

## **8.4. MM04: Strengthening Council governance and decision-making frameworks**

Increasingly we live in a world in which the unscrupulous politics of polarisation, “post-truth” and personal attacks thrive. When lies and misinformation are repeated, the facts and truth are confused and diminished.

Evidence-based decision-making and transparent, accountable governance are now more important than ever.

This current Council has been committed to a professional approach, turning back from a decade of chaos, and returning to a focus on transparency, integrity and good governance with an unrelenting focus on the needs and expectations of our community.

The North Sydney Olympic Pool (NSOP) redevelopment project was **not** on budget in January 2022. Construction contracts had been signed prior to designs being complete, misleading budgets prepared, inadequate project management resources allocated and these were drivers of the circumstances, costs and delays that this Council is now managing.

It is well past time that the former mayor and councillors who supported the poorly conceived, poorly planned and poorly budgeted NSOP project took responsibility for the decisions they made and were accountable for the long-term financial consequences and impacts of those decisions on the North Sydney community.

This current Council was elected in December 2021 and took office in January 2022, more than 9 months after construction on the project commenced and almost 13 months after the rushed construct-only contract was entered into with Icon.

Without any doubt, the current issues are a result of the poor planning and decisions of the previous Council. In fact, that was the conclusion of the independent review reported to Council on 26 April 2023.

A failure of good governance and robust oversight that permitted deficient early planning, the lack of any real community consultation and the flawed decision by the previous Council to rush into a construct-only contract before final construction drawings were provided are at the heart of the delays and additional costs this Council is now having to manage.

It is, therefore, vital that this current Council take every action available to ensure that a future Council will not make decisions that leave a similar mess for their successors to manage and clean up.

### **So, how did we get here and how do we prevent it from happening again?**

The previous Council initially resolved to undertake the much-needed refurbishment of the NSOP within a budget of \$28 million. Loans would not be required to fund a project of that scale.

In September 2018 a “Value Management Workshop” attended by the Design Steering Committee (which included Mayor Jilly Gibson, Cr Drummond and the lessee of the NSOP venues) identified a number of new facilities to be included in the project. This resulted in a budget increase to \$58 million. No community consultation was undertaken on this revised scope that almost doubled the original budget.

It is a matter of public record that I, together with Cr MaryAnn Beregi and former Cr Tony Carr, consistently raised red flags and concerns about the design, scale and cost of the NSOP redevelopment and, particularly the \$30 million in borrowings for the, then, \$63.9 million project.

Indeed, between 2018 and December 2020, we three minority councillors voted against the project on more than 23 occasions. At every major decision milestone we sounded the alarm about insufficient information and planning, the significant risks of the design and scale of the proposal, the lack of a proper budget and business case and the inevitable long term financial impacts of the project.

Over and again, we unsuccessfully moved motions to introduce a probity adviser and plan, to prevent the closure of the pool, to rescind the resolution to proceed to tender and to enter into the building contract with Icon. We publicly and repeatedly pleaded with the previous Council to reject the tenders, revise the scope of the works and prepare amended plans for the rebuild of the pool within the original \$28 million budget.

We called on the Office of Local Government (OLG) to act and even complained to the Ombudsman seeking an investigation. Our concerns were very public and available.

Our voices were hoarse from calling out the danger of the decision to proceed with insufficient detail and a weak budget.

All to no avail. Instead, in the absence of any conforming tender, the previous Council voted to proceed and, extraordinarily, authorised the (then) General Manager to negotiate directly with the preferred tenderer and enter into a contract for construction-only subject to gaining unanimous consent from a committee comprising the Mayor (Cr Jilly Gibson), the Deputy Mayor (Cr Stephen Barbour) and Cr Ian Mutton in respect to negotiated amendments to the Construction Contract.

It is exceedingly bad governance practice to leave the final terms of a construction contract on a project of this scale to a “sign off” by three councillors from a governing body of 10 councillors.

The lack of any conforming tender was a clear message: the proposed budget was inadequate to build the design.

The construct-only contract with Icon was signed before the provision of “for construction” drawings. The contracted construction budget was artificially and misleadingly low as it did not include essential matters such as the cost of insurance, required works (such as the

eastern stairwell), fit-out and insufficient allocation for the costs of project management and design for a project of this scale and complexity.

### **Failure of external and independent gatekeepers**

The OLG Capital Expenditure Guidelines (December 2010) apply to all councils undertaking large scale capital works. Councils are required to comply with the guidelines before committing to a project and commencing construction. Yet, the NSOP project failed to meet many of the requirements of those guidelines including, for example, the proposed project **must** be publicly consulted **prior to making a commitment** to the project (cl 10.7).

This never happened. Our community never had the chance to review the project before Council committed to it. Instead “community consultation” was relegated to the public exhibition of the DA for the project without any of the detailed project costs including a consideration of the “opportunity costs” of committing to the project.

Failure to meet the requirements of the Guidelines did not result in any investigation or intervention by the OLG to prevent Council from proceeding.

The purpose of Council’s Audit, Risk and Improvement Committee (ARIC) is to continuously review and provide independent advice to the Council on how it is functioning and managing risk.

Yet Council’s ARIC (which included independent external as well as councillor membership) met 16 times between March 2018 to December 2021 and not once did they issue any warnings or raise any concerns in relation to the risks of the project, budget, funding arrangements, the scale of proposed borrowings, the governance structure (for example, the project steering group included the lease-holder of the NSOP venues Aqua Dining and Ripples), compliance with the OLG Capital Expenditure Guidelines, the impacts on Council’s long term financial plan.

At every turn the guardrails failed. Intervention by the OLG or Council’s ARIC at any point before decisions were made could have averted the costs and delays this Council is now managing.

### **The actions of the current Council – 2022 to date**

This Council has demonstrated a commitment not only to managing the project to delivery and addressing the long-term financial impacts on council finances in a responsible, open, transparent and accountable way but improving the overall performance and administration of North Sydney Council. To date, this Council has acted to strengthen capacity including:

- Recruiting and appointment of the new General Manager;
- Reducing management overheads to resource an organisational performance function which is tasked with reviewing the operations of Council, developing and implementing best practice processes and systems;
- Strengthening transparency and public participation in Council meetings;

- Commissioning an independent review of the NSOP project with the report of the review findings going to Council on 26 April 2023;
- Engaging specialist external project managers, programmer and Quantity Surveyor;
- Adopting all 33 recommendations of the independent review;
- Addressing the \$24m shortfall in the 2023/2024 budget to address the increasing costs of the project; and
- Addressing the operational model and preparing a robust business plan for the future operation of the pool.

It is notable that the independent review of the project underscored *“the importance of project initiation and planning phases of the project management process in creating a strong foundation for the delivery of the project including, project governance, planning and development, feasibility and business case development, procurement strategy, scoping and budget development, and associated decision making”*.

The failure to undertake early site investigations, particularly of latent conditions of the site, was short sighted and together with the inadequate provision for contingency on a project of this scale and complexity directly contributed to the delays and cost increases.

Significantly, the review found that **the NSOP project risk management plan was not developed to a standard that could support effective risk management and decision-making for a project of this scale and complexity.**

The consequences of the failure of early planning and the decisions of the previous Council were inevitable, foreseeable and tie this Council to managing the project to completion and addressing and funding the real costs of the project.

### **Good governance and decision-making framework**

Elected representatives and the organisation more broadly must look unflinchingly at the path taken to this point, learn from it and put strategies and policies in place to make sure it never happens again.

There is a new Minister for Local Government with a commitment to good governance in NSW. The OLG has a new CEO in place and in November 2023 issued new Risk Management and Internal Audit Guidelines to be implemented by all councils by July 2024. This includes new provisions for ARICs.

In January 2024 IPART commenced consultation on the terms of reference for an investigation and report on the financial model for NSW local councils.

This year, under the new leadership of this Council together with the new General Manager and executive leadership team, Council has commenced work on developing and adopting a series of strategies on economic development, arts and culture and social inclusion to guide planning for and delivery of services and projects.

Given the experience of the NSOP redevelopment it is vital that Council also prepare and adopt a rigorous, robust governance and decision-making framework to guide all decisions of Council, no matter how large or small, to ensure transparency, accountability and long-term financial sustainability.

We must act to ensure that such bad governance and decision-making is never repeated.

**I therefore recommend:**

**1.THAT** Council prepare, consult on and adopt a Governance and Decision-Making Framework/Strategy as part of the strategic framework being undertaken this year.

**2.THAT** Council engage with the community, the Office of Local Government, IPART and other external stakeholders to ensure that the Framework/Strategy is best practice and local government sector leading.

**3.THAT** Council note the new Risk Management and Internal Audit Guidelines issued by the OLG and resolve to immediately reset the external membership of the Audit, Risk and Improvement Committee ahead of the implementing of the guidelines by July 2024.

**4.THAT** Council inform the community of this resolution.

**COUNCILLOR ZOË BAKER  
MAYOR**