considered adequately (e.g. ground water and utilisation), and the risk assessment process has not played a defining role in the options appraisal process. Risks that have been considered as a part of the qualitative risk assessment should be quantified and costed.

Given that much of the documented work on risk dates back to 2013, the risk assessment for the Project should be revisited, with much greater detail and scrutiny of key risks, which could add significantly to cost estimates. The options should also be considered again in light of the risk assessment, and risk should be a criterion for appraising options.

3.3 Procurement

Procurement should be used as a tool to achieve an appropriate allocation of risk, to achieve identified procurement objectives, and to consider the operating and funding model that delivers the best value for money.

Documentation provided did not adequately outline the procurement approach or framework, and there has been limited analysis completed to support the contracting model taken to market. There are a number of procurement options we would expect to be considered before a decision is made. For example, NBC could:

- ▶ Own, develop and operate MOCP, or integrate operations with its other car parks;
- ▶ Own and develop MOCP, and contract an operator to operate the car park; or
- ▶ Sell a fixed term concession to build and operate MOCP, with either no, part or full transfer of revenue risks, and with or without full private financing.

Each of these options has a very different risk profile, and the Guidelines suggest that NBC determines its procurement objectives prior to assessing options. Documents provided indicate that Manly Council considered two privately financed procurement methods in 2013, but they appear to have been evaluated from the perspective of financial viability only rather than a broader measure of value for money.

3.3.1 Options Assessment

An options assessment is a critical component of a business case. It should be used to test the rationale for intervention by a sponsor (NBC) and, if established, define a preferred option.

To test the rationale for intervention, a sponsor should identify a root problem, and identify the benefits arising from intervening. This logic becomes the basis for a sponsor to respond by identifying changes or assets which could address problems and realise benefits. The role of the sponsor should also be re-tested: that is, are the problems identified for the sponsor to address given definitions of its role?

Following an articulation of problems and benefits, a business case should describe a framework for identifying and evaluating scope options: the options may be investment in assets or implementation of non-asset changes such as regulatory change or grant funding. This approach to 'logic mapping' is consistent with best practice and is described in the Guidance.

- ▶ The documents provided do not demonstrate that this assessment has occurred for the Project.

Manly Council has prepared a strategic masterplan which identifies a number of goals. The considerations supporting these goals could be useful inputs for identifying root problems and benefits of intervention. However, strategic planning should be supplemented by the process described above, so that projects are clearly linked with specific and defined problems and benefits.

- ▶ This method reduces the risk that a sponsor ultimately pursues the wrong project - whether or not the project is financially onerous - and consequently fails to achieve its intended strategic outcomes.

For example, the root problems in relation this Project which could be identified through a logic mapping process include either:

- ▶ Insufficient levels of economic activity in the Manly CBD in future, or high risks to future activity;
- ▶ Excessive travel times through or around the Manly CBD;
- ▶ Insufficient use of public transport by local commuters; or
- ▶ High risks of physical loss or harm arising from controllable ground or sea water flows.

Assuming there are benefits to addressing these problems, and where they are considered within the role of NBC, various asset or non-asset responses could be proposed. For example:

- ▶ Non-asset interventions such as supporting alternatives to retail-based economic activity in the Manly CBD;
- ▶ Partnering with other levels of government to improve links with public transport, or partnering to re-align road infrastructure around the CBD; or
- ▶ Building or refurbishing infrastructure such as car parking which supports retail activity.

By contrast, the ageing or deterioration of the WSCP should be considered from the perspective of NBC's asset management priorities.

The overall merit of options for the community should be tested through a multi-criteria approach which considers impact overall: both social (including environmental) and economic (including financial).

- ▶ An options assessment using this method is not demonstrated in the documents provided. Documents provided show that car park build options were appraised for Manly Council but from a technical perspective only and with findings limited to a short list of 'pros and cons' only.

Further work on a business case in future could work through options appraisal to clearly establish links between the Project - or separately the MOCP development - and root problems and benefits of intervention. This work would be consistent with best practice as described in the Guidance.

3.4 Recommendations

We recommend that NBC consider the steps below before proceeding with the Project:

- ▶ **Completing a full business case as described in the Guidelines including an options assessment in the form described in section 3.3.1 of this Report. A comprehensive benefit/cost analysis should be completed, incorporating all appropriate costs (including risk).**
- ▶ **Collating and consolidating the financial analysis in digital form (a financial model), and running the analysis with up to date assumptions, which have been tested against benchmarks and the market to ensure that they are reasonable, defensible, and provide a robust basis to evaluate the Project.**
- ▶ **Undertaking a full risk analysis for the Project, using the risk matrix prepared to date as a starting point. Risks that support both the assessment of scope options and the forecasts of financial impacts should be quantified and incorporated into the financial modelling. Key risks identified should be quantified using technical analysis, and included in cost estimates.**
- ▶ **The preferred procurement method should be developed in accordance with best practice that includes an analysis of the optimal risk allocation between NBC and contracted parties. The preferred method will in turn drive the approach to financing the Project. The procurement method work should be extended - as relevant - to include commercial principles for contracting.**
- ▶ **Subject to advice from others (including legal advice), consider suspending the current procurement and allocating resources to complete the work identified above.**

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Manly Oval Car Park Review Report

18 August 2016

Value Network Pty Ltd

P: (02) 9550 5922

www.valuenetwork.biz

MANLY OVAL CARPARK REVIEW – REPORT 18-AUG-16

Value Network

Mr Mark Ferguson
General Manager
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

18 August 2016

**Review of Manly Oval Carpark and Redevelopment of the Whistler
Street Site**

Dear Mark

In accordance with our assignment brief dated 14 June 2016, please find enclosed our
final Report.

Yours faithfully



Alan Griffin
Director

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Foreword

This Report presents the results of a review of documentation and information provided by the Northern Beaches Council on the Manly Oval Carpark and Whistler Street Redevelopment.

The analysis provided in this Report is intended to provide the Northern Beaches Council with sufficient information to resolve the overall viability of the project and to provide a way forward that minimises risks to Council.

We do not make any representation as to the accuracy or completeness of the documentation or information provided to us for this Review. We accept no liability for any loss or damage, which may result from changing aspects of this Report without our agreement or reliance on this Report without obtaining independent assessment valuation or legal advice or undertaking a due diligence review where recommended in this Report.

1 Executive Summary

Value Network was requested by the General Manager, Northern Beaches Council to review the business case, procurement strategy, tender evaluation, contract formation and aspects of the project approval of the Whistler Street Redevelopment and the Manly Oval Carpark. These are the enabling projects for the *Manly2015 Masterplan*. The Northern Beaches Council also requested a review and comment on the Development Application submission made by the Save Manly Oval Alliance (SMOA).

The findings and recommendations of this review are based on a review of documentation provided by Northern Beaches Council and refer to local and NSW Government legislation, policies and guidelines for infrastructure / project development, tendering and contracting.

In parallel with the Value Network review, Northern Beaches Council commissioned Ernst and Young (EY) to review the financial viability of the Manly Oval Carpark project, including the valuation of the Whistler Carpark site. Value Network was provided the opportunity to review the EY report and have not identified any issue or conclusion made in the EY Report, that would cause us to adjust our findings or conclusions.

1.1 Key Findings

- In its current state, the Manly Oval Carpark project represents a significant contractual and financial risk to Council
- Total cost of the Manly Oval Carpark has been significantly underestimated
Council's total estimated cost of [REDACTED] is not realistic, as it does not include all of the qualifications / exclusions in the accepted tender from Abergeldie Contractors, the latent conditions identified by the various geotechnical studies or adequate provision for Council's contract supervision and administration costs. A more realistic total outturn cost of the Carpark is estimated at [REDACTED]
- There is no agreed timetable for the payment of the Whistler Street Carpark site sale proceeds
While the tender offer for the Whistler Street Redevelopment indicated a broad payment timetable, the Development Deed signed between Manly Council and Built Development (Manly) Pty Ltd and Athas Holdings Pty Ltd (the developer) states that a payment timetable has to be agreed between the parties
- Proceeds from the sale of Whistler Street might not be available to fund the Manly Oval Carpark construction
The majority of the Whistler Street Carpark Site [REDACTED] may not be forthcoming until the developer has assured their return on the site redevelopment (i.e. likely to be in 5 to 6 years). The follow on risk from this delay is the developer not proceeding with the current arrangement due to changing commercial or economic conditions
- Viability of the Whistler Street redevelopment price offer may be above market value and beyond a viable commercial return

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The offer of [REDACTED] cash and [REDACTED] in-kind for the Whistler Street Redevelopment is some three (3) times greater than Council's valuation of [REDACTED] and also the next best market offer. Given the significant disparity between the offer and the valuation, a normal tender assessment process would be to conduct a due diligence review to validate the offer. In this regard, the review team did not find any evidence of this having occurred

- Council is exposed to contract risks on the Manly Oval Carpark project
Council has assumed significant contract risks in the arrangements expressed in the Development Deed for the Manly Oval Carpark i.e. the accepted tender by Abergeldie Contractors was heavily qualified and the qualifications appear to have been accepted. Realisation of any of these risks is likely to increase the final outturn cost of the Manly Oval Carpark project
- The Whistler Street Redevelopment is likely to constitute a PPP arrangement. In addition, when considered collectively, the Whistler Street Redevelopment and the Manly Oval Carpark may be regarded as a single project under the OLG PPP Guidelines¹

Council should enter into discussions with the OLG to confirm the Whistler Street Redevelopment and the total project are not regarded as being significant or high risk PPPs and that the OLG PPP Guidelines have been complied with.

1.2 Detailed Findings

A summary of the review findings is provided below:

Project Viability

- There was no formal business case prepared to demonstrate / quantify the achievement of value for money and guide the delivery of either the Whistler Street Redevelopment or the Manly Oval Carpark
- The Economic Assessment of the Masterplan (HillPDA December 2013) is a high level impact assessment
While the assessment identified a number of 'economic' issues, it did not examine the full range of benefits and costs i.e. there is no economic appraisal to demonstrate value for money to the community. In the HillPDA assessment the car park benefits were predicated on providing 800 car spaces compared to the 500 spaces to be provided
- The Financial and Commercial Review (KPMG Limited December, 2013) is considered overly optimistic, given the underpinning assumptions. The assumptions relate to growth in carpark utilisation and turnover, carpark construction cost (including insufficient contingency and not accounting for all related project costs)
- There is no evidence that the Financial Assessment for the current Manly Oval Carpark proposal (500 spaces) has considered the full range of Council costs. In addition, Council's assessment assumed the upfront payment for the Whistler Street

¹ <https://www.olg.nsw.gov.au/.../public-private-partnerships-guidelines-and-legislation>

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Redevelopment would be received in year 2 and not year 5 or 6 which is the more likely outcome

- The Manly Oval Carpark appears to now rely on increased 'commuter' patronage, which is inconsistent with the current utilisation of the Whistler Street Carpark. How this 'change of use' relates to the *Manly 2015 Masterplan* objective of resolving Manly's long term parking needs to be addressed.

Office of Local Government (OLG)

- While the OLG confirmed (July 2014) that the Manly Oval Carpark project '*generally satisfied the Office's capital expenditure criteria*', it did not endorse the project due to concerns in relation to the cost estimate, the financial modelling and community issues. There was no evidence sighted by the review team that these concerns have been addressed
- The Manly Oval Carpark was submitted to the OLG as a stand-alone project. No documentation was sighted by the review team to show that the Whistler Street Carpark Redevelopment was submitted to the OLG.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Procurement

- Procurement Strategy: There is no evidence that any assessment of procurement options was completed and that the optimum or most advantageous strategy was decided. In comparison to the two projects approach, a single / combined package would have insulated Council from the Manly Oval Carpark construction cash flow risk
- Expression of Interest (EOI): EOIs normally focus on capability, albeit with some consideration of indicative pricing. While this approach was evident in the Manly Oval Carpark selection criteria, the EOI tender evaluation has primarily focussed on indicative prices and there are anomalies in the Assessment Score used for ranking

the EOI's, that is there two different Evaluation Panel Reports with different assessment scores. The final scores were influenced by factors other than the Assessment Criteria specified in the EOI

- Request for Tender (RFT): The overall assessment approach for the Manly Oval Carpark generally reflects accepted tendering procedural steps. However, there are a number of significant shortcomings in the application of the procedure:
 - The tender assessment process did not provide a consolidated overall weighting / scoring that brought together the price and non price criteria i.e. there appears to be no objective basis for decision making in the event that a tenderer scores lower in the non price criteria, but offers a significantly more advantageous tender price
 - The tender evaluation criteria focussed on the capability and track record of the tenderers and not on an appreciation of the project or its characteristics. In the absence of evaluation criteria such as 'appreciation of the project' or 'response to the design brief', the Tender Evaluation Panel had no means to discern the design merits of respective tenders.

Latent Conditions

- Latent Conditions Risk: While the tender documents placed the geotechnical risk at the site with the tenderers, the Development Deed for the Manly Oval Carpark (accepting / attaching the tenderer offer) transfers this risk back to Council in respect of design and construction assumptions associated geotechnical conditions, disposal of excavated material including quality, acid sulphate soils and contaminated material
- Contract Provisions: The tender invitation documents and the Development Deed for the Manly Oval Carpark identified AS 4902-2000 General Conditions of Contract for the project. It is considered that the contract's Latent Conditions and the associated Deemed Variation provisions mean that Council have little scope to avoid costs should these risks eventuate.

1.3 Review of Save Manly Oval Alliance Submission

Section 5 of this Report presents summary commentary on the Save Manly Oval Alliance (SMOA) submission. The submission, amongst other thing, highlights a number of omissions from Council's consideration of the proposed Manly Oval Carpark. The key area of the submission and our review comments are summarised below.

Business Case

SMOA submits that no adequate business case was prepared.

Our review agrees that an adequate business case was not prepared for either the combined project (sale of Whistler Street and Manly Oval Carpark) or the Manly Oval Carpark as a stand-alone project.

Sporting Venue

SMOA submits that the construction of the Manly Oval Carpark will result in the Oval being unsuitable for senior level rugby union due to a decreased in the area available for play and the impacts on drainage / water table.

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Our review notes that the impacts upon users of the Manly Oval during construction, has been identified as an omission in Council's Financial Analysis. The potential impact on the suitability of the Manly Oval post construction for senior level competitions in cricket and rugby union exacerbates this omission.

Financial

SMOA submits that the end cost of the Manly Oval Carpark will be considerably higher than the tendered price of [REDACTED] and suggests that a final amount will be [REDACTED] *but could easily rise to [REDACTED]*

Our review agrees that the current estimate of project costs is substantially understated and considers that the outturn final cost is likely to be of the order of [REDACTED]

Environment and Amenity

SMOA submits that the proposal fails to comply with the principles of ecological sustainable development, in particular issues relating to floodplain management, impacts of climate change, acid sulphate and contaminated soils, ecological and environmental concerns, heritage, traffic, noise and air pollution.

Our review concurs with SMOA concerns regarding possible impacts of changing water table levels during and post construction upon the surrounding vegetation and development, risk associated with acid sulphate material and possibly contaminated waste in the excavated fill material. There are also concerns on the possible impacts of changing water table levels during and post construction upon the surrounding vegetation and development.

BCA Compliance

SMOA has identified potential non-compliances concerning travel distances to fire escapes, carpark ventilation and freeboard requirements for potential flooding events.

Our review considers that these 'non-compliance' issues are typically resolved in the detailed design process.

Heritage

SMOA has provided a detailed Statement of Heritage Impact that concludes that the proposed development of Manly Oval is not considered compatible with the heritage value of the precinct.

Our review considers that the Manly Oval Carpark documentation sighted as part of the review does not demonstrate that heritage aspects have been adequately addressed.

Hydrology, Hydrogeology and Flooding

SMOA submits that further modelling of flooding and groundwater is essential.

Our review considers that there may be cause for concern on the potential impact of the new carpark on ground water flow and the resulting impact of disrupted groundwater upon surface flooding.

Roads and Traffic

SMOA has raised a number of concerns associated with traffic management, in particular in Sydney Road. The Alliance has also raised issue with bus movements.

We understand that RMS has raised concerns with the Sydney Road entrance and exit proposals, including relocating the exit to Raglan Street.

1.4 Recommendations

Having regard to the foregoing, we recommend:

1. Northern Beaches Council **not** proceed with the projects (Manly Oval Carpark project and the Whistler Street sale / redevelopment) under the current Development Deed Arrangements
2. Prior to any decision to proceed with the projects, the Northern Beaches Council should reassess project viability; in particular, financial feasibility, delivery strategy, risk management, stakeholder consultation and sustainability (environment and heritage) i.e. complete a robust business case consistent with OLG and NSW Government requirements.

The foregoing recommendations are expanded in Section 6 of this Report.

2 Introduction

2.1 Review Purpose

As part of the *Manly2015 Masterplan*, the former Manly Council entered into Development Deeds for the:

1. Provision of a 500 space carpark under Manly Oval for a contract cost of [REDACTED]
2. Redevelopment of the Whistler Street Site for a cash payment of [REDACTED] and an in-kind payment of [REDACTED]

The two Deeds are:

- A Development Deed for the Manly Oval Carpark between Manly Council and Abergeldie Contractors Pty Ltd for the design and construction of a new underground car park at Manly Oval which was signed on 26 April 2016
- A Development Deed for the Whistler Street Redevelopment between Manly Council and Built Development (Manly) Pty Ltd and Athas Holdings Pty Ltd for the redevelopment of the Whistler Street Carpark and Library signed on 27 April 2016.

The Deeds are largely independent agreements. The only linkage being the requirement for the Whistler Street Carpark to remain operational until the Manly Oval Carpark is constructed.

The Northern Beaches Council Administrator has asked for an assessment of the possible commercial impacts of both projects and what commercial and contractual options are available to Council. The Northern Beaches Council is the result of the merging of Manly, Pittwater and Warringah Councils announced by the Minister for Local Government on 12 May 2016.

2.2 Review Approach

The approach to completing this review was as follows:

- Review of documentation provided by the Northern Beaches Council. This was provided to us in four (4) tranches, as additional documentation review requirements were identified e.g. communications with tenderers / proponents to fully understand the clarifications and / or undertakings given by Council (see Appendix A)
- Assessment of the Manly Council 'case for the project'
- Conformance review of the project with NSW Government (Office of Local Government) and 'best practice' requirements
- Compliance review
- Identification and assessment of project risks
- Identification and assessment of potential contract liabilities
- Identification of possible project scenarios that might eventuate.

² Note: Excludes Council costs, provision for contingency and allowances for required / related works

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- Review and comment on the Development Application submission made by the Save Manly Oval Alliance (SMOA), including discussions with Mr Craig Smith
- Briefed the management of the Northern Beaches Council on the review outcomes
- Held discussions of our findings and recommendations with the Council and other advisors engaged by the Council
- Discussed the review findings with Council staff involved in the development of the project(s). [REDACTED]
- Reviewed additional project information and commentary on the draft review findings provided [REDACTED] on 4 August 2016.

2.3 Review Personnel

The following personnel completed the review:

Review Task	Review Personnel
Assessment of the 'case for the project'	Ted Smithies / Alan Griffin
Identification of risks and assessment of potential contract liabilities	Alan Griffin / Ted Smithies
Development of project scenarios / options	Alan Griffin / Ted Smithies
Financial aspects	Chris Taylor / Ted Smithies / Alan Griffin

3 Business Case Review

3.1 Capital Expenditure Guidelines, December 2010

The OLG Capital Expenditure Guidelines (December 2010)³ establish the Business Case requirements for major council capital expenditure projects. The guidelines establish a two-step process, which is summarised as follows:

Step 1: Preliminary Business Case

- Demonstrate project need, including consistency with Council's community strategic plan
- Identify alternative options, including an outline of the risks, sustainability issues, costs and benefits relevant to these alternatives, as well as identify any assumptions on which the proposal(s) are based
- Identify the delivery program
- Demonstrate value for money, including affordability i.e. the proposed capital expenditure is based on sound strategic and financial planning
- Establish that Council has the capacity to deliver and maintain the project
- Identify the governance arrangement and internal controls which will be utilised to manage project risks and assist the successful completion of the project
- Demonstrate that the project is supported by the views, priorities and objectives of the broader community.

Step 2: Capital Expenditure Review

The Capital Expenditure Guidelines recommend that councils undertake this review as part of their internal control processes for all material or high risk capital expenditure projects, irrespective of the funding source. The Guidelines requirements build on the Preliminary Business Case and identify that the following should be addressed in the review:

- Outline of the proposed project
- Justification of need
- Assessment of the capacity of council to manage the project
- Priorities in relation to existing capital commitments
- Assessment of alternative options, including appropriate economic appraisals
- Financial implications, including relevance to council's long term financial plan
- Public consultation and engagement in the decision making process.

For projects greater than \$10M, the Guidelines **require** that Council submit a Capital Expenditure Review to the Office of Local Government for review. Further, the Guidelines expand the above requirements to require:

³ <https://www.olg.nsw.gov.au/sites/default/files/Capital-Expenditure-Guidelines.pdf> . The Guidelines were issued pursuant to section 23A of the Local Government Act 1993

- Development of a comprehensive Business / Management Project Plan
- Financial Implications Report which includes an economic / market appraisal (including cost benefit analysis), and a cost effectiveness analysis (environment, heritage, quality of life, health and safety, law and order)
- Development of a Risk Management Plan addressing issues such as investment / planning risk, design risk, demand / market risk, management / operations risk, reputation risk, compliance risk, completion / construction risk, environmental risk OH&S risk
- Development of a Probity Plan.

In summary, a business case must provide a base for change by examining total lifecycle costs, benefits, risks and implementation requirements. It should also be a reference for the procurement and implementation of a project or program. Critical parameters such as cost, schedule, and quality, social and environmental issues need to be documented demonstrating an organisations capability for timely delivery of the project.

3.2 PPP Legislation and Guidelines

The Local Government Act 1993 No. 30 (Chapter 12 Part 6 Division 1 Section 400B) defines a public private partnership (PPP) as an arrangement between a Council and a private person:

- a. To provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and
- b. In which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control.

If the project is deemed a significant (\$50M) or high risk PPP then it needs to meet the requirements of OLG Circular 05/51 PPP Guidelines⁴, including:

- a. The need to prepare economic and financial appraisals as per NSW Treasury Guidelines
- b. Subject the project to an assessment by and obtain the endorsement Local Government Project Review Committee (membership includes OLG, Treasury and, Premiers and Cabinet).

Where a project is to be conducted in stages and involves a combination or series of potential contracts, the project is to be considered as one (1) project for the purposes of assessment and review. Breaking a project up into smaller parts to avoid the threshold condition is not acceptable and does not comply with the Act or OLG Guidelines.

The Minister for Local Government has the power to call in any PPP project for review by the Project Review Committee where a council has not complied with the Guidelines in relation to entering into the PPP or the carrying out of the project.

⁴ Circular No 05/51. Date 2 September 2005. Doc ID A20203. Guidelines on the Procedures and Processes to be followed by Local Government in Public-Private Partnerships (1 September 2005)
<https://www.olg.nsw.gov.au/sites/default/files/05-51.pdf>

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Given the membership of the Local Government Project Review Committee, it is considered that the project business case would be evaluated against that required for NSW Government agencies seeking to provide service delivery through a PPP vehicle.

3.3 Status of the Project

3.3.1 Project Elements

The major elements of the project are:

- Sale of the Whistler Street site [REDACTED] incorporating the in kind replacement of the library [REDACTED]. The latter is a 'barter' arrangement in which the developer is accepting the financial risk associated with providing the Council with the replacement library. Under these circumstances, the project is considered to fall in the ambit of a PPP
- Construction of the Manly Oval Carpark [REDACTED]
- Council accepted risks and enabling works e.g. acceptance and disposal of fill from the Manly Oval Carpark Project.

When the project major components are considered collectively, it is evident that they reflect the characteristics of a PPP arrangement. Further, the delivery approached reflected in the two Development Deeds i.e. a combination of separate contracts is specifically contemplated by the above PPP guidelines.

There was no information sighted indicating whether Council has confirmed with the OLG that the Whistler Street Redevelopment or the total project (i.e. the Manly Oval Carpark and the Whistler Street site sale) are not significant or high risk PPPs or whether the total project is considered one project under the OLG guidelines⁵ irrespective of two separate contracts.

3.3.2 PPP Nature of a Consolidated Project

To illustrate the PPP nature of the consolidated project, the PPP characteristics can be described as follows:

- Sale of the Whistler Street site for redevelopment
- Provision of new library space that is financed as part of the Whistler Street redevelopment
- Construction of the Manly Oval Carpark that is financed by the Whistler Street developer / proponent, possibly including a concession period of say 20 years.

When considered against the current offer of [REDACTED] and [REDACTED] in-kind, the inclusion of the Manly Oval Carpark as part of the one project is likely to enhance the investment return to the developer / proponent i.e. they would be getting a return on the [REDACTED] rather than it just being a cash payment to Council. The advantages to Council are the removal of:

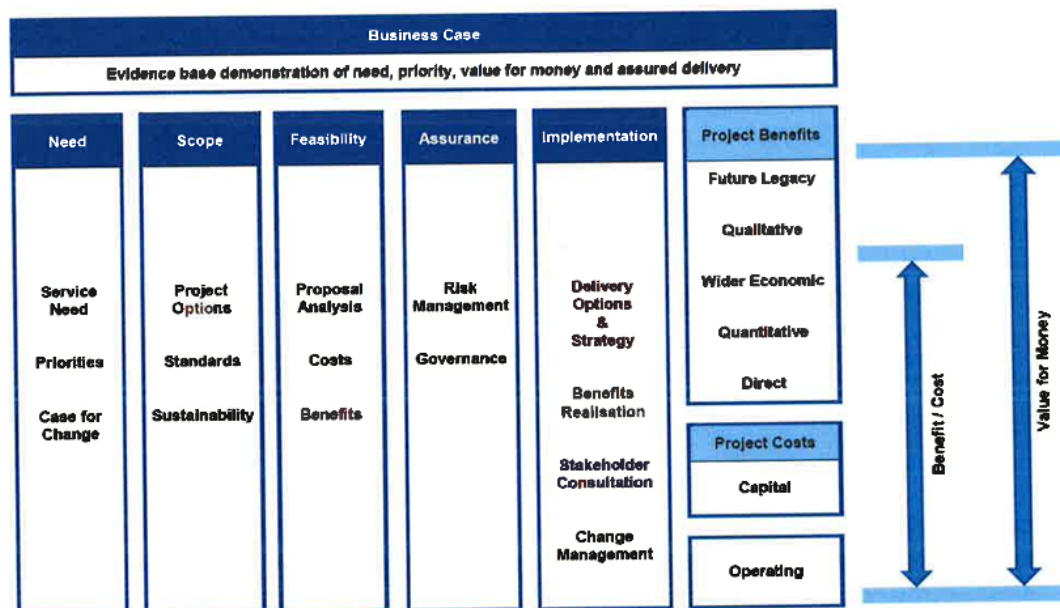
- The cash flow risk associated with the construction of the Manly Oval Carpark
- The patronage risk and thereby revenue projection risk associated with the new carpark. The revenue risk is driven by the new carpark being more removed from the central Manly precinct and thereby less attractive to current users. This is

⁵ <https://www.olg.nsw.gov.au/.../public-private-partnerships-guidelines-and-legislation>

demonstrated by the tenderers questioning the design standard following a meeting with Council wherein it was emphasised that this was to be a 'commuter' car park.

3.4 Project Business Case

Our business case review has been undertaken in the context of our understanding of the OLG and NSW Government requirements⁶ described in Section 3.1 above and as reflected by the following process outline.



Our review did not identify a single document which could be said to constitute a business case. Accordingly, we examined those documents which might be said to represent elements of the business case. This review found that while some documents provided relevant material, there were significant shortcomings to the extent that it can be said that no business case exists. This is demonstrated below, by providing an overview of some of the key aspects that a business case should address, along with a commentary on the material that was available to us in the course of this review.

3.4.1 Project Need

The rationale for the project is provided in the *Manly2015 Masterplan* which defines the following two objectives / needs:

- Creation of a town centre
- Resolve long term parking need, which is defined by 2013 studies as providing 800 spaces in total or approximately 550 net after the sale of the Whistler Street Carpark.

⁶ NSW Local Government Capital Expenditure Guidelines
<https://www.olg.nsw.gov.au/sites/default/files/Capital-Expenditure-Guidelines.pdf>
 NSW Treasury Guidelines for Capital Business Cases (tpp08-5)
<https://www.finance.nsw.gov.au/sites/default/files/policy-documents/tpp08-5.pdf>

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Contrary to the foregoing car parking objective, the current strategy will only see construction of an additional 200 spaces (500 at Manly Oval less the loss of the existing 300 after remedial works at Whistler Street), compared to 'need' of an extra 550 spaces. Accordingly, the current proposal fails one of the two masterplan objectives.

The review also noted that the reduction in carpark spaces has progressed from a two stage construction strategy i.e. 500 spaces now and later a 200 spaces extension. However, the Development Deed for the Manly Oval Carpark and the Abergeldie Contractors tender only requires 500 spaces. The review was advised [REDACTED] that the reduction was decided by Council however, no documentation was sighted which explained the rationale for the reduction and the impact on the *Manly2015 Masterplan* objectives.

3.4.2 Economic Appraisal – Costs and Benefits

The Economic Assessment (HillPDA) was limited to identification of positive economic impacts of the two projects (Town Centre and Carpark). The assessment is not an Economic Appraisal as outlined in Section 3.1 above. The assessment includes a substantial portion of qualitative discussion on the benefits of the town centre and some identification of economic benefits. In this latter regard, the shortcomings include:

- While the assessment identifies benefits, it is not clear that all potential benefits have been identified. Further, some of the benefits can be questioned as follows:
 - Assigning a portion of the value of the retail / commercial growth for the Manly area to the commercial and retail space provided by the Whistler Street site redevelopment. The issue here is that it can be argued that the growth is likely to occur irrespective of the Whistler Street Redevelopment. To attribute benefit to the site, it needs to be demonstrated that the development will facilitate, bring forward, or prevent the growth from occurring elsewhere i.e. in adjacent areas outside the Manly centre
 - \$15M per annum increase in retail revenue from additional parking. This is based on a 'shopper survey' and estimated parking occupancy. The issues here are that the Manly Oval Carpark may be less likely to attract the same utilisation (being more distant and thereby less convenient) and the total number of spaces provided has been substantially reduced from that originally identified
 - Construction activity induced benefits, providing some \$120,000 demand for local goods by construction workers. Induced benefits of this type (construction jobs) rely on ABS or equivalent economic multipliers. While these are often reported in a business case, they are not normally included as a benefit in an economic appraisal
 - \$15M in additional investment in the economy and \$34M in production and consumption induced multipliers. The footnote qualification in the HillPDA report provides an adequate explanation of the limitation of this benefit, namely *'it is important to note that caution should be applied when interpreting economic multipliers as the geographic location of the expenditure is dependent on the extent of goods, services and labour used to undertake the works'*

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- The assessment does not consider costs or provide a Net Present Value (NPV) and benefit / cost assessment. In particular, there is no evidence that a range of potentially significant costs have been included. For example:
 - Disruption associated with construction activities
 - Relocation costs of current Manly Oval users (possible upgrade costs of alternate venues)
 - Loss of revenue from closing down Whistler Street carpark (potentially [REDACTED] per annum based on a Council figures)
- There has not been any economic assessment of alternate options, including:
 - Consideration of the Base Case (Do Nothing / Minimum i.e. [REDACTED] for upgrade works at Whistler Street)
 - An alternate Whistler Car Park development proposal e.g. site redevelopment incorporating car parking.

The above conclusion is made noting that there was a *Manly2015 – Carparking Options* report that considered the following:

- Option 1: Manly Oval Carpark – 700 spaces
- Option 2: Belgrade St Carpark + Whistler Carpark Upgrade – 500 spaces
- Option 3: Oval Carpark + Iconic Building (Whistler Street) – 700 spaces
- Option 4: Whistler Street carpark Upgrade – 270 spaces
- Option 5: New Whistler Street Carpark – 430 spaces
- Option 6: Stage 1 Oval Carpark + Whistler Street Upgrade – 720 spaces

The *Manly2015 – Carparking Options* report can be characterised as providing architectural options. The assessment is limited to some high level commentary on the 'Pros' and Cons' of each option. Significantly, there was no quantitative or multi criteria assessment as would be expected in a robust business case. Overall, there is no indication as to how the option of providing 500 spaces at Manly Oval Manly Oval Carpark was selected as the best solution.

3.4.3 Financial Assessment – KPMG

KPMG completed a 'Financial and Commercial Review' of the proposed Manly Oval Carpark in May – December 2013. The KPMG review compared the option of Council equity funding the carpark and a PPP approach. The KPMG review outcome is summarised by the following:

- A 20 year Internal Rate of Return (IRR) of [REDACTED] for the Council option
- A 20 year IRR of [REDACTED] under private sector funding where the private ownership is retained i.e. no concession period. In comparison the minimum return needed is reported as [REDACTED]

The KPMG review was underpinned by the following assumptions:

- The adopted construction contingency (WT Partnership, 2013) was 6%

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Evans & Peck⁷ identify a P90⁸ contingency range of 25% to 40% for projects at the 'full business case stage'. While the infrastructure might be of a different scale, there is sufficient commonality in the civil construction nature of the project for the Evans & Peck range to be considered relevant

- Professional fees were acknowledged as being '*at the lower end of what would be considered appropriate ..., but reflects the relatively simplistic design and delivery requirements*'

Review Comment

While it is a hindsight observation, issues associated with latent conditions (geotechnical and acid sulphate soils) and RMS traffic management requirements mean that the Manly Oval Carpark is not simplistic in design or delivery

- The capital cost is based on the WT Partnership (13 February 2015) estimate. There is no evidence that all Council costs have been included in the Financial Assessment. For example:
 - Given the Manly Oval Carpark Deed was signed on 26 April 2016, there are no details of the cost of the delay in signing the Deed as the Tendered Price was only valid for 120 days after tender close (i.e. from 15 September 2015 to 13 January 2016)
 - Fit out costs of car park
 - Administrative costs such as reporting, organising and verifying contractual payments, Superintendent's Role, etc.
 - Contingency is under priced
 - Related projects e.g. soil disposal costs for Manly Oval excavated material
- Car parking revenue projections include an increase in the Average Daily Turnover of car parking visitation of 3.5% per annum. The review team understands that this has been 'extrapolated' based on the uplift in retail and commercial Gross Floor Area in Manly

Review Comment

In comparison, the HillPDA Economic Assessment identifies a Manly LGA growth of rate 1.4% as the driver of the additional retail and commercial expenditure. The link between 1.4% versus 3.5% is not evident with implication that the long term revenue projections are overstated

- Car parking revenue projections are heavily dependent on the potential car park utilisation identified in the Bitzios Manly Car Park Demand Forecasting Study

Review Comment

The Bitzios study was based on '*interview surveys with car park users with a view to developing a parking cost / time elasticity model to test a range of parking scenarios*'

⁷ Best Practice Cost Estimation for Publicly Funded Road and Rail Construction, June 2008 (Updated May 2011 Australian Department of Infrastructure and Transport))

⁸ Estimate with a 90% chance of being achieved

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at the proposed manly Oval car park'. While the survey methodology was robust and thorough, the following findings raise concern about how the car parking demand scenarios have been translated into what appears to be highly optimistic revenue projections used in the KPMG analysis:

- The majority of Whistler Street Carpark customers (85% on Thursday and 74% on Saturday) do not pay for parking
- Only 7% of customers use long term parking (5+hours), paying a maximum fee of \$33
- The major parking reasons were 'recreation' and 'personal business or shopping' (combined 81% on Thursday and combined 90% on Saturday)
- Only 26% of the Whistler Street Carpark users would move to the Manly Oval Carpark.

In comparison to the foregoing, the Manly Oval Carpark is planned to rely substantially more considered a commuter carpark patronage, as indicated confirmed in Council's response on 9 March 2016 to a tenderer clarification request. The foregoing also raises adverse implications for the benefits identified in the Economic Assessment i.e. benefits which linked car parking with additional retail and commercial activity (the commuter carpark users are going somewhere else other than Manly to spend).

3.4.4 Value for Money and Affordability

The key questions that a business case needs to answer include:

- Are there sufficient resources (financial, physical and human) to deliver the project?
- Will the expenditure of these resources provide value for money over the project's life?

The affordability does not appear to have been explicitly addressed in the context of the overall project. At the time that the 2013 decision was taken to proceed with the project, a 10 year Income and Balance Sheet review that demonstrated that Manly Council generally had a net positive annual operating result, appears to have been the only affordability assessment.

3.4.5 Procurement Strategy

There was no evidence sighted in our review of an assessment of the optimum procurement and contract strategy. Issues that should have been considered include:

- The risk that Manly Council would attract by acquiring the project through multiple contracts versus one overall development contract. In the current arrangement, Council has taken on the finance or cash flow risk for the construction of the Manly Oval Carpark
- On a lesser level, the selection of the construction contract for the oval can impose varying level of risk for Council. The current Development Deed for the Manly Oval Carpark is based on using AS 4902-2000 contract which is considered more contractor friendly than the NSW Government GC21contract.

3.4.6 Risk Management

A 'Risk Assessment Matrix & Issues Log' completed in 2013 was provided by Council for our review. However, it cannot be said to be a Risk Management Plan as contemplated or required by the OLG Guidelines. More specific shortcomings include:

- The matrix / log is undated and all issues are identified as 'open'
- The matrix / log appears to only relate to the Manly Oval Carpark component of the project
- In terms of 'likelihood', only 7 of 46 risks are rated as likely with the remainder rated low or very low i.e. no risks are identified as high or almost certain
- After 'consequence' is considered 11 of the risks produce a combined rating that can be described as 'High'. Significantly, latent conditions are rated as High, which is contrary to the 'Low' geotechnical risk considered in the KPMG Financial and Commercial Review of the carpark 'viability'.

3.5 Capital Expenditure Review

A Capital Expenditure Review was prepared for the Manly Oval Carpark project in December 2013.

While the Capital Expenditure Review broadly addresses 'headings' identified in the OLG Guidelines⁹, the substance of the case for the Manly Oval Carpark should be characterised as qualitative rather than quantitative. Where quantitative information is provided, it repeats and relies on the information and quantification referenced in Section 3.4 above and thereby incorporates the same shortcomings.

While it is noted that the OLG advised¹⁰ Council that it had '*generally satisfied the Office's capital expenditure criteria ...*', the advice raised concerns with viability of the project, the impact of unforeseen cost increases, significant risk (financial and non financial) issues, and community concerns. In this context, the advice can only be considered as an acknowledgment that the capital expenditure criteria had been addressed rather than an acknowledgement or endorsement as to the adequacy of the review.

When the Capital Expenditure Review is compared to the requirements described in Section 3.1 above, it does not address a number of fundamental requirements. These include an economic appraisal, a robust risk management framework, and procurement strategy assessment.

In respect of the OLG PPP Guidelines warning that '*... Breaking a project up into smaller parts to avoid the threshold condition is not acceptable and does not comply with the Act or OLG guidelines*', it should be noted that the Manly Oval Carpark Capital Expenditure Review specifically states:

'The Car Park Proposal is a stand-alone project which provides development of a new underground car park under Manly Oval to accommodate 800 cars ...'

It is not considered that the Manly Oval Carpark should be regarded as a standalone project when it was relying on sale of the Whistler Street Carpark to fund the construction.

⁹ <https://www.olg.nsw.gov.au/sites/default/files/Capital-Expenditure-Guidelines.pdf>

¹⁰ OLG letter of 25 July 2014 to Manly Council

3.6 Allowable Uses of Manly Oval

Manly Oval is within Ivanhoe Park which is Crown Land reserved for public recreation and community purposes. Council is appointed Trustees under the provisions of the Crown Lands Act (1989). Under that Act the Minister for Primary Industries – Lands and Water can authorise additional uses, provided the Minister is satisfied these uses are compatible public recreation and community purposes.

We have noted, the proposed Manly Oval Carpark is aimed at commuters and that users of Ivanhoe Reserve will only ever make up a small percentage of the carpark patronage.

Advice [REDACTED] is that Council considers seeking the Crown's consent to the Manly Oval Carpark is an *administrative step* and that it was always planned that DA approval would be sought prior to seeking Crown consent. The intention to seek Crown consent after the DA appears at odds with what would be considered a logical project development process. The information necessary to obtain Crown consent was available well before the DA process and it is considered that this should have occurred to mitigate risks and delays to the project.

3.7 Project Alignment – Departures

The Manly Oval Carpark project has significantly departed from that identified as being required in the Capital Expenditure Review. Some key departures include:

- Only 500 car spaces are being provided compared to the 760 to 800 originally identified as being required
- The planned carpark patronage will rely substantially more on 'commuter' patronage, which is inconsistent with the current utilisation of the Whistler Street Carpark. How this 'change of use' relates to the *Manly 2015 Masterplan* objective of resolving Manly's long term parking needs is not addressed
- The cost of car parking spaces has increased from [REDACTED] per space in original Financial Assessments to [REDACTED] in tenders.

In addition, the adopted option for Whistler Street has a larger floor space ratio (FSR) than contemplated in the Capital Expenditure Review.

4 Findings

4.1 Business case

This review did not identify a single document which could be said to constitute a business case as required by OLG Guidelines¹¹, either for Capital Works Review or PPP arrangements.

In respect of PPP arrangements, the OLG Guidelines contemplate circumstances as reflected by the two current Development Deeds i.e. where a project is to be conducted in stages and involves a combination or series of potential contracts, the project is to be considered as one (1) project for the purposes of PPP assessment and review. The OLG Guidelines specifically warn against breaking a project up into smaller parts to avoid the PPP review requirement.

The foregoing means that the business case should have fully met the requirements of the OLG Guidelines in terms of the quantitative assessment required, including a full economic and financial assessment providing a NPV of all costs and benefits, Benefit / Cost Ratio (BCR) and an Internal Rate of Return (IRR).

This review found that while some documents provided by Council contained relevant material, there were significant shortcomings to the extent that there is no overarching business case to guide the delivery of the project and demonstrate / quantify the achievement of value for money.

4.2 Project Financing

The decision to proceed with the Manly Oval Carpark project was made on the basis of receiving a cash payment of [REDACTED] (plus [REDACTED] in kind) for the sale of the Whistler Street site.

4.2.1 Viability of the Offer

The Whistler Street Redevelopment offer of [REDACTED] and [REDACTED] in-kind is some three (3) times greater than Council's valuation of [REDACTED] and also the next best market offer.

While it is noted that the offer for the Whistler Street Redevelopment is for a higher FSR than originally contemplated, Council relied on the earlier estimates of [REDACTED] (for a lower FSR) and the Whistler Street Redevelopment EOI / RFT process in concluding the offer represented value for money. However, given the significant disparity (i.e. 3 times the value) between the offer and the valuation, a normal tender assessment process would be to conduct a due diligence review to validate the offer. In this regard, the review team did not find any evidence of this having occurred.

As part of our review, we conducted a financial sensitivity test to identify the minimum sale price that Council would need to obtain for the Whistler Street site in order to deliver the

¹¹ <https://www.olg.nsw.gov.au/.../public-private-partnerships-guidelines-and-legislation>.
<https://www.olg.nsw.gov.au/sites/default/files/Capital-Expenditure-Guidelines.pdf>

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Manly Oval Carpark project on a 'break-even' basis i.e. what is the commercial 'tipping' point.

The financial assessment was based on the following:

- 20 year assessment period
- 10% real discount rate (considered more appropriate for economic infrastructure)
- [REDACTED] construction cost
- Whistler Street sale proceeds available at completion of the Whistler Street Redevelopment i.e. 50% at the end of Year 6 from pre-completion sales and 50% in Year 7 following sale of all properties
- Car Park Revenue is in current (2016) dollars and is capped once i.e. no utilisation growth.

The assessment indicated Council would need to achieve a minimum sale price of around [REDACTED] for the Whistler Street Carpark site. Note: The 'break even' scenario would require Council to finance a substantial component of the construction cost (say [REDACTED] over the 20 year financial assessment period).

4.2.2 Timing of Payments

The timing of the cash payments for the sale of the Whistler Street site is uncertain given the contradictory information in the Development Deed for the Whistler Street Redevelopment. That is, the tender / offer indicated a timeline for payment whereas the Deed provides (clause 2.1.6) that the Parties are to agree in writing to 'a payment and delivery schedule in relation to the Land payment'. The payment schedule indicates a [REDACTED] payment just before the start of construction and the remaining [REDACTED] payment post purchaser settlements.

Nevertheless, it is highly unlikely that the bulk of payment [REDACTED] will be forthcoming until the Redevelopment is completed which, allowing a realistic 24 months for the completion of the Manly Oval Carpark, is potentially in 5 to 6 years, assuming no delays in the start of construction of the carpark or the Whistler Street Redevelopment.

Aside from the requirement that the Whistler Street Carpark remain in operation until the completion of the Manly Oval Carpark, there are no linkages between the two projects. Accordingly, there is a risk the current offer for the Whistler Street site might 'fall over' because of changing commercial or economic conditions over the intervening 5 to 6 year period. If this were to occur, the only compensation available to Council is the [REDACTED] deposit paid (cash or bank guarantee) by the Whistler Street developer. Council would potentially be left with no offset to the cost of the Manly Oval Carpark which is estimated to be of the order of [REDACTED] contract cost plus Council's costs e.g. contract management and supervision, latent conditions (geotechnical) risks, fitout, spoil disposal related costs at Keirle Park, RMS costs).

4.3 Procurement

4.3.1 Procurement Strategy

[REDACTED] Council has put itself at unnecessary risk of having liability of the order of [REDACTED] for an extended period,

should the arrangement for Whistler Street site be delayed or 'fall over' for whatever reason e.g. economic / commercial reasons.

4.3.2 Expressions of Interest (EOI)

Normally the focus of an EOI is on the non-price criteria with some regard to indicative pricing (i.e. the evaluation emphasis is reverse to an RFT). However, the shortlisting of EOI tenderers for the Manly Oval Carpark appears to have focussed on indicative prices. In addition, the Assessment Score used for ranking the EOIs received are different to that initially determined and signed off by the Evaluation Panel. A further / later Assessment Matrix that was signed off by the Evaluation Committee members was subsequently provided for this review and this reflected the ratings provided in the Assessment Score. While the relativity of the tenders was not changed, the revised non-price assessment scores decreased the ratings given to the higher scoring tenderers thus narrowing the gap by up to 12 percentage points.

The reasons provided for the differences in the ratings, was that Council *considered other relevant factors*. Using factors / criteria to short list proponents other than the Assessment Criteria specified in the EOI documents is not good tendering practice especially when it only impacts on the highest scoring tenderers from the initial assessment.

4.3.3 Request for Tender

The overall approach and Request for Tender (RFT) for the assessment of the Manly Oval Carpark generally reflects accepted tendering procedural steps. However, as outlined below, there are a number of significant shortcomings in the application of the procedure.

Tender Analysis

The RFT documents for the Manly Oval Carpark show that an analysis was carried out on a quasi-two envelope basis (non price and price). The outcomes being:

- Non-price criteria: Abergeldie Contractors Pty Ltd (Abergeldie Contractors) was assessed as the highest score, being some 3.4% higher (considered marginal) than the next tenderer
- Cost analysis: Abergeldie Contractors was assessed as the lowest tenderer. Abergeldie Contractors tendered price was similar to the next lower tender however the higher tender included a number of exclusions. The exclusions were priced at an additional [REDACTED]

Abergeldie Contractors were selected on the basis of achieving the best non price score and offering the lowest price. On the basis of the tender evaluation criteria for the Manly Oval Carpark this was a reasonable decision.

However, the shortcoming in the process arises if either of the other tenderers had submitted lower prices i.e. in the absence of a consolidated overall weighting / scoring, there appears to be no objective basis for decision making.

Selection Criteria

The RFT evaluation criteria for the Manly Oval Carpark focussed on the capability and track record of the tenderers and not on an appreciation of the project or its characteristics. It would be expected that the capability and track record should have been resolved to a large

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extent by the EOI process and the RFT should have focussed more on the delivery of the project.

To illustrate the importance of the foregoing:

- Tenderers were advised that Council's preference was for a 'tanked' design solution as opposed to the cheaper Secant piling solution. In spite of this stated preference, the selected / accepted tenderer has adopted a secant piling solution. This will increase ongoing operating costs due to the drainage / pumping required given the higher than expected water tables water detailed in the two more recent geotechnical investigations
- The Manly Oval Carpark tender documents referred to a solution that provided 500 car spaces with the option for later expansion. The second lowest tender offered a 3 level tanked solution that occupied a much smaller footprint (some 50% of the oval) and thereby space for future augmentation i.e. the tender was significantly more in keeping with the tender requirements and the advice provided by Council during the tender process.

In the absence of evaluation criteria such as 'appreciation of the project' or 'response to the design brief', the tender evaluation panel had no means to discern the merits of the respective tenders.

4.4 Estimated Project Costs

The review documentation provided by Council indicates that Council's estimated / anticipated cost of the new Manly Oval Carpark is [REDACTED] made up of [REDACTED] Deed / Contract cost, Council costs and related / dependent project costs). The Council [REDACTED] cost estimate can be broadly linked to the WT Partnership (2015) estimate.

4.4.1 Budget Exclusions

The WT Partnership estimate identified a large number of exclusions that would normally be included in a pretender project estimate. Further, Council's estimate is considered low as:

- The contract administration costs of [REDACTED] that are contained within the WT Partnership estimate were nominated by Council and are considered insufficient to administer a contract of this size and complexity
- There is no indication that costs associated with receipt and management of fill at Kerle Park has been provided for in the budget.

4.4.2 Project Risks

The geotechnical studies have identified a number of inherent risks that may impact on the design and construction of the carpark. These include potential dewatering issues, contaminated fill material and acid sulphate soils. It is not considered that the contingency provision contained in the WT Partnership estimate adequately reflects the risks that have now been identified.

4.4.3 Provisional Sums

The selected tender (Abergeldie Contractors) for the Manly Oval Carpark includes a total of [REDACTED] (6% of total Price) in Provisional Sums covering Entry and Exit Ramps, Traffic Signals

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and a Roundabout at the bottom of Sydney Road. All tenderers were instructed by Council to allow [REDACTED] for the 'Carpark Access Package' (dated 4 March 2016).

In addition, the selected tender:

- Includes the cost of relocating services as required in constructing the Access Package within the [REDACTED]
- Includes in the *Clarifications an un-costed Provisional Sum* for relocating services within the Oval impacted by the construction of the Carpark.

The risks associated with the final cost of the works covered by the Provisional Sums are with Council.

Given the current issues arising from the current negotiations with RMS in finalising the designs for 'Carpark Access Package' and the accepted clarifications from the selected tenderer, it is considered that the current allowance for Provisional Sums for the Manly Oval Carpark is under severe risk and is likely to increase up to [REDACTED] or even more.

4.4.4 Outturn Cost Estimate

We prepared an estimate of the anticipated 'outturn cost' (Base Estimate + Contingency + Escalation) of the car park. The estimate considers the selected tender (Abergeldie Contractors), WT Partnerships estimates (2015), industry norms (e.g. contract supervision and administration), the impacts of the various geotechnical studies and work not included (including tender qualifications) in the Deed for the Manly Oval Carpark. While the following cost should be considered indicative, it is considered more realistic than the Council [REDACTED] estimate, as it seeks to price a number of obvious risks and omissions / exclusions.

Description	Estimate (\$M)	Total (\$M)
Manly Oval Carpark Tender Amount (selected tender)	[REDACTED]	
Escalation	[REDACTED]	
Contractors Costs		[REDACTED]
Council D&C Contingency (WT)	[REDACTED]	
External Consultant costs (WT)	[REDACTED]	
Contract Supervision and Administration (2.5%)	[REDACTED]	
Soil disposal Kerle Park	[REDACTED]	
Treatment of Sulphates in soil and dewatering (Provisional Sum)	[REDACTED]	
Utility relocations (allowance)	[REDACTED]	
Removal of temporary anchors (allowance)	[REDACTED]	

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Description	Estimate (\$M)	Total (\$M)
Additional dewatering costs during construction	█	
Services in Sydney Road and additional costs from RMS requirements (increase in Provisional Sum █)	█	
Fitout costs	█	
Additional Studies (Heritage, Flood and Dilapidation)	█	
Reinstatement of Trees, furniture, etc. (allowance)	█	
Risk and Omission Costs		█
Anticipated 'Total Outturn Cost'		█

Note: The above estimate has considered:

- Inherent Risks (risk applied to individual items) and Contingent Risks (risk due to unmeasured items)
- Allowances have been made in the estimate for inherent risks identified by the various geotechnical studies
- The Evans and Peck Best Practice Cost Estimation Guideline (referred to in Section 3.4.1) identifies a P90 pre tender estimate contingency range of 5% to 15%. While it is considered that the nature of the Manly Oval Carpark project would have meant the adoption of a value towards the higher end of the range, the review team assessment has have taken a number of inherent risks into account. Accordingly, it is considered appropriate to adopt the WT Partnership's contingency estimate of █ which equates to 6.7% i.e. towards the bottom of the best practice P90 range.

It is considered that the foregoing indicates that Council has significantly underestimated the final cost of the Manly Oval Carpark.

4.5 Latent Conditions

4.5.1 Geotechnical Risk

While the Manly Oval Carpark tender invitation documents placed the geotechnical risk at the site with the tenderers, the selected tenderer's documents incorporated as part of the Development Deed, transfers this risk back to Council in respect of design and construction assumptions and disposal of excavated material including quality / contamination of removed material. Note: The Deed for the Manly Oval Carpark specifically states the Abergeldie tender prevails over all other documents.

The geotechnical information that was provided to the Manly Oval Carpark tenderers is as follows:

- The geotechnical information provided to tenderers as part of the initial tender invitation documentation was very limited. It was only based on six (6) boreholes on

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the perimeter of the site and only one in the middle of the oval (seven (7) Electric Cone Penetration Tests were also carried out around the perimeter generally adjacent to the boreholes). The two subterranean profiles provided were based on extrapolating the information along Sydney Road (southern boundary) and along the eastern side of the site. There was very little information in the area where the Carpark is actually being built

- Further geotechnical investigation was carried out in February 2016 and provided to the tenderers late in the tender period (2 March 2016 compared to the closing date of 15 March 2016). The information was described as *'complete Geotech summary of bore hole investigation'*. Tenderers had already been requesting an extension to the closing date and were granted a further 3 days until 15 March 2016

We were provided with a copy of the JK Geotechnics' report (Reference No. 26654ZH3rpt) dated 9 March 2016 (in the second tranche of documents received from the Northern Beaches Council), which is taken to be the formalised report of the *'complete geotech summary ...'* provided to the tenderers. The report provides information on additional eight boreholes, 6 on the edges of the oval / carpark footprint and two roughly on a central cross section of the carpark

The bore logs confirm that the water table is some 2 to 3 metres higher than that recorded in 2013 -14 (initial tender information) i.e. now up to 1 to 1.5 metres above the floor level of the upper level of the carpark. The increased water table level has significant dewatering construction cost implications. It should also be noted that the more permeable nature of the adopted Secant wall design (over a 'tanked' design stated by Council as a preference in advice to tenderers on 19 February 2016), means that the Manly Oval Carpark will likely become a continuous dewatering facility with the potential to impact on surrounding properties by permanently lowering the water table.

While the additional geotechnical information had the potential to reduce the design geotechnical risk, this was reduced by the limited time that the tenderers for the Manly Oval Carpark had to revise their design approach. Consequently, it is of no surprise that Abergeldie Contractors qualified their tender submission.

While the additional geotechnical information may have persuaded / led Council to accept the Abergeldie Contractors geotechnical qualification, we did not see any information to suggest that Council:

- Assessed the potential risk in terms of the likelihood and value of a potential for a contract claim
- Sought to have the qualification removed as part of the tender assessment process.

Irrespective of the quality of the geotechnical information, it is considered imprudent for Council to accept what remains a considerable unknown. Issues such as the variable nature of the sand material, different strength characteristics of the underlying bedrock and only 2 bore holes on the central cross section mean that the geotechnical risk remains significant. At best it might have been reduced from a very high risk to a high risk in terms of likelihood. However, it is considered that the value of a potential claim will remain significant.

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In respect of the Council's advice to the Office of Local Government (letter dated 14 April 2014), our review did not sight information available at that time, to support the advice that there was a low geotechnical risk.

4.5.2 Acid Sulphate Soils

Preliminary Environmental Site Assessment, December 2013

Included in the third tranche of documents provided by the Northern Beaches Council for our review (on 15 July 2016) was a report titled *Preliminary Environmental Site Assessment for the Proposed Car Park Development at Manly Oval*. The report was by Environmental Investigation Services and is dated 3 December 2013. The report highlights the following issues:

- Underground services representing possible contaminant migratory pathways at the site included the sewer and electrical mains
- Groundwater bore records indicate water is extracted in the area for recreational use and may be a possible down gradient contaminant receptor
- Areas of environmental concern included previously imported / potentially contaminated fill material, the use of pesticides / fuels / oils for site maintenance and the presence of in-situ potential acid sulphate soil
- Laboratory testing was completed of the material obtained from the 5 borehole (represent 20% of the recommended density outlined in the NSW EPA Sampling Design Guidelines 1995) confirmed the following:
 - i. Elevated concentrations of benzo(a)pyrene (PAH) and hydrocarbons in the fill material above the site SAC
 - ii. Acid sulphate soil was encountered at depths of approximately 4.8m and below
 - iii. Groundwater was not sampled / analysed for this investigation. The report did note that '*groundwater bore records indicate water is extracted in the area for recreational use and may be a possible down gradient contaminant receptor*'. The review team takes this to mean that, in conjunction point (ii), there is the possibility that lower level groundwater contains acid sulphate materials.

Based on the foregoing, the Environmental Investigation Services report concluded the following:

- The fill material may be re-used provided the contaminated areas are removed, or a 'clean' capping layer (and separating geofabric) is used over the fill material. Additional investigation is required to better assess fill depths, obtain supplementary waste classification data and better assess contaminated areas
- Material excavated from depths of approximately 4.8m and below must be treated as acid sulphate soil. An additional investigation is required to better assess the depths of acid sulphate soil across the site.

The Environmental Investigation Services report recommended that additional site investigation be undertaken to better assess contamination associated with the fill material, the existing waste classification data, acid sulphate soils conditions across the site and

stratigraphy across the site. The additional assessment was required to develop a remedial action plan and acid sulphate soil management plan.

Review Comment

Acid sulphate soil is the common name for soils that contain metal sulfides. In an undisturbed and waterlogged state, these soils may pose no or low risk. However, when disturbed or exposed to oxygen, acid sulphate soils undergo a chemical reaction known as oxidation. Oxidation produces sulphuric acid which has led to these soils being called acid sulphate soils¹²

Acid sulphate soils can impact on build and natural environment in the following ways:

- Ecosystems: May be affected by changes to water and soil quality. This can lead to negative effects on the species and ecological communities
- Cultural: Assets / facilities may be degraded or may not be able to be used for cultural, recreational or consumptive uses. Significant impact on the flora and fauna (terrestrial and aquatic) by acidic water, metal contamination or oxygen depletion in water
- Built: Acid sulphate soils may cause metal to corrode and concrete, bricks and mortar to break down or crack. Buried metal pipes, fittings and joins may corrode at an accelerated rate. These effects may lead to structures and materials requiring increased maintenance costs and eventual replacement decades earlier than under normal circumstances.

We could not identify any material which indicated that the December 2013 Preliminary Environmental Site Assessment had either been actioned by Council as part of the project development process or made available to tenderers. Not disclosing the contents of the report to the tenderers places Council at considerable risk of contractual claims and possible damages. These risks will manifest by additional costs for:

- Treatment of dewatering
- Materials handling during excavation
- Design costs to overcome long term corrosion / concrete degradation and whole of life costs.

In addition, Council has accepted the responsibility for receiving / disposal of excavated material at Kerle Park, Seaforth Oval and Tania Park. Council will have to prepare and implement an Acid Sulphate Soil Management Plan which will require treatment of a substantial volume of affected material. This will be a significant cost.

4.5.3 Contract Conditions and Implications

The tender invitation documents identified AS4902-2000 General Conditions of Contract for the project. This is reflected in the signed Development Deed for the Manly Oval Carpark project.

The AS4902-2000 contract has the potential to expose the client to greater risk in a number of areas compared to for example the NSW Government GC21 contract, particularly in Latent

¹² Department of Environment, Federal Government

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Conditions and the associated Deemed Variation provisions. The AS4902-2000 Contract provides that:

- Latent Conditions are physical conditions (excluding weather conditions) which differ materially from the physical conditions which should reasonably be anticipated
- The effect of a *latent condition* shall be a *deemed variation*.

In comparison, the GC21 Contract requires the contractor to justify its contention that the site conditions are 'materially worse' that might have been anticipated, and have had a detrimental effect on the Works or Scheduled Progress.

Given the issues identified in Sections 4.5.1 and 4.5.2 above, it is considered that combined with the nature of the proposed contract, Council is carrying a substantial Latent Conditions risk.

4.6 Tender Undertakings

Schedule H of the selected tender included in the Development Deed for the Manly Oval Carpark provides a list of clarifications on which the tender is based. The clarifications detail agreements and advice provided by Council during the tender period. It is noted that some of the agreements are more akin to issues that would be resolved post contract award.

In providing the agreements and advice as detailed, Council has accepted risk for a number of items e.g. Item 24: *We have assumed that Council will seek the necessary permission / approvals for the temporary anchor easement under the adjoin properties*, meaning Council is potential exposed to contract program delay damages. Other areas include RMS approval risks, DA costs, excavated material disposal, services and utilities relocation.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]

4.7.2 Manly Oval Carpark

- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
 - The carrying out of the carpark works *'is subject to and conditional upon the Council obtaining Development consent to its Development Application and on terms and conditions which are acceptable to both parties acting reasonably'*. The Deed then requires execution of the Construction Contract within fourteen days from the granting of Development consent
 - The Deed provides circumstances for Termination and Substantial Breach. In respect of:
 - Substantial Breach: The Deed defines these as repudiation, default of an essential term (Conditions Precedent, Dispute Resolution, Indemnity and No Fetter)
 - Termination: The Deed defines circumstances when either party is able to terminate the Deed which are; non fulfilment of a Conditions Precedent, a Substantial Breach, any other breach not rectified within thirty (30) days and, any negligent act or omission.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- DA: Approval is subject to *'terms and conditions which are acceptable to both Parties acting reasonably'*. The lack of precision is the flexibility afforded in terms of *'acceptable'* terms
 - Construction Contract: *'If agreement on the wording of the Construction Contract cannot be reached then this Development Deed is terminated ...'* The lack of precision is the flexibility associated with what might or might not be *'agreement on the wording'*.

4.7.3 Whistler Street Redevelopment

The following observations are made on the terms of the Whistler Street Redevelopment Deed:

- [REDACTED]
- [REDACTED]

- _____

[REDACTED]

Should Council consider termination, confirmation of the above assessment should be subject to legal advice.

5 Review of Save Manly Oval Alliance Submission

The Northern Beaches Council also requested a review and comment on the Development Application submission made by the Save Manly Oval Alliance (SMOA). This review has identified its understanding of the key issues raised by the SMOA and has provided a corresponding comment below.

5.1 Business case

Summary of Submission

In its Financial Analysis, SMOA notes that the OLG Capital Expenditure Guidelines (2010) require a business case for any major capital expenditure (i.e. a project where the capital cost exceeds \$15M). The Alliance then submits that no business case was prepared for the Manly Oval Carpark as currently proposed.

Review Comment

The OLG Guidelines¹³ requirements outlined in Section 3.1 actually reference a \$10M threshold in contrast to the \$15M value referenced by SMOA. As identified by this review, there was no adequate business case prepared for either the combined project (sale of Whistler Street and Manly Oval Carpark) or for the Manly Oval Carpark as a stand-alone project.

5.2 Sporting Venue

Summary of Submission

SMOA notes the long sporting association / history of the Oval, especially cricket and rugby union. SMOA contends that the construction of the Manly Oval Carpark will result in the Oval being unsuitable for senior level rugby union due to a decrease in the area available for play and the impacts on drainage / water table.

Review Comment

The impacts upon users of the Oval during construction, has been identified as an omission in Council's Financial Analysis. The potential impact on the suitability of the Manly Oval post construction for senior level competitions in cricket and rugby union exacerbates this omission.

5.3 Financial Assessment

Summary of Submission

SMOA submits that the end cost of the carpark will be considerably higher than the tendered price of [REDACTED] and suggests that a final amount will be [REDACTED] *'but could easily rise to [REDACTED]'* The basis of the [REDACTED] amount appears to be Monte Carlo risk simulation (using @RISK software package).

¹³ <https://www.olg.nsw.gov.au/sites/default/files/Capital-Expenditure-Guidelines.pdf>

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SMOA carried out a financial assessment using their estimated capital costs with income and operating costs based on Council and Bitzios data. SMOA's findings were:

- A negative [REDACTED] Net Present Value (NPV) of the cash flows for 20 years for the new Manly Oval Carpark
- The Council will face cash shortfalls in each year of its operation
- Council's net borrowing position will be substantially worse off, by having to borrow to fund the construction, the annual cash flow shortfalls and the consequential debt servicing obligations.

Review Comment

It is considered that SMOA's estimate of [REDACTED] for the final cost is overly pessimistic for the following reasons:

- Using the unit rate of the QS firm Napier & Blakely (July 2105) for the construction of underground concrete structure carpark results in a cost range of [REDACTED] to [REDACTED]
- The upper bound costs of a number of elements of the SMOA estimate appear overly high. To this end SMOA's overall 'Upper Bound' is some 12% greater than the total 'Likely Cost'
- A number of elements have been escalated by amounts (10% to 15%) in excess of what could be expected
- The Monte Carlo risk simulation has been applied to rolled-up elements (e.g. 'basic car park cost') that should have been applied on an individual element basis.

Irrespective of the foregoing, our review does agree that the current estimate of project costs is substantially understated. While Council has allowed [REDACTED] the final cost, the outturn cost is likely to be in the order of [REDACTED]. The increase is due to an underestimation of the entrances and exit works to the Manly Oval Carpark, Latent Conditions, and relocation of services, contract supervision and administration costs and, inclusion of related project costs (e.g. Council disposal / management of excavated material).

SMOA's observation that street car parking spaces will be lost due to the entrances and exit works for the proposed carpark is noted. The loss of these spaces should have been included in Council's financial assessment.

5.4 Environment and Amenity

Summary of Submission

SMOA submits that the proposal fails to comply with the principles of ecological sustainable development as described under the Environmental Planning & Assessment Act (1979), Local Government Act (1993 - S.7) and the principles of Crown Land Management as defined in S.11 of the Crown Lands Act (1989). The submission focuses on floodplain management, impacts of climate change, acid sulphate and contaminated soils, ecological and environmental concerns, heritage, traffic, noise and air pollution.

Review Comment

This review concurs with SMOA's concerns regarding:

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- Possible impacts of changing water table levels during and post construction upon the surrounding vegetation and development
- The risk associated with acid sulphate material and possibly contaminated waste in the excavated material. The acid sulphate material has:
 - Major implications for Council given the agreement that Council will receive the excavated material at Kerle Park and in managing groundwater discharges
 - The possibility of acid sulphate material being mobilised into the groundwater by the dewatering process. This would incur additional dewatering treatment costs

The foregoing issues were considered in detail by the review team, given the major risks posed by these issues

- The possible impacts of changing water table levels during and post construction upon the surrounding vegetation and development
- The carpark potentially not being compatible with Reserve's defined purposes.

5.5 BCA Compliance

Summary of Submission

SMOA has identified potential non-compliances concerning travel distances to fire escapes, carpark ventilation and freeboard requirements for potential flooding events.

Review Comment

These potential non-compliances are typically resolved in the detailed design process though review processes such as Safety in Design and HAZOP. Consequently, these issues are not considered significant.

5.6 Heritage

Summary of Submission

SMOA has provided a detailed Statement of Heritage Impact (June 2016) prepared by Dr Anne Warr (Anne Warr Heritage Consulting). The impact statement concludes that the proposed development of Manly Oval is not considered compatible with the heritage value of the precinct as:

- It will detract from the heritage significance of Ivanhoe Park and the adjacent streetscape and listed heritage items
- It does not comply with the heritage provisions of Manly Council's planning instruments.

The impact statement further notes that neither a Heritage Impact Statement or a Conservation Management Plan have been prepared for the carpark development.

The Statement of Heritage Impact includes an assessment of heritage significance using the criteria (7) identified in NSW Heritage Office Guideline 'Assessing Heritage

Significance'. The assessment submits that *'Manly Oval and its setting can be considered to be of NSW State Heritage significance as it meets the state heritage criteria in 4 categories'*.

Review Comment

Whether or not Ivanhoe Park and thereby Manly Oval are of State Heritage significance can only be determined after assessment under the provisions of the NSW Heritage Act 1977, which would include an opportunity for public submissions. However, there was no evidence in the documentation we reviewed that heritage aspects have been adequately addressed.

5.7 Hydrology, Hydrogeology and Flooding

Summary of Submission

SMOA submits that further flood modelling is essential to determine the required detention capacity and / or other flood mitigation measures as well as design modifications to the carpark are required to ensure its safety.

Detailed modelling of groundwater is also required to understand the impact of the car park structure on groundwater flow and water table levels. In addition, potential impacts on nearby buildings and vegetation when the site is dewatered during construction and post construction needs to be assessed. The submission also suggested that precautionary dilapidation surveys be carried out on these buildings.

SMOA also notes that Cardno in November 2013 recommended the construction of an above ground 3,400 cubic metre detention tank and 1,000 cubic metre tank integrated with the carpark.

Review Comment

The potential impact of the new Manly Oval Carpark on ground water flow and the resulting impact of disrupted groundwater upon surface flooding appear to be a relevant concern.

The reference the 3,400 cubic metres above ground detention tank in Cardno's 2013 letter was not a recommendation. It was only a reference to the above ground storage (i.e. a detention basin) within Manly Oval that was proposed in the preliminary carpark design. In its 2008 study, Cardno recommended the construction of a 1000 cubic metre tank below ground and this has been provided.

5.8 Roads and Traffic

Summary of Submission

SMOA's principal concerns with the impacts on roads and traffic are:

- Traffic management at the intersection of Sydney Road and Eustace Street
- The impact of the westbound exit ramp in Sydney Road on westbound traffic in and safety concerns associated with sight distances and visual obstruction caused by the ramp barrier walls
- The impact on buses turning out of Sydney Road into West Promenade
- Bus movements (SMOA bus traffic count) are considerably higher than those recorded in Council 's Traffic Report

- The Council traffic assessment did not take account of additional traffic generated by the proposed carpark.

Review Comment

It is understood that RMS has raised concerns with the Sydney Road entrance and exit proposals, including relocating the exit to Raglan Street.

5.9 Complying Tender

Summary of Submission

SMOA submits that the accepted tender for the Manly Oval Carpark may not be conforming and potentially be in breach of Regulation 176 of the Local Government (General) Regulation 2005. This issue concerns whether the current proposal can be expanded to 760 spaces in the future as required by the tender documentation.

Review Comment

Tenders are evaluated with the objective of identifying the offer that meets an organisation's requirements and provides the best value for money. Tenders must be evaluated fairly and equitably in a manner that is consistent with the Council's procurement principles, including exclusion of non-compliant offers.

Non-compliant offers include those that:

- Do not comply with the conditions for participation
- Were lodged after the closing time and do not meet the requirements for consideration following late lodgement contained in the RFT and the Evaluation Plan
- Fail to meet mandatory specifications or other compliance criteria.

As noted in Section 4.3.3, the RFT evaluation criteria for the Manly Oval Carpark focussed on tenderer capability and track record and not on tenderer's appreciation of the project or its characteristics. In this context, there is no basis to determine that a tender is non-conforming because it did not provide for possible future expansion of the carpark i.e. in the absence of evaluation criteria such as 'appreciation of the project' or 'response to the design brief', the tender evaluation panel had no means to discern the merits of the respective tenders.

6 Conclusions

Proceeding with the Manly Oval Carpark project in its current state poses significant contractual and financial risk to Council. There are also questions associated with the overall financial viability of the carpark and the extent to which it will meet the long term parking objective set out in the *Manly 2015 Masterplan*.

Should Council wish to proceed with the current proposal, the following actions are recommended:

1. Immediately enter into discussions with the OLG to confirm that neither the Whistler Street Redevelopment or the total project (i.e. Manly Oval Carpark and the Whistler Street Redevelopment) are not regarded as significant or high risk PPPs and comply with the OLG Guidelines.
2. Obtain an independent valuation of the Whistler Street site for the development envelope proposed under the Development Deed. This will provide:
 - a. Confirmation that Council is realising an appropriate market return
 - b. Indicate the confidence that can be applied to realising timely payment to offset the Manly Oval Carpark cash flow requirement.

It is considered that obtaining an independent valuation assessment should have been a minimum tender assessment assurance requirement.

3. In parallel with the foregoing action, a due diligence review should be completed to close out the issues identified in Section 3. This should include further financial assessment to better quantify the financial return that the project will deliver to Council. The assessment should cover the proposals at both sites (i.e. Whistler Street and Manly Oval Carpark) and a comparison with the base case (i.e. status quo or do minimum). The assessment should go a long way in resolving the OLG's concerns with the project's risks.
4. Confirm Council's contractual risk exposure (geotechnical risk exposure and other accepted tender clarifications / qualifications) for the Manly Oval Carpark Development Deed/contract. We are prepared to work jointly with Council's Corporate Counsel in confirming contract liabilities.
5. Identify what risk mitigation actions are available to Council in minimising the risks accepted by Council in the tender process and reflected in the Manly Oval Carpark Development Deed. For example, what trade-offs / price might be required for the contractor to accept risks associated with geotechnical issues.
6. Ensure that the total project budget for the Manly Oval Carpark covers all required work budget (e.g. fitout costs of the carpark and library, related projects), provides adequate contingency and incorporates Council's project / contract management costs.

Note: Until the results of the above actions are available, Council would be required to place a moratorium in advancing the assessment of the Manly Street Carpark Development Application. This will result in a delay of up to 3-4 months in progressing with the current proposals at Manly Oval Carpark and Whistler Street Redevelopment.

Appendix A: Documents Provided by Council

Date	Study / Report / Assessment	Author
Tranche 1 – provided by Northern Beaches Council at start of review 10 June 2016		
2007-2013	Manly 2015 Masterplan inc Communications Strategy	Manly Council
June 2009	Parking Study	Gennaui
Jul 2010	Rental Analysis on use of Crown Land	Manly Council
Dec 2013	Stormwater Detention	Manly Council
June 2013	10 Year Financial Plan	Manly Council
June 2013	Fire and Safety Assessment of Whistler Carpark	Building and Fire Surveying
Aug 2013	Flood – stormwater studies	Cardno
Oct 2013	Manly Carpark Financial Feasibility Estimate	WT Partnership
Nov 2013	Geotechnical Report	JK Geotech
Nov 2013	Demand Forecasting Car parking	Bitzois
Nov 2013	Whistler Car Park Feasibility Appraisal	Hill PDA
Dec 2013	Economic Assessment of Master Plan	Hill PDA
Dec 2013	Geomorphological Assessment & correspondence with Aboriginal Heritage	Geoff Hunt
Dec 2013	Manly CBD Manly Oval Pedestrian Access	Manly Council
Dec 2013	Financial and Commercial Review	KPMG
Dec 2013	Capital Expenditure Review Submission to Local Government	Manly Council
2013	Revenue models, NPV's etc.	Manly Council
2015	Financial Feasibility Review and NPV of 470 Carpark	Manly Council
2016	Development Application for Manly Oval	Manly Council
April 2016	Deeds of Agreement:	Manly Council

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Date	Study / Report / Assessment	Author
	<ul style="list-style-type: none"> Deed for Manly Oval Carpark between Manly Council & Abergeldie Contractors Pty Ltd for design & construction of a new underground car park at Manly Oval, signed on 26 April 2016 Deed for Whistler Street Redevelopment between Manly Council & Built Development (Manly) Pty Ltd & Athas Holdings Pty Ltd for redevelopment of Whistler Street Carpark & Library signed on 27 April 2016 	
Undated	Risk Assessment Matrix & Issues Log	Manly Council
Various	Council Meeting Minutes / Resolutions	Manly Council
Tranche 2 – provided by Northern Beaches Council 4 July 2016		
May 2015	Structural Drawings	Cardno
May 2015	Invitation Brief for EOI – Design and Construction of Manly Oval Carpark and Attachments	Manly Council
Dec 2015	Confidential EOI Assessment Reports and minutes	Manly Council
April 2016	Confidential RFT Assessment Reports and minutes	Manly Council
Jan – April 2016	Communications between Tenderers and Council	Manly Council and various Tenderers
2016 (undated)	Financial Assessments Spreadsheets 1 to 18	Manly Council
June 2016	Paper – Applicability of public private partnership provisions in the Local Government Act	Manly Council – GM
Tranche 3 – provided by Northern Beaches Council 15 July 2016		
May 2013	Manly Oval Carpark – Cash Flow Balance Sheet	Manly Council
Oct 2013	Manly Oval Underground Carpark Feasibility Estimate Rev 1	WT Partnerships
March 2016	Second Supplementary Geotechnical Investigation	JK Geotechnics
Feb 2015	Manly Oval Underground Carpark Indicative Estimate	WT Partnerships
Dec 2013	Preliminary Environmental Site Assessment at Manly Oval	Environmental Investigation

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Date	Study / Report / Assessment	Author
		Services
July 2016	Various documents including Financial Assessment Heritage, Environmental, Traffic, Suitability of Oval post Construction, etc.	Save Manly Oval Alliance
Tranche 4 – provided by Northern Beaches Council 4 August 2016		
Various	Correspondence – between OLG and Council	OLG and Council
2014	Manly Oval Car Parking Options	Manly Council
July 2015	EOI Revised Assessment	Manly Council

Appendix B: About Value Network

Accreditation

Value Network (www.valuenetwork.biz) is a specialist consultancy providing innovative value adding business improvement solutions and strategies to clients. Value Network has established a reputation for excellence in service delivery covering all aspects of project formulation and delivery.

Value Network accredited with government includes:

- Accredited with Austrade as a Procurement Support Service Provider
- Appointed to Urban Growth NSW Probity Services Panel ITT
- Prequalified for Value Management Facilitation by the Department Finance, Services & Innovation
- Transport for New South Wales Probity Advisor Services Panel. Accredited Panel Members: Alan Griffin, Ted Smithies, Rosemarie Risgalla
- Commonwealth Department of the Environment: Multi-Use List Arrangement 0708-21, Provision of expert and specialised services related resources and their administration
- Prequalified under the Consultant Performance and Management Services Scheme with the NSW Department of Finance, Services and Innovation for:

Work Type 341 – Performance Review

Agency Reviews
Targeted Reviews
Management Reviews
Policy
Strategy Reviews

Work Type 344 – Organisational Capacity

Corporate and Business Strategy
Asset Management & Procurement
Governance & Reporting
Agency Procurement Assessment (Goods & Services)

Work Type 342 – Infrastructure and Major Projects

Strategy & Planning
Risk
Major Project Procurement & Delivery
Contracting

Work Type 345 – General Technical Expertise

Policy Development
Business Case Development
Contracts & Contracting
Economic Analysis

- Registered Adjudicators (Ted Smithies and Rosemarie Risgalla) for Queensland, NSW, ACT, VIC and TAS. Completed over 636 contract determinations / decisions for disputes worth \$105M.

Relevant Experience

Value Network capability to perform this review is highlighted by the following achievements:

- Prepared business cases for Barangaroo Point (Headland Park), Wynyard Walk, Barangaroo Central Stage 1 and Barangaroo Integration Works
- Prepared business cases (18) for Housing NSW (5, including a PPP 'barter' arrangement), Centennial Parklands 2010-2019 Capital Investment Program), State Water (7 major dam upgrade projects), Sydney Catchment Authority (Tallowa Dam Fishway and Environmental Flows and Bore Water Supply), NSW Maritime (Commuter Wharf Upgrade program) and Department of Premier's and Cabinet (Public participation - Jenolan Caves)
- Instrumental in the planning application for the demolition of the Sydney Harbour Control Tower (Options Assessment Report). Subsequently, Value Network was the lead consultant in the successful submission to The Minister for Heritage to not have the Tower listed on the State Significant Heritage register
- Assessed the Economic and Financial Implications of Heritage Listing the Sirius Building (the Rocks) for Government Property NSW
- TfNSW – North West Metro: Facilitated and reported on the 2011 International Expert Review to validate / verify the Product Definition of the North West Metro. The purpose of the review was to confirm that the project met transport needs and enable Government funding of the next stage of development
- Advised the NSW Audit Office in performance reviews of WestConnex (project formation and business case), Tippy Cotter Bridge, Moore Park (project formation, business case, contract and delivery) and Sydney Light Rail (project formation, business case, contract strategy and award, including early works and PPP)
- Provided probity advice to Parramatta Council on the sale of 169 Macquarie Street, Parramatta. The sale was a key part of the \$2B Parramatta Square project, one of the largest urban renewal projects in Australia
- RMS – Alliance Contract Governance Audit: Examined achievement of the objectives of the Alliance projects, mechanisms for protecting the interests of the RMS and the Government and the clarity in definition and understanding of roles and responsibilities of the RMS Alliance Leadership Team members and RMS's management in respect to the Alliance projects
- Provided project management support to RMS with development of the M5 West Widening BOOT / PPP scheme (\$400M) to obtain the best value for money for the NSW Government
- Energy Australia Overflow Alliance Contract Selection (\$8B): Facilitate Phase 1 & Phase 2. Plan, facilitate & report on outcomes for Alliance Partner Selection and Commercial Alignment
- Advised Port Macquarie Hastings Council on the delivery and management of the \$50M Cultural Centre (Glasshouse), commercial negotiations with Qantas over the use of Council's Airport and private sector participation in managing and operating the Port Macquarie Airport and Council's motor vehicular fleet.

Review Personnel

Alan Griffin, Director

B.Sc. (Civil Engineering) UNSW, Grad. Dip. Admin SIT, FIE (Aust)

Alan has experience in the public and private sector at senior and executive levels, including Chair of the State Contract Control Board (now the NSW Procurement Board) for 8 years; Principal's delegate for \$3.5 B & \$1.6 B p.a. expenditure on supply & construction contracts respectively; Deputy Director General, NSW Department of Commerce; Administrator Jenolan Caves Trust; Alternate Administrator Port Macquarie / Hastings Council. His experience covers probity, project management, construction/contract management, dispute management/resolution, project assurance, supply chain solutions, commercial and environmental stewardship roles. Alan's experience is complimented by time spent managing a number of business improvement, organisational and performance reviews into both state and local government issues e.g. State Records Authority, Health IT, State Electoral Office, Gosford City Council (Piles Creek Landslip) and international projects advising clients on tendering and project management issues.

Ted Smithies, Director / Principal

B.Eng. (Civil) UNSW, Accredited VM Facilitator & Fellow of Institute of Value Management Australia

Ted has significant public and private sector experience in both strategic and operational roles. As Group General Manager Strategic Procurement Services, NSW Dept. of Public Works & Services (DPWS) / Commerce he was Principal's (Minister) delegate for \$1.4 B p.a. of construction projects. He was principal author of first NSW Total Asset Management (TAM) Manual. TAM was the first service outcomes approach to resource allocation. Ted led the team that developed the NSW Government Capital Project Procurement Manual. He has represented Australia at APEC negotiations on transparency & probity in government procurement (1996). He also represented Australia on DFAT 'Capital Delegation' at WTO (Geneva) negotiations on Agreement in Government Procurement (1999). Ted was a Member of the Taskforce, which developed 2002 NSW Working with Government PPP Guidelines. Ted's private sector experience covers business strategy, resource allocation and management, business cases & feasibility studies, project assurance, governance reviews, probity risk assessment, probity services, project review/audits, risk management studies, value management, procurement strategies/methods, project management, contracting solutions, contract dispute adjudication.

Chris Taylor, Senior Associate

Bachelor of Economics and Graduate Diploma in Environmental Studies (Macquarie Uni)

Chris has more than 35 years commercial experience providing economic advice on infrastructure (rail, dam, construction, water and sewerage). He has also undertaken a range of financial and economic appraisals; designed and implemented costing systems for the private sector, NSW Government and local government clients. Chris prepared the economic and financial analysis of leasing of heritage listed public housing at Millers Point, Sydney, for Housing NSW, which lead to leasing out of buildings to the private sector and generation of funding for alternative provision of better quality public housing at alternative sites.

NORTHERN BEACHES COUNCIL

