



Council Chambers
29 September 2023

The **3791st MEETING** of **COUNCIL** will be held on Cammeraygal lands at the Council Chambers, North Sydney at **6.30pm** on Monday 9 October 2023. The agenda is as follows.

THERESE MANNS
GENERAL MANAGER

North Sydney Council is an Open Government Council. The records of Council are available for public viewing in accordance with this policy, with the only exception being made for certain confidential documents such as legal advice, matters required by legislation not to be divulged, and staff matters.

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- 1. Opening of Meeting**
 - 2. Acknowledgement of Country**
 - 3. Apologies and applications for leaves of absence or attendance by audio-visual link by councillors**
 - 4. Confirmation of Minutes**
 - 5. Disclosures of Interests**
 - 6. Public Forum**
 - 7. Items by Exception**
 - 8. Mayoral Minutes**
Nil
 - 9. Reports of Committees**
 - 9.1 Environment Reference Group Minutes - 5 September 2023
 - 9.2 Sustainable Transport Reference Group Minutes - 5 September 2023
 - 9.3 Waverton Peninsula Working Group Minutes - 12 September 2023
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10. Reports to Council

- 10.1 Matters Outstanding to September 2023
- 10.2 2023 Local Government NSW Annual Conference - Proposed Motions
- 10.3 Disclosure of Pecuniary Interests by Councillors and Designated Persons
- 10.4 Audit Risk & Improvement Committee - Councillor Representatives
- 10.5 Customer Feedback and Complaints: January - June 2023
- 10.6 Re-formation of Design Excellence Panel for 2023/24 - 2024/25
- 10.7 Affordable Housing and Heritage Planning Council Priorities
- 10.8 East Crescent Street Shared Space - Post Trial Report
- 10.9 Willoughby Road Shade Structures - Post Exhibition Report
- 10.10 Hard Surface Weed Control Tender 06/2023
- 10.11 Current Appeals and Results - September 2023
- 10.12 North Sydney Olympic Pool Redevelopment - Project Update

11. Notices of Motion/Questions with Notice

- 11.1 Notice of Motion 10/23: Interim Heritage Orders on 7 and 9 Selwyn Street Wollstonecraft - Cr Gibson
- 11.2 Notice of Motion 11/23: Tree at 38 Shellcove Road Kurraba Point - Cr Gibson
- 11.3 Notion of Motion 12/23: MLC Centre change of use - Cr Gibson
- 11.4 Notice of Motion 13/23: Notice of Motion deadline - Cr Gibson

12. Matters of Urgency

Raised by Councillors

13 Closure of Meeting

In the spirit of open, accessible, and transparent government, the Council meetings of North Sydney Council will be streamed live via Council's website. By speaking at a Council meeting, members of the public agree to being recorded and must ensure their speech to the Council is respectful and use appropriate language. A person who uses defamatory, discriminatory, or offensive language may be exposed to liability for which Council takes no responsibility. Any part of the meeting that is held in Closed Session will not be recorded.

TO: The Mayor, Zoë Baker and Councillors Beregi, Bourke, Gibson, Lamb, Lepouris, Mutton, Santer, Spenceley, and Welch

3791st MEETING OF COUNCIL TO BE HELD ON MONDAY 9 OCTOBER 2023

1. OPENING MEETING

2. ACKNOWLEDGEMENT OF COUNTRY

3. APOLOGIES AND APPLICATIONS FOR LEAVES OF ABSENCE OR ATTENDANCE BY AUDIO-VISUAL LINK BY COUNCILLORS

4. CONFIRMATION OF MINUTES

THAT THE MINUTES of the 3790th Council Meeting held on Monday 25 September 2023 be taken as read and confirmed.

5. DISCLOSURES OF INTEREST

6. PUBLIC FORUM

7. ITEMS BY EXCEPTION

8. MINUTES OF THE MAYOR

Nil

9. REPORTS OF COMMITTEES

9.1 Environment Reference Group Minutes - 5 September 2023

Report of Peita Rose, Governance Officer

The purpose of this report is to inform Council of the proceedings of the Environment Reference Group, and for Council to consider any recommendations from the Reference Group.

This report presents the recommendations of the last meeting of the Environment Reference Group held on 5 September 2023.

There were no recommendations for further actions.

The Minutes are attached for the information of Council.

Recommending:

1. THAT the Minutes of the Environment Reference Group dated 5 September 2023 be received.

9.2 Sustainable Transport Reference Group Minutes - 5 September 2023

Report of Peita Rose, Governance Officer

The purpose of this report is to advise Council of the proceedings of the Sustainable Transport Reference Group, and for Council to consider recommendations from the Reference Group.

This report presents the recommendations of the last meeting of the Sustainable Transport Reference Group held on 5 September 2023.

There were no recommendations for further actions.

The minutes are attached for the information of Council.

Recommending:

1. THAT the Minutes of the Sustainable Transport Reference Group dated 5 September 2023 be received.

9.3 Waverton Peninsula Working Group Minutes - 12 September 2023

Report of Peita Rose, Governance Officer

The purpose of this report is to advise Council of the proceedings of the Waverton Peninsula Working Group meeting held on 12 September 2023.

This report presents the recommendations of the Waverton Peninsula Working Group meeting held on 12 September 2023 for Council adoption.

Where the Working Group recommendations are supported, they are proposed to be adopted by Council.

The minutes are attached for information.

Recommending:

1. THAT the Minutes of the Waverton Peninsula Working Group meeting of 12 September 2023 be noted.

10. REPORTS TO COUNCIL

10.1 Matters Outstanding to September 2023

Report of Ian Curry, Manager Council and Committee Services

The purpose of this report is to update Council regarding the status of resolutions arising from Mayoral Minutes, Notices of Motion, and Questions Without Notice.

Each month, a report is presented to Council on the status of resolutions arising from Mayoral Minutes, Notices of Motion, and Questions Without Notice.

The attached table has been updated to include resolutions up to the 11 September 2023 Ordinary Meeting of Council.

Recommending:

1. THAT the report be received.

10.2 2023 Local Government NSW Annual Conference - Proposed Motions

Report of Ian Curry, Manager Council and Committee Services

The purpose of this report is to determine Council's Motions for consideration at the LGNSW Conference.

The Local Government NSW (LGNSW) Annual Conference is taking place from 12 to 14 November 2023 at Rosehill Gardens Racecourse, and will feature a range of keynote speakers, workshops, training sessions, and more.

As the main policy-making event for the NSW local government sector, the Annual Conference is an opportunity to help set the advocacy agenda for the year ahead. Motions passed at the Conference become Resolutions, which LGNSW actions on behalf of its members, as part of its advocacy program.

Council is entitled to five voting delegates at the Conference.

Recommending:

1. THAT Councillors submit suggested issues for Council's consideration as Motions to the Conference.

10.3 Disclosure of Pecuniary Interests by Councillors and Designated Persons

Report of Ian Curry, Manager Council and Committee Services

The purpose of this report is to report on compliance as required under the *Local Government Act 1993* (LGA) and *Local Government (General) Regulation 2021*. Councillors and persons holding designated positions must complete and lodge a Disclosure of Pecuniary Interests Return.

Section 4.21 of the Model Code of Conduct (made under section 440 of the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*) requires Councillors and persons holding designated positions, as at 30 June, complete and lodge a Disclosure of Pecuniary Interests Return within three months of that date (i.e., 30 September).

Section 4.25 of the Model Code of Conduct requires that Returns are lodged under Section 4.21 and tabled at the first meeting of the council after 30 September 2023.

All 2022/23 Returns have been duly completed and lodged within the prescribed period by Councillors. Two designated officers currently on secondment and extended

leave did not complete their Returns by the statutory date, however they will be asked to do so upon their return to work.

Pecuniary Interest Returns are available for inspection on Council's website.

Recommending:

1. THAT the report be received, and Council note the tabling of Returns as required under Clause 4.25 of the Model Code of Conduct.

10.4 Audit Risk & Improvement Committee - Councillor Representatives

Report of Ian Curry, Manager Council and Committee Services

The purpose of this report is to determine the Councillor representatives on the Audit Risk and Improvement Committee following the Deputy Mayor election.

Council has two Councillor representatives on the Audit Risk and Improvement Committee.

The election of a new Deputy Mayor on 25 September gives Council an opportunity to review its representatives on ARIC.

Recommending:

1. THAT Council appoint two Councillors as its representatives on the Audit Risk and Improvement Committee.

10.5 Customer Feedback and Complaints: January - June 2023

Report of Anna Warren, Corporate Planning Coordinator, and Jenny Gleeson, Manager Corporate Planning and Engagement

The purpose of this report is to provide a report of complaints and compliments received by Council during the period 1 January to 30 June 2023.

In accordance with Council's *Complaints Handling Policy*, a report comparing the number of complaints to the total number of customer contacts is provided to the Council every six months for information.

The total number of customer contacts for the period 1 January to 30 June 2023 was 41,640, with 59 compliments and 17 complaints recorded. This is an increase in total customer contacts on the prior period, and the same period last year, due largely to an increase in Stanton Library contacts.

The data is extracted from Council's electronic records system, from the complaints and compliments/appreciation letters subjects respectively.

Recommending:

1. THAT the Customer Feedback and Complaints Report January - June 2023 be received.

10.6 Re-formation of Design Excellence Panel for 2023/24 - 2024/25

Report of Leonard Vogel, Planning and Development Advisor, and Stephen Beattie, Manager Development Services

The purpose of this report is to seek Council's endorsement of the recommended appointments for the Design Excellence Panel (DEP) for 2023/24 – 2024/25.

North Sydney Council encourages high quality urban design and sustainability outcomes in the North Sydney local government area (LGA). This is achieved, in part, by seeking the independent advice of the Design Excellence Panel (DEP), established under Council's recently amended *Design Panel Policy*.

In accordance with the *Design Panel Policy*, membership of the DEP should be renewed every two years. Expressions of interest for DEP membership for the 2023/24 – 2024/25 term were sought from 15 June 2023 to 16 July 2023. A total of 116 applications were received.

A review of the *Design Panel Policy* and Design Excellence Panel Charter was undertaken. The Policy was subsequently amended to include sustainable building design as an area of expertise sought for membership to the Panel.

Support for the recommended appointments will enable the reformed DEP to commence in November 2023.

Recommending:

1. THAT Council resolves that the identified attachment to this report is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(a) personnel matters concerning particular individuals (other than Councillors)

2. THAT Council endorses the appointment of the recommended panel members nominated within the confidential report for the reformation of the North Sydney Design Excellence Panel for the 2023/24 - 2024/25 term.

3. THAT Council writes to acknowledge the valuable contribution made by the previous members of the Design Excellence Panel.

10.7 Affordable Housing and Heritage Planning Council Priorities

Report of Marcelo, Occhiuzzi, Director Community, Planning and Environment

The purpose of this report is to present to Council the competing strategic planning priorities of very significant projects which cannot be pursued concurrently whilst maintaining a level of quality, timeliness, and meaningful stakeholder engagement.

This report presents the projects associated with affordable housing policy and planning, and the comprehensive heritage review, and outlines why one should be prioritised over the other.

Affordable housing throughout Sydney and indeed Australia is a high-profile urban priority for which has been the subject of much renewed focus over the last 6-12 months for all tiers of government.

Both affordable housing and heritage conservation are identified as priorities in the North Sydney Local Strategic Planning Statement endorsed by Council in 2020.

This report discusses the relative priorities of affordable housing and heritage review work that whilst both important, cannot be pursued concurrently and effectively within existing resources. It recommends that affordable housing should be prioritised ahead of the comprehensive heritage review as a strategic policy priority.

Reprioritisation will not draw additional resources but will seek to address a wider and more immediate policy area, build on momentum developing at the Federal and State level to both recognise the affordable housing crisis and fund solutions, and free up resources to conduct this in a manner that is comprehensive, exhaustive, and

collaborative. Both these priority areas are important, however, they are also very resource-intensive, and cannot be conducted effectively and concurrently.

Recommending:

1. **THAT** Council reprioritise its work programme to pursue affordable housing policy, planning and implementation, ahead of the comprehensive Local Government Area wide heritage review.
2. **THAT** the North Sydney Local Strategic Planning Statement be amended to give resolution 1 above, effect.

10.8 East Crescent Street Shared Space - Post Trial Report

Report of Matthew Noonan, Engineering Project Manager

The purpose of this report is to present the results of the community consultation, traffic count, and a human movement analysis study that were undertaken during the trial of the East Crescent Street Shared Space between March and June 2023, for which Council received funding under the NSW Government's Round 2 - Streets as Shared Spaces Program.

This report is seeking Council endorsement to formalise part of East Crescent Street as a permanent shared space.

Construction of the East Crescent Street Shared Space, located at the corner of East Crescent Street and Blues Point Road, concluded in March 2023, and then trialled for a period of four months. The project originated from the McMahons Point - Blues Point Road Village Centre Public Domain Upgrade Masterplan (2021) and was partly funded through the NSW Government's Streets as Shared Spaces Program - Round 2.

Community feedback was sought between 31 March and 30 June 2023 via Council's Have Your Say Webpage. 112 submissions were received, comprising 103 responses to the online form and nine written submissions.

- Of the online feedback received, the majority of respondents were from McMahons Point; most (n=76) agree the project has improved pedestrian safety when crossing East Crescent at the Blues Point Intersection; most (n=92) agree the park creates a more inviting street environment; most (n=88) would like to see this change made permanent; and 30 respondents are interested in joining a Streets Alive group to care for the park.
- Of the written submissions received:
 - The majority (n=6) overtly support the shared zone/park - in particular, the most liked aspects are the additional open space e.g., inviting space/welcome oasis; promotes the village atmosphere and adds community life/attraction to the neighbourhood; adds greenery, herbs, and native plants; seating/amenity; traffic calming and speed reduction.
 - three submissions raised various pedestrian and road safety issues.

Traffic counts were also undertaken prior and following construction of the Shared Spaced. In summary the traffic counts found that the average traffic speed in East Crescent Street reduced and a significant reduction in illegal movements against the one-way traffic flow after construction of the Shared Space was completed.

Additionally, Council commissioned a Human Movement Analysis Study prepared by Urbis Consultants. The purpose of this study was to measure and analyse visitation to and from the Shared Space during the trial period. The results of this study found that

visitors spent more time at East Crescent Street during the activation (trial) period, compared to the historical period.

The community feedback, traffic count, and the human movement analysis study will now be used to determine the decision in making the East Crescent Street Shared Space a permanent addition to the McMahons Point streetscape.

Recommending:

- 1. THAT** Council notes the community feedback received during the trial of the Shared Space.
- 2. THAT** Council notes the results of the traffic count as well as the Human Movement Data Study that was undertaken during the trial period of the Shared Space.
- 3. THAT** Council notes the improvements in driver behaviours that have resulted from the trial.
- 4. THAT** Council endorses making the East Crescent Street Shared Space trial a permanent addition to the McMahons Point streetscape.

10.9 Willoughby Road Shade Structures - Post Exhibition Report

Report of Paul Yang, Engineering Project Manager

The purpose of this report is to detail submissions received during the public exhibition period of the Willoughby Road Shade Structures in Crows Nest. The final recommendation is presented to Council for adoption.

At its meeting of 27 February 2023, Council resolved to adopt a preferred design option (Option 1C) for the upgrade of the Willoughby Road public domain. Council also resolved to undertake further consultation with business operators in relation to the potential replacement of shade structures related to outdoor dining.

Subsequent community engagement was undertaken in relation to this matter from 27 June to 7 August 2023, in accordance Council's Community Engagement Strategy for this matter.

A total of seven submissions were received when the consultation period closed. Over 85% of submissions supporting the proposal.

Recommending:

- 1. THAT** Council note the submissions received for the Willoughby Road Shade Structure consultation.
- 2. THAT** Council proceeds with the Willoughby Road Shade Structure proposal as part of the Crows Nest Masterplan Implementation Project in 2023/2024.

10.10 Hard Surface Weed Control Tender 06/2023

Report of Kieran Meurant, Head Turf Manager

The purpose of this report is to provide Council with an overview of the tender process for the tender for Hard Surface Weed Control (06/2023) and recommends entering a contract with the preferred tenderer.

Tenders were called and received until 3pm Thursday 31 August 2023 for the submission of tenders to undertake the hard surface weed control of council facilities across the North Sydney LGA.

Two tenders were received when the tender period closed at 3pm 31 August 2023.

If Council wishes to discuss the report, the meeting should be closed to the public to do so, in accordance with:

(d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and because consideration of the matter would, on balance be contrary to the public interest as publication of all tendered amounts would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services.

Recommending:

1. THAT Council accept the tender of the highest ranked tenderer for Tender 06/2023 Hard Surface Weed Control.

2. THAT the General Manager be authorised to take any necessary action to implement the decision including entering associated contracts.

3. THAT once Council has executed the Contract, the information relating to the successful

tender be published in Council's Register of Contracts as required by Government Information (Public Access) Act 2009 – Part 3 Division 5-Government Contracts with Private Sector.

4. THAT Council resolves that the identified attachment to this report is to be treated as confidential in accordance with section 11(3) of the Local Government Act for the following reason under section 10A(2) of the Local Government Act:

(d)(i) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it and because consideration of the matter would, on balance be contrary to the public interest as publication of all tendered amounts would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services.

It is further noted that the release of this information would, on balance, be contrary to the public interest as publication of all tendered documents would discourage potential tenderers from submitting commercial information in future and would affect Council's ability to obtain value for money services.

10.11 Current Appeals and Results - September 2023

Report of Christina Wu, General Counsel

The purpose of this report is to provide Council with information on current appeal and prosecution matters.

Attached is a list of current appeal and prosecution matters as at 1 September 2023 for Council's information.

Four attachments are provided, including a public listing and a separate confidential report. The confidential report includes additional detail (as highlighted) on the legal nature of the appeal, status update and legal issues relating to matters still afoot.

Should Council wish to discuss this report it is noted that the attached confidential document includes advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the grounds of legal professional privilege and because consideration of the matter in open Council would be, on balance, contrary to the public interest as it would affect Council's ability to manage

legal matters effectively and in the best interests of the community. As such should this report be discussed it should be considered in closed session.

Recommending:

1. THAT the report be noted.

2. THAT should Council resolve to debate or discuss this matter that the meeting be closed to the public in accordance with Section 10A(2) of the Local Government Act and the Local Government (General) Regulation 2005 for the reason listed below:

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

It is further noted that release of this information would be, on balance, contrary to the public interest as it would affect Council's ability to manage legal matters effectively and in the best interests of the community.

10.12 North Sydney Olympic Pool Redevelopment - Project Update

Report of Gary Parsons, Director Open Space and Infrastructure

The purpose of this report is to provide an update on the redevelopment of North Sydney Olympic Pool.

Construction work on the North Sydney Olympic Pool is anticipated to reach Practical Completion in May 2024.

The current construction contract value is \$58.62m, which includes approved construction contract variations of \$5.1m.

Additional Project Management resources are now in place, in accordance with the Council resolution of 28 August 2023.

Confirmation of final project forecasts continues, as outstanding claims continue to be assessed, and scoping for additional works are progressed.

A Business Plan for the operation of the facility is currently being finalised and will be presented to Councillors at a briefing session in October 2023.

Recommending:

1. THAT Council notes the contents of this report, which provides an update in relation to the North Sydney Olympic Pool redevelopment project.

11. NOTICES OF MOTION

11.1 Notice of Motion 10/23: Interim Heritage Orders on 7 and 9 Selwyn Street Wollstonecraft - Cr Gibson

1. **THAT** Council takes immediate action to prevent the further removal of heritage elements at both homes - both internally and externally.

Background (as provided by the submitter)

A local resident has reported that stained glass window/door panels have been removed over recent weeks.

Clause 3.11 Report - Director Community Planning and Development

At its meeting of 28 August 2023, Council resolved to seek urgent heritage advice with a view to potentially creating an Interim Heritage Order (IHO) for the properties at 7 and 9 Selwyn Street, Wollstonecraft. The procurement process has been completed and a Heritage consultant recently appointed to undertake this work.

The properties are not currently heritage listed under the North Sydney LEP 2013, nor are they within a heritage conservation area. As such "exempt development" can be carried out without Council's consent. This includes a range of minor works that are identified in the Exempt and Complying State Environmental Planning Policy (SEPP).

Council investigated works that were being conducted on these properties on 22 September 2023 which were found to satisfy the conditions of the SEPP and therefore no further action was or could be taken.

11.2 Notice of Motion 11/23: Tree at 38 Shellcove Road Kurraba Point - Cr Gibson

1. **THAT** Council takes appropriate action on a so called 'dangerous tree' situated on private property at 38 Shellcove Road Kurraba Point.

Background (as provided by the submitter)

Neighbours have contacted Councillors alerting them that boughs of this mature Ginko tree are extending over public footpaths. There are also concerns that the retaining wall may be in danger of collapsing - due to pressure from tree roots.

Clause 3.11 Report - Director Community Planning and Development

An Order was issued to the owner of 38 Shellcove Road Kurraba Point by Council in 2013 to remove the "so called dangerous" tree and brick wall interfacing the public footpath, but the matter was challenged through the Land and Environment Court. At that time, the matter was resolved after a conciliation process as both sets of experts agreed that the tree and wall were in safe and healthy condition and compliance with the terms of the Order was not required. In response to the complaint, we requested that Council's Tree Preservation Officer inspect the tree. That occurred and she observed that the tree is healthy and showed no signs of health decline nor is she concerned about the tree.

Clause 3.11 Report continued

With regard to the retaining wall, Council's Senior Building Compliance Officer also undertook a site inspection of the wall. The photos taken did not seem to show any further signs of movement compared to the photos taken at the time of the initial investigation in 2013. Given that there were no significant signs of further deterioration, it is difficult to find reason to issue a Notice of Intention seeking an up-to-date engineering report especially given the recent history of the matter.

In addition to this, Council's Tree team undertook Target Safety Clearance pruning of 2.4m over the parking lane and footpath which was completed on the 27th of February 2023. Council wrote to the complainant on 25 September 2023 to respond to their enquiry.

11.3 Notion of Motion 12/23: MLC Centre change of use - Cr Gibson

1. THAT Council have a Councillor Briefing on the intention to convert the MLC Centre from commercial use to 'build to rent apartments'.

Background (as provided by the submitter)

There have been media pronouncements from Council that we will "strongly object" to any such proposal. Yet this matter hasn't come before Council, so no position has

Clause 3.11 Report - Director Community Planning and Development

Council has a long history of seeking to preserve the employment base of the North Sydney CBD.

The existing E2 – Commercial Core zone, expressly prohibits residential development including serviced apartments. This prohibition has been in place for many years.

Council staff objected strongly to the amendment of the Housing SEPP, which introduced provisions that allowed "build to rent" development in the North Sydney CBD in 2021. The amendment to the Housing SEPP introduced the permissibility of residential development to the CBD for the first time in many years.

Prepared in response to the Greater Cities Commission's *North District Plan*, the adopted and endorsed *North Sydney Local Strategic Planning Statement* includes the following commentary:

The North Sydney CBD will retain its commercial core zoning to ensure that employment capacity is provided for and residential development is restricted to its peripheral locations. This will ensure that North Sydney continues to deliver a place that is reflective of the highest order centre assigned under the regional and district plans.

And the following specific "Action" (P1.1) which includes:

- *increase commercial floorspace capacity and employment growth for the North Sydney CBD;*

been determined by the elected body. There is much community interest in this rather unique proposal.

Clause 3.11 Report continued

- *deliver high quality commercial floorspace that caters to the needs of existing and emerging industries;*
- *restrict residential development to the mixed-use periphery to preserve a critical mass of employment in the North Sydney CBD;*

The notion of prohibiting residential development in the North Sydney CBD is therefore a long-held Council policy position.

11.4 Notice of Motion 13/23: Notice of Motion deadline - Cr Gibson

1. THAT the deadline to submit a notice of motion be extended from midday, the day following Council's regular meeting, to 5pm.

Background (as provided by the submitter)

Matters arise at Council Meetings that lead to Councillors lodging a notice of motion. The current deadline makes the process difficult.

12. Matters of Urgency

Nil

13. CLOSURE
