



Hawkesbury City Council

supplementary ordinary meeting business paper

date of meeting: 27 November 2007

location: council chambers

time: 5:00 p.m.

ORDINARY MEETING - Supplementary

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SECTION 4 - Reports for Determination

SUPPLEMENTARY REPORTS

Item: 273 **CP - Councillor Representation on the Board of Peppercorn Services Inc. - (78340, 95498)**

Previous Item: 242, Ordinary (13 November 2007)

REPORT:

This report has been prepared to provide further advice to Council in relation to this matter.

Background:

- At the Special Meeting of Council held on 18 September 2007, Council renewed the appointment of Councillors to sit on various Committees. In considering the re-appointment of a Councillor to sit on the Board of PS Inc. (PSI), Council resolved to request advice from the Board of PS Inc. as to whether the Board had a view as to the requirement for continued Councillor representation on the Board.
- Advice was sought from the Board of PS Inc and a report prepared for Council which was considered at Council's Ordinary meeting held on 13 November 2007. At this meeting Council resolved;

"That this matter be deferred to the next Council meeting pending further clarification regarding the disclosures of interest in this matter."
- In debating this matter, Council also requested clarification as to the views of the Board regarding the disclosure of interest issue and other matters raised at the 13 November 2007 meeting. Council staff were unable to provide this information at the meeting, and these matters were subsequently referred to the Board for further advice.

Disclosure of Interest.

With regard to whether or not a Councillor as a Council delegate/representative to an external organisation is required to declare a interest when issues relating to that organisation come before the Council, Section 448 of the Local Government Act details a number of circumstances where an interest **does not** have to be disclosed and includes:

- "(p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative as delegate."

Further Advice from the Board of PS Inc.

The issues raised at the 13 November 2007 Council Meeting were reported to the PSI Board Meeting held on 22 November 2007. The Board has considered these issues and has forwarded correspondence to Council (Attachment 2).

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Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

"Objective: Investigating and planning for the City's Future in consultation with our community, and coordinating human and financial resources to achieve this future."

Funding

There are no funding implications arising from this report.

RECOMMENDATION:

That Council:

1. Note that, given the existing Council representation on the Board of Peppercorn Services Inc., a Councillor is not required to sit on the Board of Peppercorn Services Inc. as a voting Director, and that the Constitution for Peppercorn Services Inc. be amended to reflect this.
2. Nominate a Councillor to act as a 'rapporteur' to facilitate communication between Council and the Board of Peppercorn Services Inc.

ATTACHMENTS:

AT - 1 Previous Report to Council (13 November 2007)

AT - 2 Correspondence from Vice Chairperson, Peppercorn Services Inc. dated 22 November 2007

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AT - 1 Previous Report to Council (13 November 2007)

ITEM: CP - Councillor Representation on the Board of Peppercorn Services Inc. - (78340, 95498)

Previous Item: 193, Special (18 September 2007)

REPORT:

This report has been prepared to provide advice from the Board of Peppercorn Services Inc. regarding the continuing requirement for a Councillor Representative to sit on the Board.

Background:

- Peppercorn Services Inc was established in 2002. It is an autonomous association, incorporated under the Associations Incorporation Act 1984.
- Peppercorn Services Inc (PS Inc) was initially established to assume delegated responsibility for the management of the Hawkesbury Community Transport Service. Since 2002, the number of services and facilities delegated by Council to PS Inc has progressively expanded to the point where PS Inc. now operates as the contracted service delivery arm of Council for Council's externally funded community services. Within this framework PS Inc operates in much the same way as the Hawkesbury Sports Council.
- Article 22 (2) (c) of the constitution of PS Inc. provides for up to four representatives from Council (one to be a Councillor) to take up positions as a Board Members of Peppercorn Services Inc. As provided for in the constitution, the current make-up of the Board also includes representatives from Hawkesbury District Health; Sydney West Area Health; Anglicare; Nova Employment; Right Connections Coalition; Forgotten Valley Project Consultative Committee; Home Care NSW; Hawkesbury Seniors Centre; a community representative; and a private bus service operator representative.
- At the Special Meeting of Council held on 18 September 2007, Council renewed the appointment of Councillors to sit on various Committees. In considering the re-appointment of a Councillor to sit on the Board of PS Inc. Council resolved the following:

That Council defer the nomination of a representative to Peppercorn Services Inc. and that following discussions with Peppercorn Services Inc. a further report be submitted to Council on the need for a Council representative to that organisation.
- This request was considered by the Board at its Board meeting held on 27 September 2007.

Current Situation:

In considering this matter, the Board noted that it has been successfully managing the Council services delegated to its control for the past five years. Over this time, Council and Peppercorn Services Inc have developed a strong and successful partnership for the planning, procurement and provision of community services in the City of Hawkesbury.

Within this partnership Council has retained responsibility for community planning and service commissioning. In effect, Council is the 'engine' for the identification of the human service needs of residents (through its community planning processes). Council, as a 'lead agency' in partnership with PS Inc and other consortia partners, then tenders for grants to establish these services which are delegated to PS Inc. to operate. In turn PS Inc. has executed a service agreement with Council's Community Services Branch whereby the Branch provides project management for the services delegated to PS Inc. to operate. This arrangement enables Council to retain an operational oversight for the services delegated to PS Inc and ensures that Council can be satisfied that the Board complies with the statutory

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and funding obligations associated with the management of the Council auspiced funded services delegated to its control.

The model of planning and service commissioning by Council, externally contracted service delivery by PS Inc., and contracted project management by Council's Community Services Branch has proven to be an effective and durable mechanism for developing and delivering services to residents. The model (as outlined in Table 1) implicitly recognises the critical role of Council in providing strategic and policy leadership to direct the investigation and planning of responses to meet the human service needs of the ageing and changing demography of the City. The model also acknowledges Council's role in facilitating inclusive community engagement processes and building strong community connections.

The Board believes that the success of these partnership arrangements has lessened the requirement for a Councillor sit on the Board - to be directly involved in managing the operations of PS Inc. The Board perceives that Council's role should be to continue to provide strategic leadership to shape the future of the City through its community planning and community engagement processes.

Table 1: Strategic Partnership for planning, procurement and provision of community services in the City of Hawkesbury.



The Board however wishes to maintain its strategic alliance with Council to assist Council in discharging its place-shaping role by working with Council at the strategic and city-wide level to investigate, plan and commission services to respond to the needs of residents. The Board would therefore welcome the opportunity to establish a communication channel with Council to facilitate the exchange of information and advice between PS Inc and Council so that both parties can continue to work to achieve their common goals.

The Board requests that Council give consideration to nominating a Councillor to act as a 'rapporteur' to facilitate communication between Council and the Board. The Councillor appointed to fill this role would (where required) attend Board meetings to discuss specific matters of interest to Council and/or the Board but would do so in an ex-officio capacity. The Councillor representative would receive Board Business Papers and would be in a position to provide advice to Council (at Council meetings) on the operations of PS Inc where such questions may arise.

In consideration of these matters, the Board at its meeting of 27 September 2007 resolved the following;

"The Board to forward advice to Council to the effect that there is no longer a requirement for a Councillor representative to sit on the Board as a voting director. The advice to also acknowledge the Board's

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appreciation of Council's continuing support of its activities. The Board would invite Council to nominate a Councillor to act as a 'rapporteur' to facilitate communication between Council and the Board."

Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

"Objective: Investigating and planning for the City's Future in consultation with our community, and coordinating human and financial resources to achieve this future."

Funding

There are no funding implications arising from this report.

RECOMMENDATION:

That Council:

1. Note that, given the existing Council representation on the Board of Peppercorn Services Inc, a Councillor is not required to sit on the Board of Peppercorn Services Inc as a voting Director, and that the Constitution for Peppercorn Services Inc be amended to reflect this.
2. Nominate a Councillor to act as a 'rapporteur' to facilitate communication between Council and the Board of Peppercorn Services Inc.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

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AT - 2 Correspondence from Vice Chairperson, Peppercorn Services Inc. dated 22 November 2007



Peppercorn Services Inc.
Peppercorn Place
320 George St.
WINDSOR NSW 2756

22nd November 2007

The General Manager
Hawkesbury City Council
366 George St.
Windsor NSW 2756

Dear Mr. Jackson;

I am writing on behalf of the Board of Peppercorn Services Inc. (PSI) in relation to Council's request for advice from the Board regarding the continued requirement for a Councillor representative to sit on the Board of Peppercorn Services Inc.

As you would be aware, Council had resolved to seek advice from the Board regarding this matter. Council's request was considered by the Board at its September Board meeting and the Board subsequently forwarded advice to Council which was considered by Council at its Ordinary Meeting held on 13 November 2007.

I would stress that providing its advice, the Board was not seeking to do away with or downgrade the status of the Councillor appointed Board representative. Indeed, the inclusion of the provision for Councillor representation within the constitution of PSI was initiated and endorsed by the Board. While PSI is an autonomous association constituted under the *Associations Incorporation Act 1984*, it has always valued the involvement of Council in its operations. The 'review' of Councillor representation was not one initiated by the Board - the Board was simply responding to Council's request. The Board assumed that in asking for advice, Council was itself reviewing the necessity to maintain a Councillor Representative on the Board - perhaps with a view to moderating the demands placed on Councillors. The Board carefully considered this request and advised Council that it did not perceive that there was a requirement for a Councillor representative to sit on the Board as a voting director. This advice was based on a re-appraisal of the relationship between Council and PSI. The Board did advise that it wished to maintain its strategic alliance with Council and identified a mechanism to facilitate this alliance.

I understand that in discussing this matters at its November 13 meeting, a number of issues and concerns were raised by Councillors and public speakers and that clarification was sought about the views of the Board regarding these matters. To Board would provide the following additional advice to clarify and correct the information provided to Council.

1. Community Representation on PSI. - The Board understands that Council expressed a view that continued Councillor representation was required to ensure that the interests of



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the community could be represented on the Board. The Board accepts that Council will determine its own response to this issue, however it would highlight that the current membership of the Board includes consumer representatives drawn from seniors groups, isolated communities, as well as a designated community representative. Representation on the Board also includes persons involved in the delivery of health, welfare and social services to senior residents, people with disabilities and vulnerable families. The Board would therefore seek to correct the suggestion that it cannot effectively represent the interests of the community. Indeed, PSI operates as a Community Board of Management and was established to facilitate stakeholder and consumer input into the provision of services to the community. The Board (like other governing bodies) may well be unable to represent all the sectional interests within a community, but it believes that its membership and structure does facilitate informed decision making based on the common good - though it accepts that not all Board decisions will satisfy all its stakeholders and consumers.

The Board would also seek to allay any concerns (which may arise from the suggestion that it lacks a mechanism for community representation) that it is not being sufficiently held accountable for the services it delivers. PSI currently operates 25 programs with funds derived from 17 separate grants. A further two services are funded from user charges. In this context PSI has entered into funding contracts or legal agreements with government agencies to deliver defined service outputs and outcomes. PSI is required to submit regular reports to funding bodies to demonstrate that it has delivered these required outputs and is subject to an external accreditation process. In this context PSI is held accountable for its performance and to date has satisfied all its contracted service outputs. PSI is perceived by its funding bodies as an accountable, credible and effective service delivery agency. PSI has also engaged outside bodies to conduct Consumer Satisfaction Surveys on its behalf and has acted on the findings of these surveys.

2. Conflict of Interest - The Board understands that Council has sought clarification of issues relating to real or perceived conflicts of interests which may arise in the course of Councillors sitting as voting directors on the Board. The Board is not in a position to comment on the provisions of the *Local Government Act 1993* but would advise that neither the *Associations Incorporation Act 1984* (under which PSI is legally constituted) or PSI's *Constitution* make direct reference to conflicts of interest (whether pecuniary or non-pecuniary). The Board's understanding is that Directors are appointed to the Board on the basis of their professional qualifications or industry knowledge in order to provide consumer, technical or industry advice to the Board. In this capacity the convention applied by the Board has been for Board Members to declare an interest where they form a view that they would be unable to impartially meet their responsibilities under Sect 12 (c) of the PSI constitution 'to do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of Peppercom Services Inc'. having regard to the Objectives of the Organisation. The simple test of conflict of interest applied by the Board is for each Director to assess whether or not an affiliation with another service or individual would prevent them from making an impartial decision which was in the best interest of PSI, its consumers, and its staff.

The Board is aware of the difficulties experienced by Councillor representatives in situations where their Councillor duties (as advocates for residents) may come into conflict with their Director duties. The Board acknowledges that its decisions may from time-to-time result in vigorous representations being made to Councillors (who sit on the Board) requesting that the Councillor vary or rescind Board resolutions or policies, or alternatively for the Councillor to direct Board representatives not to implement these decisions. The Board is also aware that the actions of Council staff - who are delegated with the responsibility of implementing Board decisions - has exposed them to allegations of misconduct. The Board accepts that its decisions may aggrieve a very small minority of consumers but believes it has a responsibility to manage PSI in a way that delivers the maximum benefit to all of its

consumers in accordance with its funding obligations. In these situations the Board has endeavoured to deal with the conflicts of interest which may arise from these representations and allegations by ensuring that they are considered and/or investigated in accordance with the Board's complaints and grievance policies or through the referral of these matters to funding bodies and the General Manager of Hawkesbury City Council (in the case of allegations made against Council staff).

3. The Role of Directors - The Board understands that Council was seeking to clarify the precise role of Directors appointed to the Board. The Board would advise that the role of Directors is defined (in broad terms) in Section 12 of the *PSI Constitution* which states that the role of the Board (and therefore its Directors) is to ;

- (a) *is to control and manage the affairs of Peppercorn Services Inc.; and*
- (b) *may exercise all such functions as may be exercised by the Board; and*
- (c) *has the power to perform all such acts and to do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of Peppercorn Services Inc.*

The Board interprets these 'powers' in the context of the *Objects* of PSI (as defined in its constitution) which state that PSI has been established to operate transport, food, traineeship, supported employment, early intervention and community support services for the aged, younger people with a disability and vulnerable families from socio-economically and geographically isolated backgrounds.

Taking into account these provisions, the Board understands that the primary role of Directors is to operate the services, programs and activities as defined in its constitution by taking such actions which are necessary to ensure their proper management. The Board interprets these responsibilities to suggest that Directors are required to make decisions which are in the best interests of PSI. The Board accepts that from time to time Directors may advocate on behalf of individual consumers - in these situations a response to these representations will be collectively determined by the Board.

4. Concerns Regarding the Operations of the Board - The Board understands that Council was advised of communications in which it was suggested that the Board member had expressed concern about the operations of the Board prompting their resignation from the Board. The Board would seek to correct the public record by advising that it has received correspondence from a long-standing Board member indicating that due to (non-PSI) work requirements they would be unable to maintain their role as a Director. This correspondence contained no mention of other concerns or matters and indicated that the individual concerned would be available to provide consultancy and technical advice if required by the Board. The Board is not aware of any concerns or issues raised by its members and would respectfully request that where such concerns are raised that they should be referred to the Board for investigation and action in accordance with the provisions of its constitution and complaint policies. The Board would also advise Council that it has cited all written complaints and concerns received by PSI and is satisfied that these complaints have been thoroughly investigated in accordance with its approved policies and procedures and that any resolutions of the Board arising from these concerns and complaints have been duly implemented.

The Board is unaware of any other issues or concerns regarding the Board's governance and performance apart from the ongoing disagreement between the Board and Bridges Disability Services (a licensee of Peppercorn Place) regarding the property management of Peppercorn Place. While PSI regrets that it has been unable to resolve the disagreement with Bridges Disability Services to the satisfaction of that organisation, it is committed to dealing with the licensees at Peppercorn Place fairly and equitably and in accordance with

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the provisions of their Licence Agreements. The Board has written to Bridges on a number of occasions to encourage that organisation to work constructively with PSI and the other licensees at Peppercorn Place to resolve their concerns. The Board has recently implemented a structured process whereby it has delegated authority to a Licensee committee to make recommendations to the Board as to changes that may be needed to the building rules for Peppercorn Place.

5. Expenditure of Council funds - The Board understands that concern was expressed as to the provision of Council funds to PSI. The Board would advise that the funds required to operate the business of PSI are derived totally from grants and through user charges and fees. PS Inc receives no subsidies or funds from Council - apart from a small annual contribution of \$3,000 per year to nominally cover the costs of operating Council's community access bus (these funds are used by the Board to operate a subsidised transport service for residents).

I hope that this information will correct and clarify these matters. The Board has been working with Council since 2002 to commission and provide services to respond to the needs of the residents. This partnership has delivered more than \$1M in additional ongoing funding for new services and programs for residents of the City. The Board looks forward to maintaining this productive partnership.

Yours faithfully etc.

Laurie Dundas
V/Chairperson
Peppercorn Services Inc.



oooO END OF REPORT Oooo

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Item: 274 **IS - Removal of Telstra Payphones within the Hawkesbury - (95495, 105667)**

Previous Item: 166, Ordinary (28 August 2007)

REPORT:

This matter was previously reported to Council at its meeting of 28 August 2007 where Telstra Consumer Marketing and Channels advised of their intention to remove two payphones, one in East Market Street, Richmond near Brentwood Avenue and the other in Brabyn Street, Windsor near George Street. Council at that meeting resolved not to support the removal of any payphones located in the Hawkesbury Local Government Area.

Telstra has now advised that the 90 day consultation period has finished and apart from the Council's submission they have received no submissions from members of the community. Telstra advises that whilst it agrees with Council's views that payphones provide a valuable community service they also have a responsibility to ensure that the payphones are being used cost effectively.

Telstra advise that full consideration has been given to the request that the payphones remain in the current locations however lack of patronage and the cost of retaining those payphones outweigh the reasons put forward for their retention. The removal of the phones is to commence from December 2007.

It is considered that further representations should be made in an effort to retain the phones and the support of both the Federal and Local Members be sought in this regard.

Conformance to Strategic Plan

The proposal is deemed to conform with the objectives set out in Council's Strategic Plan i.e:

"Objective: A network of towns, villages and rural localities connected by well maintained public and private infrastructure, which supports the social and economic development of the city."

Funding

Nil impact on current funding.

RECOMMENDATION:

That the support of both Federal and State Members be sought with a view to retaining the payphones in East Market Street, near Brentwood Avenue, Richmond and Brabyn Street, near George Street, Windsor.

ATTACHMENTS:

There are no supporting documents for this report.

oooO END OF REPORT Oooo

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CONFIDENTIAL SUPPLEMENTARY REPORT

Item: 275 **GM - Appointment to Position of Director Support Services - (79351)**
CONFIDENTIAL

Previous Item: 238, Ordinary (13 November 2007)

Reason for Confidentiality

*This report is **CONFIDENTIAL** in accordance with the provisions of Part 1 of Chapter 4 of the Local Government Act, 1993, and the matters dealt with in this report are to be considered while the meeting is closed to the press and the public.*

Specifically, the matter is to be dealt with pursuant to Section 10A(2)(a) of the Act as it relates to personnel matters concerning particular individuals (other than councillors).

In accordance with the provisions of Section 11(2) & (3) of the Local Government Act, 1993, the reports, correspondence and other relevant documentation relating to this matter are to be withheld from the press and public.

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ordinary
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