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1. Acknowledgement to Country

Shellharbour City Council acknowledges the Traditional Owners and Custodians of the Land on which we are meeting and pays its respects to Elders past and present.

Webcasting Comment

The public gallery should note that Council records and webcasts its Council Meetings live to enhance the accessibility of Council Meetings to the broader Shellharbour City Community.

Council Meetings can now be viewed live via webcast, downloaded from Council's website for later viewing, or purchased from Council for viewing on a computer.

At the appropriate time during the meeting pre registered or invited members of the gallery may Address the Council at which time their image, comments or submissions will be broadcast live and recorded.

Council accepts no responsibility for any defamatory or offensive statements.

Please ensure that mobile phones and other electronic devices are turned off or are in silent mode for the duration of the meeting.

2. Apologies / Leave of Absence

3. Confidential Business (Committee of the Whole)

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

Set out below is Section 10A(2) of the Local Government Act 1993, in relation to Confidential Business:

10A(2) Which parts of a meeting can be closed to the public? The matters and information are the following:

- (a) personnel matters concerning particular individuals;
- (b) the personal hardship of any resident or ratepayer;
- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business;
- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,

- (e) information that would, if disclosed, prejudice the maintenance of law;
- (f) matters affecting the security of the council, councillors, council staff or council property;
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege.

CONFIDENTIAL ITEMS

3.1 Proposed Resumption of Lands at Oak Flats by Transport for NSW (10024469) CONFIDENTIAL

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(d)(i) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (d) commercial information of a confidential nature that would if disclosed:
 - (i) prejudice the commercial position of the person who supplied it.

This item, if discussed in the Open Meeting of Council, would be contrary to the public interest because it is premature at this time. The appropriate time for its full release such that the commercial position of the person who supplied it is not prejudiced, would be when the proposed acquisition by Agreement is entered into.

Transport for NSW has also requested that this matter remain confidential between the parties until agreed to by Council.

3.2 Airport Terminal Fire (10024887) CONFIDENTIAL

Reason for Confidentiality

This item is classified CONFIDENTIAL under the provisions of Section 10A(2)(e) of the *Local Government Act 1993*, which permits the meeting to be closed to the public for business relating to the following:

- (e) information that would, if disclosed, prejudice the maintenance of law.

This report has been made confidential to enable Councillors to discuss the issues regarding the investigation into the cause of the fire at the Airport Terminal Building in May 2013.

If this matter were to be discussed in open Council, there is a risk that those discussions could prejudice persons involved in the operation of the Aviator Lounge restaurant at the time of the fire.

4. Pecuniary Interest and Conflict of Interest Declarations

Note: Councillors who declare a Pecuniary Interest at the Council Meeting are also required to complete a Pecuniary Interest Declaration form.

5. Addresses to Council

6. Committee of the Whole in Closed Session: Adjournment

RECOMMENDATION:

1. That Council resolve into Committee of the Whole (in Confidential Session) to consider the above business as listed, together with any late reports tabled at the meeting.
2. That pursuant to Section 10A(1-3) of the *Local Government Act 1993*, the press and public be excluded from the proceedings on the basis that the business to be considered is classified confidential under the provisions of Section 10A(2)(d)(i) and 10A(2)(e) of the Act as outlined above.
3. That the correspondence and reports relevant to the subject business be withheld from access to the press and public in accordance with Section 11(2) of the *Local Government Act 1993*.

7. Committee of the Whole: Consideration of Adoption of Decisions Reached in Closed Session

8. Reports

8.1 Airport Terminal Fire - Insurance Options (10024924)

To the General Manager

Directorate: Corporate Policy
Department: Risk Management

Manager: Tony Gearon - Group Manager Finance
Author: Ian Smith - Manager Risk Management Services

Summary

On Monday 20 May 2013 at approximately 3.00am, there was a fire in the Aviator Lounge at the Illawarra Regional Airport, Albion Park Rail. The damage to the building was extensive and as a consequence of the fire, the entire ground floor section of the restaurant, bar and reception area was destroyed beyond repair. The tower located in the centre of the building was not damaged to the same extent as the rest of the building. We have been advised by the consulting engineers, that the tower and amenities block located beneath it on ground floor are both salvageable, subject to some additional repairs to the external skin of brickwork.

Background

Construction of the airport terminal building was completed in June 1994. It was designed and constructed as a purpose built airport passenger facility, with basic catering facilities. Construction of the terminal building was funded largely by a Federal Government Capital Works Program (\$157,000), with Shellharbour Rotary Club contributing \$16,500 and Council providing the remainder of the funds (approx \$90,000).

After reviewing Councils records, there are no conditions associated with the Federal Government funding, that require Council to replace the terminal building, in the event that it is totally or partially destroyed.

The facility operated in this capacity for a number of years. A development application was submitted in 1996 to enable the facility to become a licensed restaurant, with increased areas for both external and internal seating. The building continued to operate as both a terminal building and a licensed restaurant.

In April 1999, another development application was submitted for minor extensions to the western side of the building and car parking, to further enhance the restaurant.

The final development application received for the building, was submitted in February 2010, by the last lessees of The Aviator Lounge. The work that was approved by Council in that application, was again to increase the capacity of the restaurant. The approval did

come with a limited consent, for allowance of 12 months to assess parking issues and the approval also made provisions for Council to reinstate the passenger terminal facilities should, they be able to find a passenger airline willing to operate from the airport. Neither of these issues came to fruition and the consent lapsed in May 2011. When Council advised the lessee that the application had lapsed in March 2011, he indicated that he would lodge another application within 30 days, but for whatever reason this did not occur.

Implications/Considerations

The Aviator Lounge fire will have a minimal impact on Council's Delivery Program, because the asset was not defined as critical, in the day to day operations of Council. The impacts associated with this event are far greater for the former lessee than they are for Council, when considered in the context of business disruption.

The financial implications for Council regarding the future of the airport terminal building, are significant. Council is faced with a number of options regarding the future of the asset, all of which will have both financial benefits and disadvantages depending on the interests of each of the stakeholders. It is noted that the most important stakeholders in this decision are the community. It is equally important for Council to manage community expectations regarding decisions of this nature. Council will ensure that the community is adequately informed about any decision made by Council, regarding the future of passenger services and / or restaurant facilities operating from the airport.

The legal issues associated with this matter are limited to the provisions outlined in the relevant insurance contracts. Council's insurer (Vero) has indemnified Council for the loss and we are currently negotiating with the insurers on quantification of the claim.

From a planning perspective, The Airport Master Plan is a relevant document although it is still in draft form. The fact that this plan has not yet been formally adopted by Council will further complicate the decision regarding the future of the asset.

The public and social impacts associated with the loss of this asset are particularly evident for the frequent users of the airport and the users of the Aviator Lounge and Café. The restaurant provided the only onsite catering service at the airport and it provided visitors and locals with the opportunity to have an "airside dining experience".

Council must consider the best, long term decision, regarding the future of this asset. To do that, we must consider the options on offer from Council's insurers, which are set out in an extract from a report prepared by Council's Claims Managers (CMA).

INSURER'S POSITION

As you may recall, insurers nominated contractors who undertook demolition works of all portions of the building, that they believed could not be successfully restored. In essence, this amounted to only the slab and the control tower, being left in position.

Thereafter, a scope of works for restoration was produced, based upon plans supplied by Council and amended where necessary to meet current building codes.

It was put to insurers that Council may wish to reinstate with a different building, reinstate elsewhere, or simply not carry out reinstatement. Accordingly, as any settlement calculation must use the cost of rebuilding/ repairing the original building to meet current codes as the starting point, it was agreed upon that a Quantity Surveyor's report would be obtained. Wilde and Woollard Pacific Pty. Ltd. subsequently provided a report, which has previously been supplied to Council.

That report indicated that the total reinstatement works as valued at 20 June 2013 and net of GST, would amount to \$1,036,900. That figure included \$65,700 in relation to demolition. The majority of the demolition work as previously indicated, has in fact taken place. Therefore, the remaining cost of the rebuilding works based upon the quantity surveyor's estimates, would be approximately \$965,000.

Insurers subsequently put forward the following position –
If Council chose to reinstate the building as was there before, they (Insurers) would conduct the works and bear the costs, apart from the policy excess.

1. They would pay the sum calculated by the Quantity Surveyor, of approximately \$960,000 to Council, after deduction for the works already undertaken (the demolition), to allow them to undertake the work, providing Council did carry out the reinstatement of the original building at the site.
2. The latter figure of \$960,000 would also be paid to Council if it chose to build a different type of building at that site, or indeed another nominated site, providing Council could demonstrate it had spent that sum of money.
3. Insurers indicated that if Council simply wished to take a cash settlement, then they would apply depreciation under the terms of the policy, to the figure. The depreciation factor was put forward at about 30% which would have resulted in Council receiving a cash payment of approximately \$650,000.

NEGOTIATIONS BY OUR OFFICE

Cost of rectification

We reviewed the documentation provided by the insurers and considered that the quantity surveyor had not allowed appropriate margins for, in particular, contingencies which are common in most contracts, but were markedly missing from the report. We were also concerned in relation to the cost allowed for the commercial kitchen. We also considered it prudent to have it confirmed independently, that the slab and tower were fit to remain in place.

The costs of our office's involvement are covered under the claims preparation section of the insurance policy, as are the costs of the professionals we engaged to assist with that preparation. Therefore, with the agreement of Council, we requested a building

consultant/ structural engineer to review the quantity surveyor's report. Acumen Engineers attended the site, with our representative and Mr. Smith of Council. Acumen Engineers subsequently provided an in depth report, in relation to the assumptions made in the Quantity Surveyor's report, in relation to how much of the building could be retained and also into the costs.

The initial estimations put forward by Acumen, of the reinstatement costs (inclusive of the demolition that had already been carried out) amounted to \$1,280,500. The most notable increases related to a higher value assigned to the commercial kitchen, of an extra \$40,000, a higher amount for professional fees of almost \$100,000 and the allowance of a 5% contingency at \$61,000. The remainder of the difference of \$243,000 was for relatively minor items.

Our office reviewed both reports and held discussions with the loss adjusters acting on behalf of the insurers. The experts acting on behalf of the insurers made arguments that for instance, the additional approximately \$100,000 for professional fees was overstated as plans for the original building were already available and no full development application was required. We found those particular arguments somewhat difficult to resist. They also argued that their allowance for the commercial kitchen was referenced from quotations and a review of the figures indicated that their original allowance may well have in fact been realistic. However, we held firm in relation to a large number of the minor items and particularly the contingency.

The insurers eventually agreed a reinstatement figure of **\$1,110,000** as opposed to the original **\$978,000** envisaged to complete repair.

We then turned our attention to the assertion made by the insurers, that if Council merely sought a cash settlement and chose not to reinstate, that they could apply a depreciation factor of 30% and reduce the offer to \$650,000. Even if the latter was applied to the agreed figure at \$1,100,000 it would only result in Council on a purely cash basis, obtaining \$770,000.

We put forward a submission to insurers, that their arguments were fundamentally flawed and the policy wording allowed Council to elect a cash settlement on this occasion, regardless of whether they rebuilt or not.

Following receipt of our submission and further discussions, it was conceded by insurers that the latter was indeed the case.

CURRENT OFFER

Accordingly, with respect to repairs to the building on a cash basis, insurers are now willing to put forward an offer of \$1,110,000, as opposed to the \$650,000 initially discussed.

RENTAL

On the basis of a cash settlement, the insurer initially put forward a payment equivalent to six months loss of rental value. We argued on the basis that it should be ten months, taking into account the notional rebuild time and thereafter a period to take into account attracting a tenant and to allow for any rent free incentive period.

Underwriters have finally agreed with an increased compromise cash offer. Obviously it can never be proven one way or the other as to what the actual period to attract a tenant would have been. If the building is rebuilt as is and advertised, there is a potential for rental loss to continue for a period of 36 months.

The figure for the rental loss therefore finally agreed by the insurer, is \$30,000.00 net of GST and accounts for both the lease and license revenue.

Finally, Insurers have agreed to the claims preparation fees, estimated at \$11,000.

Conclusion

Council has a number of options under its insurance policy regarding the loss of the terminal building. Put simply, they are as follows:

1. Reinstate the terminal building and restaurant as it was before the fire, with the insurer to pay all costs associated with the reinstatement.
2. Rebuild the terminal building (including the restaurant) at a different location at the Airport. Council would be required to provide evidence to the insurers that the building (or something similar) was actually rebuilt.
3. Accept the cash settlement offer from Vero for \$1,100,000.00 and reallocate the funds to a potentially higher yielding asset for Council, without any further obligation to the insurers.

In addition to the insurance matters raised in this report, Council also needs to consider the matter of finalising the termination of the lease with Aviator restaurants Pty Ltd.

Due to the damage caused by the fire incident, a Notice of Termination was served to Aviator Restaurants Pty Limited in accordance with the lease and licence agreement. Clause 8.2.2 of the lease and 7.10.3 of the licence states:

"If the property or the building of which it is part is damaged (a term which includes destroyed) if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the other and no compensation is payable in respect of that termination.

To finalise the legal termination of the lease agreement with Aviator Restaurants Pty Ltd, Council is required to forward an application to Land and Property Information (NSW)

requesting the removal of the notation of the lease details with Aviator Restaurants Pty Limited from the Certificate of Title of Lot 10 in Deposited Plan 1157377.

Link to Community Strategic Plan

The Airport Terminal Fire Report supports the following objectives and strategies of the Community Strategic Plan:

Objective: 4.2 Supported by a Council that is responsive, accountable and financially viable

Strategy: 4.2.5 Minimise risk and ensure continuity of critical business functions

Objective: 3.1 Infrastructure is planned and managed in a way that meets the community's needs

Strategy: 3.1.1 Provide the community with a broad range of quality infrastructure, assets and facilities delivered in a cost-effective and sustainable manner.

3.1.2 Renew the City's ageing assets, infrastructure and facilities to meet the needs of the community now and into the future.

Consultations

Internal

Manager Property and Recreation
Manager Records and Document Management
Group Manager Finance
Director Corporate Policy
Director Shellharbour Enterprises

External

Claims Managers Australasia (CMA)
United Independent Pools (UIP)
Crawford Global Technical Services

Political Donations Disclosure

Not Applicable

Recommendation

- 1. That Council agrees to accept the cash settlement offer from Council's Insurers (Vero) in the amount of \$1,110,000.00 in full and final settlement of the property damage claim, for the loss of the terminal building at The Illawarra Regional Airport in May 2013.**
- 2. That the Mayor and General Manager, or his nominated delegate, be authorised to sign the associated Deed of Release issued by Vero Insurance Limited and Allianz Australia Insurance Limited, for agreement and approval of the affixing of the General Manager's signature.**
- 3. That the Mayor and General Manager, or his nominated delegate, be authorised to sign any documentation associated with the request for the removal of Lease to Aviator Restaurants Pty Limited from the Certificate of Title for Lot 10 in DP 1157377 under Council Seal.**

Approved for Council's consideration: _____

Attachments

1. Deed of Release

Attachment 1 - Deed of Release

Our Reference: FVP1346096 – Frank Pecar

FORM OF RELEASE

SUBJECT TO THE APPROVAL OF VERO INSURANCE LIMITED AND ALLIANZ AUSTRALIA INSURANCE LIMITED and to the terms and conditions of the Policy WE hereby agree to accept payment of the sum of ONE MILLION ONE HUNDRED AND TEN THOUSAND DOLLARS (\$1,110,000.00 net of the Deductible) in Final satisfaction and discharge of all claims under Policy No. ISA0167144806 (Vero) arising from the loss or damage which occurred at Terminal building Illawarra Regional Airport, Cnr Princes 7 Illawarra Highways, Albion Park Rail NSW 2527 on or about Discovered 20 May 2013.

WE hereby declare that there is no other insurance covering the same property, and that no other party has an interest therein, except¹

UNITED INDEPENDENT POOLS/SHELLHARBOUR CITY COUNCIL is registered for GST purposes. The enterprise making this claim is eligible to claim an Input Tax Credit of 100% on creditable acquisitions which are part of this claim.

WE hereby authorise payment of the said sum of ONE MILLION ONE HUNDRED AND TEN THOUSAND DOLLARS (\$1,110,000.00 net of the Deductible) in satisfaction and discharge of our claim as follows:

To: Account Name:

Bank:..... BSB: Account No.....

DATED ATTHISDAY OF 2013

SIGNED:.....
For and on behalf of UNITED INDEPENDENT POOLS/SHELLHARBOUR CITY COUNCIL

NAME:.....

WITNESS:.....

NAME:.....

ADDRESS:.....

¹ Insert name "mortgagee" "trustee" etc. as the case may be. If no other parties, strike out "except" and initial deletion.